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## **PUBLIC UTILITIES**

### **BOARD OF PUBLIC UTILITIES**

#### **COMMUNITY SOLAR ENERGY PILOT PROGRAM**

##### **Community Solar Energy Pilot Program Rules**

###### **Adopted New Rules: N.J.A.C. 14:8-9**

Proposed: October 1, 2018, at 50 N.J.R. 2048(b).

Adopted: January 17, 2019, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: January 25, 2019, as R.2019 d.021, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: QO18060646.

Effective Date: February 19, 2019.

Expiration Date: May 1, 2019.

###### **Summary of Public Comments and Agency Responses:**

Written comments were submitted by: Stefanie A. Brand and Sarah Steindel, Division of Rate Counsel (RC); Philip J. Passanante, Atlantic City Electric Company (ACE); Thomas R. Donadio, Jersey Central Power & Light (JCP&L); Joseph A. Shea, Public Service Electric & Gas (PSE&G); Margaret Comes, Rockland Electric Company (RECO); Ann Leib; Richard W. Caperton, Arcadia Power; Steven Leitner, Cap Solar; Brandon Smithwood, Coalition for Community Solar Access (CCSA); Shannon Weigel and Rich DiMatteo, Edison Energy; Flett

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Exchange; Gabel Associates; Gretchen Boise; Tom Figel, GRID Alternatives (GRID); Howard Lee; Keith Peltzman, Independence Solar; Jay Norman; Jeanne Fox; Ed Potosnak, New Jersey League of Conservation Voters (NJLCV); Mark Canright, Comeback Farm; Mohammad Karim; Michael McGuinness, Commercial Real Estate Development Association New Jersey Chapter (NAIOP NJ); Peter Kasabach, New Jersey Future (NJ Future); Elliott Ruga, New Jersey Highlands Coalition (NJHC); Stephen B. Pearlman, Pearlman & Miranda; Christine Weydig, The Port Authority of New York & New Jersey (Port Authority); Lloyd D. Levenson, Cooper Levenson, Attorneys at Law on behalf of Radiant Energy (Lloyd Levenson); Trevan J. Houser, RE-Imagine Real Estate (RIRE); Jeff Tittel, New Jersey Sierra Club (Sierra Club); Will Fischer, Summit Ridge Energy (Summit Ridge); Steve Durst, Synnergy; Thomas Wells, The Nature Conservancy; Ross Abbey, United States Solar Corporation (US Solar); Rob Gregson, UU Faith Action NJ. The following groups submitted joint comments: Mary Barber, Environmental Defense Fund (EDF); Thomas Gilbert, New Jersey Conservation Foundation; Nathanael Greene, Natural Resources Defense Council (NRDC); Jaclyn Rhoads, Pinelands Preservation Alliance; and Ed Potosnak, NJLCV (collectively this group of commenters is referred to as the “Joint Environmental Commenters”). The following groups submitted joint comments: Nicky Sheats, Center for the Urban Environment, John S. Watson Institute for Public Policy at Thomas Edison State University; New Jersey Environmental Justice Alliance, Ironbound Community Corporation, and The Wei LLC (collectively this group of commenters is referred to as the “NJEJA”). The following groups submitted joint comments: Thomas Gilbert, New Jersey Conservation Foundation; Nathanael Greene, Natural Resources Defense Council; and Ed Potosnak, New Jersey League of Conservation Voters (collectively this group of commenters is

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referred to as the “Joint Conservation Commenters”). The following groups submitted joint comments: Melanie Santiago-Mosier, Vote Solar; Environment New Jersey; Earthjustice; GRID Alternatives; and Solar United Neighbors of New Jersey (collectively this group of commenters is referred to as the “Vote Solar”).

The following speakers submitted oral comments at the November 8, 2018 public hearing at 1:00 P.M.: Sarah Steindel, Rate Counsel (RC); Nancy Griffeth, Unitarian Universalist Faith Action New Jersey (UU Faith Action NJ); Ronald Tuff, Green Faith; Brandon Smithwood, Coalition for Community Solar Access (CCSA); Lloyd Levenson, Cooper Levenson Attorneys at Law (Lloyd Levenson); Joe Henri, Dimension Renewables Energy; Peter Ross, Borrego Solar Systems; Salar Naini, Turning Point Energy; Melanie Santiago-Mosier, Vote Solar; Ted Repetti, PSE&G; Will Fischer, Summit Ridge Energy; Brad Forstein, Clean Energy Collective; Emily Cosbar and Alejandro Avagato, Ampion; Jeanne Fox, GRID Alternatives (GRID); Jeff Tittel, New Jersey Sierra Club (Sierra Club); Tom Gilbert, NJ Conservation Foundation and Rethink Energy New Jersey (NJ Conservation Foundation); Marisa Slaten, Atlantic City Electric (ACE); Lena Smith, Food & Water Watch; Ross Abbey, US Solar; Dylan McAuliffe, Solar Landscape; Melissa Kemp, Cypress Creek Renewables; Jay Norman, Village Green Condominiums (Jay Norman); Hillel Halberstam, Synnergy Solar; George Lopez; and John Jetson, All-Stage Ventures.

The following speakers submitted oral comments at the November 8, 2018 public hearing at 5:30 P.M.: Brad Higginbottom, Nexamp; Greg Mahan; Nicky Sheats, Edison State University Center for Urban Environment in the Watson Institute and the New Jersey Environmental Justice Alliance (Nicky Sheats); Zac Meyer, Soltage; and Jaclyn Rhoads, Pinelands Preservation

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Alliance.

In this notice of adoption, individuals that are not affiliated with an organization are identified by their first and last names; individuals that are affiliated with an organization are identified by their organization's name. The following summaries of comments are the Board of Public Utilities' ("BPU" or "Board") best understanding of the comments filed.

**General Comments**

1. COMMENT: The commenters support the Community Solar Energy Pilot program proposed rule (Proposed Rule), believing it will expand access to solar energy to renters and homeowners who currently cannot benefit from solar energy. (Ann Leib, Gretchen Boise, Mohammad Karim, and Greg Mahan)
2. COMMENT: The commenter believes New Jersey's new Community Solar Energy Pilot Program (Pilot Program) is an exciting opportunity to provide New Jersey ratepayers with financial and environmental benefits. (Arcadia Power)
3. COMMENT: The commenter supports the community solar program in New Jersey. Community solar allows those who can't put solar panels on their own homes to buy into solar power. (Sierra Club)
4. COMMENT: The commenter supports the development of the Community Solar Energy Pilot Program in New Jersey. The commenter believes that community solar is important, particularly as it will help those who are at the greatest risk from climate change and yet have often been left behind with regards to access to New Jersey's clean energy programs, particularly in dense urban communities. (Green Faith)

RESPONSE TO COMMENTS 1, 2, 3, AND 4: The Board thanks the commenters for their

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comments and support for the Pilot Program. The Pilot Program is intended to increase access to solar energy to customers that may not have access to solar energy through existing programs and rules. Furthermore, the BPU recognizes that the three-year Pilot Program will provide the opportunity to test different ideas and models with the intention of establishing a robust and inclusive community solar market in accordance with the Clean Energy Act, P.L. 2018, c. 17. Over the three years of the Pilot Program, the BPU will carefully monitor the Pilot Program and may adjust program parameters based on feedback from stakeholders and the BPU's observations.

5. COMMENT: The commenter supports the achievement of the New Jersey clean energy goals established by the Clean Energy Act and believes that the electric distribution companies (EDCs) are a critical part of making the Pilot Program successful. (ACE)

RESPONSE: The BPU appreciates the comment and looks forward to working with the EDCs to implement community solar in New Jersey.

6. COMMENT: The commenter presents a summary of community solar, identifying the relationship between subscriber, grid, and community solar provider. The commenter notes that there are a variety of different business models; in all cases, the community solar subscriber pays the provider for their subscription in the project in exchange for bill credits on the subscriber's utility bill according to the subscriber's portion of the community solar project's production. (CCSA)

7. COMMENT: The commenter thanks the BPU for undertaking this stakeholder process to

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design the Pilot Program and supports the continued growth of responsibly developed solar energy as a clean source of electricity generation, and the implementation of the Pilot Program to ensure that there is more equitable access to solar energy for residents and communities that have not enjoyed the benefits of solar energy, including residents of multi-family dwellings and low- and moderate-income communities. (NJLCV)

RESPONSE TO COMMENTS 6 AND 7: The stakeholder engagement process has informed the development of this rulemaking. The BPU greatly appreciates the sustained and thoughtful input from the many stakeholders who participated in the development of the Pilot Program and looks forward to continuing this stakeholder engagement throughout the further development and implementation of community solar in New Jersey. Furthermore, the BPU intends for the Pilot Program to enable access to solar energy for customers that do not currently have access.

8. COMMENT: The commenter strongly supports the Proposed Rule as it allows for larger projects to be centrally located. Community solar helps drive down the cost of solar and energy to consumers, because it allows those who cannot afford to install individual solar projects to share the use of one centrally located solar project with multiple investors permitted. (NAIOP NJ)

RESPONSE: One of the goals of the Pilot Program is to facilitate the decrease in cost for installing solar for all ratepayers.

9. COMMENT: The commenter is optimistic about the potential for the Pilot Program to reap many future benefits for low- and moderate-income households in New Jersey. The

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commenter strongly believes that the vast number of non- “properly closed landfills” in New Jersey can be safely and efficiently redeveloped as solar electric power generation facilities and provide environmental and economic benefits to New Jersey residents. (RIRE)

RESPONSE: The BPU appreciates the comment. The Pilot Program prioritizes the inclusion of low- and moderate-income (LMI) households and the pursuit of local clean energy development that is tied to the communities without materially compromising the preservation of open space or protected lands in New Jersey.

10. COMMENT: The commenter notes that the comments it submitted to the BPU reflect the community solar experience of its affiliated utilities: the Baltimore Gas & Electric Company, the Commonwealth Edison Company, the Delmarva Power & Light Company, PECO Energy Company, and the Potomac Electric Power Company in Delaware, the District of Columbia, Illinois, Maryland, and Pennsylvania. (ACE)

RESPONSE: The BPU appreciates the observation, and notes that, in developing the rules for the Pilot Program, the BPU has drawn from the experiences of existing community solar programs in other states, while crafting a program that reflects the goals and circumstances specific to New Jersey.

11. COMMENT: The commenter supports the BPU’s direction with the Pilot Program, as well as the proposed nationally leading program target for LMI customer participation. The commenter’s recommendations aim to ensure that LMI projects in the Pilot Program are successful and maximize benefits to LMI customers, including, but not limited to, bill savings

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and energy burden reduction, as well as solar workforce training and economic opportunities.

The commenter also urges the BPU to center environmental justice, equity, and inclusion within the Pilot Program's structure and implementation. The commenter supports NJEJA's recommendation that projects should promote ownership, entrepreneurship, research, and educational opportunities for Environmental Justice (EJ) communities. The BPU has strong authority to incorporate EJ principles and recommendations through Governor Murphy's Executive Order 23 (2018) concerning EJ issues. New Jersey should aim to provide LMI customers proportionate access to program participation regardless of income level or housing type. New Jersey has approximately 1.9 million LMI households based on U.S. Department of Housing and Urban Development (HUD) income definitions, about 200,000 of which live in affordable housing units, half of which are master-metered. BPU should aim to ensure that all of these customers have access to participation in the Pilot Program. (GRID)

RESPONSE: One of the key goals of the Pilot Program is to provide the benefits of solar energy to LMI households throughout New Jersey. The BPU understands the importance of recognizing EJ communities and issues and will work with other State entities and relevant stakeholders to implement Governor Murphy's Executive Order No. 23 (2018). Specific items pertaining to the design of the Pilot Program are addressed in the relevant sections of this rulemaking.

12. COMMENT: The commenter comments that obtaining input from community residents and organizations on siting locations for community solar projects and other issues could be performed through a community energy planning process. Community energy planning would allow community residents, community groups, and EJ groups to be part of a process that often

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excludes them. Instead of energy decisions being made for these communities, decisions could be made by these communities in regards to how their energy is produced, where and what type of energy projects are located in their community, and what type of co-benefits are connected to energy production. Projects, or at least a certain number of projects, could be required to include a community energy planning process. Or, alternatively, but probably less effective, “points” could be awarded to projects in the selection process that include community energy planning in their project proposals as a way of incentivizing and prioritizing such projects. (NJEJA and Nicky Sheats)

13. COMMENT: The commenters note that this program provides opportunities for the BPU to engage in transparent and inclusive processes that relate to the roll-out, implementation, and review of the Pilot Program. The BPU can use the Pilot Program to increase engagement with communities that do not have the resources to participate in what are often complex, opaque, and inaccessible proceedings, as well as stakeholders who can offer technical expertise. The BPU should hold early conversations with underserved communities and the groups that represent them in consideration of program design, implementation, review, and adjustment. (Vote Solar)

RESPONSE TO COMMENTS 12 AND 13: The BPU understands the importance of meaningful community engagement throughout the Pilot Program, and believes that community solar projects, by their very nature as a shared asset, may be particularly well suited to local development and/or ownership. While the application process is being discussed in a separate public comment proceeding, the BPU believes that points in the evaluation criteria for applications are one way to encourage certain types of project development. Throughout the development of this rulemaking for the Pilot Program, the BPU has prioritized public

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engagement through several stakeholder meetings and opportunities for public comment and has engaged local communities through events and presentations on community solar. The BPU will continue to maintain an open and transparent process with stakeholder engagement.

14. COMMENT: The commenters support the Clean Energy Act, and support the development of appropriately-sited community solar projects to advance clean energy and ensure greater access to solar energy for residents and communities that have generally lacked access to solar energy. The BPU should ensure that future solar development is subject to clear and strong siting guidelines and policies that guide solar development to preferred locations and avoid unnecessary conflicts with the State’s longstanding and ongoing land preservation and natural resource protection efforts. (Joint Environmental Commenters, Joint Conservation Commenters, and NJ Conservation Foundation)

RESPONSE: The BPU is committed to balancing the dual objectives of increased renewable energy generation and the preservation of open and protected lands in New Jersey.

15. COMMENT: The commenter notes that the Pilot Program rulemaking should specifically mention condominiums as eligible participants in the program. (Jay Norman)

RESPONSE: Although condominiums are not explicitly mentioned in this rulemaking, they are not excluded from participating, so long as they adhere to the provisions and requirements in the Pilot Program rulemaking.

16. COMMENT: The commenter comments that the BPU should not make any changes to

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the Proposed Rule that might have a disproportionate or unnecessary impact on subscriber organizations that don't charge exit fees or cancellation fees to subscribers. The BPU should promptly finalize guidelines for subscriber organizations because identifying and subscribing customers takes time. (Arcadia Power)

RESPONSE: The BPU has adhered to the Administrative Procedures Act (APA), N.J.S.A. 52:14B-1 et seq., throughout this rulemaking process regarding any proposed changes to the Proposed Rule upon adoption. Clarity is an essential component to the development of a successful community solar market. This rulemaking establishes a Pilot Program that will require further stakeholder engagement to develop a permanent community solar program.

17. COMMENT: The commenter recommends expanding the Pilot Program to the broadest array of participants to provide additional incentives to businesses to undertake large-scale solar projects that will support the State's goal of advancing solar development while cutting costs. The State should review the relevant statutes and rules that govern or impact community solar projects and identify opportunities to foster and expand the type of service sharing. There also needs to be uniformity in the law governing contracting with public entities, so that the process is fair and affords the maximum amount of participation. The BPU should, in conjunction with Department of Community Affairs, the Department of Education, and the Division of Law and Public Safety, undertake a complete review of its statutes and implementing rules to ensure that community solar projects can be applied uniformly to all government entities in the most efficient manner possible. In some cases, legislative changes may be needed, but legislators may be eager to embrace policies that encourage the continued development of community solar

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agreements, so that clean energy can be enjoyed by all demographics in urban and suburban communities. (NAIOP NJ)

RESPONSE: The BPU will continue to explore ways to make rules more streamlined and effective, only as they pertain to the section of the Clean Energy Act being implemented. Any expansion of the Pilot Program that is beyond the scope of the Clean Energy Act, or any review of other statutes or rules, is beyond the scope of this rulemaking.

18. COMMENT: The commenter stresses the importance of developing a Pilot Program that benefits customers who otherwise could not take advantage of rooftop solar, while weighing the costs of such a program that will be paid by all customers, particularly non-participating customers. Further, to inform the development of the permanent program, the Pilot Program must be based on established, pre-set goals, and measures of success. In order to develop a robust Community Solar Program and to achieve New Jersey's clean energy goals, the BPU should encourage the participation of all stakeholders, including developers and the EDCs. Encouraging the participation of developers and EDCs will strengthen the permanent program by incorporating all of the lessons learned from the Pilot Program. (RECO)

RESPONSE: The Pilot Program is intended to support access to solar for all ratepayers in New Jersey. The BPU intends that the Pilot Program, with ongoing stakeholder engagement, will inform the development of a permanent program. The BPU further recognizes that the three-year Pilot Program will provide the opportunity to test different ideas and models with the intention of establishing a robust and inclusive community solar program. The BPU will carefully monitor the Pilot Program and may adjust program parameters based on feedback from stakeholders and

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the BPU's observations.

19. COMMENT: The commenter recommends that the BPU should establish technical and policy working groups composed of BPU staff, EDCs, and solar developers. These working groups would address issues that certainly will arise during the three-year Pilot Program, as well as make recommendations to the BPU on issues involving technology advancements within the solar and utility industry, metering, reporting, and periodic policy review. Further, these working groups could identify issues and explore solutions to support the Pilot Program, as well as clean energy development in New Jersey. (RECO)

RESPONSE: The BPU recognizes that the implementation of community solar in New Jersey will require sustained work and coordination on the part of many different stakeholders, and looks forward to continued dialogue during the Pilot Program and the implementation of a permanent program. The BPU will further explore the suggestion of technical and policy working groups for community solar.

20. COMMENT: The commenter applauds the BPU for proposing these rules; yet, it has overarching concerns with the timeline set forth and with regard to the number and nature of program details that still need to be finalized. Uncertainties about the future of New Jersey's solar incentives may have a negative impact on the success of the Pilot Program.

The BPU should revise the timeline for the Pilot Program Proposed Rule to include stakeholder meetings through January 15, 2019, to finalize Pilot Program application details; program details submitted to the BPU for approval on February 28, 2019; and an application

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window opened from April 1, 2019 to April 30, 2019. Several Pilot Program details need to be approved by the BPU prior to the opening of the pilot program application window for Program Year 1 (PY1). (Summit Ridge)

RESPONSE: The BPU is committed to working to ensure that the roll-out of the Pilot Program is as smooth and transparent as possible. The Pilot Program Rule creates an overarching program framework, in accordance with the Clean Energy Act, and identifies specific steps for the implementation of community solar in New Jersey. Furthermore, as described in N.J.A.C. 14:8-9.3, the effective date of the Pilot Program does not automatically signal the immediate opening of the Application Period, which will be opened per the provisions in N.J.A.C. 14:8-9.3(c)). Please see the Response to Comments 46 and 47 regarding the change in effective date of the Pilot Program.

### **Notice of Proposal Impact Statements**

21. COMMENT: The commenter notes that the Economic Impact statement fails to provide the expected economic impact of the Proposed Rule. Based on the Economic Impact statement, the BPU has not provided any quantitative analysis because the “majority” of the costs and impacts of the Proposed Rule “have already been accounted for in previous rulemaking proceedings.” However, this is not the case. The rules, as proposed, would create several categories of costs that would presumptively be paid by non-participating ratepayers. In addition to rate increases to cover the costs of above-market net metering credits, the Proposed Rule creates a presumption that non-participating ratepayers would pay for any incremental costs incurred by the EDCs to accommodate community solar projects, as well as, specifically, the

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costs of installing advanced meters, the implementation of “Green Button” or similar data sharing, administration of the bill credits, and “adders” or additional incentives the BPU may establish for specific types of projects. When utility rates are increased to pay for renewable energy initiatives, there is a corresponding reduction of economic activity in other sectors of the economy. A complete analysis of the economic impact of the rulemaking must consider both the positive impacts mentioned above and the negative impacts that may result from the rate increases that are contemplated in the rulemaking. The BPU’s Economic Impact statement is also deficient because it does not consider the potential impact of the Proposed Rule on the State’s ability to meet its overall renewable energy goals within the cost caps established in the Clean Energy Act. Following the closure of the current solar renewable energy certificate (SREC) program to new applicants, existing “legacy” projects will continue to receive SRECs for the remainder of their 15-year SREC eligibility period. The cost cap must accommodate both the costs of compensating legacy projects for their SRECs and the costs of new renewable energy development. At current retail sales levels and SREC prices, the funds needed to cover the cost of SRECs generated by legacy projects will meet, or even exceed the Clean Energy Act cost cap. Thus, the BPU must reduce the amounts paid for SRECs from legacy projects to create a budget for the costs of new renewable energy initiatives that will affect utility rates during and after Energy Year 2022. The additional costs for community solar that are contemplated in the Proposed Rule will be included in that budget. A quantification of those costs is essential in order to establish the budget for the Pilot Program and permanent community solar programs, and the economic impact of the Proposed Rule.

The commenter notes also that the BPU has not supported the statement that one of the

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costs of the Pilot Program, the net metering credit, “has been selected based on reasonable and prudent estimates of the cost of community solar project development.” The Proposed Rule contains no analysis of the “cost of community solar project development” nor the level of the net metering credit required to cover such costs. (RC)

RESPONSE: As noted by RC, the BPU’s Economic Impact statement for this rulemaking states that “the proposed credit and annual capacity set forth in this subchapter are within the scope of the existing solar Renewable Portfolio Standard (RPS). The majority of these costs and impacts have already been accounted for in previous rulemaking proceedings.” (N.J.A.C. 14:8-9)

Community solar is a program designed for customers who cannot install solar on their property; customers who are able to install solar on their property would be able to net meter their systems at the full retail rate. While the Pilot Program is not net metering, it falls under the scope of the existing RPS. The Pilot Program bill credit is set at retail rate, minus non-bypassable charges (N.J.A.C. 14:8-9.7(a)), a bill credit cost structure that will have a lower cost impact to ratepayers.

Any additional incremental costs associated with the implementation of the Pilot Program, for which the EDCs receive full cost recovery pursuant to the Clean Energy Act, will be quantified and fully reviewed under a rate filing. Additionally, the BPU notes that, while there is an added administrative cost to the EDCs to implement the Pilot Program, some of those administrative costs may have been developed under other existing solar programs (such as, but not limited to, the EDC solar programs and remote or aggregated net metering requirements set forth at N.J.S.A. 48:3-87(e)). Any additional incremental incentives for community solar pursuant to N.J.A.C. 14:8-9.7(s) have not yet been determined, and, therefore, would not be appropriate to quantify at this time. Additionally, while the BPU is committed to implementing

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an SREC transition pursuant to the Clean Energy Act, including the cost cap, the transition is being addressed in a separate proceeding (see the New Jersey Solar Transition Staff Straw Proposal published December 26, 2018). Finally, the BPU intends to ensure the publication of a report regarding the community solar cost modeling that was conducted prior to the drafting of the Proposed Rule, so as to provide additional transparency into the policy assumptions used.

22. COMMENT: The Jobs Impact statement is flawed because it does not consider the impact of the rate increase that would result from the Proposed Rule. When rates and other costs increase to pay for clean energy investments, such as community solar, there is a corresponding reduction of economic activity in other sectors of the economy, and a reduction in jobs in those sectors. Although the lost jobs are not as easily identifiable as the created jobs, they can be estimated using accepted economic models. A complete jobs impact analysis must consider both positive and negative jobs. (RC)

RESPONSE: Any theoretical jobs loss attributed to the Pilot Program would be difficult to identify and quantify given the nature of the Pilot Program as a pilot and its relatively limited scale. Data from the Pilot Program should enable a more specific quantification of jobs created or lost through the establishment of community solar.

**N.J.A.C. 14:8-9.2 Definitions**

23. COMMENT: The commenters state that the definition of “affordable housing” includes a cross-reference to N.J.A.C. 5:80-1.2 that may be a typo as the word “affordable” does not appear in 5:80-1.2. A more appropriate definition of affordable is contained in N.J.A.C 5:80-26.2, which

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reads: “‘Affordable’ means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12.” (Vote Solar)

RESPONSE: The BPU appreciates the commenter’s identification of the error and has corrected the reference in the rule text.

24. COMMENT: The commenter believes that the definition of “Affordable housing provider” should be modified to allow them to provide, to their subscriber organization, an affidavit, on a form approved by the Board, that they are passing along specific, identifiable, and quantifiable long-term benefits to their tenants/residents, rather than have to demonstrate such benefits in their application to the Board. (Summit Ridge)

RESPONSE: The precise manner in which an affordable housing provider demonstrates to the BPU that they are passing along specific, identifiable, and quantifiable long-term benefits to their tenants/residents in the application, whether through a standardized form or more open question, will be addressed in the Application Form.

25. COMMENT: The commenter believes that the definition of “annual net energy” should be revised to clarify that it is the total amount of “net” energy produced by a community solar facility. The energy used by the facility behind-the-meter cannot be allocated to subscribers. (RECO)

RESPONSE: The BPU has clarified this definition in the rule text to reflect that only the “total amount of net energy” can be expected to be exported. The word “net” was properly included in

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the term “annual net energy,” but omitted from the definition.

26. COMMENT: The commenter believes that the definition of “co-location” should be revised to refer to two community solar projects on the same parcel; co-location would not occur when projects are located on adjacent parcels. (CCSA)

RESPONSE: The BPU appreciates this comment, and welcomes further discussion of co-location as it relates to specific community solar projects in the Pilot Program. The definition of co-location at N.J.A.C. 14:8-9.2 identifies that two projects located on contiguous parcels are co-located.

27. COMMENT: The commenter comments that the meaning of “co-location” as “providing subscriptions to two separate and distinct subscriber groups” is not clear and should be clarified by the BPU prior to the opening of the application window for PY1. (Summit Ridge)

RESPONSE: The phrase “providing subscriptions to two separate and distinct subscriber groups” is intended as one identifying marker for co-located community solar facilities. Two community solar projects are considered to be separate projects if, among other criteria, no subscriber is subscribed to both projects.

28. COMMENT: The commenters suggest modifying the definition of “community solar developer” or “developer” to reflect that “developer” is an entity that identifies potential solar project locations, negotiates land leases or purchases, initiates interconnection applications, initiates permitting, and evaluates project economics based on costs, revenues, and financing

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options, and may or may not ultimately be responsible for constructing a project. One commenter recommends revising the definition of “community solar developer” to be an entity that identifies potential solar project locations and may submit project applications for pilot program capacity. The commenter further recommends adding an appropriate definition for “engineering, procurement and construction company” or “EPC,” defined as “an entity that is duly authorized to do business in the State of New Jersey and constructs a community solar facility within the State of New Jersey.” Another commenter suggests broadening the definition of “community solar developer” by adding that it is an entity that “constructs or contracts for the construction of a community solar facility within the State of New Jersey.” (Summit Ridge and Vote Solar)

RESPONSE: The BPU agrees that a “community solar developer” is not necessarily the entity that physically constructs the solar facility, and has clarified the definition in the rule. It is not necessary to add a definition of EPC, as the term is not used in this Proposed Rule.

29. COMMENT: The commenter states that the definition of “community solar facility” should be modified to reflect a maximum capacity as measured in alternating current (AC), rather than direct current (DC). (Vote Solar)

RESPONSE: It has been the standard definition within the BPU for solar capacity to be measured in DC capacity for New Jersey solar programs; it would be a departure from standard practices for community solar capacity to be measured in AC capacity.

30. COMMENT: The commenter believes that the definition of “community solar subscriber” or “subscriber” should be modified to refer only to a person or entity who is a

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customer of an electric distribution company. (JCP&L)

RESPONSE: The BPU appreciates the comment, but the proposed modification to the definition of community solar subscriber is not necessary. As referenced in the notice of proposal Summary, the Pilot Program is open only to “electric utility companies.”

31. COMMENT: The commenters states that the definition of “community solar subscription” or “subscription” should be changed to clarify that the subscription is an actual agreement, rather than the act of participation. Furthermore, the use of the word “share” may confuse subscribers who participate in the most common model of community solar currently offered in the U.S., as the noun, “share,” can, and generally does, convey some level of ownership. “Share,” therefore, should be replaced by “portion,” which generally does not include a sense of ownership. (Vote Solar)

RESPONSE: The BPU agrees that a subscription properly refers to an actual agreement, rather than the act of participation. The BPU intended for the term “share” to represent a variety of types of community solar subscriptions; indeed, the definition of community solar subscription already explicitly includes types of subscriptions such as “ownership of a panel or panels in a community solar facility, ownership of a share of a community solar project, or a fixed and/or variable payment to the project operator.” The BPU, therefore, agrees that the term “portion” is more appropriate. The BPU has clarified this definition in the Proposed Rule accordingly.

32. COMMENT: The commenters supports the flexibility given to the subscription structure provided in the definition of “community solar subscription” or “subscription.” (Summit Ridge)

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RESPONSE: The BPU appreciates the comment, and is satisfied that adequate flexibility is provided, as changed in response to Comment 31.

33. COMMENT: The commenters notes that “customer information” is an unused term and the definition should be deleted. (RC)

RESPONSE: The BPU appreciates the comment. The definition of “customer information” is not used and will be deleted from the Proposed Rule as adopted.

34. COMMENT: The commenters proposes to delete the definition of “electronic data exchange” or “EDI.” (Summit Ridge)

RESPONSE: As explained in further detail in the responses to comments on N.J.A.C. 14:8-9.9(d) below, the BPU uses the term EDI and, therefore, finds this definition to be necessary.

35. COMMENT: The commenters supports the definition of “existing solar project” as stated in the Proposed Rule, as it properly excludes projects that have already been deemed financeable without the net metering credits available to community solar projects. (RC)

RESPONSE: The BPU appreciates the comment. Additionally, the BPU refers the commenter to the Response to Comment 183, clarifying that the bill credit is not a net metering credit.

36. COMMENT: The commenter states that the definition of “existing solar project” should be modified to refer to a solar project having submitted an interconnection application to an EDC, begun operation, and/or been approved by the Board for connection to the distribution

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system prior to January 1, 2019. New projects should be developed for the Pilot Program and projects that were previously proposed for other purposes and are already under evaluation for interconnection, and should not be allowed to participate. (Summit Ridge)

RESPONSE: The BPU is satisfied with the current definition of an “existing solar project” as “having begun operation and/or been approved by the Board for connection to the distribution system.” As such, no additional clarification is necessary. However, the cutoff date for defining an existing solar project has been modified to align with the effective date of the Pilot Program in the Proposed Rule as adopted.

37. COMMENT: The commenters ask the BPU to clarify whether a project that has obtained conditional certification, but has not yet received full certification, under N.J.A.C. 14:8-9.7(t), is considered an “existing solar project,” and whether such a conditionally certified project is intended to be eligible to participate in the Pilot Program. Projects that have received conditional certification, but have not yet received full certification, under subsection (t) of the Solar Act, should remain eligible to participate in the Pilot Program. If such projects are eligible to participate in the Pilot Program, the land-owning government entity will be in a position to realize significantly greater benefits as a result of the solar project, as it would be able to negotiate not only a lease payment with the solar developer, but also the right to receive community solar bill credits. Government entities should not be precluded from realizing this benefit, simply because the underlying, yet to be constructed solar project, has received conditional certification under subsection (t) of the Solar Act. One commenter believes that the language in definition of “existing solar project” that includes “and/or has been approved by the

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Board for interconnection to the distribution system” is objectionable for the following reasons:

1. Solar projects can have an approved Subsection (t) Order, but be nowhere near having all approvals necessary to begin construction, let alone be in operation; 2. The proposed community solar pilot program rule should acknowledge that obtaining all necessary approvals for a mixed grid supply and net energy metered (NEM) solar project on a Superfund site undergoing active ground-water remediation (despite being supported by State and Federal public policies) is far more complex, time-consuming, and expensive than any other solar project. (Pearlman & Miranda and Lloyd Levenson)

RESPONSE: The BPU appreciates the comments; however, the Board is satisfied with the definition of “existing solar project.” Allowing projects that have received a subsection (t) conditional certification from the BPU to additionally qualify as a community solar project would place them at an unfair advantage compared to other projects applying to participate in the Pilot Program. The BPU encourages any specific project that may be in this situation to consult with the Program Administrator of the Subsection (t) Program.

38. COMMENT: The commenters note that the defined term of “good utility practice” does not appear anywhere else in the Proposed Rule and should be deleted. (RC and Vote Solar)

RESPONSE: The BPU appreciates the comment. This definition is not used in the Proposed Rule and will be deleted accordingly.

39. COMMENT: The commenters note that the defined term of “historic fill” does not appear anywhere else in the Proposed Rule and should be deleted. (RC and Vote Solar)

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RESPONSE: The BPU appreciates the comment. This definition is not used in the Proposed Rule and will be deleted.

40. COMMENT: The commenter states that, in the definition of “moderate-income household,” the unit of measurement for eligibility is “median income, as determined by annual HUD income limits.” The word “area” was inadvertently excluded from this sentence and should be added directly before “median.” (Vote Solar)

RESPONSE: The BPU uses the definition of the New Jersey median income as defined by HUD; the addition of the term “area” is not necessary.

41. COMMENT: The commenters state that the two definitions of “low-income household” and “moderate-income household” should be coordinated, so that there is no income gap between the two definitions. Under the definitions as proposed, the upper end of the “low-income” range is not the same as the lower end of the “moderate-income” range. Two of the commenters further note that definitions of “low-income household” and “moderate-income household” use two different baseline units for determining eligibility. The “low-income household” definition uses the Federal poverty level while the “moderate-income household” definition uses “median income.” The baseline units for these two definitions should be the same, so that there are no gaps between the two definitions. “Area median income as determined by annual HUD income limits” should be used as the baseline units. With this change, low-income can be defined as having an adjusted gross income below 80 percent of the area median income, and moderate-income can be defined as having an income between 80 percent and 120

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percent of the area median income. One commenter notes that the proposed definition for moderate income equates to HUD's definition of low-income, which may create confusion among low-income program services and providers. One commenter recommends the BPU adopt a streamlined LMI definition of 80 percent of area median income (AMI) for low-income, 50 percent AMI for very low-income, in line with HUD definitions, which qualifies many LMI customers through existing low-income housing services and programs. Another commenter suggests expanding the definition of "low-income" to include households over 200 percent of the Federal poverty line but under 50 percent of the median income for a county, as defined by HUD. (RC, GRID, Food & Water Watch, and Vote Solar)

RESPONSE: The BPU appreciates the comments. The gap between the upper bound of "low-income" and the lower bound of "moderate-income" was accidental, and has been corrected, by changing "moderate-income household" to be income in excess of "200 percent of the Federal poverty line..." rather than "50 percent ... of the median income." The BPU notes that the standards used in these two definitions are in line with those used in other New Jersey State programs.

42. COMMENT: While the commented does not necessarily oppose the definitions of "low-income household" and "moderate-income household," it does question whether race was sufficiently considered before these definitions were adopted. The commenter believes that race should be considered in some manner when fashioning a definition for low- and moderate-income. The rules also do not indicate how many residents would fall under the proposed definition and how many of those would be people of color. The BPU should make this

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information known, so interested stakeholders can make informed comments on this very important topic. Another commenter supports the suggestion to conduct a racial sensitivity analysis, to determine how many people of color may fit within the definitions in the Proposed Rule relating to low-income and moderate-income households. (NJEJA, Nicky Sheats, and Vote Solar)

RESPONSE: The BPU greatly appreciates the comment. The definitions of “low-income household” and “moderate-income household” are defined based on income criteria, in conformance with the Clean Energy Act.

43. COMMENT: A commenter states that a definition of “low-income household” and “moderate-income household” should include institutions that serve those communities, such as public schools, community centers, churches, and day care centers. It is not clear to the commenter whether the Proposed Rule allows these institutions to be part of the program. (NJEJA)

RESPONSE: The BPU appreciates the comment. The BPU looks forward to reviewing all specific applications it receives, and encourages community-based institutions to consider how they may participate in community solar.

44. COMMENT: A commenter states that the definitions of “low-income household” and “moderate-income household” should provide more detail, including specific data sources for the Federal poverty level and HUD income limits. The definitions should also clarify whether household size needs be considered in qualifying a subscriber, or whether a default household

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size will be used. The definitions should also clarify how households with more than one wage earner should be qualified. Finally, the definitions should clarify that participation in LIHEAP, Universal Service Fund, Comfort Partners, and/or the Lifeline Utility Assistance Program are alternative means of establishing eligibility per N.J.A.C. 14:8-9.8(d)2i. (Summit Ridge)

RESPONSE: As a clarification, the Pilot Program uses data from the U.S. Federal Poverty Guidelines as published and as amended from time to time by the U.S. Department of Health & Human Services Office of the Assistant Secretary for Planning and Evaluation (for illustrative purposes only, see <https://aspe.hhs.gov/poverty-guidelines>). The Pilot Program uses data for the HUD income limits as published and as amended from time to time in the HUD Income Limits Documentation System (for illustrative purposes only, see [https://www.huduser.gov/portal/datasets/il/il2018/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/il/il2018/select_Geography.odn)). The BPU will use data as is most currently available as of the date of the signing of the subscription with an LMI subscriber. The HUD definition and U.S. Federal Poverty Guidelines adjusts for household size, and the BPU will do the same under the Pilot Program. The BPU notes that it refers to the HUD definition of income in a household. The criteria for qualification as an LMI customer, including the use of participation in LIHEAP, Universal Service Fund, Comfort Partners, or Lifeline Utility Assistance Program as qualifying criteria, are appropriately identified in N.J.A.C. 14:8-9.8(e), and do not need to be further repeated in the definition of “low-income household” or “moderate-income household.”

45. COMMENT: The commenter is concerned that developers looking to maximize profits will subscribe as many families as close to the maximum 80 percent of AMI (that is, moderate-

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income households) as possible to lower their development risk. This approach will leave out the truly vulnerable who would benefit the most from community solar. The BPU should concentrate the majority of potential incentive packages on developers who seek to include the lower end of the LMI populace. Further, the BPU should include all local/State/Federal programs that require applicants to prove a minimum of 200 percent poverty or 80 percent of AMI, to automatically qualify as off takers for the Pilot Program. (Cap Solar)

RESPONSE: The BPU may evaluate, on a case-by-case basis, prior to the implementation of the permanent program, the inclusion of any additional local/State/Federal programs that have identical definitions of low-income and moderate-income households as those used in the Pilot Program or definitions developed in the permanent program. The BPU will monitor low-income household participation in the Pilot Program, as one of the primary goals of community solar is to expand access to solar, including to LMI households.

46. COMMENT: The commenter states that the definition of “program year” or “PY” needs to be modified and defined as the capacity made available to a queue of projects within that calendar year. (CCSA)

47. COMMENT: The commenter states that the BPU should expect projects will be completed within 12 months of being awarded pilot program capacity. Therefore, Pilot Program years should simply be defined and referenced to the year of project award. The amended language would read “the year in which an application window opens for pilot program capacity.” (Summit Ridge)

RESPONSE TO COMMENTS 46 AND 47: The BPU appreciates the comments, but the

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definition of “program year” as proposed in N.J.A.C. 14:8-9.2 is appropriate. However, the BPU notes that the definition of “program year” is changed upon adoption to reflect a Pilot Program start date at the effective date of Proposed Rule.

48. COMMENT: The commenter notes that “regulated entity” is an unused definition and should be deleted. (RC)

RESPONSE: The BPU appreciates the comment. This definition is not used and will be removed from the Proposed Rule.

49. COMMENT: The commenter notes that “regulated service” is an unused definition and should be deleted. (RC)

RESPONSE: The BPU appreciates the comment. This definition is not used and will be removed from the Proposed Rule.

50. COMMENT: The commenter notes that “Renewable Portfolio Standard” or “RPS” is an unused definition and should be deleted. (RC)

RESPONSE: The BPU appreciates the comment. This definition is not used and will be removed from the Proposed Rule.

51. COMMENT: The commenters note that the defined term of “sanitary landfill” does not appear anywhere else in the Proposed Rule and should be deleted. (RC and Vote Solar)

RESPONSE: The BPU appreciates the comment. This definition is not used and will be removed

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from the Proposed Rule.

52. COMMENT: The commenter notes that the definition of “service area” is inconsistent with the text of the Proposed Rule, which uses the term “EDC area.” (RC)

RESPONSE: The BPU has changed and alphabetically relocated this definition to reflect the terminology used in the Proposed Rule.

53. COMMENT: The commenter notes that the definition of “solar panel” is inconsistent with the text of the Proposed Rule, which uses the term “PV panel.” (RC)

RESPONSE: The BPU has changed this definition to add “or PV panel” to reflect the terminology used in the Proposed Rule.

54. COMMENT: The commenter notes that “solar power” is an unused definition and should be deleted. (RC)

RESPONSE: The BPU appreciates the comment. This definition is not used and will be removed from the Proposed Rule.

55. COMMENT: The commenter states that the definitions of “telemarketing sales call” and “unsolicited advertisement” should be rewritten, so that they apply to the community solar market. In addition, the term “telemarketing sales call” does not appear elsewhere in the text of the Proposed Rule, which uses the term “telemarketing.” (RC)

RESPONSE: The BPU appreciates the comment. It was always the intent for these definitions to

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apply to community solar. However, for the avoidance of any doubt, the BPU will replace this cross-reference with the same definition, but specifically include the community solar terminology, thereby maintaining the language from existing N.J.A.C. 14:4-7.2, as in the Proposed Rule, as proposed.

56. COMMENT: The commenter believes that the definition of “unallocated/reallocated capacity” needs to be separated into definitions for “unallocated capacity” and “reallocated capacity” and defined such that any capacity available to BPU-approved projects is provided to a queue of projects for that program year if, and as, projects fail to meet established construction timelines in the rules after any extensions these projects may be granted by the BPU. If there are an insufficient number of compliant projects applying to the Pilot Program in a program year or if there are no longer projects in the queue to utilize capacity from that program year in the Pilot Program, capacity should be reallocated to subsequent years of the Pilot Program. (CCSA)

RESPONSE: As described in further detail in the response to comments under N.J.A.C. 14:8-9.3, the BPU application process laid out in N.J.A.C. 14:8-9.3 does not establish a queue for projects. The BPU, therefore, believes the definition of “unallocated/reallocated capacity” as proposed is sufficient.

57. COMMENT: The commenter proposes to add a new definition for “avoided wholesale cost of power,” which would include the locational marginal price for energy, ancillary services, adjustments for distribution losses, and allowances for reductions in installed capacity charges and transmission charges. If this definition is not added, the commenter suggests that the

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definition of the avoided wholesale cost of power be approved by the BPU through another means prior to the opening of the application window for PY1. (Summit Ridge)

RESPONSE: The BPU notes that the Proposed Rule already contains a definition for avoided cost of wholesale power at N.J.A.C. 14:8-9.2.

58. COMMENT: The commenter notes that the term “low- and moderate-income household” or “LMI” is used in the Proposed Rule but is not defined. A definition of this term should be added. (RC)

RESPONSE: The BPU appreciates the comment but believes that the term “low- and moderate-income” is sufficiently clear and understood as meaning low-income and moderate-income households, as defined at N.J.A.C. 14:8-9.2.

59. COMMENT: The commenter proposes that the term “mechanically complete” be defined as the physical completion of the developer portion of the project as evidenced by either a Certificate of Completion signed by wiring inspection, or an affidavit signed by the engineer of record. (CCSA)

RESPONSE: The BPU appreciates the comment, but does not believe it necessary to add a definition for the term “mechanically complete,” as the term is not used in the Proposed Rule.

### **N.J.A.C. 14:8-9.3 Pilot Program Structure**

#### **N.J.A.C. 14:8-9.3(a)**

60. COMMENT: The commenter states that PY1 should begin when the BPU has approved

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the full range of program details and should not specify a specific end date. (Summit Ridge)

RESPONSE: The BPU notes that the Pilot Program will begin on the effective date of this rulemaking (February 19, 2019). The BPU does note that PY1 should begin on the effective date of the Proposed Rule, and, therefore, has modified the Proposed Rule accordingly. Given the statutory language of the Clean Energy Act, it is logical to divide the Pilot Program into three program years, with PY2 and PY3 beginning on January 1, 2020 and 2021, respectively. The BPU further notes that, as provided for at N.J.A.C. 14:8-9.3, the start of PY1 does not necessarily entail the immediate opening of the first Application Period.

**N.J.A.C. 14:8-9.3(c)**

61. COMMENT: The commenter agrees that each of the three pilot years should have individual application processes because of the changes likely to be made, and believes that the BPU should meet with stakeholders. (Jeanne Fox)

RESPONSE: The BPU appreciates the comment. The BPU is committed to maintaining an open dialogue with stakeholders throughout the development and implementation of the Pilot Program.

62. COMMENT: The commenter supports the BPU's proposal to use a competitive process to select community solar projects. The BPU should issue a detailed proposal for public comment of the application and subsequent scoring process. A competitive request for proposal (RFP) process should be used to select projects for both the Pilot Program and permanent program. In addition, it is important to focus on cost-effectiveness for the Pilot Program to

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provide the basis for budgeting for the costs of a permanent community solar program. The commenter also notes the absence of provisions for data collection and program evaluation in the Proposed Rule, this is critical so that the BPU and stakeholders can track program development and identify both successes and/or failures of the Pilot Program. The RFPs issued for community solar projects should include sufficient data collection requirements to support the BPU’s evaluation activities. (RC)

RESPONSE: The BPU appreciates the comment. The BPU issued a Draft Application Form on November 28, 2018, which includes proposed evaluation criteria. Stakeholders were invited to provide comments at three stakeholder meetings and/or through written comments until December 21, 2018. Comments regarding the project selection method have been further addressed below in the section pertaining to N.J.A.C. 14:8-9.3(c), and regarding data collection and program evaluation in the section pertaining to N.J.A.C. 14:8-9.11.

63. COMMENT: The commenters disagree with the comments made by several commenters that Pilot Program applications should be processed and approved on a “first-come, first-served” basis. This does not take into consideration that the Clean Energy Act and Pilot Program have been enacted in order to accomplish certain priority policy objectives and that simply approving applications because they have been submitted first does nothing but serve the solar developers’ agenda. One commenter strongly urges the BPU to maintain an application process that specifies certain policy objectives as criteria and ensures that projects meet the requirements to satisfy those objectives. Another commenter notes that a competitive application process will force developers to compete on quality, not quantity. (RIRE and US Solar)

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64. COMMENT: The commenter agrees that New Jersey does not want to fall prey to the issues that plagued New York when they had no requirements to enter the interconnection queue, “first-come, first-served” and a maturity pre-requisite only favors developers who have outsized resources that can sit idle for the several years it takes to build and put a community solar project into operation. The whole point of a Pilot Program is to learn. With an interconnection queue that is criteria-based, the Pilot Program will be able to collect data-points that are the foundation of a hypothesis as to what will and will not work, especially for the LMI community. “First-come, first-served” will have no root in any fact-finding for the LMI community. It is mostly based on securing a long-term financial instrument. While the commenter agrees that some pre-requisites should be put into place to access the queue, it believes that the projects should be scored as it was originally intended. Community solar investments with predominant lower end LMI participation should be moved to the head of the queue and given fast-tracked resources from the EDCs and the State. (Cap Solar)

RESPONSE TO COMMENTS 63 AND 64: The BPU believes that a competitive application will help the BPU meet a number of policy objectives for the Pilot Program. It will enable the BPU to identify evaluation criteria, and, therefore, promote development of projects that provide specific benefits to the State. At the same time, it will foster a diversity of projects and encourage developers to propose creative or innovative ideas. The process will also enable the BPU to more closely consider and evaluate projects that apply to participate in the Pilot Program, and, therefore, be better prepared to design an effective permanent program within 36 months, as required by the Clean Energy Act.

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65. COMMENT: The commenters are opposed to a competitive annual application process and suggest that the BPU adopt a first-come, first-serve process with high project maturity requirements. Stakeholders expressed concerns that the proposed competitive application process will create a strong incentive to propose earlier stage projects, and, therefore, is likely to yield awards to projects that ultimately may not be viable. They recommend that the BPU include high maturity requirements, specifically: 1) proof of site control; 2) a signed interconnection agreement or proof of payment for a portion of the project's interconnection upgrade costs; and 3) proof that all non-ministerial permits have been received. Projects meeting these maturity requirements and the other rules of the Pilot Program would receive capacity in the program based on the time of their application. Stakeholders further note that the current solicitation process is ambiguous and does not specify any criteria used in determining projects. They comment that not knowing the evaluation criteria until shortly before each annual competitive application process will act as a barrier to investment, stating that if developers do not know how projects will be evaluated, they cannot forecast and model likely business outcomes and, thus, cannot make early stage investments. Therefore, the commenters state that it is essential for application criteria to be established and unambiguous well before proceeding down the path of project development.

One commenter suggests that, if a first-come, first-served approach is not adopted in PY1, at minimum, the competitive application process should be based on upfront quantitative criteria, weighting that is transparent to project developers, and some project maturity requirements in PY1, and include a queue of projects. Given the uncertainty of the process, for only the first year of the Pilot Program, the commenter recommends that the BPU consider a

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short-term, interim policy to only require: 1) proof of site control; 2) an interconnection impact study or signed interconnection agreement; and 3) proof of application for all non-ministerial permitting. Because these are substantially weaker maturity requirements and, thus, will be less effective in ensuring that only viable projects qualify, the commenter states that the BPU should also require a bid deposit or notice escrow of \$60.00/kw that will be refunded if the project does not qualify for the Pilot Program or when the project reaches mechanical completion. The Pilot Program would then be converted to a first-come, first-served process with higher project maturity requirements in PY2 and beyond. Stakeholders cite the experience of other states, particularly Maryland, as examples of community solar programs with first-come, first-served mechanisms. (CCSA, NJLCV, Port Authority, Summit Ridge, Dimension Renewables Energy, Borrego Solar Systems, Turning Point Energy, Food & Water Watch, and Cypress Creek Renewables)

66. COMMENT: The commenter recommends that the BPU consider requiring a fully-refundable \$50.00/kW application deposit, which can be held in escrow similar to the Minnesota deposit requirement to incentivize applicants to cancel the project (and, thus, receive their deposit back) if, and when, it becomes clear to the applicant that the project does not have a path forward. (US Solar)

RESPONSE TO COMMENTS 65 AND 66: As explained in the Response to Comments 63 and 64, the BPU believes that a competitive application process as proposed at N.J.A.C. 14:8-9.3(c) is preferable for the Pilot Program. The BPU recognizes some stakeholders' concerns that insufficient project maturity requirements may lead the BPU to select projects that ultimately fail to be constructed. The BPU is currently exploring a variety of options to mitigate this risk

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through the application process for the Pilot Program. The BPU may apply certain maturity requirements, as recommended by the commenters, in the Application Form. The BPU will explore the option of an escrow.

Furthermore, the BPU appreciates the importance of a stable and predictable market for project development. As noted previously, the BPU has initiated a public process to discuss the Application Form (and associated evaluation criteria), and intends to maintain transparency and dialogue throughout the implementation of the Pilot Program.

67. COMMENT: The commenters request that the BPU consider an easy and inclusive subscription application process. Two commenters emphasize the need for an application process with clear selection criteria. (Ann Leib, Gretchen Boise, Mohammad Karim, Borrego Solar Systems, Turning Point Energy, and Solar Landscape)

68. COMMENT: The commenter recommends that the application criteria be based on quantitative, not qualitative, criteria. (Cypress Creek Renewables)

RESPONSE TO COMMENTS 67 AND 68: The BPU recognizes the importance of a clear application process. As noted in response to prior comments, the BPU initiated a public process to discuss the Application Form (and associated evaluation criteria) and intends to maintain transparency and dialogue throughout the implementation of the Pilot Program.

69. COMMENT: The commenters support a formal, transparent process to develop the application that will be used to select projects to participate in the Pilot Program. The process should also include the opportunity for in-person meetings to provide an opportunity to seek

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input from organizations representing low-income communities, communities of color, and EJ communities that might not be able to participate in a more formal comment-driven stakeholder feedback process. The BPU should consider the level of complexity associated with the application to ensure it doesn't unintentionally limit participation by non-traditional community solar providers, such as local non-profits, community-based organizations, and others. The process must still have a reasonable level of certainty that community solar projects have met certain maturity criteria. Transparency around project maturity requirements is critical to reduce the number of speculative projects that apply for capacity in the pilot program and provide an even playing field for community solar providers attempting to secure capacity in the pilot program. The BPU should institute an inclusive stakeholder process to elicit feedback on the application process, to inform adjustments to the process in PY2 and PY3 of the Pilot Program, and the transition into the permanent program. Aside from the process to develop the application for participation in the Pilot Program, the application is a means of ensuring key benefits for underserved communities. Enhanced scoring should be awarded for projects that result in jobs for residents of EJ communities and other underserved communities, and for projects that will promote ownership, entrepreneurship, research, and educational opportunities in the EJ community in which they are located. Proposals for projects sited in EJ communities should only be awarded points if they include measures for obtaining community input into siting. Any bid commitments, especially relating to LMI customers, bill savings, or impacts for EJ communities, should be maintained and enforceable for the life of the project, where applicable. (Vote Solar, NJEJA, and Nicky Sheats)

70. COMMENT: The commenter states that the evaluation criteria should target the areas

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with the highest pollution burden, and low- and moderate-income areas. (Sierra Club)

RESPONSE TO COMMENTS 69 AND 70: The BPU recognizes the importance of stakeholder engagement. As noted in response to prior comments, the BPU published a Draft Application Form (and associated evaluation criteria) for public comment on November 28, 2018, and followed up with three stakeholder meetings in December 2018. The BPU intends to maintain transparency and dialogue throughout the implementation of the Pilot Program, and will remain attentive to participation by local communities, non-profits, and community-based organizations. The evaluation criteria and scores will be discussed in the Draft Application Form, per N.J.A.C. 14:8-9.3(c)1. See also the Response to Comments 65 and 66 for project maturity requirements. Finally, the BPU agrees that any commitments made in the Applications Forms submitted to the BPU are expected to be maintained for the life of the project.

71. COMMENT: The commenters note that the Proposed Rule does not specify the timing of the required EDC interconnection review for projects that are accepted. They stress that the interconnection application for any projects should not occur prior to BPU approval of a project applicant. This will help to avoid the unnecessary costs and time for EDC engineering teams to review proposals that ultimately may not be selected by the BPU and avoid the possible results of having a higher ranked project receive a higher interconnection cost because it is later in the queue. (JCP&L, ACE, PSE&G)

72. COMMENT: The commenter notes that the Proposed Rule does not specify the timing of required EDC interconnection review for projects that are accepted but suggests that it be incorporated into the annual application process. For example, the Proposed Rule should provide

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for at least 60 business days for review by the EDC, as part of the annual application process.

This review will identify any impediments to the successful completion of the community solar projects. RECO suggests that the BPU establish a working group to determine an application fee schedule that would cover this preliminary review of the project for feasibility. Further, when the EDC completes the technical review of a community solar project, and the developer decides to move forward, the clock can start for the six-month timeline provided for the start of construction. In addition, the commenter recommends that the BPU establish a process in which proposed projects are publicly ranked, whether by date submitted or other measures, before the EDCs must commence their technical review. Such ranking is a critical component of a transparent process that will facilitate the successful development of community solar projects in New Jersey. (RECO)

73. COMMENT: The commenter urges the BPU to include interconnection approval as part of the application requirements to help identify mature projects that are likely to move forward in the Pilot Program. In order to avoid any unintentional preferences, it is critical that interconnection applications are reviewed in the order they are submitted. (Vote Solar)

74. COMMENT: The commenter believes that developers should not have to wait for an interconnection approval prior to applying to the Pilot Program, as that would add an additional 12 months to the process.

RESPONSE TO COMMENTS 71, 72, 73, AND 74: The timing and specifics of the interconnection approval process will be properly clarified in the Application Form and, therefore, are beyond the scope of this rulemaking.

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**N.J.A.C. 14:8-9.3(c)2**

75. COMMENT: The commenter states that at N.J.A.C. 14:8-9.3(c)2, there is a nearly incomprehensible sentence that should be rewritten: “Board staff shall open applications for the Pilot Program for a length of time to be enacted at the official approval of the application.” This sentence appears to use two different meanings for the word “application,” the first being a request from a project developer to set up a project and the second being the application form to be created by the BPU. (UU Faith Action NJ)

RESPONSE: The BPU agrees that the ambiguous use of the term “application” could lead to confusion, and accordingly has clarified the term in the sentence at N.J.A.C. 14:8-9.3(c)2 to change the first use to “an application period” and to change the second use to “the application process.”

**N.J.A.C. 14:8-9.3(c)3**

76. COMMENT: The commenter states that it is essential for application criteria to be clear before proceeding down the path of developing a project. The criteria and weighting of those criteria for PY1 should be set as soon as possible and be made transparent to developers. Any criteria and weighting should be objective, quantitative, and unambiguous in order to build investor confidence and interest. If other more qualitative metrics are used, like points for siting type or even for economic development, the evaluation process gets complex and sends a poor market signal for investment while creating the chance that the BPU’s decisions may be challenged by developers who have not secured capacity due to a subjective assessment of a project’s merits. (CCSA)

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RESPONSE: The BPU appreciates the request for clarity on the application criteria, and refers the commenter to the Draft Application Form issued for public comment on November 28, 2018. Evaluation criteria will be addressed in the Application Form, pursuant to N.J.A.C. 14:8-9.3(c)1.

77. COMMENT: The commenter agrees with the Proposed Rule as drafted, but recommends that BPU staff engage with stakeholders before adoption. The commenter also suggests the following for extra “points” on evaluation criteria: LMI; EJ community; load close to the generation - the closer load is to generation, the more points (maybe on a sliding scale); brownfields; parking lots/decks; maybe rooftops; jobs in the community. By the conclusion of the Pilot Program, the BPU must get the incentives right. (Jeanne Fox)

RESPONSE: The BPU appreciates the comment, and refers the commenter to the Draft Application Form issued for public comment on November 28, 2018. Evaluation criteria will be addressed in the Application Form, pursuant to N.J.A.C. 14:8-9.3(c)1.

78. COMMENT: The commenter supports an application process that is clear and transparent. The commenter recommends that, especially for LMI Projects under the Pilot Program, the BPU should strive to maximize benefits to LMI customers and EJ communities. Benefits evaluated under the application process should include bill savings or energy burden reduction for participating LMI customers, participation of residential low-income customers in projects, coordination with energy efficiency (EE) measures and other complementary services for LMI customers, workforce development opportunities or hiring of EJ communities during project installation, and other direct benefits for EJ communities, including ownership,

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entrepreneurship, research, and educational opportunities within EJ communities in which projects are located. (GRID)

79. COMMENT: The commenters believe that community solar projects should deliver more benefits to EJ communities than the production of electricity and reduction of air pollution emissions. Projects should also strive to produce economic benefits for community residents, such as quality jobs, an opportunity to participate in the ownership of the project, and renewable energy entrepreneurship opportunities. One commenter also suggests that projects provide educational and research opportunities by linking them to the local public education system. One commenter suggests that, for a certain number of projects, the social benefits associated with community solar should be included in the evaluation that the BPU will develop for project proposals. The commenter also notes that project evaluation criteria developed by BPU should be made public and subject to public comment. A less certain way to attempt to ensure the co-benefits are part of community solar projects would be to incentivize their inclusion by awarding “additional points” to, that is, prioritizing project proposals that integrate them into the project. (NJEJA, Nicky Sheats, and Green Faith)

RESPONSE TO COMMENTS 78 AND 79: The BPU appreciates the comments pertaining to the need for an inclusive and streamlined application process. As noted in the response to prior comments, one of the key objectives for the Pilot Program is to ensure that solar is made accessible and provides benefits to LMI and EJ communities. The BPU will, therefore, continue to engage with stakeholders, both in the implementation and subsequent monitoring of the Pilot Program, to ensure that LMI and EJ communities are able to participate. The BPU refers the commenters to the Draft Application Form issued for public comment on November 28, 2018.

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Evaluation criteria will be addressed in the Application Form, pursuant to N.J.A.C. 14:8-9.3(c)1.

80. COMMENT: The commenter urges the BPU to adhere to the intent of the Solar Act that clearly made “properly closed sanitary landfill facilities, brownfields, and areas of historic fill” priority locations for solar electric energy generation facilities. The Pilot Program application should properly incentivize projects that are proposed to be installed on these lands. (RIRE)

RESPONSE: The BPU appreciates comments made regarding specific evaluation criteria, or “points,” that will be addressed in the Application Form, pursuant to N.J.A.C. 14:8-9.3(c)1.

**N.J.A.C. 14:8-9.3(c)4**

81. COMMENT: The commenters support the BPU’s proposal to exclude the State’s EDCs from participating in the Pilot Program beyond the billing and other responsibilities specified in the Proposed Rule. One commenter believes that allowing participation in the Pilot Program by EDCs that can receive a return on their investments from captive customers would hinder the BPU’s ability to use competitive market forces to identify the lowest-cost options for community solar. Another commenter agrees that participation by EDCs in the program is problematic, given the information asymmetries between the EDCs and other community solar developers who do not have access to the same data available with ease to the EDCs, and that EDC participation would also not fit with the State’s goal of attracting private sector investment and driving down costs through competitive markets and would be inconsistent with the intent of the 1999 Electric Discount and Energy Competition Act. (RC, CCSA, Summit Ridge, and Cypress Creek Renewables)

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RESPONSE: The BPU appreciates the support of the provisions at N.J.A.C. 14:8-9.3(c)4.

82. COMMENT: The commenter supports prohibiting the EDCs from developing, owning, and operating community solar projects. The EDCs can, however, facilitate LMI participation in a number of ways that do not interfere with community solar market development, such as: facilitate LMI subscriber enrollment, education, and engagement; facilitate on-bill payment and/or financing (or consolidated billing) to increase low-income customers' access to solar; facilitate siting for solar projects that will serve low-income customers; serve as a backup subscriber in the event that LMI subscribers default; and facilitate the participation of other large entities as backup subscribers. (Vote Solar)

83. COMMENT: The commenters do not agree with the provisions in N.J.A.C. 14:8-9.3(c)4. They believe that N.J.A.C. 14:8-9.3(c)4 is inconsistent with the language contained in the Clean Energy Act, which expressly permits the EDCs to participate in the permanent community solar program. If the EDCs are excluded from full participation in the Pilot Program, the BPU and the EDCs will be unable to learn from their participation in the Pilot Program when the permanent program is established, thus placing the EDCs at a disadvantage to effectively participate when the permanent program is implemented. The EDCs are uniquely positioned in that they would be in the best position to locate and operate projects to provide the most benefit to the grid and its customers, including underserved communities. The EDCs can strengthen the Pilot Program because of their long-standing relationship with customers, where they can provide customer engagement and outreach, as well as customer education. (ACE, JCP&L, PSE&G, and RECO)

RESPONSE TO COMMENTS 82 AND 83: The BPU greatly appreciates the comments of all

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stakeholders on this important issue. The BPU has carefully considered the question of EDC participation in the Pilot Program in conformance with the Clean Energy Act. The Proposed Rule directs the EDCs to assist in setting up specific aspects of the Pilot Program (including, but not limited to, those related to billing and administration of the bill credit). It would, therefore, not be appropriate for them to also be permitted under the Proposed Rule to develop projects at this pilot stage. The BPU does not believe that this places the EDCs at a disadvantage in the permanent program, given both their contributions to developing and implementing the administrative procedures, and the general applicability of lessons learned in the Pilot Program. However, the BPU does wish to begin immediate discussions with the EDCs to explore ideas and models for EDC participation in community solar in the permanent program, including to support LMI participation, and welcomes further discussion of this issue. The BPU further reiterates that, pursuant to the Clean Energy Act, the BPU “will be adopting rules and regulations for the permanent program that will include standards for projects owned by electric public utilities.”

**N.J.A.C. 14:8-9.3(c)5**

84. COMMENT: The commenter believes that, as currently structured, the competitive application process is likely to result in failed projects without a set of projects to replace them and, therefore, a queue is needed with all projects ranked by weighting of the evaluation criteria developed by the BPU. Providing BPU-approved application criteria to the marketplace shortly before the opening of a program year will discourage projects from moving well into the project development cycle before applying to the program. At the same time, the lack of maturity

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requirements will mean there is no incentive for developers to make some progress down the development process to show they are likely to succeed. As a result, many projects will be speculative and will ultimately fail after being selected. (CCSA)

85. COMMENT: The commenter states that the BPU can expect that the number of applications will far exceed the initial 75 MW allocation. The Pilot Program needs to think through how this “overhang” of projects is treated. A waiting list might be used to replace approved projects that are not built or non-accepted projects could be automatically placed in a queue for the 2020 Pilot Program. It may be in the best interest of the Pilot Program to give non-accepted developers some preference or security toward the 2020 allocation. With this security, developers would continue to “season” their projects during the course of 2019, rather than to simply wait for the results of a new 2020 application. The commenter further recommends that the Pilot Program at least explore options for how to treat the excess of applications that are not accepted in the first year of the Pilot Program. (Independence Solar)

RESPONSE TO COMMENTS 84 AND 85: The BPU does not currently believe that a project queue would be appropriate: a guarantee of capacity or preference for projects not selected in PY1 would inappropriately circumvent the BPU’s ability to set evaluation criteria and select the best projects. The BPU notes, however, that a project that is not selected in a given Application Period is not precluded from resubmitting an application in a subsequent Application Period.

**N.J.A.C. 14:8-9.3(c)7**

86. COMMENT: The commenter asks that the term “begin construction” be clearly defined. The commenter also recommends using the definition established by the Internal Revenue

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Service for eligibility for the renewable energy investment tax credit. Those requirements are: (1) engaging in significant physical work through either direct or contract “Physical Work Methods”; or (2) achieving the “Five-Percent Safe Harbor” standard, whereby five-percent of the ultimate tax basis of the project is paid or incurred. (CCSA)

RESPONSE: The BPU appreciates the comment. The BPU notes that the definition established by the Internal Revenue Service is the standard definition in the electric utility business.

87. COMMENT: Stakeholders indicated that the deadline for approved projects to “begin construction” should be extended. One commenter suggests a period of 12 months from approval, with the ability to extend by two periods of three months each, if appropriate milestones are being achieved, as determined by the BPU. One commenter suggests a period of 12 months from approval. One commenter suggests a period of 12 months of approval, with extensions provided in the instance where a developer places a refundable \$50.00/kW deposit. One commenter suggests a period of 12 months from approval. One commenter suggests that extensions be granted for up to six months. One commenter suggests that there be no project commencement deadline. One commenter suggests that, rather than “hard code” a maximum project time in the Proposed Rule, the BPU should simply formalize the delegation of that authority to itself, so that it can tailor the maximum project timeline based on Pilot Program learnings. Finally, a commenter suggests a period of 12 months from approval, with opportunity for extensions. (RIRE, GRID, CCSA, Gabel Associates, Jeanne Fox, Summit Ridge, US Solar, Vote Solar, Cypress Creek Renewables, and Turning Point Energy)

RESPONSE: The BPU appreciates that the deadline in N.J.A.C. 14:8-9.3(c)7 is ambitious. The

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deadline is mitigated by the extension policy in the Proposed Rule, which provide for an unrestricted number of extensions for projects that demonstrate substantial progress toward meeting the construction and completion milestones. The language of the Proposed Rule ensures that projects are held to a reasonable standard for completion milestones, while at the same time establishing a mechanism by which the BPU can monitor progress and keep projects moving forward.

**N.J.A.C. 14:8-9.3(c)8**

88. COMMENT: Stakeholders indicated that the “fully operational” period should be extended. One commenter suggests a period be extended to 24 months from approval, with the ability to extend by one or more periods of six months each, if appropriate milestones are being achieved, as determined by the BPU. One commenter suggests that the timeline for completion should be expanded to allow projects to undergo the interconnection process only after they have been selected by the BPU to construct a community solar project. One commenter suggests a period of 18 months from approval, with opportunity for a single six-month extension. One commenter suggests that the second milestone to be achieved should be that the project is “mechanically complete,” and projects should be required to reach “mechanical completion” within 12 months of beginning construction. One commenter suggests a period of 30 months from approval. One commenter suggests a period of 15 to 18 months from approval. One commenter suggests a period of 18 to 24 months and/or special exceptions and/or extensions up to 12 months. One commenter suggests a period of 24 months from approval. One commenter suggests that, rather than “hard code” a maximum project time in the Proposed Rule, the BPU

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should simply formalize the delegation of that authority to itself, so that it can tailor the maximum project timeline based on Pilot Program learnings. One commenter suggests a period of 18 months from approval with opportunity for a single six-month extension. (RIRE, JCP&L, GRID, CCSA, Gabel Associates, Independence Solar, Jeanne Fox, Summit Ridge, US Solar, Vote Solar, Cypress Creek Renewables, and Turning Point Energy)

RESPONSE: The BPU appreciates that the deadline in N.J.A.C. 14:8-9.3(c)8 is ambitious. The deadline is mitigated by the extension policy in the Proposed Rule, which provides for an unrestricted number of extensions for projects that demonstrate substantial progress toward meeting the construction and completion milestones. The language of the Proposed Rule ensures that projects are held to a reasonable standard for completion milestones, while at the same time establishing a mechanism by which the BPU can monitor progress and keep projects moving forward.

**N.J.A.C. 14:8-9.3(c)11**

89. COMMENT: One commenter states that the Pilot Program should not artificially and arbitrarily limit individual developer's market share in the Pilot Program. Rather than making this limitation, maturity requirements for projects and timelines for project completion should be used to ensure that developers are bringing forward their best projects and that those developers best able to complete projects are rewarded. Another commenter notes that developer caps would sub-optimize the Pilot Program, and that such developer caps would be unnecessary if the program size were increased. (CCSA and Dimension Renewables Energy)

RESPONSE: The BPU believes it reasonable to maintain N.J.A.C. 14:8-9.3(c)11, which gives

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the BPU the discretion to set restrictions on the number of projects approved for a single developer in a program year, if it deems it desirable or necessary. The BPU also directs the commenters to the Response to Comments 106, 107, and 108, regarding the Pilot Program size.

90. COMMENT: The commenters encourage the BPU to limit the number of projects approved for a single developer during a program year. One commenter suggests a limit of two projects per developer per EDC service territory per program year. (RIRE and Summit Ridge)

91. COMMENT: The commenter recommends that the BPU consider a mechanism to prevent a developer from taking up a large share of the available capacity in the Pilot Program if it decides to adopt a first-come, first-served project selection process. (Synnergy)

RESPONSE TO COMMENTS 91 AND 92: The BPU believes it reasonable to maintain N.J.A.C. 14:8-9.3(c)11, which gives the BPU the discretion to set restrictions on the number of projects approved for a single developer in a program year, if it deems it desirable or necessary. The BPU is not currently considering switching to a first-come, first-served project selection mechanism (see also the Response to Comments 66 and 67).

92. COMMENT: The commenter thinks it is important to clarify that this provision should only be used when there are more applications for capacity than the annual capacity limit established pursuant to N.J.A.C. 14:8-9.4(b). (Vote Solar)

RESPONSE: The BPU believes it reasonable to maintain N.J.A.C. 14:8-9.3(c)11, which gives the BPU the discretion to set restrictions on the number of projects approved for a single developer in a program year, if it deems it desirable or necessary.

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93. COMMENT: The commenter believes that there is a risk that out-of-State developers could monopolize the entire allocation of the Pilot Program. To retain these benefits in-State, the Pilot Program should maintain developer caps and also create a set-aside or preference for State-based developers. (Independence Solar)

RESPONSE: Without discussing the legality of the suggestion in this comment, the BPU does not plan to set developer caps based on the geographic origin of developers.

**N.J.A.C. 14:8-9.3(d)**

94. COMMENT: The commenter believes that any allowable incremental EDC costs should be defined in the Proposed Rule, as should a process for challenging these recoverable charges. Incremental costs associated with development and interconnection should be the responsibility of the developer. EDCs and project developers should be required in the regulations to work together to identify areas of constraint, as well as areas where capacity and/or resiliency may be needed and where projects may provide the highest value. The BPU should reject suggestions that the Proposed Rule establishes special mechanisms for the recovery of “lost revenues” by the State's EDCs. Such mechanisms would be unreasonable for ratepayers and would further reduce the resources available under the Clean Energy Act cost cap to meet the State's renewable energy goals. (RC)

RESPONSE: The Proposed Rule’s language at N.J.A.C. 14:8-9.3(d), pertaining to the EDC cost recovery, is verbatim from the relevant provision in the Clean Energy Act. Cost recovery will be handled through normal rate recovery proceedings as is standard practice. The BPU may

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evaluate what, if any, costs should be assigned to developers in the permanent program, based on data and information from the Pilot Program. The “capacity hosting maps” at N.J.A.C. 14:8-9.9(f) should facilitate communications regarding grid constraints.

95. COMMENT: The commenter believes that, in addition to administrative costs that may be incurred, including for billing and technical review, the commenter will also incur costs associated with software, and believes that these costs should fall under the term “incremental” subject to full cost recovery. The commenter further believes that Distributed Energy Resources (DER) interconnection costs should be borne by the developer. It is important that the EDCs be entitled to full cost recovery in both the Pilot Program, as well as a permanent program. The Proposed Rule should ensure that the EDCs are compensated for the technical review of community solar projects, and any other costs for the development of the community solar projects. (RECO)

96. COMMENT: The commenter believes that full and timely cost recovery should explicitly include the recovery of lost distribution revenues. Participants in community solar projects do not reduce their use of the distribution system by the virtual crediting mechanism contained in a community solar program. (JCP&L)

97. COMMENT: The commenter asks the BPU to clarify the EDC cost recovery component of the rule, and to make it clear that the BPU will allow EDCs to recover reasonable costs and lost margins, so that they will not be financially worse off by helping the implementation of the Proposed Rule. (Gabel Associates)

98. COMMENT: The commenter believes that the Proposed Rule should be explicit that the

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incremental costs of community solar include the full value of the credit provided by the EDCs under the program, which should be fully recoverable by the EDCs. Specifically, the commenter believes that lost revenues assigned to community solar should be recovered by the EDCs.

Allowing EDCs to recover the full value of the participant credit fairly recognizes that community solar is different than “normal” net metering, in that it avails solar to all customers. Further, the community solar crediting is purely financial, and is not based on physical production of a system interconnected to a customer’s meter, reducing the participant’s specific consumption from the grid, as in “normal” net metering. The commenter proposes that the aggregated dollar-credits applied to subscribers’ bills, as well as any payments made to the host facility by the EDC for any unsubscribed allocation of the system capacity, be recoverable through the Non-Utility Generation Charge (NGC) or similar EDC mechanisms. Additionally, as the commenter proposes that the host facility be directly connected to the distribution system, such a system will effectively reduce losses on the commenter’s distribution system, which should benefit all customers’ supply bills (and serve as an offset to the costs recovered through the NGC). In order to avoid any confusion or improper treatment of costs, the BPU should issue a Board Order further clarifying this cost recovery section, working with the EDCs to determine what mechanisms for recovery work best for each EDC. (PSE&G)

99. COMMENT: The commenter states that, while cost recovery of incremental community solar costs is specified in the draft rulemaking, there currently is no provision in the Proposed Rule regarding the specific manner that such costs will be recovered. The commenter recommends that the BPU specify that the incremental distribution costs will be recovered through an EDC distribution bill surcharge applicable to all customers. The commenter also

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recommends that the payment of full retail generation and transmission costs be recovered through an adjustment to the BGS rates, even for payments made to customers served by a third-party supplier. In the event that cost recovery is delayed, it is also appropriate that the EDCs be permitted to have an opportunity to earn on incurred Pilot Program costs prior to their recovery. More specific guidance on cost recovery would also enable the EDCs to structure the appropriate accounting process. (ACE)

100. COMMENT: The commenter objects to any cost recovery for utilities. (Sierra Club)  
RESPONSE TO COMMENTS 95 THROUGH 100: N.J.A.C. 14:8-9.3(d), pertaining to the EDC cost recovery, is verbatim from the relevant provision in the Clean Energy Act. Cost recovery, and the determination of which costs should be considered “incremental” costs under the Pilot Program, will be handled through normal rate recovery proceedings, as is standard practice.

101. COMMENT: The commenter states that any separate fee or surcharge to community solar projects should be established in advance of the opening of application windows for each program year. The open-ended financial uncertainty inherent in the proposed language will frustrate the financing process for projects and potentially undermine interest in the Pilot Program. (Summit Ridge)

RESPONSE: The BPU appreciates the comment and is sensitive to the need to minimize potential financial uncertainty for the developer community, but believes it is premature to address this issue. The BPU welcomes continued dialogue on the important issue of project financeability.

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#### **N.J.A.C. 14:8-9.4 Pilot Capacity Limits**

102. COMMENT: The commenters support the goal of 75 MW of community solar for the first three years of the program, reserving 40 percent of the Pilot Program annual capacity for LMI communities, and prohibiting community solar projects on preserved farmland. (Ann Leib, Gretchen Boise, and Mohammad Karim)

RESPONSE: The BPU appreciates the comments.

103. COMMENT: The commenter states that the limitations in N.J.A.C. 14:8-9.4 are best monitored by the BPU in order to verify that New Jersey's goals are being met. The EDCs cannot be responsible for monitoring and verifying compliance with the Proposed Rule. To the extent the size and type of community solar projects do not further the State's goals, the BPU will be able to act quickly to approve an updated mix of project types serving the needs of different types of customers and communities. (RECO)

RESPONSE: The BPU looks forward to working closely with the EDCs in the further development and implementation of community solar in New Jersey. However, with regards specifically to the allocation of program capacity, the competitive application process set forth in N.J.A.C. 14:8-9.3 states that the BPU may approve projects for participation in the Pilot Program based upon the capacity limits delineated in N.J.A.C. 14:8-9.4.

104. COMMENT: The commenter believes that the BPU should provide a special allocation of the Pilot Program to certain urban municipalities or an entire geographically benefitted area, as opposed to limiting the Pilot Program's application to individual projects throughout the State.

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(Pearlman & Miranda)

RESPONSE: The BPU appreciates the comment, but such an allocation method is not currently being considered for the Pilot Program, as the BPU believes that overly restrictive program capacity allocations may create additional difficulties in fostering community solar in New Jersey. Moreover, the BPU notes that nothing in the Proposed Rule prevents a municipality from submitting an application to establish a community solar project. The BPU looks forward to reviewing all applications.

**N.J.A.C. 14:8-9.4(a)**

105. COMMENT: The commenter states that the proposed caps are too high for New Jersey's community solar Pilot Program. The purpose of a Pilot Program is to provide information and feedback on program design, market responses, and lessons learned; and to give policymakers an opportunity to adjust the program structure as needed. It is unclear how the Pilot Program and the subsequent permanent program will fit in with the ongoing changes in the SREC program and its imminent closure. Specifically, it is unclear what value SRECs generated in the Pilot Program will receive. Finally, given the range of pilot programs in other states, and the current status of New Jersey's solar energy market, the Pilot Program capacity limits should be at the lower end of the range of the caps in effect in other states. RC recommends a program cap of no more than five percent of recent annual installations, or about 16 MW for each of the three years of the Pilot Program, for a total of 48 MW. (RC)

106. COMMENT: The commenter is encouraged that the BPU identified 75 MW as a capacity limit for PY1 of the Pilot Program; however, this capacity limit is significantly less than many

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parties advocated for during the stakeholder meeting process. (Vote Solar)

107. COMMENT: The commenters recommend increasing the size of the Pilot Program. One commenter recommends restoring the Pilot Program to the 150 MW per Program Year capacity level discussed originally. One commenter would like to see the program doubled from 75 MW to 150 MW a year, if not 200 MW. One commenter recommends a Pilot Program size of 1,000 MW AC every year over the next 12 years. One commenter cites a report issued by Vote Solar that examines the potential jobs and economic benefits associated with a 450 MW Pilot Program. (Summit Ridge, Sierra Club, Dimension Renewables Energy, Clean Energy Collective, Food & Water Watch, and Cypress Creek Renewables)

RESPONSE TO COMMENTS 105, 106, AND 107: In deciding upon the size of the Pilot Program, the BPU has had to balance a number of considerations. On the one hand, the Pilot Program is a pilot, intended to test models and implementation of community solar in New Jersey and later inform the design of the permanent program. On the other hand, the Pilot Program must be sufficiently large, so as to properly evaluate a representative sampling of projects. The BPU believes that a Pilot Program of 75 MW in PY1, and at least 75 MW in each of PY2 and PY3 (with the ability to increase available program capacity in PY2 and PY3 at the BPU's discretion) is appropriate. The BPU would also like to note that a Pilot Program capacity limit set at 150 MW was proposed by certain stakeholders, but was not proposed or endorsed by the BPU.

108. COMMENT: The commenter believes that the Pilot Program should be focused on projects that serve LMI EDC consumers and projects that benefit EJ communities that have

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historically been disproportionately affected by air, water, and soil pollution and other impacts of environmental degradation. (RC)

RESPONSE: The BPU agrees that enabling projects that benefit LMI customers and EJ communities is a key goal for the Pilot Program. However, the BPU also notes that the Clean Energy Act mandates the adoption of rules “establishing a Pilot Program to permit customers of an electric public utility to participate in a solar energy project that is remotely located from their properties but its within their electric public utility service territory.” The BPU welcomes continued dialogue on this important issue.

109. COMMENT: The commenters state that the program size and project size should be specified in MW AC, rather than MW DC, and that the use of MW AC for the maximum project size results in a meaningful reduction in cost. One commenter further notes that AC rating is more flexible and easier to administer for both the developer and the interconnecting utility and, unlike aggregate sum of DC panel ratings, the AC output can be physically capped by simply programming the inverter settings. Two commenters add that capacity denoted in MW DC is problematic for the inclusion of storage. (CCSA, NJLCV, US Solar, Vote Solar, Borrego Solar Systems, and Nexamp)

RESPONSE: The BPU notes that it has been standard definition within the BPU for solar capacity to be measured in DC capacity for New Jersey solar programs; it would be a departure from standard practices for community solar capacity to be measured in AC capacity.

110. COMMENT: The commenter agrees that the annual capacity limit for all community

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solar projects be defined as the sum of the nameplate capacity in DC rating of all Photovoltaic (PV) panels in projects approved for participation. If the BPU chooses to define the limit in terms of AC capacity, it should provide a standard conversion rate to adjust this measure to DC capacity, as this is how solar capacity in the State has been measured since the inception of the RPS and the SREC program. (RC)

111. COMMENT: Two commenters state that a process for stakeholder input should be established for determining the annual capacity limits for PY2 and PY3, with an eye toward expanding the minimum 75 MW capacity allocations in PY2 and PY3. One commenter believes there will be robust demand for community solar in New Jersey and enabling consumers to participate in this program will help New Jersey meet its clean energy and climate goals with local projects. (CCSA and Vote Solar)

RESPONSE TO COMMENTS 110 AND 111: The BPU appreciates that the community solar market benefits from clear signals from the BPU but cannot make any commitments regarding the determination and publication of PY2 and PY3 capacity limits beyond what is provided for in N.J.A.C. 14:8-9, as this process and determination will in large part be informed by the experience and data from PY1. The BPU welcomes continued engagement on this issue.

**N.J.A.C. 14:8-9.4(c)**

112. COMMENT: The commenter states that the roll-over of unsubscribed capacity is unnecessary. If there is a lack of interest in the program adding more capacity to subsequent program years is likely to be futile. (RC)

RESPONSE: The BPU appreciates the comment. The BPU believes, however, that it is

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important to retain flexibility in this regard, particularly in the context of a Pilot Program. The BPU further believes that the reallocation of unallocated capacity may be necessary to send a clear signal as to the overall size of the Pilot Program over its three years. Based upon the results of the Pilot Program, the BPU may explore a different process in the permanent program.

113. COMMENT: The commenter recommends that capacity should only be carried over by the same EDC in order to maintain consistency with N.J.A.C. 14:8-9.4(d), which provides that annual capacity is divided among the EDCs based on their average percentages of State retail electric sales. Put another way, unallocated capacity that has been assigned to one EDC in a specific program year cannot be reassigned to a different EDC in a subsequent program year. (RECO)

RESPONSE: The BPU appreciates the comment, but wishes to retain discretion as to if, and how, unallocated capacity should be reallocated to subsequent program years.

114. COMMENT: The commenter states that the treatment of unallocated and reallocated capacity should be clarified and made more certain to allow for reallocation to projects further down the queue and to roll into subsequent program years should the queue be exhausted. The definition of “unallocated capacity” should be modified to be clear that capacity will be reallocated to projects in that program year’s queue until the queue is exhausted. Or, in the case that the queue of projects is exhausted or there are insufficient numbers of conforming project applications, capacity should be allocated to future years. (CCSA)

RESPONSE: As explained in the Response to Comments 84 and 85, the BPU does not currently

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propose to establish a queue for projects that were not selected in the Application Period for which they applied.

**N.J.A.C. 14:8-9.4(d)**

115. COMMENT: The commenters agree with the allocation of capacity among EDCs in N.J.A.C. 14:8-9.4(d). (RC and Jeanne Fox)

RESPONSE: The BPU appreciates the comments.

**N.J.A.C. 14:8-9.4(e)**

116. COMMENT: The commenters believe that the 40 percent LMI requirement in PY1 will have a hard time acquiring financing. One commenter suggests a 30 percent LMI carve-out for the PY1, which can always be raised in PY2 and/or PY3. One commenter suggests the BPU begin with a 10 percent carve-out in PY1, a 20 percent carve-out in PY2, and 30 percent carve-out in PY3 to better keep pace with the rate of adoption in the financing community, while setting meaningful targets for LMI participation. (Jeanne Fox and Summit Ridge)

RESPONSE: The BPU greatly appreciates the comments on this issue, and believes that the 40 percent capacity allocation sends an appropriate signal as to the Pilot Program's focus on serving LMI households. One of the benefits of the Pilot Program is to learn about this important issue. The BPU looks forward to continued dialogue and evaluating the data on LMI participation in the Pilot Program.

117. COMMENT: The commenter fully supports the 40 percent set aside of total annual

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capacity in the Pilot Program for LMI projects, and wants to make sure these projects succeed in order to set the bar for other statewide community solar programs across the country. (Vote Solar)

RESPONSE: The BPU appreciates the comment.

118. COMMENT: The commenter states that the Pilot Program needs to be expanded and targeted more toward LMI communities. The commenter would like to see a rise from 40 to 50 percent of solar targeted to LMI communities. (Sierra Club)

RESPONSE: The BPU supports LMI inclusion in community solar and refers to the Response to Comment 116.

119. COMMENT: The commenters note that it is unclear from the Proposed Rule whether the 40 percent is to be applied to the overall capacity limit, or each EDC's allocated capacity limit. One commenter recommends that LMI projects are distributed throughout the entire State according to concentrations of LMI households; thus, the 40 percent capacity set-aside for LMI projects should apply not only to the overall program, but to the individual EDC service territories as well for PY1 of the Pilot Program. (RC and Vote Solar)

120. COMMENT: The commenter would like to discuss with the BPU whether set asides should apply to each electric distribution company or just to the State as a whole. (NJEJA)

RESPONSE TO COMMENTS 119 AND 120: The 40 percent capacity allocation for LMI projects applies to the overall capacity limit Statewide, in order to retain flexibility and maximize the BPU's ability to select the best projects to serve LMI New Jerseyans. For the avoidance of

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doubt, the 40 percent does not apply to each EDC's allocated capacity limit. The BPU will monitor the geographic distribution of LMI projects in the Pilot Program.

121. COMMENT: The commenter strongly supports the 40 percent generated capacity LMI set aside that is currently in the Proposed Rule, but further recommends that at least 10.4 percent of this set aside should be reserved for low-income customers. The commenter interprets the Proposed Rule as currently stating that BPU, at its own discretion, can add a 10 percent set aside for low-income customers to the 40 percent LMI set aside but a 10 percent low-income set aside for low-income customers is not a requirement. The 10.4 percent low-income set aside might be essential in forcing providers to devote a fair share of the electricity generating capacity produced by community solar projects to low-income residents in New Jersey. (NJEJA and Nicky Sheats)

RESPONSE: The BPU appreciates the comment and supports the participation of residents of all income-levels in community solar. The BPU looks forward to the data collected within the Pilot Program regarding income distributions of subscribers, and to further dialogue on this important issue.

**N.J.A.C. 14:8-9.4(f)**

122. COMMENT: The commenter believes that the option to reserve an additional 10 percent of capacity for low-income projects should be reserved for PY2 and PY3. The commenter is concerned that the LMI provisions of the program will not be achieved without additional credit support. Given the challenges to achieving the existing 40 percent target proposed for LMI

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projects, and particularly given the limited capacity available in the first year, the BPU should wait until the second and third years to make a determination of whether an additional 10 percent of the program should be reserved for low income projects. This determination should be made when the PY2 and PY3 capacity levels are announced, ideally well before the opening of that program year to help developers and interested participants understand what will be available for that year. (CCSA)

RESPONSE: The BPU appreciates the comment and refers stakeholders to N.J.A.C. 14:8-9.4(f) regarding the timing of the announcement of an additional capacity set aside for low-income projects. The BPU will make the decision as to whether to reserve an additional 10 percent of annual Pilot Program capacity for low-income projects based on its discretion and evaluation of good public policy.

**N.J.A.C. 14:8-9.4(g)**

123. COMMENT: The commenters recommend that the capacity limit for individual projects be smaller. One commenter recommends a one MW cap for projects within ACE, JCP&L, and PSE&G and a 400 kW cap for RECO. One commenter recommends that project size be limited to two MW AC. (RC and Summit Ridge)

124. COMMENT: The commenter recommends downsizing the maximum project size during the Pilot Program or only allowing a few larger projects. If large projects are allowed, the commenter recommends that the load be nearer to the project, so as to not require an upsizing of the distribution lines and to allow it to truly be “community solar.” The commenter supports up to five MWs on roofs and parking lots/decks/brownfields, but not if projects are permitted on

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open land. (Jeanne Fox)

RESPONSE TO COMMENTS 123 AND 124: The BPU believes that one of the potential strengths of community solar is the possibility of building larger projects, and, thus, benefiting from economies of scale. The BPU further believes that the Pilot Program should be used to test a variety of community solar projects, including projects of varying sizes.

125. COMMENT: The commenter suggests that, in the event the BPU increases the overall Pilot Program annual capacity of 75 MW in the Proposed Rule, it should also increase the maximum size for individual projects that serve only LMI customers above the currently proposed five MW limit. (Gabel Associates)

126. COMMENT: The cap on project size should be removed or expanded from five MW to 10 MW or 20 MW. (Sierra Club)

RESPONSE TO COMMENTS 125 AND 126: The BPU notes that the Clean Energy Act states that “the rules and regulations developed by the board shall establish a capacity limit for individual community solar projects to a maximum of five megawatts per project.”

**N.J.A.C. 14:8-9.4(h)**

127. COMMENT: The commenter states that, assuming the provision at N.J.A.C. 14:8-9.4(h) refers to a meter to measure output from the solar generation facility, the commenter agrees with this provision. The commenter suggests that the language be changed to specify the type of meter required. (RC)

RESPONSE: The BPU notes that the meter referenced at N.J.A.C. 14:8-9.4(h) refers to the

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utility-grade revenue meter installed, maintained, and read by the EDC in the project’s EDC service territory.

128. COMMENT: The commenter states that N.J.A.C. 14:8-9.4(h) should be clarified as to whether this is the same as the EDC meter as provided for in N.J.A.C. 14:8-9.9 or a separate additional meter. If this is an additional meter, this should be clarified and also should specify that it is to be paid for by the community solar project. (JCP&L)

RESPONSE: The BPU notes that the meter referenced at N.J.A.C. 14:8-9.4(h) refers to the utility-grade revenue meter installed, maintained, and read by the EDC in the project’s EDC service territory. The BPU is unsure what meter JCP&L is referring to in N.J.A.C. 14:8-9.9, but notes that any additional metering and/or monitoring equipment is distinct from the revenue meter, and is not required under the Pilot Program. The BPU welcomes continued dialogue on this issue.

**N.J.A.C. 14:8-9.4(i)**

129. COMMENT: The commenters agree with the exclusion of existing projects from the Pilot Program and restricting the Pilot Program to new solar projects to spur further solar deployment in New Jersey. (RC, CCSA, and Summit Ridge)

RESPONSE: The BPU appreciates the comment.

**N.J.A.C. 14:8-9.4(j)**

130. COMMENT: The commenter agrees with the provision at N.J.A.C. 14:8-9.4(j), as it may

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help to facilitate lower-cost market-based community solar projects. (RC)

RESPONSE: The BPU appreciates the comment.

131. COMMENT: The commenter state that the BPU should revise the co-location definition and provision to: 1) prohibit two community solar applications from being approved on the same parcel; but 2) allow community solar projects to be sited on adjacent parcels. (CCSA and US Solar)

132. COMMENT: The commenter states that co-location should not be allowed in the Pilot Program, in order to maximize project geographic diversity and to provide a clear distinction between community solar and utility-scale development. If the BPU finds some compelling reason to allow co-location it should be the exception, not the rule. (Summit Ridge)

133. COMMENT: The commenter believes that the Proposed Rule should specify that co-location of facilities should not increase the cost over what it would be if the site were a single project. If a single site were broken into multiple community solar projects, multiple interconnections and metering would increase the cost of the project without adding any benefits over a single larger project. The main benefit of allowing co-location would be to ensure that the communities served are coherent, possibly making the community solar projects too small to fill the site. However, a better approach to serving “communities of interest” would be to locate the solar farms in the communities. Such siting decisions should be made with community input. (UU Faith Action NJ)

RESPONSE TO COMMENTS 131, 132, AND 133: The BPU believes that it is appropriate to

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leave the matter of co-location to the BPU's discretion, as stated at N.J.A.C. 14:8-9.4(j).

Comments on the definition of co-location have been addressed in the Response to Comments 27 and 28. Furthermore, the BPU will use the Pilot Program to study what, if any, requests for co-location are presented to the BPU, and the impacts of such potential co-location, including potential benefits and/or costs impacts.

134. COMMENT: The commenter believes that this provision is better stated in either N.J.A.C. 14:8-9.3, Application process, or 9.5, Project siting requirements. (Vote Solar)

RESPONSE: The BPU appreciates the comment but does not believe it necessary to change the location of this subsection in the Proposed Rule.

**N.J.A.C. 14:8-9.5 Project Siting Requirements**

135. COMMENT: The commenter agrees with the provisions in this section. The Proposed Rule should also include a provision to clarify that this section does not override local land use restrictions, such as limitations on the development of "open space" as defined in the Proposed Rule. (RC)

RESPONSE: The BPU appreciates the comment, and notes that the Proposed Rule does not supersede local land use restrictions. Project developers will be expected to comply with local land use policies and provisions and receive all appropriate permits.

136. COMMENT: The commenter believes that a portfolio of lands owned by the State of New Jersey or its affiliates should be made available for lease or purchase by organizations

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willing to focus the majority of their commitment to the low-end of the LMI community. The commenter also encourages the BPU to enlist the State to work with local and regional governments to make lands available. (Cap Solar)

RESPONSE: The BPU appreciates the comment and welcomes further discussion on the matter of State-owned land.

137. COMMENT: The commenters are in favor of siting community solar projects in EJ communities but states that it must be done with community input and some degree of planning that emanates from the community where the project is to be sited, in order to bring important co-benefits to those communities. The BPU could form a stakeholder group that includes community and EJ representatives to create a set of guidelines but ultimately the decision of where projects are sited in a community should be made largely by the community. (NJEJA, Nicky Sheats, Joint Environmental Commenters, and Joint Conservation Commenters)

RESPONSE: The BPU supports community engagement in the development of community solar projects. The BPU has identified certain siting requirements at N.J.A.C. 14:8-9.5 and will develop further guidelines in the Application Form; however, this in no way precludes a community or municipality from engaging in community planning if they so desire. The BPU welcomes further discussion on the idea of forming a stakeholder group to discuss siting of community solar projects during the implementation of the Pilot Program and development of the permanent program, based on the experiences of the Pilot Program.

**N.J.A.C. 14:8-9.5(a)**

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138. COMMENT: The commenter states that the BPU should clarify, prior to the commencement of PY1, how a developer might be characterized as placing a geographic restriction on the subscribers to a project. The commenter does not support any required restriction that would reduce the available subscribers for a given project to anything less than ratepayers that share the EDC service territory. (Summit Ridge)

RESPONSE: Under N.J.A.C. 14:8-9.5(a), “community solar projects may have subscribers anywhere in the EDC service territory in which they are located, unless they have indicated otherwise in their application to participate in the Pilot Program.” Any evaluation criteria pertaining to the geographic restriction of projects, and details as to how developers might be characterized as placing a geographic restriction on the subscribers to a project, will be clarified in the Application Form.

139. COMMENT: The commenter believes that the Proposed Rule smartly allows projects to serve customers anywhere in the service territory giving the flexibility needed to site projects and for customers to be able to retain their subscriptions as they move. This is a best practice adopted in successful community solar markets and is critical to the program’s success. (CCSA)

RESPONSE: The BPU appreciates the comment.

140. COMMENT: The commenter believes that projects that restrict membership to smaller areas than the EDC area—in particular, to municipalities—should be scored more highly than projects with no restrictions. If municipalities develop projects, the profit that has to be allowed for developers does not arise, so it reduces the cost to ratepayers. Also, subscribers will be more

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committed to the project if it involves a local effort. In addition, local governments that choose to commit to such a project are being responsible to their residents, and this deserves to be rewarded. (UU Faith Action NJ)

RESPONSE: The BPU appreciates the comment. The evaluation criteria will be addressed in the Application Form pursuant to N.J.A.C. 14:8-9.3(c)1.

141. COMMENT: The commenter urges the BPU to reconsider the provision to allow community solar anywhere in an EDC's franchise area. This provision, if not changed, would require significant upgrades of distribution and even transmission lines - for which the utility ratepayers would pay (rate-based). Transmission lines should never be included in or upgraded for/due to community solar. (Jeanne Fox)

RESPONSE: N.J.A.C. 14:8-9.5(a) recognizes the wide diversity in community solar models and strikes the balance between, on the one hand enabling financing and customer acquisition for community solar projects, and on the other hand maintaining community engagement. Additionally, the BPU notes that infrastructure filings are not tied to specific project upgrades.

**N.J.A.C. 14:8-9.5(b)**

142. COMMENT: The commenter requests that the BPU define the location of a community solar project in a manner that would allow projects to be located at a site that does not currently have a utility meter. (RIRE)

RESPONSE: Under N.J.A.C. 14:8-9.5(b), the location of a community solar project is identified by the location of its physical utility meter. This does not mean that a project must be located at a

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site that already has a utility meter prior to the construction of the community solar facility.

Therefore, new meter service for a community solar site is permitted within the Proposed Rule.

However, in order to be interconnected, any solar project will necessarily have a utility meter installed, and it is the location of that utility meter that will be used to identify the location of a given community solar project.

**N.J.A.C. 14:8-9.5(c)**

143. COMMENT: The commenter states that N.J.A.C. 14:8-9.5(c) should be clarified to make clear that community solar projects may be developed on other lands that are not: a) preserved farmland; b) Green Acres preserved open space; nor c) land owned by the New Jersey Department of Environmental Protection (DEP). The sentence construction of the proposed language in this subsection could be read to limit development only to Green Acres, preserved open spaces, or DEP-owned land. Please clarify that this is not the case, and that projects can be developed on a wide variety of land designations that are not within the restrictions identified. (Gabel Associates)

RESPONSE: The BPU recognizes that the language in the Proposed Rule was subject to misinterpretation and has clarified the subsection upon adoption.

144. COMMENT: The commenter supports the BPU's proposed siting restrictions. (Summit Ridge)

RESPONSE: The BPU appreciates the comment.

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145. COMMENT: The commenter believes that the Proposed Rule has a reasonable approach regarding project location and siting, as it creates some restrictions while enabling the needed flexibility in location of projects to keep costs down for New Jerseyans and allow projects to serve as many people as possible. It recognizes the significant existing regulations controlling project permitting that exist at the local, regional, and State level. (CCSA)

RESPONSE: The BPU appreciates the comment.

146. COMMENT: The commenter supports the BPU's approach to project siting. However, the commenter asks that any additional siting criteria in the competitive application be set upfront in the Proposed Rule. (Cypress Creek Renewables)

RESPONSE: The BPU appreciates the comment but believes it appropriate to maintain some discretion in setting the application criteria pursuant to N.J.A.C. 14:8-9.3(c)1.

147. COMMENT: The commenter states that the Pilot Program project application should have criteria regarding project siting that score projects located on properly closed sanitary landfill facilities, brownfields, and areas of historic fill higher than other projects. Preference should be granted to these facilities, as they promote smart land use choices that have been identified as policy objectives under the 2012 Solar Act. This reiterates that a "first-come, first-served" application process would not serve to support the policy goals that have been clearly identified in the Solar Act. (RIRE)

RESPONSE: The BPU appreciates the comment; the evaluation criteria will be addressed separately in the Application Form pursuant to N.J.A.C. 14:8-9.3(c)1.

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148. COMMENT: The commenter states that rooftop projects can be built more cost effectively and with less impact on New Jersey land and neighborhoods. In addition, rooftop projects tend to be located in higher-density areas that correlate with areas of grid congestion. The commenter recommends that a set-aside be made for rooftop projects and/or that rooftop projects receive a preference in scoring. At the very least, the BPU should relax any requirement for rooftop projects to obtain a checklist review, approval, or meeting from the DEP, as a DEP review is not germane to rooftop projects. (Independence Solar)

RESPONSE: The BPU appreciates the comment; the evaluation criteria will be addressed separately in the Application Form pursuant to N.J.A.C. 14:8-9.3(c)1. No specific set aside for rooftop projects is currently identified in the Proposed Rule.

149. COMMENT: The commenter states that there should be restrictions on siting solar facilities on forested land, wildlife habitat, and other environmentally sensitive locations. Such restrictions should be developed in consultation with the DEP. (RC)

150. COMMENT: The commenters state that the adopted subchapter should identify and give preference and incentives to preferred sites as identified in DEP's 2017 updated solar siting guidelines: rooftops, brownfields, landfills, parking lots, and areas with existing impervious coverage that are generally urban, commercial, or residential areas. The adopted subchapter should also identify non-preferred locations. One commenter supports a continued prohibition for solar energy development on preserved lands, except in approved cases of collocation on underutilized or low value lands. One commenter also notes that it may be possible to identify a

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category of marginal, undeveloped lands that are not environmentally sensitive, nor identified priorities for land preservation, that may be suitable for community solar projects, as determined on a site-by-site basis. One commenter suggests placing limitations on clear cutting, deforestation, or wetlands fill, and not allowing projects if they impact threatened or endangered species. One commenter suggests that BPU work with DEP to remove the barriers that exist for solar development on brownfields and other already disturbed sites. One commenter also notes that any other lands be identified with input from the DEP, State Agriculture Development Committee, stakeholders, and the public. One commenter adds that the adopted subchapter should prohibit tree removal greater than five acres per project. (Joint Environmental Commenters, Jeanne Fox, NJLCV, Mark Canright, NJ Future, NJHC, Joint Conservation Commenters, The Nature Conservancy, NJ Conservation Foundation, and the Pinelands Preservation Alliance)

RESPONSE TO COMMENTS 149 AND 150: The BPU has worked, and will continue to work, closely with State agencies on matters relating to the siting of solar facilities. The BPU welcomes continued discussion on this important matter, and notes that the DEP’s Solar Siting Analysis may be a good resource for informational purposes only. Additional guidance of project siting may be provided through the evaluation criteria, which will be addressed in the Application Form pursuant to N.J.A.C. 14:8-9.3(c)1.

151. COMMENT: The commenters state that the Proposed Rule seeks to encourage “applications for projects that make creative use of marginal or low-value lands” without defining what this term refers to. Land that is unable to be put to other productive use may exist

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and may be an appropriate location for solar development, but this term and the land it describes must be clearly defined in the adopted subchapter. A process to identify such land involving DEP, stakeholders, and the public should be required. (Joint Environmental Commenters, NJ Future, Joint Conservation Commenters, The Nature Conservancy, and NJ Conservation Foundation)

RESPONSE: One of the key objectives of the Pilot Program is to “encourage applications for projects that make creative use of marginal or low-value lands.” More specific guidance on siting will be provided in the Application Form. Additionally, the BPU reiterates that this is a Pilot Program, which will be used to test various models and gain experience and data regarding the implementation of community solar in New Jersey.

152. COMMENT: The commenter believes that placing solar panels on the roof-tops of residential housing or of institutions that desire them is generally a good idea, but notes that additional financial resources might be needed in low-income neighborhoods to make this possible. A portion of the Clean Energy Fund should be dedicated to costs such as this in order to ensure that EJ communities in New Jersey have access to renewable energy and EE. The commenter recommends that the portion of the fund so dedicated should be at least 33 percent. (NJEJA)

RESPONSE: The BPU may explore the creation of new or additional incentives for community solar at a later time, as described in the responses to comments on N.J.A.C. 14:8-9.7(s) below.

153. COMMENT: The commenter wishes to further discuss whether or not properties in EJ

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communities that are in the State’s Blue Acres program should be available for community solar projects. (NJEJA)

RESPONSE: The BPU appreciates the comment. A determination regarding the siting of community solar projects in the Blue Acres program would require consultation with the Department of Environmental Protection (DEP), as the program is run by the DEP. More generally, the BPU will continue to engage with stakeholders and State agencies to determine appropriate siting of community solar projects.

**N.J.A.C. 14:8-9.5(c)1**

154. COMMENT: The commenters state that the BPU should not approve solar projects on any farmland - not just the farmland under the State Farmland Preservation Program - unless the electricity will be used on that site or within a mile of that site. (Jeanne Fox and NJ Conservation Foundation)

RESPONSE: The BPU understands and appreciates the need to balance community solar development and the impacts on open space, including farmland. The Pilot Program provides an opportunity to test under which circumstances farmland may provide appropriate sites for community solar. It is a Pilot Program and may be modified based on lessons learned in its implementation.

**N.J.A.C. 14:8-9.5(c)2**

155. COMMENT: The commenters believe that the Proposed Rule appropriately bans solar development on preserved farmland, but allows for solar development on Green Acres lands with

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special approval of the DEP. Like preserved farmland, solar development should not be permitted on Green Acres lands that have been set aside to protect natural, scenic, and recreational resources. Possible exceptions might include solar canopies on parking lots at parks, or rooftop solar on park buildings, but any such exceptions should be clearly stipulated and exclude solar development that conflicts with protecting the natural, recreational, or scenic values of these lands. One commenter states that the BPU should strictly ban solar development on all Green Acres lands. One commenter suggests that both the DEP and the BPU be required to approve any DEP-owned land but such land should be a very infrequent exception that is clearly “in the public interest.” (Joint Environmental Commenters, Mark Canright, NJ Future, NJHC, Joint Conservation Commenters, The Nature Conservancy, Jeanne Fox, and NJ Conservation Foundation)

RESPONSE: Green Acres lands are preserved through a DEP-administered program, and, thus, fall under the purview of the DEP. Any specific exemptions granted to construct solar on Green Acres preserved open space, and the conditions under which those authorizations may be granted, are the jurisdiction of the DEP.

#### **N.J.A.C. 14:8-9.6 Subscription Requirements**

156. COMMENT: The commenter recommends that the BPU explore a sliding scale of delinquent payment allowances for offtakers. If a developer removes any of these LMI offtakers within the two-month parameter of the Proposed Rule, without trying to ascertain a possible payment schedule, they will be subjecting this offtaker to further fiscal uncertainty. The commenter further recommends that, before developers are allowed to access the LMI market,

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they should demonstrate experience servicing this population or, in the alternative, have a formal affiliation with a community organization which does so. (Cap Solar)

RESPONSE: The BPU appreciates the comment. The BPU regulates the contract that underpins a community solar subscription to the extent of the Proposed Rule under the Pilot Program. The BPU notes that it is uncertain what “two-month parameter of the Proposed Rule” Cap Solar is referring to in its comments. However, generally speaking, the BPU will be monitoring community solar subscriptions and verifying that all subscribers, but especially LMI subscribers, are adequately served and protected. The BPU may implement additional measures as a future rulemaking within the Pilot Program or permanent program based on data received from the Pilot Program.

**N.J.A.C. 14:8-9.6(c)**

157. COMMENT: The commenter proposes to either remove or increase the provision limiting the number of customers per megawatt. It states that many customers community solar is designed to reach, such as renters, urban dwellers, and low-income customers, use less energy and, therefore, will typically receive smaller subscriptions than average usage customers. Instead, the commenter recommends that the BPU reduce potential administrative burden and pursue simpler lower cost billing solutions, such as billing automation and an amended retail credit rate. (CCSA)

158. COMMENT: The commenter expresses concern that a higher number of subscribers might be needed, or at least desirable, in low-income communities especially if that community

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has developed some type of joint ownership strategy. (NJEJA)

RESPONSE TO COMMENTS 157 AND 158: The BPU understands that community solar subscribers may have subscriptions of varying sizes. The BPU standard established at N.J.A.C. 14:8-9.6(c) aims to both encourage sizing subscriptions according to subscriber's historic annual usage and facilitate the administration of the Pilot Program. Throughout the data collection and implementation of the Pilot Program, the BPU will consider ways in which administrative processes for community solar can be adjusted. The BPU welcomes further discussion of models of community ownership based on actual projects in the Pilot Program. The BPU has addressed the comments pertaining to billing automation and the retail rate bill credit in its responses to comments 186, 187, 188, and 189 and 236 and 237.

159. COMMENT: The commenter encourages the BPU to carefully consider any limitation on the maximum number of subscribers per project. It states that, in the case of a one MW community solar system that is serving primarily residential customers, this would result in an average subscription size of four kW, which is too high an average subscription size to account for low-usage customers. In addition, the commenter believes the more appropriate mechanism is to place a minimum subscription size of one kW in the Proposed Rule to ensure that all New Jersey customers, even those with relatively small individual load, can participate in the clean energy economy. (Vote Solar)

RESPONSE: The BPU refers stakeholders to the standard established at N.J.A.C. 14:8-9.6(c). The BPU welcomes further discussion of this standard based on actual data in the Pilot Program and may consider whether a minimum subscription size is appropriate.

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**N.J.A.C. 14:8-9.6(d)**

160. COMMENT: The commenter supports the exemption to the 10-subscriber minimum requirement for the situation described in the Proposed Rule. It suggests that the 10-subscriber minimum should be lifted for any project serving a master-metered building as a subscriber, including those which qualify as affordable housing for the purpose of fulfilling LMI participation requirements. (Summit Ridge)

RESPONSE: The exemption provided under N.J.A.C. 14:8-9.6(d) is defined to apply only to multi-family buildings with a community solar project sited on their property that directly serves the residents of said buildings. The BPU may consider changes in the permanent program based on the data and experiences from the Pilot Program.

**N.J.A.C. 14:8-9.6(e)**

161. COMMENT: The commenter states that its customers billed under the Commercial and Industrial Energy Pricing (CIEP) rate are billed under prices that vary on an hourly basis. It states that, under the Proposed Rule, if these customers subscribe to a community solar project, the commenter will be required to modify its billing process to accommodate hourly price changes for solar credits. The commenter recommends that the BPU permit the commenter to use the non-hourly pricing rate applicable to these customers or exclude CIEP customers from Pilot Program participation. (ACE)

RESPONSE: The BPU appreciates the comment and looks forward to further discussions to determine how best to calculate and apply the community solar bill credit so that all rate classes

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are eligible to participate in a community solar project, as intended under N.J.A.C. 14:8-9.6(e).

The BPU, therefore, does not currently believe it is necessary to prevent customers billed under the CIEP rate from participating in a community solar project. The BPU will work with ACE specifically to determine whether the non-hourly pricing rate should be applied to CIEP customers, or whether another method of calculating the bill credit would be preferable.

162. COMMENT: The commenter believes that, because the Proposed Rule includes a credit based on retail rate net metering that cannot offset fixed, non-by-passable charges, only customers that are metered and have kWh usage should be able to participate as a subscriber. It states that customers, such as public or private lighting customers, that are not billed on usage should be ineligible to be a subscriber. (RECO)

RESPONSE: The BPU appreciates this interesting comment. The BPU notes that the participation set forth at N.J.A.C. 14:8-9.6(e) and bill credit set forth at N.J.A.C. 14:8-9.7(a) is not net metering as set forth at N.J.S.A. 48:3-87(e). The BPU has clarified this in the Response to Comment 184. If a customer is billed by the EDC for electricity usage under a BPU-approved tariff, that customer should be able to apply as a subscriber for a community solar project. The BPU looks forward to further working through this issue during the Pilot Program and notes that this matter may need to be addressed through a tariff case in the future.

163. COMMENT: The commenters support the need to set minimum participation targets, whereby 50 percent of capacity for each project should be reserved for small subscribers. With the net metering credit, as defined, it is almost assured that some EDC service territories will

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have no non-residential customer participants, including housing authorities and other non-residential customers serving low- and moderate- income individuals. One commenter strongly recommends that the BPU adopt a 50 percent small subscriber requirement, defined as 50 percent of the project's capacity serving customers with subscriptions of 25kW AC or less. Additionally, the commenters recommend targeted incentives to offset the added customer acquisition, billing, and administrative costs of a large portion of small subscribers. (CCSA and Vote Solar)

164. COMMENT: The commenter supports the recommendation of CCSA and Vote Solar that a 50 percent residential and small commercial customer participation requirement be adopted, which it believes will be important to LMI residential customer participation. The commenter believes that, without a minimum requirement and/or incentives, developers will likely gravitate predominantly toward master-metered affordable housing, stating that it is much easier to acquire and finance a single customer rather than many LMI residential households. The commenter also supports a minimum subscription size of one kW, with no overall cap on LMI subscribers. (GRID)

RESPONSE TO COMMENTS 163 AND 164: The BPU greatly appreciates the comment. The provisions set forth under N.J.A.C. 14:8-9.6(e) enable the BPU to set a minimum percentage requirement for residential subscribers, at its discretion. Based on data from the Pilot Program, the BPU will further consider this question and determine whether such a minimum percentage requirement is necessary. If it does prove necessary, the BPU would examine whether such a minimum percentage requirement should be set at 50 percent or at another percentage level. The BPU reiterates its commitment to working toward ensuring robust participation by all customer

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classes, including LMI residential customers.

**N.J.A.C. 14:8-9.6(f)**

165. COMMENT: The commenter states that N.J.A.C. 14:8-9.6(f) should define whether a subscriber's share is on an energy basis (kWh) or a capacity basis (kW). The commenter adds that, if the subscriber's share is based on a capacity basis (kW), a method for calculating the subscriber's share based on its historic annual usage should be defined (for example, capacity factor). (RC)

RESPONSE: Pursuant to the Clean Energy Act, the BPU is open to subscriptions denominated either on an energy basis (kWh) and/or on a capacity basis (kW) and looks forward to evaluating project applications and data over the course of the Pilot Program. The BPU notes that the diversity of subscription models and/or ownership models necessitate a diversity of subscription arrangements.

**N.J.A.C. 14:8-9.6(f)1**

166. COMMENT: The commenter generally supports the 100 percent usage limit as it helps avoid unwelcome subscriber “cash outs” at lower generation credit rates. It also supports the “commercially reasonable” standard for subscriber organization usage estimates where necessary. (Summit Ridge)

RESPONSE: The BPU appreciates the comment.

167. COMMENT: The commenter recommends that customers be allowed to subscribe up to

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120 percent of their initial electricity usage. (Food & Water Watch)

RESPONSE: The BPU believes it is appropriate to size subscriptions at 100 percent of historic annual usage. The BPU notes that the Proposed Rule does not prevent an increase to the size of subscriptions based on significantly changed usage, so long as the subscription agreement permits such changes.

**N.J.A.C. 14:8-9.6(f)2**

168. COMMENT: The commenter suggests that the BPU increase the single subscriber limit to no more than 50 percent instead of 40 percent, as LMI projects may have to rely on a large customer as their base subscriber. (Jeanne Fox)

RESPONSE: The BPU appreciates the comment. The single subscriber limit at N.J.A.C. 14:8-9.6(f)2 is intended to enable the possibility of “anchor” offtakers (that is, subscribers). The BPU welcomes additional dialogue on this issue based on the data and experiences learned from the Pilot Program.

169. COMMENT: The commenter believes that the 40 percent limit for a single utility meter/account is reasonable and in line with restrictions in programs in other states. However, the commenter recommends that the 40 percent restriction be lifted in the case of a master-metered multi-family building serving as the subscriber for a project, in order to allow developers flexibility in allocating credits while avoiding unnecessary restrictions. (Summit Ridge)

RESPONSE: The BPU appreciates the comment, but reiterates the provisions pertaining to

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master-metered multi-family buildings set forth at N.J.A.C. 14:8-9. The BPU may evaluate a potential exemption for master-metered multi-family buildings in the interest of facilitating participation for LMI households based on the experiences gained in the Pilot Program.

**N.J.A.C. 14:8-9.6(f)3**

170. COMMENT: The commenter supports the portability of subscriptions. The commenter notes that an EDC should not interfere with the agreement between subscriber organization and subscriber, and, therefore, that the EDC will not make a change to a subscriber's relationship, including account number or percentage allocation, without notification from the subscriber organization. Any changes provided to the EDC will be effective on the facility's next billing date, if the updated allocation form is received in conformance with the procedural requirements agreed upon for submission of the standardized form. (RECO)

RESPONSE: The BPU appreciates the comment and notes that further clarification of the process for information sharing between subscriber organizations and the EDCs will be provided pursuant to N.J.A.C. 14:8-9.7(l).

171. COMMENT: The commenter suggests that community solar subscriber organizations should have 60 days, rather than 30 days, to notify the EDC when a customer's subscription is transferred to a new account. (CCSA)

RESPONSE: The BPU appreciates the comment but does not believe that a 60-day notification period is necessary. The BPU believes that the 30-day notification period provided for at N.J.A.C. 14:8-9.6(f)3 is feasible for community solar subscriber organizations and necessary to

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the timely sharing of information between subscriber organizations and the EDCs. The BPU welcomes further discussion on this issue based on actual data from the Pilot Program.

**N.J.A.C. 14:8-9.6(f)4**

172. COMMENT: The commenter states that subscriber transfer requirements need to be clarified. Currently, the Proposed Rule reads that a subscription can be sold or transferred back to the community solar project owner. However, the commenter states that it may be the community solar subscriber organization that manages subscriptions and is responsible for transfer of subscriptions. (CCSA)

RESPONSE: The BPU appreciates the comment and agrees that there are a variety of different community solar models, meaning that the project owner does not necessarily hold or manage subscriptions. The BPU has corrected the language in the Proposed Rule upon adoption.

173. COMMENT: The commenter expresses concerns about the “portability” of subscriptions, about how subscriber organizations will handle moves, and about how portable subscriptions reflect the intent of community solar. (Jeanne Fox)

RESPONSE: The process of handling the movement of subscribers should be no more or less difficult than signing up a new customer to replace a subscriber leaving the community solar project. This provision is intended to provide flexibility to both subscribers and subscriber organizations. As indicated by the commenter, subscribers may move but wish to retain their community solar subscription. Pursuant to N.J.A.C. 14:8-9.5(a), the initial geographic restrictions defined in a project’s Application to the BPU remain effective for the lifetime of the

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project (unless waived by special permission of the BPU). In other words, if a community solar project indicated in its Application that it would place a geographic restriction to a given municipality, subscribers who move out of that municipality would not be able to keep their subscription to that project.

**N.J.A.C. 14:8-9.6(f)5**

174. COMMENT: The commenters encourage the BPU not to limit the ability of large customers to participate in more than one community solar project, which may have market implications for some non-residential customers. One commenter notes that even if a subscriber is defined as an electric meter as proposed, limiting subscribers to one project may restrict the ability of non-residential customers who may have a small number of large meters from effectively participating in the project. One commenter states that New Jersey is home to some large energy users, many of whom may have individual climate or clean energy goals and no other adequate programs available for them to meet those goals with in-State clean energy. One commenter further states that N.J.A.C. 14:8-9.6(f)5 is unnecessary given the provisions at paragraph (f)2 and the definition of “community solar facility” at N.J.A.C. 14:8-9.2. One commenter adds that this provision would significantly increase a developer’s cost of customer acquisition, and, therefore, increase the cost borne by all ratepayers. (CCSA, Vote Solar, and Edison Energy)

175. COMMENT: The commenter states that there are many legitimate reasons that one subscriber may want to subscribe to more than one community solar facility, and that the provision at N.J.A.C. 14:8-9.6(f)5 restricts customers’ freedom to contract and reduces the level

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of market competition for subscribers. (US Solar)

RESPONSE TO COMMENTS 174 AND 175: The BPU appreciates the thoughtful comments, but notes that N.J.A.C. 14:8-9.6(f)5 is, in part, intended to maximize access and participation in community solar in terms of number of individual participants. Therefore, it is appropriate to limit subscribers to one community solar project. Furthermore, the BPU reiterates that the definition of subscriber at N.J.A.C. 14:8-9.2 states that “one electric meter denotes one subscriber.” Thus, large energy users with multiple meters would be able to subscribe to more than one community solar project.

176. COMMENT: The commenters state that, practically, it is the EDC, not the provider, who knows whether a customer has already subscribed to a community solar project, so community solar subscriber organizations have no practical way to ensure that a customer is not already participating in another provider’s project. They recommend that the BPU establish a process for this validation as part of the overall EDC data exchange requirements. (CCSA, Jeanne Fox, and Summit Ridge)

RESPONSE: The BPU reiterates the obligations under N.J.A.C. 14:8-9.6(f)5 that it is the subscriber organizations that are responsible for verifying that their subscribers are not participating in more than one community solar project. The BPU may work with the EDCs to ensure that, where necessary, there is a process in place to facilitate this verification.

177. COMMENT: The commenter asks the BPU to clarify that, if an individual owns two homes in New Jersey, they would qualify for two separate subscriptions. (Jeanne Fox)

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RESPONSE: Under the definition of a “community solar subscriber” at N.J.A.C. 14:8-9.2, one meter denotes one subscriber; therefore, an individual owning two homes would qualify for two separate subscriptions.

**N.J.A.C. 14:8-9.6(g)**

178. COMMENT: The commenter recommends that N.J.A.C. 14:8-9.6(g) be revised to state that an affidavit be provided to the subscriber organization as with all other subscriber qualification information. It would be available for review by the BPU or its staff on request. (Summit Ridge)

RESPONSE: The BPU appreciates the thoughtful comment, which reflects the development process of community solar projects. The BPU has changed this accordingly in the Proposed Rule. For the avoidance of any doubt, this modification to the Proposed Rule is not in any way removing the requirement for account holders of master-meters to provide an affidavit demonstrating that specific, identifiable, sufficient, and quantifiable benefits of the community solar subscription are being passed through to the tenants, as per the requirements at N.J.A.C. 14:8-9.6(g); however, the modification is changing the point in time at which that affidavit needs to be provided.

179. COMMENT: The commenter agrees with the provisions at N.J.A.C. 14:8-9.6(g), but does not believe it to be necessary for all master-metered buildings. The commenter suggests that there may be some situations where a building could meet LEED standards or other clean energy goals through community solar and would be willing to do so even at a premium price to tenants.

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The commenter requests that this provision should be specific to affordable housing building and master-metered buildings serving low- or moderate-income individuals. (Vote Solar)

RESPONSE: The BPU appreciates this thoughtful comment and looks forward to continued dialogue on this issue throughout the Pilot Program. The BPU currently believes that master-meter account holders should be held accountable for ensuring that the benefits of community solar subscriptions for which the account holder of the master meter is subscribed on behalf of his or her tenants are passed through to the tenants.

#### **N.J.A.C. 14:8-9.7 Community Solar Bill Credits**

##### **N.J.A.C. 14:8-9.7(a) and (b)**

180. COMMENT: The commenter states that the value of the bill credit should be set at the EDC's avoided cost. The commenter reiterates that the purpose of a pilot program is to provide information and feedback on program design, market responses, and lessons learned, and to give policy makers an opportunity to adjust the program structure as needed. The commenter believes that, if the Pilot Program generates interest and development using the avoided cost, then it will show that avoided costs are sufficient as an incentive. Furthermore, the commenter states that, should the BPU choose to adopt a "retail" bill credit, it should not change the current reimbursement methodology for commercial customers, which is currently based on specific, measurable usage and tariffed rates; specifically, the BPU should make clear that commercial customers will continue to pay demand charges. The commenter reiterates its comments that there has been no analysis of the costs and benefits and ratemaking implications of the Proposed Rule. (RC)

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181. COMMENT: The commenter believes that the bill credit for the community solar projects should be based on the cost of retail generation service, such as BGS, stating that it is likely that the host is not co-located with the load and, therefore, that there is use of the distribution system, and in some cases, the transmission system. (JCP&L)

182. COMMENT: The commenter agrees, in part, with the language that the participant credit should be based on the energy portion of the customer's bill. However, the commenter believes that the avoided wholesale energy cost is the most appropriate participant credit that correctly values the energy delivered from a community solar project to the grid. (PSE&G)

183. COMMENT: The commenter requests that the BPU look into the potential problem that PSE&G's non-residential charges are higher than those of the other EDCs (commercial rates exclusive of demand charge) and may not allow for some community solar projects to be viable in PSE&G's franchise area. (Jeanne Fox)

RESPONSE TO COMMENTS 180, 181, 182, AND 183: After appropriate stakeholder engagement, the BPU determined that "the value of the bill credit shall be set at retail rate, inclusive of supply and delivery charges" as adopted at N.J.A.C. 14:8-9.7(a). This includes the change of deleting "net metering" from the sentence. The BPU looks forward to evaluating the correlation between this level of subsidy and the adoption of community solar based on actual data from the Pilot Program. The BPU further notes that the analysis of the actual data from the Pilot Program will be important to inform the development and the determination of any incentives for the permanent program, and the BPU welcomes robust stakeholder engagement on this key issue. As detailed further in the Response to Comments 185 through 188, the BPU has not adopted an alternate calculation of the retail rate bill credit for commercial customers. The

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BPU refers to its Response to Comment 21, pertaining to the Economic Impact analysis of this rulemaking.

184. COMMENT: The commenter asks if the provisions at N.J.A.C. 14:8-9.7(a) and (b) grandfather the Pilot Program projects for retail net-metering. If not, the commenter urges that at least LMI and other residential community solar projects be grandfathered at retail rates. (Jeanne Fox)

RESPONSE: Pursuant to the provisions at N.J.A.C. 14:8-9.7(b), the value of the bill credit shall remain in effect for the life of that particular community solar project. Upon adoption, the BPU has clarified that community solar projects in the Pilot Program do not receive retail “net metering,” but a bill credit set at the retail rate.

185. COMMENT: The commenter suggests that the BPU consider other forms of crediting, instead of a bill credit paid to subscribers. The commenter suggests, as an example, paying solar developers who would then pass those benefits on to customers. (Ampion)

RESPONSE: The BPU notes that the Clean Energy Act directs the BPU to establish “the value of the credit on each participating customer’s bill.”

**N.J.A.C. 14:8-9.7(a)**

186. COMMENT: The commenters believe that all community solar customers should receive a monetary bill credit based on residential retail rates. Specifically, one commenter believes that a retail rate bill credit will be insufficient to support non-residential subscribers, as it will cause

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credit values to vary widely across EDC service territories and between rate-classes, making non-residential customers unviable in some EDC service territories. Additionally, the commenter notes that most of the EDCs have high demand charges and, therefore, believes it is unlikely that community solar projects will include non-residential “anchor” customers. The commenter further proposes that the BPU either develop a bill credit based on the Residential Applicable Retail Rate methodology put forward in the commenters’ August 2018 submissions to the BPU, or provide all participating customers a bill credit based on the applicable default residential retail rate schedule. The commenter’s recommendation is that the BPU implement the second option. (CCSA and Soltage)

187. COMMENT: The commenter encourages the BPU to establish a residential retail rate credit applicable to all residential and non-residential rate classes, believing it to be necessary to support participation in the Pilot Program by all customer classes and, in particular, commercial, industrial, and affordable housing entities that may serve as creditworthy offtakers to support the successful financing of LMI projects. The commenter further states that the current language at N.J.A.C. 14:8-9.7 will result in credits varying widely across customers, even within the same EDC service territory. The commenter states that a residential retail rate credit would avoid the impact of rate design on a commercial customer’s credit rate, and would help facilitate participation by schools, affordable housing properties, and other institutional entities that may have high demand charges, who can then serve as a creditworthy “anchor” offtaker for LMI projects. (Vote Solar)

188. COMMENT: The commenter recommends that a residential rate credit be applicable to all participating rate classes in order to ensure that program crediting is adequate for non-

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residential rate classes to allow participation by a wide range of "anchor" offtakers, which are important to supporting LMI project financing. (GRID)

189. COMMENT: The commenter recommends that the BPU use a blended rate that includes demand charges, in order to ensure that commercial and other non-residential customers will be able to participate. This will be especially important for ensuring success of LMI projects. (Borrego Solar Systems)

RESPONSE TO COMMENTS 186, 187, 188, AND 189: The BPU refers to its Response to Comments 180, 181, 182, and 183, regarding its determination of the value of the bill credit in N.J.A.C. 14:8-9.7(a), and believes that the bill credit is appropriately set at the retail rate. Moreover, the BPU notes that it is attentive to the question of participation of anchor offtakers, particularly as it relates to supporting development of LMI projects.

190. COMMENT: The commenters ask the BPU to clarify that the bill credit is based on the subscriber's rate, not the generator's rate. (Borrego Solar Systems, Cypress Creek Renewables, and Turning Point Energy)

RESPONSE: The bill credit set forth under N.J.A.C. 14:8-9.7(a) is calculated based on the subscriber's retail rate, not the generator's rate.

191. COMMENT: The commenter strongly supports the proposal that bill credits are for the full retail rate. (Summit Ridge)

RESPONSE: The BPU appreciates the comment.

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192. COMMENT: The commenter states that the Proposed Rule does not clearly state what the billing credit amount is for customers who have a third-party supplier (TPS), and that TPS rates are confidential, vary by customers, and are not calculated by the EDCs. Therefore, the commenter recommends that the BPU specify that all compensation for the generation portion of the bill credit be based upon the otherwise applicable BGS rate. For PJM wholesale market settlement purposes, the commenter assumes that all of the community solar energy production, regardless of customer supplier, will be assigned to meet the BGS supply obligation. (ACE)

193. COMMENT: The commenter recommends that, since the EDCs do not have TPS pricing information, there should be no credit for supply-related costs for participants being served by a TPS. (PSE&G)

RESPONSE TO COMMENTS 192 AND 193: The BPU appreciates the thoughtful comments. The BPU will work directly with the EDCs in order to establish the calculation of the bill credit for TPS customers in situations when TPS customers wish to participate in community solar. The BPU looks forward to continuing dialogue with the EDCs on this question.

**N.J.A.C. 14:8-9.7(b)**

194. COMMENT: The commenter supports the language in N.J.A.C. 14:8-9.7(b), which provides that bill credits shall remain in effect for the life of the project. (Vote Solar)

RESPONSE: The BPU appreciates the comment.

195. COMMENT: The commenter states that the Proposed Rule is correct in providing the compensation methodology and bill credit for the life of the project and allowing developers and

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subscribers to bank those credits month-to-month for up to one year at a time. The commenter requests that the BPU clarify what “life of the project” means, and recommends defining “life of the project” to be 35 years from the project’s commercial operation date or when the project is decommissioned, should that occur before 35 years. (CCSA)

196. COMMENT: The commenter asks the BPU to clarify and confirm that community solar projects can rely on its provisions for a minimum of 15 years, especially those rule provisions related to the price to compare/net metering credit; customer enlistment and participation; and cost recovery. (Gabel Associates)

197. COMMENT: The commenter requests that the BPU clarify N.J.A.C. 14:8-9.7(b), and include language such that the life of the project terminates when the project is decommissioned. (US Solar)

RESPONSE TO COMMENTS 195, 196, and 197: The BPU appreciates the comments. The BPU’s definition of life of a project (as it applies specifically to community solar projects) was informed by modeling conducted for the BPU. The BPU clarifies that, for the Pilot Program, the term “life of the project” is set at no more than 20 years from the date of commercial operation of the project, or the period until the project is decommissioned, whichever comes first. This bill credit applies only to projects energized under the guidelines of the Pilot Program and will be reassessed in the permanent program based on data from the Pilot Program.

**N.J.A.C. 14:8-9.7(c)**

198. COMMENT: The commenter states that, assuming the BPU’s intent is to require community solar subscribers to pay the societal benefits charge (SBC) and other non-bypassable

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charges, the commenter agrees with N.J.A.C. 14:8-9.7(c). The commenter recommends that the word “fixed” be deleted from the provision as proposed, to clarify that it is intended to cover charges, such as the SBC that vary with the customer's usage. (RC)

RESPONSE: The BPU has deleted the word “fixed” for clarification in the rule text upon adoption.

199. COMMENT: The commenter states that “Fixed, non-by-passable charges” should not be included in the participant credit calculation, and that these include the service charge, capacity and transmission obligation charges, demand charges, and all non-by-passable clauses or riders, such as, but not limited to, the SBC, Green Programs Recovery Charge, Non-utility Generation Charge, and the pending Zero Emissions Certificate program. (PSE&G)

RESPONSE: The BPU appreciates the comment. As it pertains only to the Proposed Rule, the BPU currently believes that the “non-bypassable” charge referenced at N.J.A.C. 14:8-9.7(c) refers to charges that are identified as “non-bypassable” in the EDECA, N.J.S.A. 48:3-51 et seq., or other relevant statutes.

**N.J.A.C. 14:8-9.7(d)**

200. COMMENT: The commenter comments that N.J.A.C. 14:8-9.7(d) should state that the subscriber organization should be able to make a one-time election of their anniversary date. (Gabel Associates)

RESPONSE: The BPU is unsure what is suggested in this comment, as N.J.A.C. 14:8-9.7(d) refers specifically to a subscriber’s annualized period, not to the subscriber organization.

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201. COMMENT: The commenter believes that there should be a single, pre-set annualized period for each project, as defined within the EDC tariff for all community solar participants.

This would allow for the matching of the annualized period for all subscribers to the project that they are associated with, and simplify recordkeeping and billing activities, particularly in terms of the dates of meter reading and billing for participating accounts. (JCP&L)

RESPONSE: In order to promote the goals of the Clean Energy Act, the BPU believes that the current language is appropriate. The BPU further notes that N.J.A.C. 14:8-9.7(o) permits the EDCs to “sync up the monthly billing period of subscribers and projects, by modifying, with due notice given, the monthly period for subscribers upon their first month of participation in the community solar project.”

**N.J.A.C. 14:8-9.7(f)**

202. COMMENT: The commenter states that the Proposed Rule contemplates that a subscriber will be compensated for net excess credits in a manner similar to the existing rules for net metering. The commenter adds that the Proposed Rule then discusses the manner in which a cash payment can be made. Given that the Pilot Program is intended to allow customers who may not otherwise be able to participate in solar, the commenter states that the rules for compensation of net excess credits should be the same, and consequently, that the language referencing wire transfer or check should be deleted. It states that allowing the EDC to implement consistent rules will reduce the EDCs’ administrative burden, thereby reducing costs to ratepayers. The commenter asks that, in the alternative, to the extent the EDC must make a

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cash payment for net excess credits, the method of compensation should be the one that is most cost-effective for the EDC. (RECO)

203. COMMENT: To reduce billing costs and administrative burdens for the EDCs, the commenters recommend that the BPU permit the EDCs to issue a bill credit to the customer's electric service account for subscribers who continue to have an active EDC account and only permit subscribers who no longer have an active EDC account the opportunity to request a check for excess compensation amounts. (ACE and JCP&L)

RESPONSE TO COMMENTS 202 AND 203: The BPU will monitor the Pilot Program to determine whether this change would alleviate a significant administrative burden on the EDCs. However, the BPU notes that a bill credit was inadvertently omitted as an option for payment of excess bill credits, which has been rectified upon adoption at N.J.A.C. 14:8-9.7(f). The BPU does not understand the commenters' concerns pertaining to cash payments, as the phrase "cash payments" does not appear anywhere in the Proposed Rule.

204. COMMENT: The commenter recommends that the BPU simplify the calculation of the value of excess energy production by permitting the EDCs to use the average hourly value of PJM locational marginal prices (LMPs) for their PJM Zone over the most recent calendar year as the rate for excess energy production. (ACE)

RESPONSE: The BPU appreciates the thoughtful comment. The BPU reiterates the calculation of the excess net bill credits as proposed at N.J.A.C. 14:8-9.7(f). However, the BPU will monitor this calculation during the Pilot Program, and may revisit it prior to the establishment of the permanent program based on data from the Pilot Program.

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205. COMMENT: The commenter states that the provision at N.J.A.C. 14:8-9.7(f) does not make clear the entity who is to make the compensation payment, and believes that the payment for excess compensation should be made by the community solar project. However, if the intent is that the EDCs are to pay out the excess of net bill credits, to the extent that there are excess credits at the end of the annualized period, the regulations should provide that the cost of this cash-out should be fully recoverable by the EDCs. (JCP&L)

RESPONSE: The BPU notes that the language in the Clean Energy Act speaks to a relationship that is between the subscriber and its EDC and reiterates that bill credits are placed on subscribers' bills by their EDCs. Please see the Response to Comments 95 through 100, stating that the additional costs associated with the implementation of the Pilot Program for which the EDCs receive full cost recovery according to the Clean Energy Act will be quantified in tariff proceedings following the normal course of business.

**N.J.A.C. 14:8-9.7(g)**

206. COMMENT: The commenter states that the Proposed Rule is not clear as to the cost recovery mechanism for the remote read smart meter at N.J.A.C. 14:8-9.7(g). Installation of a remote read smart meter would better support the billing activities for a community solar program and the EDC should be entitled to full and timely cost recovery as an incremental program cost, whether paid directly by the owner of the project or the participating subscriber. (JCP&L)

RESPONSE: The additional costs associated with the implementation of the Pilot Program for

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which the EDCs receive full cost recovery according to the Clean Energy Act will be quantified in tariff proceedings following the normal course of business and are subject to approval by the BPU. Please also see the Response to Comments 95 through 100.

**N.J.A.C. 14:8-9.7(h)**

207. COMMENT: The commenter agrees that project operators should be allowed to distribute banked credits to new or existing subscribers during a 12-month period. However, developers should not be allowed to carry over unlimited banked credits from year to year, as this would create a disincentive for developers to initially enroll and maintain subscribers for the full capacities of their projects. At the end of each 12-month period, the amount of remaining generation credits should be limited to a specific share of the project. The commenter recommends a 10 percent cap on the total annual project generation that could be carried over at the end of a 12-month period. This limit would provide developers with flexibility and certainty, while providing them with incentives to use the full capacities of their facilities. (RC)

RESPONSE: Under the provisions at N.J.A.C. 14:8-9.7(h), community solar project operators may bank credits in a dedicated project EDC account for a period of up to 12 months, and, therefore, cannot “carry over” credits indefinitely. Additionally, the BPU notes that RC appears to use the terms “community solar operator” and “developer” interchangeably, although they have different definitions in the Proposed Rule. As defined in the Proposed Rule, “developers” do not manage subscribers or bill credits as RC appears to state in its comments.

208. COMMENT: The commenter believes that the Proposed Rule should be clarified to

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indicate that unallocated generation that is placed in a “bank” will accumulate during a 12-month period that begins on the project’s permission to operate (PTO) date. At the end of that first 12-month period, a second 12-month period will begin. These 12-month periods will continue during the life of the facility. The unallocated generation placed in a “bank” should not be purchased by the EDC, but rather should remain in the “bank,” available for subsequent distribution to subscribers or subject to forfeiture. The community solar project should bear the financial risk of producing excess energy over an extended period of time. If a forfeiture rule is not adopted and a cash out is required, the accumulation of a large “bank” during each 12-month period is counter to the BPU’s goals to provide an opportunity to participate in the benefits of solar energy by a larger number of customers than do so today. Consequently, a cap should be placed on the “bank” with the requirement that a certain percentage should be forfeited each quarter. (RECO)

209. COMMENT: The commenter believes that there should be no “banking” of generation as described in this subsection of the Proposed Rule. The EDCs do not have a means to store the generation output from a project for later use, and any excess generation that is not subscribed for would simply flow to the grid; this should be compensated in the manner of any wholesale market transaction. Any project in the Pilot Program should be restricted to the appropriate size of their active subscription base, so as to avoid the need for a banking provision. (JCP&L)

210. COMMENT: The commenter believes that “banking” of credits to be distributed to customers who sign up at a later point in time is not reasonable from a utility billing or settlement perspective. Further, this “banking” provision does not fairly address the value of the “unsubscribed” energy and should be modified. If it is the BPU’s intent for community projects

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to not bear the loss of unsubscribed energy, then this energy should be compensated at the wholesale rate, the same rate used to compensate community solar project owners for excess credits at the end of the 12-month period, with no provisions for “banking” of credits. (PSE&G)

211. COMMENT: The commenter supports the banking provisions as a means of assuring full allocation of solar production to subscribers and limiting the need for excess energy payments and suggests additional language to clarify that each month’s delivery is eligible to be banked 12 months into the future. (Summit Ridge)

RESPONSE TO COMMENTS 208, 209, 210, AND 211: The BPU clarifies that the banking period at N.J.A.C. 14:8-9.7(h) is an annual 12-month period. The BPU believes that it is appropriate that unallocated generation credits be compensated at the EDC’s or BGS provider’s avoided cost of wholesale energy. The BPU believes that the banking of unallocated bill credits pursuant to N.J.A.C. 14:8-9.7(h) provides flexibility to subscriber organizations. The BPU appreciates continued dialogue on this important issue; as previously stated this is a Pilot Program subject to continued review by the BPU. Therefore, the BPU will reexamine this issue based on data from the Pilot Program, especially if it appears that projects are accumulating a large number of generation credits in these “banks.” The BPU will clarify the language to state that it is not each month’s delivery that is eligible to be banked for 12 months, but an annual 12-month banking period.

212. COMMENT: The commenter supports the provisions in the Proposed Rule that allow for “banked” credits, which will assist with obtaining financing for community solar projects. (Vote Solar)

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RESPONSE: The BPU appreciates the comment.

**N.J.A.C. 14:8-9.7(j)**

213. COMMENT: The commenter believes that the cost of the remote-read meter, while appropriately not shouldered by the community solar subscriber, is an unnecessary requirement and for some customers, can deter interest in participating in the program, as the community solar program does not require new remote-read meters to be successful. As a remote-read meter may be useful, however, for ensuring meter reading and billing is done monthly in remote areas and at the same time for all subscribers, the commenter would support this being an option for the customer and EDC. (CCSA)

RESPONSE: The BPU appreciates the comment but will maintain this provision as proposed. The BPU believes it is appropriate for the EDCs to be able to install a remote-read smart meter upon request, given that they administer the bill credits per N.J.A.C. 14:8-9.7(n). However, this is a Pilot Program subject to continued review and evaluation by the BPU.

**N.J.A.C. 14:8-9.7(k)**

214. COMMENT: The commenter believes that this provision may unnecessarily increase costs by requiring the EDCs to implement a Green Button or similar interface. If the capability is needed, the costs incurred to establish Green Button capabilities should be borne by the developer. (RC)

RESPONSE: The BPU appreciates the comment but believes that Green Button standards provide a harmonized and simplified data sharing mechanism that could significantly simplify

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the implementation and administration of community solar in New Jersey. It is, therefore, a justified cost that is important to the implementation of the Pilot Program. A precise evaluation of the cost will be handled through normal rate recovery proceedings, per the Response to Comments 95-100.

215. COMMENT: The commenter supports the use of Green Button standards to provide the community solar subscriber organization with historical usage to be used when enrolling a customer in the community solar project and determining the appropriate allocation size.

(RECO)

RESPONSE: The BPU appreciates the comment.

216. COMMENT: The commenter believes the Proposed Rule should at least acknowledge that data access matters and that EDCs should work to provide reasonable data access. The commenter appreciates the inclusion of the language about Green Button at N.J.A.C. 14:8-9.7(k). First, Green Button Connect is a specific format of Green Button that is much more likely to meet the needs of market participants. Second, this subsection should identify the information that must be made available. (Arcadia Power)

RESPONSE: The BPU appreciates the correction and notes that the term “Green Button Connect My Data” is the full program name and will correct the rule upon adoption. Specific details regarding the information that must be made available will be identified during the implementation of the Green Button standards and the Pilot Program, as necessary.

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217. COMMENT: The commenter believes that the particular data flows through Green Button should be established prior to the start of PY1. (Summit Ridge)

RESPONSE: The BPU appreciates the comment, but notes that, given a PY1 start at the effective date of the Proposed Rule, Green Button capabilities will not likely be established prior to the start of PY1.

**N.J.A.C. 14:8-9.7(1)**

218. COMMENT: The commenters note that the requirement in the Proposed Rule for clear and timely procedures for exchanging customer billing information back and forth between community solar providers and the EDCs is critical and it is important that the final regulations retain these requirements. It should be clarified that the EDCs are also required to provide a monthly report to the community solar provider on the value of bill credits applied to each customer's bill, any excess credits banked on that customer's bills to be carried forward to future months, and any excess credits not distributed and thus being carried forward on the project account. One commenter states that, ideally, this communication between EDCs and subscriber organizations would be automated through data transfer Application Programming Interface (API). (CCSA and Ampion)

RESPONSE: The BPU appreciates the comment, and, pursuant to N.J.A.C. 14:8-9.7(1), will “work with the EDCs to develop a standardized process for sharing subscriber information between subscriber organizations and the EDCs in a way that minimizes errors and administrative costs.” This process may include data transferred from the EDCs to subscriber organizations, as appropriate.

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219. COMMENT: The commenter recommends that all EDCs have the same standardized process for sharing subscriber information. (Jeanne Fox)

RESPONSE: The BPU appreciates the comment, and, pursuant to N.J.A.C. 14:8-9.7(l), will work with the EDCs to develop a standardized process for sharing subscriber information.

220. COMMENT: The commenter believes that there are other stakeholders with years of experience with different methods of information exchange in other community solar markets that should be engaged in the conversation pertaining to the standardized process for information sharing described at N.J.A.C. 14:8-9.7(l). Additionally, the commenter recommends that the term “subscriber information” be clarified to state that the information include the subscriber’s identity, as well as any information necessary for posting bill credits onto the subscriber’s EDC bill. (Vote Solar)

221. COMMENT: The commenter believes that the community solar subscriber organization must provide the amount of each subscription to the EDC as a percentage share of the net energy exported to the distribution system, so as to ensure that a subscriber organization is never agreeing to transfer more than 100 percent of net energy to the subscriber group. (RECO)

222. COMMENT: The commenter states that it important that the EDCs give clear instructions to subscriber organizations about the format for all data that is submitted to the EDCs. For example, the format should allow as many decimal points as necessary to give an accurate allocation of the project size, considering the smallest possible subscriber size to the

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largest possible project under the final program rules. (Arcadia Power)

RESPONSE TO COMMENTS 220, 221, AND 222: The BPU appreciates the comment and will work with the EDCs and other relevant stakeholders, as appropriate, to develop a clear and effective standardized process for sharing subscriber information between subscriber organizations and the EDCs in a way that minimizes errors and administrative costs.

**N.J.A.C. 14:8-9.7(m)**

223. COMMENT: The commenter states that the language at N.J.A.C. 14:8-9.7(m) appropriately allows subscriber organizations to update the subscriber list once per month. The commenter recommends the following two additions: 1) The BPU should add a required timeframe within which the monthly subscriber lists must be processed by the EDC, which should be within one billing cycle; and 2) The BPU should allow for intra-monthly subscriber updates in the case of a subscriber's EDC account being closed (for example, due to moving or service disconnection). (Arcadia Power)

RESPONSE: The BPU appreciates the comment. The BPU notes that the billing process will be implemented by the EDCs pursuant to N.J.A.C. 14:8-9.7(n). The BPU will consider whether intra-monthly subscriber updates are necessary during the Pilot Program. However, the BPU also notes that, in the case of a subscriber moving, appropriate notice of the change in residence and/or location must be provided to the EDC no later than 30 days after the effective date of the change in residence and/or location pursuant to N.J.A.C. 14:8-9.6(f)3.

**N.J.A.C. 14:8-9.7(n)**

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224. COMMENT: The commenters state that the BPU should consider adding utility consolidated billing. (Ann Leib, Gretchen Boise, and Mohammad Karim)

225. COMMENT: The commenters believe that customers should have the ability, at the discretion of the community solar provider, to be able to pay for their community solar subscription via their utility bill. (CCSA and Ampion)

226. COMMENT: The commenter cautions that the issue of consolidated billing raises a number of complex policy and legal issues, as well as issues of practicality, costs, mechanics, and data exchange, and will require input from stakeholders, particularly the EDCs, who have separate billing systems. The commenter stresses that the risk of uncollectible subscription fees should remain with the community solar project and the subscriber organization and the risk should not be borne by the EDCs and non-participating ratepayers. The concept of purchasing receivables introduces a new set of policy and legal complexities that are not appropriate for a pilot or even longer-term program. To be cost effective, the Pilot Program should provide some flexibility, recognizing that each EDC has its own distribution and billing systems. Moreover, given the commenter's unique situation of operating under both PJM and New York Independent System Operator (NYISO), the rulemaking, as adopted, should be structured to accommodate differences between the transmission organizations' rules to avoid unintended consequences. (RECO)

227. COMMENT: The commenters state that the BPU should adopt utility consolidated billing for community solar subscribers, along with purchase of receivables. One commenter believes it is critical for the success of the Pilot Program, and particularly the success of the LMI project target, that subscriber organizations be allowed to participate in utility consolidated

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billing and purchase of receivables for customers' subscription costs. One commenter adds that, if not consolidated billing, the BPU should consider a similar on-bill finance/recovery strategy to help mitigate payment barriers for participating low-income customers. One commenter notes that issuing another bill to a subscribing customer can become confusing and serve as a barrier to participation. One commenter notes that consolidated billing with purchase of receivables would not create an additional cost to ratepayers, as it would not increase or decrease uncollectables. (Vote Solar, GRID, NJLCV, Borrego Solar Systems, Food & Water Watch, Cypress Creek Renewables, and All-Stage Ventures)

228. COMMENT: The commenter states that it is essential that all billing functions be done at the EDC level. Consolidated billing would remove the need for any additional education needed for offtakers, which, in the case of LMI participants, should lower the cost of their electricity. An unintended consequence of consolidated billing will arise when an LMI offtaker only pays a portion of their bill in order to maintain an account in good standing. There will need to be an agreement with the EDC to determine how much of that partial payment will come to the community solar provider even if the partial payment only satisfies the natural gas portion of the EDC consolidated bill. (Cap Solar)

229. COMMENT: The commenter doesn't believe that serving a significant number of residential LMI subscribers is realistic, unless the Pilot Program makes it very easy to identify qualified LMI subscribers and sign them up for a utility-provided on-bill repayment option. (US Solar)

RESPONSE TO COMMENTS 224 THROUGH 229: The BPU appreciates all the comments in these important areas. The BPU believes that consolidated billing is a suggestion deserving

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further exploration, in order to adequately assess the potential benefits and costs of implementing such billing processes. Accordingly, the BPU has directed its staff to explore the option of consolidated billing for the Pilot Program and encourages further discussion on this important matter.

230. COMMENT: The commenter believes that the calculation of the subscriber's credit should be by means of a volumetric credit at the subscriber's rate. Because community solar is intended to allow more customers to enjoy the benefits of solar energy when a viable rooftop is not available, the subscriber should receive a net metering credit calculated as if the subscriber had a net meter on its premises. (RECO)

231. COMMENT: The commenter believes that the EDCs must retain the option of crediting participants on a dollar basis based on each participant's share of the project's monthly kWh and each participant's corresponding rate class. (PSE&G)

RESPONSE TO COMMENTS 230 AND 231: The BPU appreciates the comments and notes that the EDCs have the option to apply a dollar credit and/or a kWh credit, under the conditions set forth at N.J.A.C. 14:8-9.7(n).

232. COMMENT: The commenter asks the BPU to clarify whether EDCs choosing a dollar credit or a kWh credit is due to the different EDC billing processes and that it doesn't impact customers differently. (Jeanne Fox)

RESPONSE: The BPU appreciates the comment. The option between a dollar credit and/or a kWh credit provided at N.J.A.C. 14:8-9.7(n) recognizes that EDC billing processes may vary.

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The BPU does not anticipate this decision will have a significant impact on subscribers.

233. COMMENT: The commenter states that, from a subscriber perspective, a dollar credit is preferable, if by dollar credit it is meant that a published dollar per kWh credit is used for all kWh allocated for the month. The selection of dollar credits or kWh credits by each EDC should be established prior to the start of PY1. While not a necessary part of the language in the Proposed Rule, EDCs should be required to provide pro-forma calculations of the credit rate including all billing determinants prior to the start of PY1. Additionally, the BPU should establish a process by which subscriber organizations can bill subscribers for bill credits in advance of when they are applied to the bill. This will reduce potential revenue disruptions due to subscriber non-payment and enhance the financeability of community solar projects. By providing sufficient data access to subscriber organizations, this can be implemented while avoiding overreaches that undermine consumer protection. (Summit Ridge)

234. COMMENT: The commenters believe that the BPU should mandate a dollar-denominated subscriber credit. One commenter believes that the credit is not necessarily the volumetric rate in the customer's particular rate schedule, and that monetary bill credits are easier to administer and do not create accounting problems between the EDCs and retail suppliers. One commenter believes that a dollar-denominated bill credit is both financeable and appealing to residential subscribers. The alternative kWh-denominated approach is inferior, because that makes it much harder for the subscriber to accurately estimate the financial benefit under the subscription agreement. One commenter encourages the BPU to consider the question of monetary versus volumetric crediting in the context of a third-party supplier. (CCSA, US

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Solar, Ampion, and Cypress Creek Renewables)

RESPONSE TO COMMENTS 233 AND 234: The BPU appreciates the comments, but believes that the language at N.J.A.C. 14:8-9.7(n), which leaves the determination of a volumetric or monetary credit to the EDCs is appropriate. Further understanding of which bill credit allocation method is preferable will likely come from data in the Pilot Program.

235. COMMENT: The commenter states that the subscriber's bill credits should be allocated once every billing cycle, and no later than the billing cycle immediately following when the solar energy was generated. (Arcadia Power)

RESPONSE: The BPU appreciates the comment. The BPU notes that the billing process will be implemented by the EDCs pursuant to N.J.A.C. 14:8-9.7(n). The BPU will consider whether intra-monthly subscriber updates are necessary during the Pilot Program. However, the BPU also notes that, in the case of a subscriber moving, appropriate notice of the change in residence and/or location must be provided to the EDC no later than 30 days after the effective date of the change in residence and/or location pursuant to N.J.A.C. 14:8-9.6(f)3.

236. COMMENT: The commenter believes that the BPU should encourage the EDCs to automate as many processes related to community solar as possible. Manual processes are slower and more prone to errors than automated processes. (Arcadia Power)

237. COMMENT: The commenter believes that the EDCs should file plans to automate billing and data exchange. By statute, community solar is going to be a component of the solar marketplace in New Jersey going forward and, therefore, there is no reason for the EDCs to

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delay establishing automation. (CCSA)

RESPONSE TO COMMENTS 236 AND 237: The BPU recognizes that automated processes may present certain advantages, but does not believe it is necessary or prudent to pursue within the context of a Pilot Program.

238. COMMENT: The commenter states that there should be continued dialogue among the BPU, EDCs, and other stakeholders to determine the most logical, efficient, and cost-effective mechanics regarding the metering, billing system upgrades, reporting, and billing of the projects. (PSE&G)

RESPONSE: The BPU appreciates the comment, believes that ensuring accurate and efficient bill crediting is an important element of community solar, and welcomes further discussion on this matter.

**N.J.A.C. 14:8-9.7(q)**

239. COMMENT: The commenter states that community solar projects in program years 1, 2, and 3 should be pre-qualified to generate SRECs as distribution grid-connected generators, so as to enable the success of the program and prevent market disruption, particularly given that, following closure of the SREC program, there is likely to be a multi-year lag before an SREC successor program is launched. (Summit Ridge)

RESPONSE: The BPU is not currently considering an SREC pre-qualification for community solar projects in the Pilot Program. However, pursuant to N.J.A.C. 14:8-9.7(q), community solar projects will be eligible to apply to receive SRECs or to a successor to the SREC program.

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240. COMMENT: The commenter states that a project’s qualification for SRECs is crucial to the success of the Pilot Program, and the parallel process underway in New Jersey to reform the SREC program is injecting uncertainty into the market and could undermine the program’s success. To mitigate this risk, the full size of the Pilot Program should be carved out of the existing or any successor SREC program so that any project that qualifies for the Pilot Program will be eligible for SRECs. Alternatively, pre-qualification could be limited to those projects that allocate at least 75 percent of their credits to residential subscribers, thus rewarding subscriber organizations whose projects will have the highest positive impacts on New Jersey ratepayers. (Summit Ridge)

RESPONSE: The BPU is not currently considering an SREC pre-qualification for community solar projects in the Pilot Program. However, pursuant to N.J.A.C. 14:8-9.7(q), community solar projects will be eligible to apply to receive SRECs or to successor to the SREC program. The BPU appreciates continued dialogue on this issue.

241. COMMENT: The commenters note that the current uncertainty surrounding the SREC program is problematic for developers and investors who need to know exactly what the opportunity is for revenue. (Clean Energy Collective and Solar Landscape)

RESPONSE: The BPU appreciates the comment and encourages stakeholders to remain engaged in the Solar Transition proceedings.

242. COMMENT: The commenter asks the BPU to clarify the “one-time election” for SRECs

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or Class I Renewable Energy Certificates (Class I RECs), and how this will be impacted by the expected changes in the current SREC program. (Jeanne Fox)

RESPONSE: The BPU refers the commenter to N.J.A.C. 14:8-9.7(q), by which community solar projects are “eligible to apply, via a one-time election prior to the delivery of any energy from the facility, for SRECs or Class I RECs, as applicable, or to any subsequent revision to the solar compensation mechanisms as determined by the Board pursuant to the Clean Energy Act.” The “one-time election” at N.J.A.C. 14:8-9.7(q) leaves the choice of applying to receive SRECs or Class I RECs to the community solar project owner, based on the owner’s preference and project considerations. Community solar will be a consideration in the Solar Transition, which is addressed in a separate proceeding.

**N.J.A.C. 14:8-9.7(s)**

243. COMMENT: The commenters state that LMI households will not be able to subscribe unless their bills are lowered, and a believable case is made that their bills will be smaller. Making sure that the bills are lower may require subsidies, especially in the short-term. One commenter suggests that the BPU could dedicate a portion of the SBC funds to this purpose and encourage municipalities to partner with developers to develop community solar projects. (UU Faith Action NJ and Vote Solar)

RESPONSE: The BPU appreciates the concern expressed in this comment and believes that LMI projects should demonstrate benefits to LMI households. Based on the experiences and data from the Pilot Program, the BPU may consider additional subsidies to support LMI projects and municipal engagement, potentially funded in part or in whole through SBC funds.

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244. COMMENT: The commenter encourages the BPU to explore programs, should it have the authority, such as a loan loss reserve or other credit enhancements to facilitate the financing of LMI projects. The BPU could also encourage the pursuit of such programs through the Economic Development Authority (EDA), including through the investment of Regional Greenhouse Gas Investment (RGGI) allocated to EDA. (Vote Solar)

245. COMMENT: The commenter disagrees with N.J.A.C. 14:8-9.7(s). There should be no incentives or adders for specific types of projects. In addition, as written, this appears to give the BPU unlimited discretion to implement additional incentives, with no criteria to guide the BPU in the exercise of its discretion. As noted by the commenter in comments submitted pertaining to N.J.A.C. 14:8-9.4(a), (b), and (e), the Pilot Program should be limited in size and focused on LMI subscribers and EJ communities. Based on this recommendation, there would be no need for special incentives for these types of projects. In addition, rather than using additional incentives or adders, the BPU should allow competitive forces to determine the costs of projects with the relevant characteristics. (RC)

246. COMMENT: The commenter states that municipalities are structurally disadvantaged when it comes to solar financing, and it is hard for municipalities to raise the capital to install solar. If they lease, they receive lower value compared to ownership, so New Jersey taxpayers pay more for their taxes as municipalities pay more for their electricity than they need to. For community solar to be widely adopted, municipalities need access to capital on taxpayer-favorable rates. Municipalities should be able to receive incentives equivalent to those that are available via the tax system for residential and commercial customers. (Howard Lee)

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247. COMMENT: The commenter states that, because municipalities must always put solar projects out to tender and must always go for the lowest bid, it is hard to get many solar companies interested in the business. This is because the lowest bid will tend to have cheap panels of a lower quality/efficiency/reliability. For community solar to deliver value to taxpayers, a quality standard for municipal and community solar equipment should be instituted and revised every year. Municipalities should not be required to accept bids that are based on equipment below the quality threshold. (Howard Lee)

248. COMMENT: The commenter endorses additional incentives and respectfully suggests that such financial incentives recognize those solar projects located on Superfund sites and those that exceed the minimum target LMI subscriber participation of 40 percent of project generated solar energy. (Lloyd Levenson)

249. COMMENT: The commenters believe that the BPU must create additional incentives and/or other mechanisms to ensure that LMI projects are financeable, create jobs in underserved communities, and provide savings to reduce LMI subscriber energy burdens. As proposed, N.J.A.C. 14:8-9.7(s) is insufficient to ensure that participating LMI subscribers will experience a level of savings that is likely needed to entice them to enroll. Incentives could come from the State's interim SREC program in the form of adders or multipliers, from an upfront incentive from the State's Clean Energy Program, or from partnerships with other State agencies. Incentives should be differentiated between LMI affordable housing, and LMI residential customers, recognizing that LMI residential customers face the highest financial barriers to participation. Incentives should be structured to enable deep energy cost savings for LMI customers, allowing them to reduce their energy burden significantly. One commenter suggests

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structuring incentives with a minimum 50 percent savings target. (Vote Solar, Turning Point Energy, and Clean Energy Collective)

250. COMMENT: The commenter recommends that the BPU establish and announce any applicable incentives in advance of the start of the PY1. The BPU should consider additional incentives that encourage development of solar projects on brownfields and landfills. (Summit Ridge)

251. COMMENT: The commenters believe that the BPU should adopt incentives to support LMI customer participation and benefit in projects and ensure LMI projects are financeable, maximize customer benefit through energy savings, and jumpstart the LMI solar market segment. Incentives should be differentiated between LMI affordable housing and LMI residential customers, recognizing that LMI residential customers face the highest financial barriers to participation. Incentives should be structured to enable deep energy cost savings for LMI customers. SREC factors should be differentiated to support LMI affordable housing and LMI residential customer participation in projects. The SREC program should also offer higher incentives for projects controlled by or otherwise directly benefiting EJ communities. The Clean Energy Program and RGGI investments are also potential funding sources for incentives. The EDA should be encouraged to develop green bank financing mechanisms to support low-income and affordable housing inclusion in projects. The BPU should work to align State EE, LIHEAP, and WAP programs and investments to support inclusion of solar, which can be an impactful strategy to provide long-term energy burden reduction for low-income customers through an approach that integrates solar into weatherization and efficiency services. (GRID and Vote Solar)

252. COMMENT: The commenter states that the BPU should highly consider leveraging

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funds from the Clean Energy Fund to increase LMI solar participation through targeted activities in the next three years and has recently approved allocations to do so. Other incentives like per watt incentives for LMI participation benchmarks could encourage investment. (NJLCV)

253. COMMENT: The commenters recommend integrating community solar with EE and energy assistance programs, such as LIHEAP. This could be taken a step further by tying community distributed generation to redevelopment projects and consider electric vehicle (EV) charging infrastructure and more inclusive EE programs funded by the Clean Energy Fund that provide weatherization services and rebates of energy efficient appliances. (NJLCV and Sierra Club)

254. COMMENT: The commenter believes that the BPU should consider providing incentives to LMI residents, particularly low-income residents, to join the program. This could be in the form of some type of monetary incentive to individuals and co-benefits to communities and their residents. (NJEJA)

255. COMMENT: The commenters encourage the BPU to explore targeted incentives to meet the policy goals of the Clean Energy Act, particularly to support LMI project development, job creation, customer savings, and any other policy goals, such as ownership by or siting in EJ communities, as long as these communities are involved in the decision-making process. Incentives should be structured to ensure that project developers may overcome financing barriers for LMI projects and offer LMI customers a significant economic savings to motivate them to participate at scale, and ensure their long-term benefit through participation in the Pilot Program. Incentives could either come initially from the State's interim SREC program in the form of adders or multipliers or an incentive from the State's Clean Energy Program. (Vote Solar)

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and Cypress Creek Renewables)

256. COMMENT: The commenter states that the BPU could work to align State EE, LIHEAP, and WAP programs and investments to support inclusion of community solar, which can be an impactful strategy to provide long-term energy burden reduction through an approach that integrates solar into weatherization services. (Vote Solar)

RESPONSE TO COMMENTS 244 THROUGH 256: The BPU appreciates the comments and may consider a variety of potential measures to further incentivize community solar, particularly for LMI households. The BPU welcomes continued dialogue on this important issue during the Pilot Program and the development of the permanent program. However, the BPU has not yet determined what additional incentives, if any, may be necessary to support the development of community solar in New Jersey. In deciding upon potential additional incentives, the BPU would consider available data on community solar, both from the Pilot Program and from other relevant State examples, and the benefits and costs to ratepayers. Further, the BPU may consider ways in which to support municipalities wishing to participate in the Pilot Program, however, the BPU does not have jurisdiction over municipal bidding laws and regulations.

257. COMMENT: The commenter states that the benefits from incentives provided to a particular project or class of projects should be weighed against the costs that will be borne by non-participating customers. Any additional incentives, whether for EJ or low-income communities, that are paid to a project should be included in the cost cap placed on all Class I RECs under the Clean Energy Act. In addition, any analysis of the need for additional incentives must include the revenues received by the project from all sources, including subscription fees,

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the annual cash out, SREC or Class I REC revenues, and any other revenues received, such as those for capacity and ancillary services from PJM or NYISO. (RECO)

RESPONSE: As stated in the Response to Comment 21, the BPU’s Economic Impact statement for this rulemaking states that “the proposed credit and annual capacity set forth in this subchapter are within the scope of the existing solar Renewable Portfolio Standard (RPS). The majority of these costs and impacts have already been accounted for in previous rulemaking proceedings.” (N.J.A.C. 14:8-9) Community solar is a program designed for customers who cannot install solar on their property; customers who are able to install solar on their property would be able to net meter their systems at the full retail rate. While the Pilot Program is not net metering, it falls under the scope of the existing RPS. The Pilot Program bill credit is set at retail rate, minus non-bypassable charges (N.J.A.C. 14:8-9.7(a)), a cost structure that will have a lower cost impact to ratepayers.

Any additional incremental costs associated with the implementation of the Pilot Program, for which the EDCs receive full cost recovery pursuant to the Clean Energy Act, will be quantified and fully reviewed under a true-up rate filing. Additionally, the BPU notes that, while there is an added administrative cost to the EDCs to implement the Pilot Program, some of those administrative costs may have been developed under other existing solar programs (such as, but not limited to, the EDC solar programs and remote or aggregated net metering requirements set forth at N.J.S.A. 48:3-87(e)). Any additional incremental incentives for community solar pursuant to N.J.A.C. 14:8-9.7(s) have not yet been determined, and, therefore, would not be appropriate to quantify at this time. Additionally, while the BPU is committed to implementing an SREC transition pursuant to the Clean Energy Act, including the cost cap, the

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transition is being addressed in a separate proceeding (see the New Jersey Solar Transition Staff Straw Proposal published December 26, 2018). Finally, the BPU intends to ensure the publication of a report regarding the community solar cost modeling that was conducted prior to the drafting of the Proposed Rule, so as to provide additional transparency into the policy assumptions used.

258. COMMENT: The commenter believes that community-based non-profit organizations that are already familiar with the State energy assistance programs should lead the way for reworking existing incentives. In this manner, ratepayer subsidy would not have to necessarily rise to meet the challenge of incentives, and strategies could be implemented to make incentives revenue-neutral. Funds from RGGI, NJ Clean Energy Program, EDA, LIHEAP, Weatherization Assistance (WAP), Comfort Partners, Universal Service Fund, and Lifeline should be accessed to create revenue-neutral incentives, reserves, and guarantees, so that the lowest end LMI customers can participate in the program. Applicants should be encouraged to provide strategies to show how they would maximize the impact of any dollars potentially redeployed from any of the above, existing programs. (Cap Solar)

RESPONSE: The BPU is considering a range of potential means to further incentivize or support community solar, including potential relationships with the programs and entities cited referred to by the commenter. The BPU welcomes further discussion of how community-based non-profit organizations may be able to assist in this process over the course of the Pilot Program.

259. COMMENT: The commenter strongly supports allowing the BPU to create additional

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incentives during the Pilot Program and suggests a modification that specifically allows the BPU to also delete or modify incentives as well. (Jeanne Fox)

RESPONSE: The provision established at N.J.A.C. 14:8-9.7(s) that “the Board may decide to create one or more additional incentive(s) paid and/or credited to community solar developers for specific types of projects ...” implies that the BPU would also be able to modify or eliminate any incentives created under this subsection.

260. COMMENT: The commenter encourages the BPU to fund community-based organizations who are already providing services to LMI households, such as organizations who are coordinating EE work, in order to assist with customer enrollment. (Vote Solar)

RESPONSE: The BPU is exploring ways in which to partner with community-based organizations to facilitate development of community solar; however, the BPU is not proposing specific funding for community solar customer acquisition by community-based organizations at this time.

261. COMMENT: The commenter encourages the BPU to turn to experts who already service the LMI community who understand the subsidy programs provided to these particular customers, such as community-based non-profit organizations who are already familiar with the State energy assistance programs. The commenter believes that there are existing programs/incentives that can be reoriented to the LMI developer that can be revenue neutral under existing State- and BPU-funding. The commenter believes that priority for all public incentives should be weighed against the benefit of the public. This includes, but is not limited

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to, solar developers who are the following: currently work with the LMI community; understand Federal, State, and local programs for the LMI community; have a formal partnership with community agencies who service LMI families through the State programs; provides multiple services to the LMI community, so that community solar can be a touch point for other beneficial services; and demonstrate a plan to assist LMI customers in the event of a lapse of payment.

(Cap Solar)

262. COMMENT: The commenters ask the BPU to consider funding community-based organizations to outreach to low-income communities about the program. (Ann Leib, Gretchen Boise, and Mohammad Karim)

RESPONSE TO COMMENTS 261 AND 262: The BPU is exploring ways in which to partner with community-based organizations to facilitate development of community solar; however, the BPU is not currently proposing specific funding for community-based organizations.

263. COMMENT: The commenter states that people of modest incomes should receive a 50 percent reduction on their electric bills. The BPU should use funds from the SBC. There should be a percentage carve out from the current SREC program for community solar in case the SREC solar market crashes. This will prevent the community solar program from crashing. (Sierra Club)

RESPONSE: The BPU notes that the Clean Energy Act does not require the BPU to guarantee any particular level of savings for subscribers. The BPU may consider whether to use funds from the SBC to further incentivize community solar. Please see the Response to Comment 242 regarding the SREC program.

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264. COMMENT: The commenter states that participation in the Pilot Program should not limit or preclude participation in other programs being developed by the BPU, including the new SREC program and remote net metering. It should also not limit or preclude the amount of renewable energy that may be generated for on-site consumption (behind-the-meter). (Port Authority)

RESPONSE: Nothing in the Clean Energy Act precludes participation in other programs in existence or in other programs that may be developed by the BPU, except to the extent that it is prohibited in the rules of other BPU programs. The BPU would examine such situations on a case-by-case basis.

265. COMMENT: The commenter believes community solar is very important and has multiple benefits for municipalities; however, there may be some issues that would be hard for them to overcome: 1) The SREC term should remain 15 years verses 10 for governmental organizations and nonprofits. This is the most important element since SRECs represent at least 80 percent of the income in a solar project, dramatically affecting the financing; 2) The relief sought is limited to municipally owned projects, as well as schools and hospitals involved in community solar since they more directly benefit the taxpayers in a community; 3) Waive any escrow requirement for the above captioned uses; 4) Change the requirement for starting a project until such time as the necessary State or local authority has granted the necessary permits and/or approvals required for the project; 5) Eliminate any wheeling fees for the above-captioned uses imposed by the serving EDC. (Synnergy)

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RESPONSE: The BPU appreciates the comment but notes that the discussion of the SREC term is outside the scope of this rulemaking. No escrow requirements have currently been established for community solar (see the Response to Comments 66 and 67). The BPU is not currently considering waiving the project construction milestones set forth at N.J.A.C. 14:8-9.3(c)7 and 8. As to what is commonly known in the electric utility business as “wheeling fees,” the Clean Energy Act is silent on this issue.

**N.J.A.C. 14:8-9.7(t)**

266. COMMENT: The commenter states that, prior to allowing storage to participate in the Community Solar Pilot Program, additional provisions for the installation of storage, including those involving metering, compensation, and interconnection standards, should be developed as part of technical and policy working groups. For example, rules must be developed that do not permit the compensation of energy discharged by a battery into the grid that was charged by energy from the grid. Any rules that allow for storage to be paired with solar must require that the aggregate nameplate capacity of all technologies in a project continues to comply with the five MW per project cap. (RECO)

267. COMMENT: The commenter believes that this subsection of the Proposed Rule should be removed. The commenter suggests that the BPU complete the analysis and report on energy storage, as required by the Clean Energy Act, prior to any consideration of adding storage as a component of the Pilot Program. (JCP&L)

RESPONSE TO COMMENTS 266 AND 267: The BPU notes that the provision set forth at N.J.A.C. 14:8-9.7(t) does not set any conditions to the inclusion of storage. It merely ensures the

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potential for pairing community solar with storage. The BPU looks forward to an ongoing dialogue about storage throughout the implementation of the Pilot Program.

268. COMMENT: The commenter supports the provision, so that energy storage may be a part of a project and hopes that, in the future, community solar and storage will routinely be interconnected with a number of them being included in community micro-grids. (Jeanne Fox)

RESPONSE: The BPU appreciates the comments and welcomes additional discussion based on specific project proposals.

**N.J.A.C. 14:8-9.8 Low- and Moderate-Income Provisions**

269. COMMENT: The commenters comment on the importance of dialogue with LMI communities. One commenter states that it is not clear whether this rulemaking reflects input from communities with LMI consumers, and that the provisions do not include suggestions offered by community representatives in the stakeholder process conducted by the BPU before this Proposed Rule was published for comment. The Proposed Rule should include provisions for projects developed in collaboration with target communities, as it is important to meet the needs of the communities, not the developers. One commenter invites the BPU to come to the communities and present community solar. One commenter specifically states the need for strong education throughout the Pilot Program, particularly for LMI communities. (RC and Green Faith)

RESPONSE: The BPU has carefully considered comments submitted throughout the public consultation process for the Pilot Program. The BPU welcomes continued discussions with

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stakeholders throughout the development and implementation of the Pilot Program.

270. COMMENT: The commenter supports the BPU's initiative to create a 40 percent set aside for the LMI community, but is concerned about the depth of understanding that retail solar developers have regarding the needs of the actual families within this market segment, beyond their requirement for participation in this Pilot Program. (Cap Solar)

RESPONSE: The BPU appreciates those developers who engage in outreach and education of the LMI community to understand their needs and craft appropriate projects. The BPU will monitor the Pilot Program and encourages further discussion of specific concerns.

271. COMMENT: The commenter strongly believes that the BPU's solar program and investments should drive benefits primarily to New Jersey's low-income and EJ communities, including through job creation and entrepreneurship opportunities. The BPU should center the voices of New Jersey's low-income and EJ communities in community solar program development and policy making. The BPU could also pursue the creation of an equity or EJ advisory committee such as utility commissions in other states have adopted, including direct representation by EJ communities, which could develop an equity or EJ framework to guide policy decisions. (GRID)

RESPONSE: The BPU appreciates the comment and welcomes further discussion regarding the creation of an equity or EJ advisory committee.

272. COMMENT: The commenter is aligned with the State and many stakeholders that want

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to see the LMI portion of the Pilot Program to be a national model that ensures significant benefits are passed along to the LMI participants. The more cost-effective, lower risk path forward would be to allow EDCs to leverage their existing relationships with customers currently underserved in this market to develop and own LMI projects. The commenter welcomes partnering with the BPU, the State, cities and municipalities, and other stakeholders to design community solar programs for these customers to help them achieve demonstrable savings and provide access to other utilities services, such as home comfort programs and EE measures. Amending the Proposed Rules to permit EDC participation enables the EDCs to work with the BPU and other stakeholders to create programs that support the State's goals for solar development with social impact and EJ benefits by delivering meaningful savings to LMI customers. (PSE&G)

RESPONSE: As noted in the Response to Comment 84, the BPU welcomes further discussion regarding the role of the EDCs in community solar in the permanent program, particularly with respect to promoting participation and benefits for LMI households.

273. COMMENT: The commenter believes that the development of solar projects is a grand opportunity to create jobs and provide job training in a new industry. Minority entrepreneurs should be encouraged to develop related businesses and local educational institutions can provide training. Workers from LMI households should be involved in construction and installation of the Pilot Program. There should be training and certification programs available to the community, and such trainees should be preferred for work on the project in some capacity. An alternative to requiring that a minimum number of LMI household subscribers is to define an

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LMI project as one in which ownership is in an LMI community or at least 20 percent of the workers on the project are from LMI households. This could provide a great benefit to LMI communities, particularly if the jobs pay well and are permanent, at least as much as providing lower bills through community solar and would not require that ratepayers or tax dollars subsidize lower bills for LMI households. (UU Faith Action NJ)

RESPONSE: The BPU appreciates the thoughtful comment and welcomes additional discussion regarding job creation and job training through the Pilot Program. The BPU notes that it is working with relevant State agencies to explore how the job training can be integrated into the Pilot Program. The BPU has not modified the definition of an LMI project as provided for in N.J.A.C. 14:8-9.8(b).

**N.J.A.C. 14:8-9.8(a)**

274. COMMENT: The commenter requests that master-metered buildings also be allowed to qualify as an LMI subscriber. (Ampion)

RESPONSE: The BPU appreciates the comment but does not believe it is appropriate for master-metered buildings to qualify as an LMI subscriber under N.J.A.C. 14:8-9.8(a) as master-metered buildings do not necessarily serve or house LMI households.

**N.J.A.C. 14:8-9.8(a)1**

275. COMMENT: The commenter believes that N.J.A.C. 14:8-9.8(a)1 should be revised to refer more completely to the expanded definitions developed for N.J.A.C. 14:8-9.2. The proposed new language would state: “A low-income household or a moderate-income household

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as defined in 14:8-9.2.” (Summit Ridge)

RESPONSE: The BPU appreciates the comment; however, the OAL standard for rulemaking does not allow for a cross-reference to a definitions section that, by its own terms, already applies. The BPU does agree to delete “residential” and the duplicative language from N.J.A.C. 14:8-9.2 of “determined by annual adjusted HUD income limits.”

**N.J.A.C. 14:8-9.8(a)2**

276. COMMENT: The commenter supports the BPU’s inclusion of affordable housing as qualifying LMI community solar subscribers. The commenter also recommends a requirement of a minimum amount of net metering or bill credit benefits for participating affordable housing properties, as well as LMI residential customers. The BPU may wish to look into the Solar on Multifamily Affordable Housing Program in CA as a model for requiring demonstration of benefit pass through consolidated billing for the Pilot Program. The BPU should allow flexibility for the demonstration of pass through benefits for affordable housing providers, because it is not always possible to pass community solar-related savings directly on to tenants. For example, in HUD subsidized properties, barriers including the split incentive related to utility bill subsidies, where bill savings from EE or renewable energy can be required to be returned to HUD, direct pass through benefit to can be very difficult to achieve. As such, there are cases where it may be more effective to benefit the entire housing authority through supportive services or increased solvency, for example. (GRID)

RESPONSE: The BPU appreciates the comment and will continue to explore participation of affordable housing providers to benefit LMI households. The BPU is open to discussions of

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specific cases, but believes it is important that residents/tenants of affordable housing receive appropriate benefits if their affordable housing provider is qualified as an LMI community solar subscriber.

277. COMMENT: The commenters agree with the BPU’s desire to allow affordable housing providers to qualify as LMI community solar providers, but believes that the BPU must be more explicit regarding the benefits being passed on to residents, and how those benefits are documented. The BPU should also allow flexibility for the demonstration of benefits because it is not always possible to pass community solar-related savings directly on to tenants. (Vote Solar, Food & Water Watch)

278. COMMENT: The commenter asks the BPU to clarify what it will consider to be “specific, substantial, identifiable, and quantifiable long-term benefits,” and how these benefits will be quantified and how much of these quantifiable benefits will be required to be passed along to the affordable housing provider’s residents/tenants. The commenter states that the Pilot Program rules should allow for a reasonable sharing of the project benefits, by and among the solar developer, the owner of the LMI project, and the residents/tenants at the LMI project, and that the BPU should not require that all material benefits of the project be passed through to the residents/tenants. (Pearlman & Miranda)

RESPONSE TO COMMENTS 277 AND 278: The BPU will provide additional clarity in the Application Form as to how affordable housing providers can “demonstrate in the application to the Board that they are passing along specific, substantial, identifiable, and quantifiable long-term benefits to their residents/tenants” as provided for at N.J.A.C. 14:8-9.8(a)2.

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279. COMMENT: The commenter states that subparagraph (a)2i appears redundant to subparagraph (a)2ii and can be stricken, and recommends that the affidavit be provided to the subscriber organization to be maintained consistent with all other customer qualification information. (Summit Ridge)

RESPONSE: The BPU appreciates the comment, and notes a distinction between N.J.A.C. 14:8-9.8(a)2i, in which affordable housing providers “demonstrate substantial, identifiable, and quantifiable long-term benefits to their residents/tenants,” and (a)2ii, in which they sign an affidavit to commit that they “will pass along said substantial, identifiable, and quantifiable long-term benefits to their residents/tenants.” The BPU is not making a change to the language of N.J.A.C. 14:8-9.8(a)2i or (a)2ii.

**N.J.A.C. 14:8-9.8(b)**

280. COMMENT: The commenters believe that the proposed 51 percent of a project requirement is not viable for project development without key supports including consolidated billing with utility purchase of receivables, the availability of financial supports, and an improved non-residential customer bill credit based on residential retail rates. Financial supports could include SRECs for LMI customers as part of an interim SREC program to help manage the additional cost of LMI customer subscription. The BPU should use Clean Energy Program funds to offer incentives for LMI projects and/or align state EE, LIHEAP, and WAP programs and investments to support inclusion of community solar. In parallel, BPU should encourage the EDA to dedicate allocated RGGI funds to green bank financing mechanisms to support LMI

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inclusion in projects, and community solar workforce training opportunities. If consolidated billing with utility purchase of receivables is not implemented, then the 51 percent requirement per project needs to be reduced to a 20 percent per project requirement and other improvements will be especially important to deal with the loss of revenue expectation and higher LMI customer subscription costs. (CCSA, Borrego Solar Systems, Cypress Creek Renewables, and Turning Point Energy)

RESPONSE: The BPU appreciates the comment and refers the commenters to the responses to Comments 224 through 229 and 244 through 256.

281. COMMENT: The commenter suggests that the BPU require all community solar projects to have at least 10 percent of each project's output allocated to low-income subscribers and at least 20 percent of each projects output allocated to LMI off takers and not to create three different classes of projects as defined. This suggestion would ensure that these classes of customers will be serviced and avoid the potential of low-income and LMI projects not getting financed. 70 percent or less of non-low-income and LMI off-takers for each project would ensure that the projects will get financed because of the lower likelihood of payment defaults as opposed to projects with 100 percent low-income or 51 percent or more of LMI as currently defined in the Proposed Rule. This process would also allow the BPU to increase the percentage of low-income and LMI of each project based on the results of the Pilot Program because it would enable the BPU to compare every project as opposed to just comparing the smaller number of LMI Projects and the even smaller number of low-income projects. This change would ensure that low-income and LMI subscribers are not left out for the next three years if the

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low-income and LMI projects as stand-alone are not as financeable. (Flett Exchange)

282. COMMENT: The commenter strongly supports the considerable LMI provisions within the Pilot Program but expresses concerns that it will be difficult to translate into realized policy success unless there are platforms in place that incentive LMI uptake and investment from developers. Therefore, the commenter recommends considering changing the per-project carve-out for LMI households to a program-wide LMI goal. (NJLCV)

RESPONSE TO COMMENTS 281 AND 282: The BPU appreciates the comments. Based on the experience of other states in implementing community solar programs, the BPU currently believes that a program-wide LMI goal (that is, an LMI requirement applied to every community solar project) is not the most effective way to support LMI participation in the New Jersey Pilot Program. Instead, the BPU believes that the definition of an LMI project, as set forth in N.J.A.C. 14:8-9.8(b) both reflects New Jersey's ambitious goals for LMI participation and allows for a variety of project models to be tested in the Pilot Program.

283. COMMENT: The commenter is not aware of any existing community solar market that requires LMI participation as high as 51 percent, and expects that such a high allocation to LMI subscribers will make projects very expensive to finance as financing partners are pricing perceived LMI payment risk into their terms. A 30 percent LMI subscriber requirement for LMI projects would accomplish the objectives of the Pilot Program without creating significant financing barriers. At 30 percent LMI, the remaining subscribers act as a sufficient buffer against any perceived payment risk. (Summit Ridge)

RESPONSE: The BPU believes that the 51 percent definition of an LMI project reflects the

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BPU’s goals with respect to LMI participation in community solar, as it identifies an LMI project as assigning at least half (that is, a simple majority) of project capacity to LMI subscribers.

284. COMMENT: The commenter requests that the BPU refrain from increasing the LMI requirement for the Pilot Program – above the already-challenging 40 and 51 percent requirements in the Proposed Rule – unless, and until, the BPU has collected actual program data sufficient to support that increase in the LMI requirement. It does not object to the provision in the Proposed Rule that allows the BPU some discretion to increase the LMI requirement for future Pilot Program years, but asks that the BPU make any such decision based on actual program data, including data on the program’s future success with meeting the initial LMI requirement. (US Solar)

RESPONSE: Additional increases in the LMI set-aside are not currently set forth in the Proposed Rule. However, N.J.A.C. 14:8-9.4(f) does leave to the BPU’s discretion the option of a further 10 percent of annual capacity set aside for low-income projects (see also the Response to Comment 122).

285. COMMENT: The commenters support the requirement that 51 percent of an LMI project must serve LMI subscribers. However, they urge the BPU to ensure that each LMI project serves at least 10.4 percent low-income residential customers and that participation standards for LMI households be consistent with the rates of people at these income levels living in the area where a project is located. (NJEJA and Vote Solar)

RESPONSE: The BPU appreciates the comment. The BPU believes that the definition of an LMI

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project as set forth at N.J.A.C. 14:8-9.8(b) both reflects the goals laid out in the Clean Energy Act for LMI participation and allows for a variety of project models to be tested in the Pilot Program.

286. COMMENT: The commenter states that, in the Proposed Rule, 40 percent of capacity must be reserved for LMI projects, and to be an LMI project, a project must have 51 percent LMI subscribers. There is a temptation to divide 40 percent by two and interpret this as saying that 20 percent of the subscribers will be LMI subscribers. But this rule does not actually require that and it allows very different results. In particular, the number of LMI subscribers represented in the Pilot Program could be a much smaller percentage of the total subscribers under these rules. This could happen if each LMI project includes only a small number of households, and other projects include many. The BPU might consider a more specific requirement on the number of households represented, for example, that at least 20 percent of the subscribers served in the Pilot Program be LMI households. This could be implemented by requiring each developer to serve at least 20 percent LMI households or by any other means that the BPU can devise that does not delay implementation of community solar. (UU Faith Action NJ)

RESPONSE: The BPU believes that this comment may stem from a misinterpretation of the rule at N.J.A.C. 14:8-9.8 (b), where the 51 percent subscriptions by LMI subscribers is defined by capacity, not by number of subscribers as the commenter appears to suggest. The BPU welcomes further discussion if appropriate given this clarification.

**N.J.A.C. 14:8-9.8(c)**

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287. COMMENT: The commenter is concerned that the 51 percent requirement may cause difficulties because some LMI subscribers may be removed from the project before others rejoin, and suggests some additional, maybe time-based, discretion. (Jeanne Fox)

RESPONSE: The BPU appreciates the comment. The BPU notes that the language at N.J.A.C. 14:8-9.8(c) does provide some flexibility to subscriber organizations by stating that “an LMI community solar project may not accept participation by a non-LMI subscriber if doing so would cause LMI participation in the project to fall below 51 percent of project capacity.”

**N.J.A.C. 14:8-9.8(d)**

288. COMMENT: The commenter states that it is important that the BPU provide as much clarity as possible regarding verification methods for LMI customers. (Nexamp)

RESPONSE: The BPU appreciates the comment and refers the commenter to the provisions at N.J.A.C. 14:8-9.8(d). The BPU welcomes further discussion if those provisions are not sufficiently clear.

**N.J.A.C. 14:8-9.8(d)1**

289. COMMENT: The commenter recommends that the form and content of the affidavit in N.J.A.C. 14:8-9.8(d)1 should be determined by the BPU and provided to subscriber organizations for use in the Pilot Program, and further recommends that the affidavit be provided to the subscriber organization to be maintained consistent with all other customer qualification information. Proposed new language: “(d) The following LMI eligibility criteria shall be applied:  
1. If the community solar pilot project is sited on government-owned property, and is serving

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LMI subscribers living on that property, the government site owner shall provide to the subscriber organization on a form approved by the Board an affidavit may provide a sworn statement that those community solar pilot project subscribers are considered LMI for the purposes of the Pilot Program.” (Summit Ridge)

RESPONSE: The BPU does not currently plan to issue a form affidavit for government-owned site owners under N.J.A.C. 14:8-9.8(d)1), as the specific circumstances of projects will vary. The BPU will work with relevant subscriber organizations if questions arise regarding the substantive content of the sworn statement.

**N.J.A.C. 14:8-9.8(d)2**

290. COMMENT: The commenter believes that there are ways to simplify the verification of LMI status that could significantly ease program adoption. For example, the Proposed Rule could establish that any person residing in an “environmental justice community” (or similar designation) is pre-qualified to be an LMI subscriber. This would allow project developers to easily identify pre-qualified LMI subscribers by census block group (without the need for burdensome individualized verification) and market to them through direct mail, thereby speeding adoption. (US Solar)

291. COMMENT: The commenters state that, as currently written, verifying moderate income subscriber eligibility will be problematic and verifying low income customers will be overly restrictive. This additional burden comes without any additional monetary benefit for LMI subscribers for their participation in the program. At the same time, community solar providers are saddled with the responsibility not only for collecting this confidential and sensitive data, but

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also maintaining it in their records. Without a simpler way to verify income eligibility, and especially moderate-income eligibility, otherwise eligible customers will likely be left out of the program. Customers should be able to self-certify via an attestation of income form. One commenter notes that, if the BPU staff or the BPU find it necessary, a simple process could be created, by which a random sample of these participants' incomes are verified by a third-party. Alternatively, a third-party low-income administrator could be contracted under the program to oversee income qualification, and ensure low-income consumer protection and co-benefits, as included in states like Oregon, Illinois, and California. One commenter specifically notes that it is unrealistic for the BPU to require three years of history of tax returns. (CCSA, Flett Exchange, Summit Ridge, US Solar, Vote Solar, and George Lopez)

292. COMMENT: The commenter recommends that the BPU adopt a process for approval of additional programs, services, and organizations to qualify customers, in addition to those listed in N.J.A.C. 14:8-9.8(d)2i. The BPU should aim to allow customers to automatically qualify through existing low-income energy, housing, and other services as much as possible, to reduce administrative burden for customers and subscriber organizations. The BPU could also pursue a third-party low-income administrator under the program to oversee income qualification, ensure low-income consumer protection, and program co-benefits, as included in states like Oregon, Illinois, and California. (GRID)

293. COMMENT: The commenter suggests that at N.J.A.C. 14:8-9.8(d)2i, it be clarified that EDCs shall provide this information to subscriber organizations as part of the utility data exchange requirements. The commenter has also recommended that the definitions of “Low-income household” and “Moderate-income household” be expanded to include these alternate

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qualifiers. (Summit Ridge)

RESPONSE TO COMMENTS 290, 291, 292, AND 293: With respect to process for the individual qualification of subscribers as LMI subscribers described in N.J.A.C. 14:8-9.8(d)2, the BPU appreciates the comments. The BPU is satisfied that the proposed definitions are sufficient. The BPU may explore ways in which to simplify the qualification process while at the same time ensuring a reasonable standard for LMI qualification based on the data and experiences collected from the Pilot Program.

**N.J.A.C. 14:8-9.8(b), (c), and (d)**

294. COMMENT: The commenter supports the inclusion of LMI customers in community solar projects so that this class of customers may also enjoy the benefits of renewable energy. However, the EDCs should not be required to monitor the capacity requirements imposed on projects considered LMI community solar pilot projects. Rather, the community solar subscriber organization should be responsible for monitoring and enforcing that the project meets the 51 percent requirement. This is in line with the requirement that the community solar subscriber organization must verify whether a customer is low- or moderate-income and that a project may not enroll a non-LMI customer if doing so would cause the project to fall below the 51 percent threshold. (RECO)

RESPONSE: The BPU appreciates the comment and welcomes discussion with the EDCs regarding their role in verifying the provisions in N.J.A.C. 14:8-9.8(b), (c), and (d). However, as general guidance, subscriber organizations, not the EDCs, will be expected to certify, monitor, and maintain compliance with the 51 percent definition of an LMI project.

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**N.J.A.C. 14:8-9.9 Codes and Standards**

**N.J.A.C. 14:8-9.9(a)**

295. COMMENT: The commenter states that improvements to the interconnection process, beyond hosting capacity maps, are urgently needed. Failure to address these issues will result in significant community solar project delays and otherwise viable and exciting projects becoming economically unworkable. The interconnection process should be improved through: the availability of upfront data; maturity requirements for queue entry; timeline improvements with binding queue removal; payment structure improvements; and updated technical standards. The Pilot Program should be clearly identified to the EDCs as net-metering, so that projects proceed through the State jurisdictional interconnection process, and the BPU should open a proceeding to update the current interconnection rules in coordination with the utilities and other stakeholders. (CCSA, Cypress Creek Renewables)

296. COMMENT: The commenter asks the BPU to provide additional information regarding the interconnection process. (Nexamp)

297. COMMENT: The commenter states that the BPU should consider directing the relevant EDCs to file a readiness plan (for the expected volume and complexity of these interconnection requests), including the consideration of community-solar interconnection rules and tools that have proven successful in other states. Ideally, these would include, but not be limited to: a publicly available interconnection queue, with monthly updates; a site-specific capacity pre-screen report (providing the line voltage, transformer rating, minimum load, etc. for a potential site location) made available to the developer at a reasonable cost (for example, \$250.00); clear

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utility process and timelines for all interconnection steps; accurate interconnection cost estimates, with actual interconnection costs capped at no higher than 20 percent above the estimate; a fair and workable mechanism for resolving interconnection disputes; and the ability for projects to voluntarily “move back” in the queue. (US Solar)

RESPONSE TO COMMENTS 295, 296, AND 297: The BPU appreciates the comments and recognizes the importance of having a clear and effective interconnection process for project development. The BPU will continue to work with the EDCs, solar developers, and other stakeholders to identify specific areas needing improvement with regards to community solar. The BPU will provide additional guidance on the interconnection process as it relates specifically to community solar projects upon the release of the Application Form, as described in the Response to Comments 71, 72, 73, and 74.

**N.J.A.C. 14:8-9.9(d)**

298. COMMENT: The commenter believes that the telemetering of production data to the EDCs should be on a real-time basis, which would better support the information needs of the energy market. (JCP&L)

RESPONSE: The BPU notes that the term “telemetering” of production data generally implies real-time information sharing, and, therefore, has clarified the language as reflected in the Proposed Rule, by removing “on a monthly basis.”

299. COMMENT: The commenter states that it is not clear that EDI transaction formats are

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necessary for the communication between subscriber organizations and the EDCs.

RESPONSE: The BPU believes that an EDI data sharing format is appropriate given its use in other BPU programs. The BPU may reassess this provision based on data and experiences from the Clean Energy Program.

**N.J.A.C. 14:8-9.9(e)**

300. COMMENT: The commenter believes that the relevant section of the Clean Energy Act seems to indicate that the provisions at N.J.A.C. 14:8-9.9(e) should be the responsibility of the community solar project owner. Because these standards and application process are to apply to owners of community solar projects, it stands to reason that the verification standard would apply to the project owners as well, and not the EDCs. (JCP&L)

RESPONSE: The BPU appreciates the comment. The BPU currently believes that, given their role in the administration of community solar, the EDCs are best able to verify the energy production of community solar projects, as well as the amount of energy credited to subscribers' bills.

**N.J.A.C. 14:8-9.9(f)**

301. COMMENT: The commenter does not believe that the provisions at N.J.A.C. 14:8-9.9(f) are a requirement under the Clean Energy Act. As such the requirement should be eliminated from the Proposed Rule. In addition, hosting capacity maps are not suitable for the interconnection of large projects, which will require a detailed interconnection study. Updates to any available hosting maps will always be on a lagging basis, as new applications received,

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approved, or installed may not be reflected. The format of the available maps would not be capable of real-time updates. If this is ultimately required, then the EDCs should be entitled to full and timely recovery of the costs of analysis and providing this information. Further, because of the time it will take to perform the required studies and develop a process to create and publish these maps, the EDCs should be provided the opportunity to request a reasonable extension of time to complete this process. (JCP&L)

302. COMMENT: The commenter suggests a specific time requirement be added for the EDCs to update the capacity maps - possibly every six months. (Jeanne Fox)

RESPONSE TO COMMENTS 301 AND 302: The BPU appreciates the comments. The BPU will determine the pace of the updates following further discussions with the EDCs regarding the technical implementation of this subsection. The BPU further believes that capacity hosting maps are important tools to the successful implementation of the Pilot Program.

303. COMMENT: The commenter strongly supports the requirement that EDCs publish hosting capacity maps alongside the opening of the Pilot Program. (Summit Ridge)

RESPONSE: The BPU appreciates the comment and believes that the regular and timely publication and updates of capacity hosting maps by the EDCs is important to facilitate project siting and development in the Pilot Program.

**N.J.A.C. 14:8-9.9(g)**

304. COMMENT: The commenter states that N.J.A.C. 14:8-9.9(g) seems to suggest that a project can subscribe more than 100 percent of the project's nameplate capacity based on DC

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rating, and asks the BPU to clarify that this means that annual energy consumption for a historical 12-month period of the subscribers in aggregate cannot exceed the estimated average annual production for the community solar project. This requirement should be on an annual energy basis, not power. (Gabel Associates)

305. COMMENT: The commenter states that N.J.A.C. 14:8-9.9(g) requires that a community solar project shall not subscribe more than 100 percent of the project's nameplate capacity in Direct Current (DC) rating. The commenter suggests that there be an established conversion ratio to convert the DC rating of a system to the kWh usage of subscribers. (JCP&L)

RESPONSE TO COMMENTS 304 AND 305: The BPU appreciates the request for clarification and has clarified the language in the Proposed Rule upon adoption to be "... 100 percent of the output of the community solar facility at the project's nameplate..." The BPU does not believe it is necessary to establish a single conversion ratio for community solar projects in the Proposed Rule. Any further clarifications needed will be addressed in the application process and will be monitored as part of the remote telemetering of production data for community solar projects to the EDCs set forth at N.J.A.C. 14:8-9.9(d). The BPU looks forward to continued dialogue throughout the implementation of the Pilot Program.

306. COMMENT: The commenter states that it should be established how the provisions at N.J.A.C. 14:8-9.9(g) relate to the allocation of banked energy from the project, as the allocation of banked capacity to subscribers might take the form of what appears to be a total subscription rate greater than 100 percent for a particular month. (Summit Ridge)

RESPONSE: The BPU appreciates the comment. The distribution of banked credits per the

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provisions at N.J.A.C. 14:8-9.7(h) would not be counted as part of the subscriptions referenced at N.J.A.C. 14:8-9.9(g). Furthermore, the BPU refers to the Response to Comment 208 pertaining to N.J.A.C. 14:8-9.7(h).

307. COMMENT: The commenter states that the EDCs should be required to supply their EDC meter readings to the project owners and subscriber organizations in a timely fashion. Readings forming the basis of allocating kWh to subscribers must be provided prior to credits being allocated. Subscriber organizations need to be able to validate this EDC billing determinant and assure that their customer charges for subscription credits are properly aligned (Summit Ridge)

RESPONSE: The BPU appreciates the comment but reiterates the language at N.J.A.C. 14:8-9.9(d), with the modification made in the Response to Comment 298. The BPU notes that nothing in the Clean Energy Act prevents project owners and/or operators from installing monitoring equipment to give them kWh output information. The BPU welcomes additional discussion throughout the implementation of the Pilot Program.

**N.J.A.C. 14:8-9.10 Consumer Protection**

308. COMMENT: The commenters support the inclusion in the Proposed Rule of detailed consumer protection standards, including oversight by the BPU. (RC and CCSA)

RESPONSE: The BPU appreciates the comments and emphasizes its commitment to strong consumer protection standards in N.J.A.C. 14:8-9.10.

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309. COMMENT: The commenter states that the consumer protections under N.J.A.C. 14:8-9.10 is quite good, but asks what the enforcement possibilities are. The commenter suggests adding that the BPU may, by Board Order, adopt enforcement mechanisms. (Jeanne Fox)

RESPONSE: The BPU appreciates the comments. The BPU is currently exploring enforcement mechanisms beyond the provisions of N.J.A.C. 14:8-9, which may be adopted by the BPU as necessary. The BPU welcomes additional discussion on this important topic.

310. COMMENT: The commenter believes that BPU should strengthen the consumer protection language in the Proposed Rule in order to address the possibility of a developer acquiring or being sold unsolicited lists of LMI potential off takers based solely on their income. (Cap Solar)

RESPONSE: The BPU reiterates its commitment to consumer protections for community solar subscribers to the extent covered by existing law.

311. COMMENT: The commenter asks the BPU to confirm that if a community solar developer takes ownership of the SRECs or Class I RECs, the subscribers may not make certain environmental claims associated with their subscription pursuant to established U.S. Federal Trade Commission (FTC) and other guidelines. (Gabel Associates)

312. COMMENT: The commenter believes that the SRECs or Class I RECs should not be divided from the electrical generation; consumers who generate renewable energy for their own consumption should not be allowed to sell the associated SRECs or Class I RECs. (Food & Water Watch)

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RESPONSE TO COMMENTS 311 AND 312: The BPU notes that the commenter is correct to state that the SRECs or Class I RECs associated with a community solar project represent certain environmental attributes of that community solar. How those SRECs or Class I RECs are used and/or publicized is governed by existing State and Federal laws and/or rules. The BPU will not prohibit the sale of SRECs or Class I RECs associated with community solar generation in the Pilot Program.

**N.J.A.C. 14:8-9.10(a)**

313. COMMENT: The commenter suggests that this registration form be developed and approved prior to the start of PY1. (Summit Ridge)

RESPONSE: The BPU appreciates the comment and notes that a draft Community Solar Subscriber Organization Registration Form was issued for public comment on November 28, 2018.

**N.J.A.C. 14:8-9.10(b)1**

314. COMMENT: The commenter states that the proposed language at N.J.A.C. 14:8-9.10(b)1 should be clarified and changed to allow program participation to occur under the process used in the BPU's Government Energy Aggregation (GEA) Program regulations. Specifically, N.J.A.C. 14:8-9.10(b)1 should be supplemented to also allow customer subscription through N.J.A.C. 14:4-6.5(a) through (k). This amendment would provide a pathway (with appropriate protections) for the Pilot Program to subscribe residential customers under the "opt-out" provisions of the GEA regulations. The proposed regulations should be amended to add an

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additional pathway for procurement by a municipality of solar power on behalf of a pool of LMI residential customers, and subsequent residential customer subscription, through an opt-out process. Specifically, N.J.A.C. 14:8-9.10 should be supplemented to also allow customer subscriptions through N.J.A.C. 14:4-6.5(a) through (k). (Gabel Associates)

RESPONSE: The BPU notes that the potential integration of the BPU’s GEA program and community solar is an interesting idea but would require further consideration beyond the purview of this specific rulemaking. The BPU has directed its staff to look into the potential benefits and costs of such integration between the GEA and community solar programs.

**N.J.A.C. 14:8-9.10(b)1i**

315. COMMENT: The commenter fully agrees that customers should express consent to become a community solar subscriber. The language calling for “affirmative written consent” in N.J.A.C. 14:8-9.10(b)1i is appropriate, based on a plain English meaning related to demonstrating “intentionality.” This section should be approved without changes. (Arcadia Power)

RESPONSE: The BPU appreciates the comment.

**N.J.A.C. 14:8-9.10(b)2vi**

316. COMMENT: The commenter is concerned that the wording of this provision would raise the question if a homeowners’ association would be able to discuss this beforehand, but suggests that the language pertaining to an “existing business relationship” may address such a situation.

(Jeanne Fox)

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RESPONSE: The BPU notes that N.J.A.C. 14:8-9.10(b)2vi refers specifically to the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to N.J.S.A. 56:8-127 or any successor statute and the do-not call registry as maintained by the FTC, and is unsure how this would affect homeowners' associations from discussing community solar.

**N.J.A.C. 14:8-9.10(b)3i**

317. COMMENT: The commenter states that the disclosures provided for at N.J.A.C. 14:8-9.10(b)3i could be improved by the addition of language specifically requiring a plain-language description of the subscription fee and other clarifying changes. The suggested revision is as follows (additions in bold; deletions in brackets): “Contracts must contain a plain-language description of the subscription agreement, including the type of agreement, **effective** date of [enactment of] the contract, duration of the contract, **a clear description of the amount and terms of payment of the subscription fee** [payment and pricing] **and the underlying** calculations, a good-faith written estimate of the savings a subscriber will [earn] **realize net the of subscription fee** per year **or other applicable period** [(if applicable)] and [its disclosed] **the** assumptions **underlying such estimate**, a clear description of the billing arrangements, and a complete list of any other fees, including, but not limited to, any applicable transfer and/or cancellation fees, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and any interest charges...” (RC)

RESPONSE: The BPU appreciates the careful reading of the Proposed Rule and has made the suggested changes to clarify the language at N.J.A.C. 14:8-9.10(b)3i.

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**N.J.A.C. 14:8-9.10(b)1ii and (b)3iv**

318. COMMENT: The commenter believes that the language in N.J.A.C. 14:8-9.10(b)1ii and (b)3iv is appropriate and should be approved without changes. (Arcadia Power)

RESPONSE: The BPU appreciates the comment.

**N.J.A.C. 14:8-9.10(b)3ii(2)**

319. COMMENT: The commenters believe that the BPU should insert language to allow guaranteed savings for LMI projects or pilots. (GRID and Vote Solar)

RESPONSE: The disclaimer at N.J.A.C. 14:8-9.10(b)3ii(2) refers to specifically to the fact that the BPU does not “regulate the price of community solar subscriptions, not does it guarantee projected savings.” This sub-subparagraph does not preclude a subscriber organization from offering guaranteed projected savings, but reflects the fact that BPU does not currently regulate the price of community solar subscriptions or guarantee projected savings.

**N.J.A.C. 14:8-9.10(b)3v**

320. COMMENT: The commenter notes that the right of rescission in most states, and for most consumer contracts, is three days, rather than seven, as specified in the Proposed Rule. The commenter recommends modifying that requirement to three days. (CCSA)

RESPONSE: The BPU notes that the seven-calendar day rescission period is the standard applied to customers of third-party suppliers in New Jersey.

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**N.J.A.C. 14:8-9.10(b)2v and (b)3vi**

321. COMMENT: The commenter believes that subscriber organizations should be required to have both a toll-free or local telephone number and a link to a website. (Jeanne Fox)

RESPONSE: The BPU appreciates the thoughtful comment and has clarified the language upon adoption to change “... telephone number and/or a link ...” to “... telephone number and a link ...”

**N.J.A.C. 14:8-9.10(b)4**

322. COMMENT: The commenter believes that, in developing a consumer disclosure form, the BPU should look to the form developed by Maryland and adopted in similar form by New York. (CCSA)

RESPONSE: The BPU appreciates the comment and has considered consumer disclosure forms adopted for community solar programs in other states. A draft Disclosure Form was issued for public comment by the BPU on November 28, 2018.

323. COMMENT: The commenter states that the BPU should approve a Spanish language version of the disclosure statement along with the English language version. (Summit Ridge)

RESPONSE: The BPU appreciates the comment and will approve a Spanish-language version of the disclosure form for convenience and information purpose only. The English version Disclosure Form approved by the BPU remains the legally controlling version.

**N.J.A.C. 14:8-9.10(b)7**

324. COMMENT: The commenter states that, given that the proof of eligibility is a one-time

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requirement for each subscriber and given the sensitivity of the information being disclosed, there should be a shorter document retention period for this information of three years. (Summit Ridge)

RESPONSE: The BPU appreciates the comment. The BPU notes that, under the State's Department of the Treasury's record retention and disposition schedule, typical BPU matters have a seven-year retention requirement. Since subscriber organizations are not specifically listed, N.J.A.C. 17:44-2.3 states that an entity not subject to N.J.S.A. 47:3-20 et seq., shall be maintained for a period of no less than five years after contract completion. Six years falls in between the typical seven years and the required no less than five years.

#### **N.J.A.C. 14:8-9.11 Reporting**

325. COMMENT: The commenters state that the Proposed Rule does not contain provisions to ensure that the requirement that 40 percent of the capacity in the Pilot Program be met by LMI projects. The LMI project target should incorporate other benefits, such as bill savings, job training, and creation, etc. Therefore, the reporting requirements in the proposed regulations be broadened to ensure data collection on important measures that directly address the impact of community solar on LMI subscribers. Reports should be submitted to the BPU containing the following information, in addition to the information required in the proposed regulations: The total number of LMI households served by community solar projects, the percentage of subscribers that are LMI subscribers, the total capacity allocated to LMI subscribers, the number of LMI subscribers by income ranges, whether customers are individually or master-metered, the number of jobs created, job training opportunities at local schools and on the job, and number of

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new businesses started, broken out by municipality to the extent feasible, average savings (or energy burden reduction) per subscribing household, broken out by municipality to the extent feasible. (GRID and Vote Solar)

326. COMMENT: The BPU should be transparent and clear about how it intends to ensure that 40 percent of the capacity for projects selected for the Pilot Program are, in fact, LMI projects that serve 51 percent of LMI subscribers. (RC and Vote Solar)

RESPONSE TO COMMENTS 325 AND 326: The BPU appreciates the recommendations regarding the enforcement and reporting requirements for the Pilot Program. The BPU will monitor the Pilot Program over the three program years, with special attention to LMI participation. The BPU will implement specific income verification measures to ensure that LMI projects do indeed meet the 51 percent LMI subscriber requirement.

327. COMMENT: The commenter believes that the BPU should set up a mechanism that will track the customer from the entry of the Pilot Program to their exit. This data should include how they came to the pilot and the reasons that they exited the pilot. (Cap Solar)

RESPONSE: The BPU does not currently intend to track each and every subscriber who signs up for a community solar project, as this would create an inappropriate administrative burden on the BPU. Instead, the BPU will monitor projects participating in the Pilot Program and collect data on subscribers from subscriber organizations as needed to properly evaluate the Pilot Program.

328. COMMENT: The commenter comments that mandatory data should be collected to perform a pilot-wide Social Return on Investment study to measure the impact of lower energy

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costs through community solar. (Cap Solar)

329. COMMENT: The commenter states that the Pilot Program should include data collection, reporting, and evaluation provisions, so that the pilot can be used to learn and improve the development and implementation of the permanent program. (RC)

RESPONSE TO COMMENTS 328 AND 329: The BPU will conduct monitoring and evaluation of the Pilot Program as it deems appropriate to inform the development of the permanent program.

330. COMMENT: The commenter generally believes the reporting requirements are reasonable and provides no recommendations for modification. Any additional criteria the BPU may want to use to evaluate the Pilot Program at the end of its three years should be defined now at the beginning of the program. (CCSA)

RESPONSE: The BPU appreciates the comment and notes that the evaluation will be an ongoing process throughout the duration of the Pilot Program.

331. COMMENT: The commenter believes that every program should be evaluated, and it is especially important to consider how a pilot program should be evaluated. From the point of view of LMI households, the following should be measured, both total and broken out by EDC and by developer: 1. The total number of LMI households served and the percentage of subscribers represented by LMI subscribers; 2. The total capacity allocated to LMI subscribers; 3. The number of LMI subscribers in income ranges of \$5,000; 4. Number of subscribers, number of jobs created, job training opportunities at local schools and on the job, and number of

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new businesses started, broken out by municipality and income level; 5. Average savings per subscribing household, broken out by municipality and income level. (UU Faith Action NJ)

RESPONSE: The BPU appreciates the specific recommendations and will evaluate LMI participation in the Pilot Program as it deems appropriate. However, the BPU notes that it will specifically evaluate LMI access to community solar, particularly given that LMI participation is one of the key goals of the Pilot. The BPU welcomes dialogue on this issue based on ongoing data from the Pilot Program.

332. COMMENT: The commenter states that the Proposed Rule is silent on how the Pilot Program will transition to a permanent program. As with other aspects of the Pilot Program, an inclusive and transparent process should be implemented for soliciting feedback and ideas and ensure that underserved communities have the opportunity to provide meaningful input. (Vote Solar)

RESPONSE: The Pilot Program is intended to provide data and New Jersey-specific experience regarding the implementation of community solar in the State. The BPU is looking to learn from the Pilot Program to establish the permanent program and will accordingly develop appropriate evaluation mechanisms. The BPU expects that a stakeholder engagement process will be instituted to collect feedback on the Pilot Program and recommendations regarding the development of the permanent program.

**N.J.A.C. 14:8-9.11(a)**

333. COMMENT: The commenter suggests that the reporting in this subsection be submitted

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on a quarterly basis instead of monthly. This monthly activity could prove to be burdensome. A suggested alternative would be to require reporting of limited information on a monthly basis, with the more extensive information provided on a quarterly basis. (JCP&L)

RESPONSE: The BPU appreciates the comment but believes that monthly reporting is necessary to track the evolution and implementation of the Pilot Program. The BPU will consider the suggestion as part of the permanent program based on the information provided in the Pilot Program.

**N.J.A.C. 14:8-9.11(b)**

334. COMMENT: The commenter supports the BPU clarifying and establishing a procedure to allow for ownership transfers in a project. A project can change hands, so it is crucial that the Pilot Program allow for an ownership transfer, as long as the receiving party adheres to all Pilot Program rules and regulations. (Summit Ridge)

RESPONSE: The BPU appreciates the comment.

**N.J.A.C. 14:8-9.11(b)3**

335. COMMENT: The commenter states that the specific milestones and project developments that are reported on should be established prior to the start of PY1. (Summit Ridge)

RESPONSE: The BPU appreciates the comment. The BPU may issue further guidance on this question to projects selected for participation in the Pilot Program, but further advises project developers and operators to use their best judgment as to what constitutes a major project

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development and milestone.

**N.J.A.C. 14:8-9.11(d)**

336. COMMENT: The commenter believes that subscriber acknowledgments should be retained by the subscriber organization for six years. (Jeanne Fox)

RESPONSE: The BPU notes that subscriber acknowledgements are covered in the requirement for retention of subscriber contracts under N.J.A.C. 14:8-9.11(d), which already requires a retention period of six years.

337. COMMENT: The commenter states that the BPU should define what “without delay” means, for example, within two weeks or within a reasonable time frame as established by the staff. (Jeanne Fox)

RESPONSE: The BPU applies the plain meaning of the words “without delay,” but may clarify a specific deadline if it finds it to be necessary in the implementation of the Pilot Program.

338. COMMENT: The commenter suggests deleting the reference to LMI proof of eligibility since it is already covered in N.J.A.C. 14:8-9.11(b)3. (Summit Ridge)

RESPONSE: The BPU notes that N.J.A.C. 14:8-9.11 states that “the Board shall be kept apprised of all major project developments and milestones via written notification (email or letter).”

339. COMMENT: The commenter states that another issue is how the outcomes of the pilot

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program will be evaluated? What constitutes success, especially for EJ communities? This could be the subject of another comment period. (NJEJA)

RESPONSE: The BPU appreciates this comment and notes that this is a Pilot Program. The BPU will consider the appropriate measures to evaluate the Pilot Program throughout its implementation.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Community Solar Energy Pilot Program Rule has no Federal analogue and is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., do not require a Federal standards analysis for the adopted new rules.

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**Full text** of the proposed new rules follows:

#### **SUBCHAPTER 9. COMMUNITY SOLAR ENERGY PILOT PROGRAM RULES**

##### **14:8-9.2 Definitions**

For the purposes of this subchapter, the following words and terms shall have the following

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meanings, unless the context clearly indicates otherwise.

...

“Affordable housing,” shall have the same meaning as “affordable,” as set forth in N.J.A.C. 5:80-[1.2]\*\***26.2**.\*

...

“Annual net energy” means the total amount of **\*net\*** energy produced by the community solar facility on an annual basis, measured at the EDCs’ meter.

...

“Community solar developer” or “developer” means an entity that is duly authorized to do business in the State of New Jersey and constructs **\*or contracts for the construction of\*** a community solar facility within the State of New Jersey.

...

“Community Solar Energy Program” refers to the full-scale community solar program for which the Board shall adopt rules no later than **\*[(36 months after the effective date of rules and regulations establishing the Pilot Program)]\* \*January 1, 2022\***.

...

“Community solar subscription” or “subscription” refers to **\*[participation]\* \*an agreement to participate\*** in a community solar project, by which the subscriber receives a bill credit for a **\*[share for]\* \*portion of the\*** community solar capacity and/or energy produced by a community solar facility. A subscription may be measured as capacity in kW and/or energy in kWh, ownership of a panel or panels in a community solar facility, ownership of a share of a community solar project, or a fixed and/or variable monthly payment to the project operator.

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\*[“Customer information,” shall have the same meaning as set forth in N.J.A.C. 14:4-1.2.]\*

...

**\*“EDC area” means the geographic area over which an electric distribution company has a privilege or franchise granted by the State or by any political subdivision of the State, in accordance with the provisions of N.J.S.A. 48:2-13 and 14.\***

...

“Existing solar project,” for the purposes of the Community Solar Energy Pilot Program, refers to a solar project having begun operation and/or been approved by the Board for connection to the distribution system prior to \*[January 1]\* **\*February 19\***, 2019.

...

\*[“Good utility practice” shall have the same meaning as set forth in N.J.A.C. 14:8-5.1.]\*

...

\*[“Historic fill,” shall have the same meaning as set forth in N.J.S.A. 48:3-51.]\*

...

“Moderate-income household” means a household with a total gross annual household income in excess of \*[50 percent]\* **\*200 percent of the Federal Poverty Level\***, but less than 80 percent of the median income, as determined by annual HUD income limits.

...

“Program year” or “PY” means the \*[12-month]\* period from the official launch of the Community Solar Energy Pilot Program \*[on January 1, 2019]\*, **\*as set forth at N.J.A.C. 14:8-9.3(a)\***. Each of the three program years for the Pilot Program shall be numbered PY1, PY2, and

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PY3, respectively.

\* [“Regulated entity” shall have the same meaning as set forth in N.J.A.C. 14:3-1.1.

“Regulated service” shall have the same meaning as set forth in N.J.A.C. 14:3-1.1.

“Renewable Portfolio Standard” or “RPS” means the program established by N.J.A.C. 14:8-2.1.]\*

...

\*[“Sanitary landfill” shall have the same meaning as set forth in N.J.A.C. 7:26-1.4.

“Service area” means the entire geographic area over which a gas or electric light, heat, or power company has a privilege or franchise granted by the State or by any political subdivision of the State, in accordance with the provisions of N.J.S.A. 48:2-13 and 14.]\*

...

“Solar panel” **\*or “PV panel”\*** shall have the same meaning as set forth in P.L. 2018, c. 17.

\*[“Solar power” shall have the same meaning as set forth in P.L. 2018, c. 17.]\*

...

\*[“Telemarketing sales call” shall have the same meaning as set forth in N.J.A.C. 14:4-7.2.]\*

**\*“Telemarketing sales call” or “Telemarketing” means a telephone call made by a community solar subscriber organization to a potential subscriber as part of a plan, program, or campaign to encourage them to sign a community solar subscription. A telephone call made to an existing subscriber for the sole purpose of collecting on accounts or following up on contractual obligations shall not be deemed a telemarketing sales call. A**

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**telephone call made in response to an express written, electronic, or telephonic request of a customer shall not be deemed a telemarketing sales call.\***

...

**\*[“Unsolicited advertisement” shall have the same meaning as set forth in N.J.A.C. 14:4-7.2.]\***

**\*“Unsolicited advertisement” means any advertising claims of the commercial availability or quality of services provided by a community solar subscriber organization, which is transmitted to a potential subscriber without that customer’s prior express invitation or permission.\***

#### 14:8-9.3 Pilot Program structure

(a) The Pilot Program shall run for a period of no more than 36 months, divided into Program Year 1 (PY1), Program Year 2 (PY2), and Program Year 3 (PY3). Program Year 1 shall begin **\*[January 1]\* \*February 19\*, 2019\*,\*** and last **\*[for the full calendar year,]\*** until December 31, 2019. **\*Subsequent program years shall begin on January 1 and last for the full calendar year.\***

(b) No later than **\*[(36 months after the effective date of this subchapter)]\* \*January 1, 2022\***, the Board shall adopt rules to convert the Pilot Program to a Community Solar Energy Program.

(c) For each of the three program years, Board staff shall initiate an annual application process pursuant to the Clean Energy Act as follows:

1. (No change from proposal.)
2. Board staff shall open **\*an\*** application\*[s]\* **\*period\*** for the Pilot Program for a

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length of time to be enacted at the official approval of the application **\*process\***.

3.-11. (No change from proposal.)

(d) – (e) (No change from proposal.)

14:8-9.5 Project siting requirements

(a)-(b) (No change from proposal.)

(c) The following siting restrictions shall apply to community solar projects:

1. (No change from proposal.)

2. Community solar projects shall **\*[only]\* \*not\*** be allowed on land designated as Green Acres preserved open space, or on land owned by the New Jersey Department of Environmental Protection, **\*[by]\* \*unless those projects are granted\*** special approval **\*[of]\* \*by\*** the DEP.

14:8-9.6 Subscription requirements

(a) – (e) (No change from proposal.)

(f) The following subscription requirements shall apply:

1.-3. (No change from proposal.)

4. Subscriptions may be sold or transferred back to the project owner **\*or community solar subscriber organization\*** by subscribers **\*as specified in their subscription agreements\***. Subscribers may not sell or transfer a subscription to another party other than the project owner **\*or community solar subscriber organization\***.

5. (No change from proposal.)

(g) In cases of master-metered buildings, the account holder of the master meter shall be allowed

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to subscribe to community solar subscriptions on behalf of his or her tenants. The account holder of the master meter will be required to \*[demonstrate, in his or her application to the Board and with a signed affidavit,]\* **\*provide to the subscriber organization identified for the project to which they are subscribed, an affidavit that will be made available to the Board\*** that specific, identifiable, sufficient, and quantifiable benefits of the community solar subscription are being passed through to the tenants. Nothing in this subsection prohibits the account holder of the master meter from signing a separate subscription for the separately metered building common areas.

#### 14:8-9.7 Community solar bill credits

(a) (No change from proposal.)

(b) The calculation of the value of the bill credit shall remain in conformance with retail rate \*[net metering]\*, as determined in (a) above and shall remain in effect for the life of the project\*, **defined as no more than 20 years from the date of commercial operation of the project or the period until the project is decommissioned, whichever comes first\***.

(c) - (e) (No change from proposal.)

(f) At the end of the annualized period and/or when a subscriber's EDC account is closed and/or at the end of the subscriber's community solar subscription, any excess net bill credits greater than the sum of all appropriate billable charges shall be compensated at the EDC's or BGS provider's avoided cost of wholesale power, as determined from time-to-time, calculated at the nearest node to the point of delivery of the community solar project. The excess compensation must be returned to the subscriber \*[following his or her preferred method]\* **\*by bill credit\***,

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wire transfer, or check.

(g) (No change from proposal.)

(h) Any generation delivered to the grid that has not been allocated to a subscriber may be “banked” by the project operator in a dedicated project EDC account for \*[a]\* **\*an annualized\*** period of up to 12 months. The banked credits may be distributed by the project operator to any new or existing subscriber during that 12-month period, in conformance with subscription requirements set forth in N.J.A.C. 14:8-9.6. At the end of the up to 12-month period, any remaining generation credits shall be compensated at the EDC’s or BGS provider’s avoided cost of wholesale power, calculated at the nearest node to the point of delivery of the community solar project.

(i)-(j) (No change from proposal.)

(k) EDCs must make appropriate data available through Green Button **\*Connect My Data (Green Button)\***, subject to appropriate privacy protections. If Green Button capabilities are not available or are insufficient, the EDCs will work with Board staff to determine data sharing mechanisms and requirements between the EDCs and developers.

(l) - (t) (No change from proposal.)

#### 14:8-9.8 Low- and moderate-income provisions

(a) A low- and moderate-income subscriber for the purposes of this subchapter is as follows:

1. A low-income \*[residential]\* household or a moderate-income \*[residential]\* household \*[as determined by annual adjusted HUD income limits]\*.

2. (No change from proposal.)

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(b) – (d) (No change from proposal)

14:8-9.9 Codes and standards

(a) - (c) (No change from proposal.)

(d) Each community solar project shall telemeter its production data to the EDC \*[on a monthly basis]\* in accordance with EDC EDI procedures.

(e) -(f) (No change from proposal.)

(g) A community solar project shall not subscribe more than 100 percent of the **\*output of the community solar facility at the\*** project’s nameplate capacity in DC rating.

(h) (No change from proposal.)

14:8-9.10 Consumer protection

(a) (No change from proposal.)

(b) Community solar subscriber organizations must comply with all applicable laws, rules, and regulations governing advertising, marketing, and fair business practices. Additionally, the following consumer protection measures shall apply to all subscriber organizations, and any agent, contractor, subcontractor, or affiliated person.

1. As to subscriptions, as follows:

i. -ii. (No change from proposal.)

iii. A subscriber organization may not add a new charge **\*or make any other material change to the content of the contract or subscription\*** without first obtaining affirmative written consent via wet or electronic signature from the subscriber, whether it be for

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a new service, existing service, or service option;

2. As to marketing, advertising, and solicitations, as follows:

i. -iv. (No change from proposal.)

v. Subscriber organizations must include in all advertisements, marketing, or sales materials, a toll-free or local telephone number *\*[and/or]\** **\*and\*** a link to a website through which customers can obtain further information regarding their product and/or services.

vi. -vii. (No change from proposal.)

3. As to contracts, as follows:

i. Contracts must contain a plain-language description of the subscription agreement, including the type of agreement, **\*effective\*** date *\*[of enactment]\** of the contract, duration of the contract, **\*a clear description of the amount and terms of\*** payment *\*[and pricing]\** **\*of the subscription fee and underlying\*** calculations, a good-faith written estimate of the savings a subscriber will *\*[earn]\** **\*realize net of the subscription fee or payment\*** per year (*\*[if]\** **\*or other\*** applicable **\*period\***) and *\*[its disclosed]\** **\*the\*** assumptions **\*underlying such estimate\***, a clear description of the billing arrangements, and a complete list of any other fees, including, but not limited to, any applicable transfer and/or cancellation fees, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and any interest charges. The contract must also contain the specific conditions under which such penalties and/or fees can be imposed.

ii.-vii. (No change from proposal.)

4. – 7. (No change from proposal)

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