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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

COMMUNITY SOLAR ENERGY PILOT PROGRAM

Community Solar Energy Pilot Program Rules

Adopted Amendments: N.J.A.C. 14:8-9.2, 9.3, 9.4, 9.6, 9.8, and 9.10

Proposed: November 16, 2020, at 52 N.J.R. 2039(a).

Adopted: October 28, 2021, 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: **XXX**, **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. 48:3-87.11.

BPU Docket Number: QX20090577.

Effective Date: December 6, 2021

Expiration Date: February 27, 2021

Summary of Public Comments and Agency Responses:

Written comments were submitted by: Stefanie A. Brand and Sarah H. Steindel, Division of Rate Counsel (“RC”); Joseph A. Shea, Public Service Electric & Gas (“PSE&G”) on behalf of Atlantic City Electric, Jersey Central Power & Light, PSE&G, and Rockland Electric Company (collectively this group of commenters if referred to as the “Joint EDCs”); Leslie Elder, Coalition for Community Solar Access (“CCSA”); Richard S. Mroz, Archer Public Affairs, LLC on behalf of Altus Power America (“Altus”); Jeffrey Mayer, Solomon Community Solar (“Solomon”); and Mark Schottinger, Solar Landscape (“Solar Landscape”).

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The following is a summary of the comments received from members of the public and the Board of Public Utilities’ (“BPU” or “Board”) response. The following summaries of comments are the Board’s best understanding of the comments filed.

General Comments

1. COMMENT: The commenters applaud the Board’s efforts to expand the opportunity for low- and moderate-income (“LMI”) customers to participate in the Community Solar Energy Pilot Program. (Joint EDCs)

RESPONSE: The Board notes the Joint EDCs’ support of the proposal.

2. COMMENT: The commenters state that the proposed amendments are expected to increase the number of community solar projects installed and the number of subscribing customers, which the commenters note underscores the need to resolve all outstanding EDC cost recovery issues. (Joint EDCs)

RESPONSE: Community solar cost recovery is being handled separately through consideration of rate recovery filings made by each of the EDCs before the Board. The Board is committed to ensuring that program costs are expended prudently and appropriately recovered.

3. COMMENT: The commenter applauds the Board and Staff for the continued commitment to building an effective community solar industry in New Jersey, and states that the proposed rule changes for Program Year 2 will provide a strong foundation for project implementation and market growth, contributing to state goals that can truly support all New Jersey residents in accessing affordable clean energy. (CCSA)

RESPONSE: The Board notes the commenter’s support of the proposal.

4. COMMENT: The commenter notes that transition program incentives have played a crucial role in project financing and thanks the BPU for providing the industry with the clarity

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necessary to plan, secure, and build projects. (CCSA)

RESPONSE: The Board notes the commenter’s support of the proposal and directs the commenter towards other Board proceedings establishing the Successor Solar Incentive (“SuSI”) Program.

5. COMMENT: The commenter asks the BPU to consider future amendments to the Community Solar Program rules to encourage utilities to identify creative solutions to lower interconnection costs for Community Solar Projects so that subscribers can receive a greater benefit through lower electricity bills. (Altus)

RESPONSE: The Board welcomes continued feedback on means to improve the community solar program in New Jersey. In particular, the Board encourages the commenter to take part in the forthcoming stakeholder process regarding interconnection reform and grid modernization, as well as upcoming stakeholder engagement on the design and implementation of a permanent Community Solar Energy Program.

6. COMMENT: The commenter recommends that the Board consider future rule amendments to include a robust enforcement and penalty section that will deter unscrupulous community solar developers from taking advantage of subscribers and the application process. (Altus)

RESPONSE: The Pilot Program rules include a section dedicated to consumer protection (see N.J.A.C. 14:8-9.10); however, the Board welcomes feedback and ideas to improve and strengthen measures supportive of consumer rights and community solar as the Board considers rules for the permanent program.

7. COMMENT: The commenter recommends incorporating consolidated billing for community solar, which would substantially simplify the process for community solar and lower the barriers to community solar adoption. (Altus)

RESPONSE: The Board received a report from the EDCs on this topic in May 2021, and is

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currently in the process of exploring options for the implementation of consolidated billing for community solar. As the comment is outside the scope of the proposed rule amendments, the Board will take the commenter’s suggestion under advisement.

N.J.A.C. 14:8-9.3

8. COMMENT: The commenter supports the proposed amendments to project timelines, believing them to be realistic while encouraging timely completion of community solar projects. (RC)

RESPONSE: The Board notes the commenter’s support for the proposal.

9. COMMENT: The commenter supports the new proposed project construction and operation deadlines, and believes they will bring more certainty to the New Jersey community solar market. (CCSA)

RESPONSE: The Board notes the commenter’s support for the proposal.

10. COMMENT: The commenter requests that project extension requests be granted in a clear and timely manner, stating that extensions granted after the deadline create uncertainty for the project developer and its financiers. (CCSA)

RESPONSE: The Board appreciates the commenter’s concern, and is committed to ensuring that program administration is clear and supportive of all stakeholders.

11. COMMENT: The commenter supports the Board’s amendment to remove the 6-month deadline to begin construction, and the change from 12 to 18 months to the deadline for projects to become fully operational. (Altus)

RESPONSE: The Board notes the commenter’s support for the proposal.

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

12. COMMENT: The commenter does not object to the proposed amendment, as it appears that the current rule with deadlines for setting the annual capacity limit has proven unworkable.

(RC)

RESPONSE: The Board appreciates RC’s comments and agrees that the proposed rule will result in smoother program administration.

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

13. COMMENT: The current rules require that annual capacity limits be divided among the EDCs based on their respective percentages of in-state retail sales. Section 9.4(d) of the proposed rule allows the Board to forgo awarding capacity in that EDC “[i]n the event that there have not been enough applications submitted in a given service territory to provide adequate competition[.]” The commenter believes that the proposed amendment provides the Board some recourse in the event of insufficient competition among community solar developers. However, the commenter believes that the proposed amendment could be further expanded by amending N.J.A.C. 14:8-9.3(c)(5) to allow the Board to reject all bids that do not reflect adequate competition. (RC)

RESPONSE: In the Pilot Program, projects are selected via a competitive selection process with a pre-determined evaluation rubric which enforces geographic limits to ensure that customers across New Jersey have access to this important program. The Board believes that this process enables the selection of projects using fair and transparent criteria, and therefore the non-selection of projects that do not meet the Board’s standards. The ability to reject a proposal for lack of adequate competition will help the Board ensure that effective competition exists within an EDC, even if it

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means that no projects are awarded in that service territory. The Board believes that the proposed amendment is sufficient to ensure competitive outcomes and that the overall program has been over-subscribed, suggesting that the type of global competitive concerns raised by commenter are not likely to occur. The Board thus declines to make the additional amendment suggested by the commenter.

14. COMMENT: The commenters note that the proposed amendments do not specify what number of applications will be deemed sufficient to ensure “adequate competition.” The commenters do not recommend a precise number of applications, but suggest that the number be based on each utility’s *pro rata* share of allocated capacity. (Joint EDCs)

RESPONSE: The Board believes that setting a specific numeric value to the term “adequate competition” is challenging, as it will vary from EDC to EDC depending on the amount of capacity available, as well as on the quality of applications received. The Board instead prefers to rely on its best reasonable assessment of the number of applications submitted during any given application round. The Board also agrees with the commenter that “adequate competition” will have a different meaning depending on the EDC service territory (for instance, it is normal and expected for an EDC with a small amount of available capacity to receive fewer applications than an EDC with significantly more available capacity). The Board declines to make the additional amendment suggested by the commenter.

15. COMMENT: The commenters state that the proposed amendment to “reallocate unused capacity” is unclear as to whether the unused capacity will be reallocated (a) to another service territory, or (b) in the following year in the same service territory. The commenters suggest that the proposed amendment be revised to clarify that the unused capacity would be reallocated “within the same service territory in the following year.” The commenters do not

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support reallocation of unused capacity to other EDCs within the same program year, stating that one of the goals of Pilot Program is to enable customers throughout the State to participate in community solar. (Joint EDCs)

RESPONSE: The Board shares the commenter’s commitment to ensuring equitable access to community solar, and any capacity reallocation would take this into consideration. However, the Board also notes that it has pre-determined targets that require a fixed quantity of community solar capacity to be awarded for each Project Year. In light of these competing requirements, the Board prefers to maintain flexibility to determine how capacity should be reallocated based on the specific circumstances and declines to amend the rules as suggested by the Joint EDCs.

16. COMMENT: The commenter supports the proposed amendment to reallocate unused capacity.

The proposed language states that this reallocation would occur “in the event that there have not been enough applications submitted in a given service territory to provide adequate competition.” The commenter suggests clarifying that this reallocation would occur if there have not been enough “qualifying” applications in a given service territory. This added word would give the Board more flexibility to implement the capacity reallocation based on its assessment of the applications submitted. (Altus)

RESPONSE: The Board believes that the amendment as proposed provides sufficient flexibility for the Board to implement a capacity reallocation as it deems appropriate based on the circumstances of a given application round. Therefore, the Board does not believe that the addition of the term “qualifying” is necessary, and declines to amend the rules as suggested by the commenter.

N.J.A.C. 14:8-9.6

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17. COMMENT: The commenter does not oppose the proposed change to the exemption to the 10-subscriber minimum. The commenter states that while the Board does not explain why the proposed amendment is necessary, it appears consistent with the Board’s objective of encouraging LMI projects. (RC)

RESPONSE: The Board notes the commenter’s support. As indicated by the commenter, the Board proposed this amendment as a means of continuing support of LMI projects, while removing the possibility of an exemption for non-LMI projects.

N.J.A.C. 14:8-9.8

18. COMMENT: The commenter supports the proposed amendments as reasonable measures to reduce obstacles to LMI customers’ participation in the Community Solar Program. (RC)

19. COMMENT: The commenter applauds the proposed amendments that add options for qualifying residents by income. The commenter believes that the proposed verification by census units is an important step towards fulfilling commitments to equitable solar access. (CCSA)

20. COMMENT: The commenter supports the proposed amendments as they preserve the integrity of properly identifying LMI subscribers while eliminating the onerous requirement to produce three years of tax returns. (Altus)

21. COMMENT: The commenter supports the proposed amendments designed to expand the LMI eligibility criteria. (Solomon)

RESPONSE TO COMMENTS 18 THROUGH 21: The Board notes the support from commenters.

22. COMMENT: The commenters request that the Board confirm that, consistent with the existing Pilot Program rules (N.J.A.C. 14:8-9.8(d)), the EDCs will not be responsible for verifying

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which subscribers qualify as LMI. (Joint EDCs)

RESPONSE: As noted by the commenter, existing Pilot Program rules provide that each project’s subscriber organization is responsible for customer acquisition and for verifying the subscriber income where relevant. The proposed rule amendments do not require the EDCs to verify the LMI status of subscribers.

23. COMMENT: The commenter suggests that, rather than verification by census tract, the Board use geographic income verification by census block groups, in order to better align with the information available to subscriber organizations. (CCSA)

24. COMMENT: The commenter recommends that the Board use the block level, rather than the census tract level, to identify eligible LMI subscribers. The commenter estimates that there are only approximately 2,500 people in the entire PSE&G territory that fall into an eligible census tract as defined by the proposed rule amendment. (Altus)

25. COMMENT: The commenter suggests changing the reference to “census tracts” to “census block groups.” The commenter provides data suggesting that a census block methodology covers a small number of customers, and that this number would be even smaller when using census tracts. (Solomon)

26. COMMENT: The commenter recommends the use of census block groups rather than census tracts. (Solar Landscape)

RESPONSE TO COMMENTS 23 THROUGH 26: The Board appreciates the commenters’ identification of the distinction between the terms “census tract” and “census block.” It was the Board’s intent to use the term “census block,” but the wrong term was mistakenly used in the original proposed amendments. This error has been corrected in the proposed amendment text.

27. COMMENT: The commenter recommends that the Board set threshold at 50% of households

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in a block group, rather than 80% as is proposed in the amendment. The commenter believes that the 80% threshold would significantly reduce the areas that can use this verification method to minimize barriers for income-qualified subscribers to sign up and receive benefits from community solar. (CCSA)

28. COMMENT: The commenter recommends that, for purposes of LMI income verification, the Board set the minimum number of households that earn less than 80% of an area’s median income at 50% in a block group, rather than 80%. (Solar Landscape)

RESPONSE TO COMMENTS 27 AND 28: The Board is committed to reducing barriers to LMI community solar adoption, and appreciates any suggestions to that effect. However, the Board is also concerned with making sure that that benefits intended for LMI households actually go to LMI households. At this time, the Board believes that the 80% threshold balances these two objectives. The Board may consider such a revision in its design of the permanent Community Solar Energy Program based on experience from Pilot Program implementation. Therefore, the Board declines to amend the rule as suggested by CCSA and Solar Landscape.

29. COMMENT: The commenter recommends that the Board allow self-certification by LMI subscribers, stating that the rules may still lead to gaps for certain LMI households trying to qualify who may not belong to an eligible certification program or live in a certain area. The commenter states that attestation is the most inclusive and equitable process as it allows for all LMI subscribers who meet the income requirements to participate, regardless of where they live or their participation in other programs. (CCSA)

30. COMMENT: The commenter recommends amending the proposed rule to include a “check-the-box” LMI verification method, by which subscribers could qualify for LMI status by simply self-attesting to their income levels during the enrollment process. This

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recommendation is based on the commenter’s real-world experience subscribing participants for eight Program Year 1 (“PY1”) community solar projects, which shows that LMI residents are largely unwilling to provide sensitive income verification information online, and that subscribing LMI residents is made substantially more time consuming and expensive by income-verification burdens. The commenter’s experience is residents do not typically misrepresent themselves as LMI. The commenter believes that the Board should not let the perfect be the enemy of the good, and that the benefits of allowing self-certification in enabling more widespread LMI participation and not alienating LMI residents from community solar outweighs the risk of some non-LMI subscribers being misidentified. The commenter further states that a check-the-box approach would greatly simplify the Board’s process for auditing community solar projects for LMI compliance. The commenter suggests that the Board could also consider pairing a check-the-box requirement with a fee for each LMI subscriber enrolled through this method, which could go to a fund administered by the Board or a non-profit organization to benefit LMI residents. Finally, the commenter notes that, even if the Board adopts the census-based income-qualification method, it will still not capture a vast majority of the State’s LMI population, who under the currently proposed rules, would still need to prove their income levels. (Solar Landscape)

RESPONSE TO COMMENTS 29 AND 30: As stated previously, the Board is strongly committed to reducing barriers to LMI community solar adoption, and appreciates any suggestions to that effect. The Board is also concerned with consumer protection, and with making sure that that benefits intended for LMI households actually go to LMI households. The Board considered self-certification as part of these proposed rule amendments, and has decided not to include it as an option for LMI verification at this time. However, the Board welcomes further discussion on this

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matter after the implementation of the new LMI verification standards adopted as part of these proposed amendments. The Board particularly appreciates real-world experience, and invites stakeholders to continue to communicate lessons learned from the Pilot Program with NJBPU Staff.

31. COMMENT: The commenter asks the Board to clarify whether PY1 projects may utilize Program Year 2 rules for LMI verification purposes, and states that doing so will enable more PY1 projects to offer bill credits to more customers faster. (CCSA)

RESPONSE: Upon adoption by the Board and publication of adoption in the New Jersey Register, the proposed amendments, including the new LMI verification processes, will apply to all projects approved for participation in the Pilot Program.

N.J.A.C. 14:8-9.10

32. COMMENT: The commenter supports the proposed amendment, as it will enhance the information provided to community solar subscribers. (RC)

RESPONSE: The Board notes the support from commenter.

Summary of Changes Upon Adoption:

1. At N.J.A.C. 14:8-9.8(d)(2)(ii), the Board changes the term “census tract” to the term “census block group” in order to clarify the Board’s intent in the proposal. As noted by several commenters, the term “census tract” was incorrect, as it referenced the wrong level of census data; the term “census block group” is a more granular census measure, ensures LMI verification can be conducted with data currently published by the federal government.

Summary of Agency-Initiated Changes:

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1. At N.J.A.C. 14:8-9.2, the Board changes the defined term “Low- and Moderate-Income” or “LMI” to the term “Low- and Moderate-Income subscriber” or “LMI subscriber.” The Board had inadvertently omitted the term “subscriber” in the defined term, though it was included in the definition. The inclusion of the term clarifies that this definition applies specifically to participants in a community solar project.

2. At N.J.A.C. 14:8-9.2, in the definition of the term “Low- and Moderate-Income subscriber,” the Board adds the words “pursuant to this chapter,” in order to clarify that the defined term is based on the definition of a low-income household or a moderate-income household pursuant to and as used in the Pilot Program rules.

3. At N.J.A.C. 14:9.8(d)(2)(ii), the Board proposed rules for the development of alternate forms of income verification. The Board adds the term “alternate” to end of the paragraph to ensure greater clarity.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires 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, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the adopted rule amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks

thus; deletions from proposal indicated in brackets with asterisks *[thus]*):

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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 meanings, unless the context clearly indicates otherwise.

...

“Housing Choice Voucher Program Section 8” or “Section 8 Housing Assistance” is a Federal program to provide housing assistance to very low-income families, the elderly, and the disabled.

...

“Low- and Moderate-Income ***subscriber***” or “LMI ***subscriber***” means a community solar subscriber that meets the definition of a low-income household or a moderate-income household ***pursuant to this chapter***. It may also mean an entity that qualifies as an affordable housing provider, pursuant to N.J.A.C. 14:8-9.8(a)2.

...

“Payment Assistance for Gas and Electric Program” or “PAGE” is an annual utility assistance program that helps low- and moderate-income families experiencing economic hardship pay their utility bills. The PAGE Program is funded by the Board.

...

“Supplemental Nutrition Assistance Program” or “SNAP” is the program providing food assistance to needy families, as administered by the New Jersey Department of Human Services, codified at N.J.A.C. 10:87.

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...

“Universal Service Administrative Company” or “USAC” is an independent not-for-profit company designated by the Federal Communications Commission to administer four universal service programs. In particular, USAC administers Lifeline, a program that provides financial assistance to low-income consumers for phone and Internet services.

...

14:8-9.3 Pilot Program structure

(a) - (b) (No change.)

(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. – 6. (No change.)

7. Approved projects shall provide quarterly updates on the status of project progress through a form to be made available by Board staff.

8. Approved projects are expected to become fully operational (up to and including having subscribers receive bill credits for their subscription to the project) within 18 months of their approval by the Board. Board staff may approve one six-month extension if substantial progress is demonstrated towards becoming fully operational within the initial 18-month period, as determined upon review by Board staff based on the specific circumstances of the project. The Board may grant subsequent extensions if it deems warranted upon review of a petition submitted to the Board.

9. – 11. (No change.)

(d) – (e) (No change.)

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14:8-9.4 Pilot Program capacity limits

(a) (No change.)

(b) The Board shall set by Board Order an annual capacity limit for community solar projects approved for participation in the Pilot Program during PY2 and PY3. The annual capacity limit for PY2 and PY3 shall be at least 75 MW per program year, defined as the sum of the nameplate capacity in DC rating of all PV panels in projects approved for participation.

(c) (No change.)

(d) The annual capacity limit will be divided among each EDC area based on their average respective percentages of in-State retail electric sales. In the event that there have not been enough applications submitted in a given service territory to provide adequate competition, the Board may, at its discretion, elect to not award any capacity in said service territory, and reallocate the unused capacity. The anticipated PY1 breakdown is as follows:

1. -4. (No change.)

(e) – (j) (No change.)

14:8-9.6 Subscription requirements

(a) – (c) (No change.)

(d) Multi-family buildings with an LMI community solar project sited on their property are exempt from the 10-subscriber minimum, so long as they demonstrate in their application that the project is intended to provide specific, identifiable, and quantifiable benefits to the households residing in said buildings.

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(e) – (g) (No change.)

14:8-9.8 Low- and moderate-income provisions

(a) – (c) (No change.)

(d) The following LMI eligibility criteria shall be applied:

1. (No change.)

2. In all other cases, subscribers must be individually qualified as LMI for the purposes of the Pilot Program. The subscriber organization for each project shall receive and review proof of LMI eligibility for each LMI subscriber. Any of the following may be accepted by a subscriber organization as proof of LMI status for individual subscribers:

i. Proof of participation in one or more of the following: LIHEAP, Universal Service Fund, Comfort Partners, Lifeline Utility Assistance Program, Payment Assistance for Gas and Electric, Section 8 Housing Choice Voucher Program, Supplemental Nutrition Assistance Program, the Lifeline program administered by the Universal Service Administrative Company, or other low- or moderate-income local, State, or Federal programs, as may be added to this list by the Board by Board Order;

ii. If the subscriber is a residential customer, proof that the subscriber's metered residence is in a census *[tract]* ***block group*** in which 80 percent or more of the households earn less than 80 percent of the area median income, as determined by data from the U.S. Department of Housing and Urban Development; or

iii. An alternate form of income verification proposed through a petition by a subscriber organization and approved by the Board. The petition shall include: a written description of the proposed income verification method; a complete description of how the method

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respects consumer privacy concerns; how the measures and safeguards established prevent fraud or misrepresentation by either the prospective subscriber or a subscriber organization; if the proposed methodology utilizes a statistical probability-based identification mechanism, how the method is reasonably expected to minimize incorrect eligibility determinations; and how the Board will be able to verify the income claims for accuracy. Alternatively, a subscriber organization may provide notice to Board staff of the entity's intent to utilize a verification mechanism that has already been approved by the Board. A subscriber organization may not utilize any ***alternate*** method of income verification until it has been approved by the Board.

3. – 4. (No change.)

14:8-9.10 Consumer protection

(a) (No change.)

(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.)

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 a new service, existing service, or service option.

iv. Customers must be notified in writing within 30 days if the subscriber

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organization managing their subscription has changed;