

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Community Solar Energy Program

Proposed Amendments: N.J.A.C. 14:8-9.1, 9.2, 9.3, 9.6 through 9.11, 11.2, 11.5, and 11.7

Proposed Repeals and New Rules: N.J.A.C. 14:8-9.3 and 9.5

Proposed Repeal: N.J.A.C. 14:8-9.4

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dr. Zenon Christodoulou, and Christine Guhl-Sadovy, Commissioners.

Authority: N.J.S.A. 48:3-87.11, 48:3-115, and 48:3-116.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: QX23070434.

Proposal Number: PRN 2023-095.

The deadline for comments on this matter is 5:00 P.M. on November 17, 2023. While all comments will be given equal consideration and will be made part of the final record of this proceeding, the preferred method of transmittal is through the Board's Public Document Search tool, by searching for the specific docket listed above and using the "Post Comments" button. Written comments may also be submitted. Please include subject matter and docket number and submit to:

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New Jersey Board of Public Utilities
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All comments are considered "public documents" for purposes of the State's Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth at N.J.A.C. 14:1-12.3.

The agency proposal is as follows:

Summary

The Board of Public Utilities (Board) is proposing to amend its existing solar energy rules to establish the Community Solar Energy Program (CSEP) and to integrate it with the larger Successor Solar Incentive (SuSI) Program set forth at N.J.A.C. 14:8-11. The CSEP is designed to approve community solar facilities and provide incentives within the SuSI Program, which serves as the permanent program for providing solar incentives to qualified solar electric generation facilities.

The Clean Energy Act of 2018, P.L. 2018, c. 17 (Clean Energy Act), as modified by a series of solar-related amendments passed by the Legislature on June 30, 2021, and signed by Governor Murphy on July 9, 2021, P.L. 2021, c. 169 (Solar Act of 2021), directs the Board to establish a program to "permit customers of an electric public utility to participate in a solar energy project that is remotely located from their properties but is within their electric public utility service territory to allow for a credit to the customer's utility bill equal to the electricity generated that is attributed to the customer's participation in the solar energy project." N.J.S.A. 48:3-87.11(5)(a).

Specifically, the Clean Energy Act directs the Board to create a Community Solar Energy Pilot Program (Pilot Program) and to later convert it to a permanent program. N.J.S.A. 48:3-87.11(5)(f).

In compliance with these statutory directives, the Board adopted rules for the Pilot Program on January 17, 2019, which were published in the New Jersey Register on February 19, 2019. 51 N.J.R. 232(a). At N.J.A.C. 14:8-9, the Pilot Program rules set standards and an application process for solar energy projects to participate in the program and permit customers to participate in the project.

In this rulemaking, the Board proposes rules to establish the permanent Community Solar Energy Program (CSEP) based on the framework of the Pilot Program and set new standards for participation. This includes registration of eligible projects to provide solar energy to participating subscribers through the community solar mechanism. The proposed rules establish the specifics of the CSEP design, including eligibility standards, registration processes, standards for subscriptions and low- to moderate-income (LMI) subscribers, billing procedures, consumer protection, and reporting requirements. The Board does so by proposing amendments to the Pilot Program rules to convert the Pilot Program to the CSEP. The Board further proposes amendments to the Successor Solar Incentive (SuSI) Program to incorporate standards for community solar projects.

The intention of the CSEP is to promote the development of new solar projects that will provide access to solar energy to electric utility customers who have previously been unable to participate in solar energy due to a variety of barriers, while also providing these customers with energy cost savings. These projects will also create a substantial number of green economy jobs and help the State to progress toward meeting its renewable energy goals.

In developing the proposed rules for the permanent CSEP, the Board has examined and drawn from the experiences of the Pilot Program, as well as community solar programs in other states, while crafting a program that reflects the goals and circumstances specific to New Jersey. Thus, where appropriate, the proposed rules draw upon industry standards and precedent within the framework of a New Jersey-specific program and existing New Jersey incentive programs.

Unlike the Pilot Program, which used a competitively scored application process, the proposed permanent CSEP uses a first-come, first-served registration process that is integrated with the Administratively Determined Incentive (ADI) Program and sets project maturity and siting requirements. The CSEP also requires all projects to serve at least 51 percent LMI subscribers, whose eligibility may be self-attested. Certain public entities may also automatically enroll subscribers within their jurisdiction. Community solar projects and electric distribution companies (EDCs) will be required to consolidate subscription fees with the utility bill.

As the Board has provided for a 60-day comment period on this notice of proposal, the proposed notice is excepted from the rulemaking calendar requirement set forth at N.J.A.C. 1:30-3.3(a)5.

Following is a section-by-section summary of the proposed amendments:

At N.J.A.C. 14:8-9.1, the Board proposes to delete "Pilot" and such amendment is made throughout the chapter.

At N.J.A.C. 14:8-9.2, the Board proposes new definitions for the following terms: "associated disturbed areas," "consolidated billing," "contaminated site or landfill," "guaranteed bill credit discount," "local government entity," "low- to moderate-income household," "municipal community solar automatic enrollment project," and "NJDEP." The Board also proposes to amend the definitions of "affordable housing provider" to remove a regulatory directive that is in the relevant section, "capacity" to better define this term as used synonymously with "nameplate capacity," and "community solar subscription" to limit how subscriptions may be measured. The Board also proposes to remove the following definitions that are no longer necessary: "basic generation service," "Clean Energy Act," "co-location," "days," "DEP," "EDC area," "electric distribution system," "Electronic Data Interchange," "entity," "existing solar project," "Green Acres preserved open space," "Green Button," "Housing Choice Voucher Program Section 8," "in-State retail electric sales," "kW," "kWh," "low-income household," "moderate-income household," "MW," "nameplate capacity," "open space," "Payment Assistance for Gas and Electric Program," "preserved farmland," "program year," "societal benefits charge," "solar renewable energy certificate," "Supplemental Nutrition Assistance Program," "unallocated/reallocated capacity," and "Universal Service Administrative Company."

At N.J.A.C. 14:8-9.3, the Board proposes to replace the registration process for projects seeking to participate in the CSEP. Projects shall submit a registration package to the SuSI Program administrator, who will review and conditionally accept them on a first-come, first-served basis, except when a megawatt (MW) block is oversubscribed following an

initial registration period. If the applications submitted during the initial registration period would cause any megawatt block to reach its capacity, the Board proposes that those projects be conditionally accepted in the order of their guaranteed bill credit discount, beginning with the highest. In addition, the Board proposes that projects previously approved for participation in the Pilot Program that seek to register in the CSEP not be subject to, or count toward, market segment capacity limits. The Board proposes this mechanism for project selection instead of the scored competitive application process of the Pilot Program. The change is based on the experience obtained through the Pilot Program, where all projects selected met very stringent LMI participation and siting requirements, and the solicitation and evaluation process resulted in administrative complexity and delays in awarding the projects. The proposed new rule combines stringent requirements for LMI participation and siting with a simpler process for project awards.

At N.J.A.C. 14:8-9.4, the Board proposes to repeal the capacity limits of the Pilot Program. Going forward, the Board will establish capacity limits for CSEP each energy year following the ADI Program process.

At N.J.A.C. 14:8-9.5, the Board proposes to replace eligibility requirements for participation in the Pilot Program with the CSEP. In line with statutory requirements, the Board proposes that projects must have a capacity of five megawatts or less. The Board further proposes that projects may not have commenced commercial operation prior to conditional registration. Based on experience with the Pilot Program, the Board also sets forth siting restrictions on community solar projects, limiting community solar to preferred siting, including, but not limited to, rooftops, carports, and contaminated sites and landfills, which will supersede the project siting requirements of the Pilot Program.

At N.J.A.C. 14:8-9.6, the Board proposes to remove the limit on the number of customers that may subscribe to a community solar project because this would allow larger projects to subscribe more low-income residents, who generally consume less electricity. The Board further proposes to set subscription requirements. In order to provide a mechanism for administratively efficient enrollment of LMI subscribers, the Board also proposes permitting local governments to automatically enroll subscribers in a community solar project and proposes specific requirements for automatic enrollment projects, including procedures for local governments to select subscribers, procedures for subscribers to opt out, information to be contained in the notice sent to selected subscribers, and requirements for EDCs to provide customer information to local governments to facilitate subscriber selection. The automatic enrollment provisions are generally similar to the automatic enrollment rules applicable to local governments in the context of the Government Energy Aggregation program. See N.J.A.C. 14:4-6.

At N.J.A.C. 14:8-9.7, the Board proposes to set the bill credit for affordable master-metered housing at the retail rate, inclusive of supply, delivery, and demand charges, in order to promote the enrollment of more affordable housing buildings. The Board also proposes that subscribers must receive at least a project's guaranteed bill credit discount to ensure they receive a minimum financial benefit on a subscription. The Board proposes that each subscriber may set an annualized period and also proposes conditions for carrying over credits by subscribers and projects. The Board proposes that community solar subscription fees for residential subscribers shall be consolidated on the EDC utility bill, so that subscribers have a streamlined billing process with only their usual utility bill.

At N.J.A.C. 14:8-9.8, the Board proposes adding eligibility criteria for LMI subscribers, so that LMI households can sign up for a community solar subscription without having the additional burden of providing proof of income. The Board further proposes requiring that subscriber organizations notify the Board and affected entities if a project is less than 51 percent subscribed by LMI subscribers and file a corrective plan and proposes establishing criteria to adjust SREC-II or bill credit value in the case of noncompliance, in order to ensure projects are meeting the LMI subscription standards.

At N.J.A.C. 14:8-9.9, the Board proposes responsibilities of the EDCs and permits cost recovery. The Board proposes to remove certain codes and standards of the Pilot Program.

At N.J.A.C. 14:8-9.10, the Board proposes adding certain consumer protection standards, including marketing requirements.

At N.J.A.C. 14:8-9.11, the Board proposes to amend the reporting standards for EDCs, in particular, to require that EDCs provide the Board with updated bill credit calculations.

At N.J.A.C. 14:8-11.2, the Board proposes to revise the definition of "co-location" to specify its applicability to community solar.

At N.J.A.C. 14:8-11.5, the Board proposes to require the registrant to submit documentation demonstrating that a proposed community solar project within the ADI Program meets the minimum facility maturity standards. Based on experience with the Pilot Program, maturity standards are needed to ensure a higher likelihood of a project reaching commercial operation before the registration expiration date. The Board notes that it has also proposed amendments to this section in the Competitive Solar Incentive Program rulemaking proceeding, BPU Docket No. QX22100653 (see 55 N.J.R. 127(a)), and the agency will coordinate the respective adoption language, as appropriate.

At N.J.A.C. 14:8-11.7(b), the Board proposes replacing megawatt blocks for LMI Community Solar and Non-LMI Community Solar with a single block for community solar because all projects will be required to be LMI projects.

Social Impact

The proposed amendments, new rules, and repeals will have a positive social impact on New Jersey by promoting the legislative goals of the Clean Energy Act of 2018, encouraging the continued efficient and orderly development of solar energy generation in the State and providing energy cost savings to participating ratepayers, particular LMI ratepayers for whom energy bills are least affordable. Pursuant to P.L. 2021, c. 169, the CSEP will procure at least 150 megawatts of new clean solar generation for New Jersey consumers per year. The increase in local solar generation is expected to reduce fossil fuel generation, resulting in reduced emission of greenhouse gases, particulate matter, and sulfur and nitrous oxide compounds, all of which have demonstrated negative impacts on human health and biodiversity. These reductions improve health outcomes for New Jersey residents, which in turn, brings real economic benefits to the State.

The CSEP creates an opportunity for access to solar energy to consumers who have previously been excluded. The program allows New Jerseyans who are unable to place solar on their own property because they are renters, have a shaded or unsuitable roof, are unable to afford the upfront capital costs, or for any other reason, to take advantage of, and support local solar development by subscribing to a share of a solar generation project and receiving the associated bill credit. The bill credits generated in the CSEP will provide energy discounts to participating subscribers. The CSEP is designed to specifically provide for inclusion of low- to moderate-income households, with at least 51 percent of capacity reserved for them. The guaranteed savings provided by the CSEP will be particularly significant for these households, who typically spend a disproportionately high portion of their income on their monthly energy bills, while being least able to access rooftop solar due to not owning their residence or due to the upfront investment required. The proposed opt-out model will make it easier for local governments to bring the benefits of the CSEP to more LMI residents, including those who might have been hard to reach to individually enroll, while the proposed consolidated billing requirement will make it easier for CSEP project subscribers to understand the benefits they are receiving from their participation.

Economic Impact

The proposed amendments, new rules, and repeals will provide for the expansion of a small, but growing, market for development of community solar projects. In conformance with the Clean Energy Act, the proposed rulemaking establishes a value of the credit on each subscriber's bill. This value, set at retail rate net metering minus fixed, non-bypassable charges, has been selected based on reasonable and prudent estimates of the cost of community solar project development. Additionally, the CSEP is within the scope of the existing solar Renewable Portfolio Standard (RPS) and SuSI Program. Application of a bill credit is expected to lower electricity bills for subscribers of CSEP projects. The CSEP helps remove barriers to participation in solar energy and allows subscribers to participate in the advantages of solar energy in areas where it may not have been possible to individually.

The proposed program will promote clean electricity generation, free of harmful emissions that lead to negative human and ecological health impacts in New Jersey. The positive health effects and mitigation of climate change impacts resulting from an increase in emissions-free electric generation bring benefits to New Jersey’s economy and public health. The new CSEP is expected to contribute to continued employment of the more than 6,000 New Jersey employees who currently work in solar-related jobs and expand the growth of solar-related employment. The Board anticipates that continued investment in solar electricity generating capacity will leverage private investment and stimulate additional indirect economic benefits through local jobs, supply chain benefits, and services.

The costs associated with the CSEP are in the form of performance-based incentives for developers based on megawatt hours of production. The funds to provide these incentives are collected on a prorated basis, spread among all New Jersey electricity ratepayers, as mandated by the Clean Energy Act.

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. This rulemaking has no Federal analogue and is not promulgated pursuant to the authority of, or in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to 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 proposed amendments, new rules, and repeals.

Jobs Impact

This rulemaking is designed to promote the continued vigorous development of the solar energy market in New Jersey by establishing a program that makes available capacity to install solar projects that enable access to solar energy for customers unable to benefit from traditional solar. The proposed amendments, new rules, and repeals are designed to operate within the existing solar incentive program, and, thus, contribute to the associated impacts on jobs in the development, construction, and operation of solar facilities, and in the sales and management of community solar subscriptions. This rulemaking is intended to promote job creation and retention in the State. Moreover, all systems over one MW in size, including those in the CSEP, will continue to be subject to New Jersey’s prevailing wage statutes.

Agriculture Industry Impact

The proposed amendments, new rules, and repeals establish standards for siting of community solar facilities that do not permit the siting of community solar projects on farmland. Specifically, pursuant to proposed N.J.A.C. 14:8-9.5(d), community solar facilities may only be sited on rooftops, carports, or canopies over an impervious surface, landfills and contaminated sites (which expressly exclude farmland), and bodies of water with little flora or fauna. As such, the proposed rulemaking is not anticipated to have an impact on the agriculture industry.

Regulatory Flexibility Statement

This rulemaking will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. Regarding businesses that qualify as small businesses pursuant to the Regulatory Flexibility Act, the SuSI Program, including the proposed CSEP, is a voluntary program and, as such, will not impose any requirements on any small business that chooses not to voluntarily participate in the program.

Housing Affordability Impact Analysis

This rulemaking will not impact the affordability of housing in New Jersey, nor will it have an impact on the average cost of housing. This rulemaking only addresses a solar energy program and will not directly affect housing prices or the housing market.

Smart Growth Development Impact Analysis

This rulemaking will not impact smart growth development in New Jersey. This rulemaking will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The scope of this rulemaking is limited to establishing a solar energy program in New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board evaluated this rulemaking and determined that it will not have an impact on pretrial, detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14:8-9.3, 9.4, and 9.5.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 9. COMMUNITY SOLAR ENERGY [PILOT] PROGRAM [RULES]

14:8-9.1 Purpose and scope

This subchapter sets forth the rules for the establishment of a Community Solar Energy [Pilot] Program, in accordance with N.J.S.A. 48:3-87.11.

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.

“Advertising” [shall have] **has** the same meaning as set forth [in] at N.J.A.C. 14:4-1.2.

“Affordable housing[.]” [shall have the same meaning as] **means housing that meets the definition of “affordable,”** as set forth [in] at N.J.A.C. 5:80-26.2.

“Affordable housing provider” [refers to] **means** any person or entity that owns, operates, or manages affordable housing units. [Affordable housing providers may qualify as LMI participants in an LMI community solar pilot project, under the condition that they demonstrate in their application to the Board that they are passing along specific, identifiable, and quantifiable long-term benefits to their tenants/residents (see N.J.A.C. 14:8-9.8(a)).]

“Annual net energy” means the total amount of net energy produced by the community solar facility on an annual basis, measured at the [EDCs’] **EDC’s** meter.

...

“**Associated disturbed areas**” **means areas that may not have been contaminated, but after considering tax and property records, as well as historical land use, are, or were, the site of an accessory use to contaminated areas or landfills. Examples include access roads, lay-down areas, and former building sites that were previously part of an industrial or landfill complex.**

“Avoided cost of wholesale power[.]” [shall have] **has** the same meaning as set forth [in] at N.J.A.C. 14:8-4.2.

[“Basic generation service” or “BGS” shall have the same meaning as set forth in N.J.A.C. 14:4-1.2.]

...

“Board” or “BPU” [shall have] **has** the same meaning as set forth [in] at N.J.A.C. 14:3-1.1.

“Capacity” [shall] **or “nameplate capacity”** means the [nameplate capacity, measured as the] sum of the [nameplate capacities] **maximum rated output** in DC rating of all individual photovoltaic panels physically interconnected to make up a [community] solar facility.

[“Clean Energy Act” shall mean P.L. 2018, c.17, signed into law on May 23, 2018.

“Co-location” is defined as having two or more independent community solar facilities providing subscriptions to two separate and distinct subscriber groups that are sited on the same parcel or contiguous parcels.]

...
 “Community Solar Energy Pilot Program” or “Pilot Program” [refers to] **means the community solar program [being established in this subchapter] conducted in two program years prior to its conversion to the Community Solar Energy Program.**

“Community Solar Energy Program” [refers to] **or “CSEP” or “Program” means the [full-scale] community solar program [for which the Board shall adopt rules no later than January 1, 2022] established by this subchapter.**

“Community solar facility” refers to the physical equipment, including, but not limited to, panels, inverters, racking, and balance of systems, which constitutes a solar facility used for community solar, with a [nameplate] capacity in DC rating not to exceed five MW.

“Community solar operator” **or “operator”** means the entity in charge of the day-to-day oversight, safety, and control of the community solar project. The community solar operator may or may not have an ownership stake in the community solar project.

...
 “Community solar [pilot] project[.]” [“community solar project,]” or “project” refers to a community solar project approved by the Board, **or registered** for participation in the [Pilot] Program, including, but not limited to, the community solar facility, project participants, and subscribers.

...
 “Community solar subscription” or “subscription” refers to an agreement to participate in a community solar project, by which the subscriber receives a bill credit for a 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.

“**Consolidated billing” means the practice of incorporating the community solar subscription fee directly on a subscriber’s utility bill.**

“**Contaminated site or landfill” has the same meaning as provided at N.J.S.A. 48:3-51.**

[“Days” means calendar days, unless otherwise specified.

“DEP” means the New Jersey Department of Environmental Protection.

“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.]

“Electric distribution company” or “EDC” [shall have] **has** the same meaning as an “electric public utility” provided [in] at N.J.S.A. 48:3-51.

[“Electric distribution system,” shall have the same meaning as set forth in N.J.A.C. 14:5-1.2.

“Electronic Data Interchange” or “EDI” refers to the direct computer-to-computer exchange and processing of standard business forms from one business application to another, as defined and administered by the Board’s Division of Energy.

“Entity” is defined as a natural person or persons or a legal person or persons.

“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 February 19, 2019.]

“Farmland[.]” [shall have] **has** the same meaning as set forth [in] at N.J.A.C. 14:8-1.2.

“Government entity[.]” [shall have] **has** the same meaning as set forth [in] at N.J.S.A. 48:3-51.

[“Green Acres preserved open space” means land classified as either “funded parkland” or “unfunded parkland” under N.J.A.C. 7:36, or land purchased by the State with “Green Acres funding” (as defined at N.J.A.C. 7:36).

“Green Button” is the energy industry-led effort initiated by the U.S. Department of Energy to provide utility customers with easy and secure access to their energy usage information in a standardized, consumer-friendly, and computer-friendly format.]

“**Guaranteed bill credit discount” means the minimum savings that a project’s subscribers shall receive on their electricity bill, expressed as a percentage of the bill credits applied with respect to a subscriber’s subscription size.**

“Historic annual usage” means the average amount of electricity supplied by an [electric power supplier or basic generation service provider] **EDC** to the customer over the most recent 12-month period.

[“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.]

...
 [“In-State retail electric sales” means the electricity sold by third party suppliers or BGS providers directly to end-use consumers within EDC service territories in the State of New Jersey.]

...
 [“kW” means kilowatts, a unit of power representing 1,000 watts. A kW equals 1/1000 of a MW.

“kWh” means kilowatt-hours, a unit of energy representing 1,000 watt-hours. A kWh equals 1/1000 of a MWh.]

“**Local government entity” or “local government” for purposes of the Program means a New Jersey municipal government, including a borough, town, township, city, or village, or a New Jersey county government.**

“**Low- to moderate-income household” or “LMI household” means a household with a total gross annual household income less than 80 percent of the area median income, as determined by annual income limits set by the United States Department of Housing and Urban Development.**

“Low- [and Moderate-Income] to 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.

[“Low-income household” means a household with adjusted gross income at or below 200 percent of the Federal poverty level.

“Moderate-income household” means a household with a total gross annual household income in excess of 200 percent of the Federal Poverty Level, but less than 80 percent of the median income, as determined by annual HUD income limits.]

“Multi-family buildings” [or “multiple dwellings”] are defined as having three or more independent resident housing units, [as per] **pursuant to** N.J.S.A. 55:13A-3(k) and the 2015 New Jersey International Building Code definition for Residential Group R-2.

“**Municipal community solar automatic enrollment project” or “automatic enrollment project” means a community solar project owned and operated by a local government entity or a project for which a local government entity serves as its subscriber organization, in which subscribers are automatically enrolled in the community solar project, provided that the customer may elect to opt out of enrollment at any time.**

[“MW” means megawatts, a unit of power representing 1,000,000 watts. A MW equals 1,000 kW.

“Nameplate capacity” means the maximum rated output of an electric power generator under specific conditions designated by the manufacturer and usually indicated on a nameplate physically attached to the power production equipment.

“Open space” refers to land designated as “open” or a synonymous term in a municipal or county master plan or easement.

“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.

“Preserved farmland” means land from which a permanent development easement was conveyed and a deed of easement was recorded with the county clerk’s office pursuant to N.J.S.A. 4:1C-11 et seq., land subject to a farmland preservation program agreement recorded with the county clerk’s office pursuant to N.J.S.A. 4:1C-24, land from which development potential has been transferred pursuant to N.J.S.A. 40:55D-113 et seq. or 40:55D-137 et seq., or land conveyed or dedicated by agricultural restriction pursuant to N.J.S.A. 40:55D-39.1.

“Program year” or “PY” means the period from the official launch of the Community Solar Energy Pilot Program, 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 PY3, respectively.]

“NJDEP” means the New Jersey Department of Environmental Protection.

“Residential customer” [shall have] has the same meaning as set forth [in] at N.J.A.C. 14:3-1.1.

[“Societal benefits charge” shall have the same meaning as set forth in N.J.S.A. 48:3-51.]

“Solar panel” or “PV panel” [shall have] has the same meaning as set forth [in] at P.L. 2018, c. 17.

[“Solar renewable energy certificate” or “SREC” shall have the same meaning as set forth in N.J.S.A. 48:3-51.

“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.]

... [“Unallocated/reallocated capacity” is defined as program capacity that is either not allocated to a community solar project approved within a given program year, or which was allocated to a community solar project approved within a given program year that has been deemed by the Board or Board staff, in its sole reasonable discretion, as no longer able to be completed.

“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 Community Solar Energy Program (CSEP) registration process

(a) All forms and instructions regarding the CSEP registration process shall be found on the Board’s New Jersey Clean Energy Program website at www.njcleanenergy.com. Facilities seeking eligibility for the CSEP shall submit a complete registration package to the Board, or its designee, to the Successor Solar Incentive Program in accordance with Board rules at N.J.A.C. 14:8-11.5, except as specified in this subsection and Board Orders.

(b) Registration packages submitted to the community solar segment of the ADI Program shall be reviewed by the SuSI Program registration manager on a first-come, first-served basis, except as described at (c) below.

(c) For each Program solicitation, Board staff shall initiate an application process as follows:

1. The Board shall open an initial registration period for the Program at the start of each energy year or when appropriate by Board Order. The duration of the initial registration period shall be specified in the Board Order.

2. Following the end of the initial registration period, Board staff shall review the submissions for each community solar megawatt block set by Board Order pursuant to N.J.A.C. 14:8-11.7(b) and determine if the total number of applications for each megawatt block exceeds the capacity limit for the block.

3. If a megawatt block has not received enough complete registrations to meet its capacity limit, all complete and eligible registrants shall be conditionally accepted into the Program and the megawatt block shall remain open to registrations until the segment is fully subscribed. A megawatt block will be defined as being fully subscribed, when the last registration received in the registration portal causes the total capacity of all registrations in that segment to exceed the capacity allocation for said segment.

4. If the complete registrations for a megawatt block exceed the capacity limit for that megawatt block, projects will be reviewed and accepted in the order of their stated guaranteed bill credit discount, beginning with the registrant with the greatest guaranteed bill credit

discount, until the allocated segment capacity for that year is fully subscribed.

5. The Board may modify the procedure for project application by Board Order.

(d) Projects previously approved for participation in the Community Solar Energy Pilot Program that did not reach commercial operation by their Pilot Program deadline are permitted to register in the CSEP and ADI Program irrespective of megawatt block capacity limits, provided that all CSEP and ADI Program requirements are met. Such projects’ capacities will not count toward the megawatt block capacity limits.

(e) Project applicants provided conditional registration in the CSEP shall post escrow with the Board in an amount set by Board Order, which amount shall be stated as a dollars per kilowatt rate and shall be uniform for all projects. The escrow amount shall be reimbursed to the applicant in full upon commencement of commercial operation of the community solar facility. The escrow amount shall be forfeited to the State if the facility does not commence commercial operation by the expiration of the notice of conditional registration. This escrow requirement shall not apply to projects owned by public entities or registered 501(c)(3) non-profit organizations, subject to Board staff’s determination that the non-profit organization is a community-based organization that is run by members of the community and whose benefits accrue to the community.

14:8-9.4 (Reserved)

14:8-9.5 Community Solar Energy Program (CSEP) eligibility

(a) The CSEP is open to community solar projects with a capacity of five MW or less, measured as the sum of the nameplate capacity in DC rating of all PV panels comprising the community solar facility.

(b) The CSEP is open only to new facilities that have not commenced commercial operation prior to conditional registration, unless the Board grants a waiver in response to a petition. A planned facility that has been conditionally awarded an incentive in the Successor Solar Incentive Program or Transition Incentive Program may not qualify until its initial conditional registration expiration date has passed.

(c) Community solar facilities that meet the requirements of this section are eligible to register pursuant to the ADI Program at N.J.A.C. 14:8-11.4. Community solar projects may receive SREC-IIs or Class I RECs, as applicable.

(d) Unless modified by Board Order or by a waiver granted by the Board, a community solar project may be located on:

1. A rooftop;
2. A carport or canopy over impervious surfaces;
3. A contaminated site or landfill, where associated disturbed areas constitute a maximum of 10 percent of the total area dedicated to solar development, and that excludes farmland; or
4. A body of water that has little to no established floral and faunal resources, such as a water treatment reservoir or dredge pond.

(e) Regarding projects located on a contaminated site or landfill:

1. Facilities shall comply with the requirements for soil erosion and sediment control, in accordance with the New Jersey Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) and the implementing rules at N.J.A.C. 2:90;

2. Facilities shall, as part of the development of a comprehensive siting plan, assess existing drainage conditions, and identify any areas where surface runoff currently exists or where proposed grades will create surface runoff concentration. All such areas shall be designed to prevent onsite erosion, as well as protect offsite areas from erosion and flooding;

3. Facilities shall comply with the NJDEP’s Stormwater Management Rules at N.J.A.C. 7:8;

4. Facility panel drip lines shall be protected against scour; and

5. Facilities shall complete a post-construction NJDEP compliance form.

(f) Community solar projects shall be considered connected to the distribution system.

(g) Community solar facilities are not considered co-located if they are located on rooftops of separate buildings on different properties with different beneficial owners.

(h) EDCs are not allowed to develop, own, or operate community solar projects beyond the billing and other responsibilities set forth in this subchapter.

14:8-9.6 Subscription requirements

(a) All subscription requirements pertaining to the CSEP and Pilot Program shall apply to both the original subscription and to all subsequent subscriptions enacted throughout the lifetime of a project, unless expressly determined otherwise by rule or Board Order.

(b) (No change.)

(c) [The] **There is no** maximum number of participating subscribers for each community solar project [shall be set at 250 subscribers per one MW installed capacity (prorated to project capacity)].

(d) [Multi-family] **Community solar projects sited on the property of 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.

(e) All rate classes, **except lighting customers**, are eligible for participation in a community solar project. [In PY2 and PY3, the Board may set a minimum percentage requirement for residential subscribers.]

(f) The following [subscription] requirements **regarding subscribers** shall apply:

1. Community solar [pilot] project subscriptions shall not exceed 100 percent of the subscriber's historic annual usage, **excluding net-metered generation**, calculated over the past 12 months, available at the time of the application. In cases where a 12-month history is not available, the community solar subscriber organization shall estimate, in a commercially reasonable manner, a subscriber's load based on available history **or projections**.

2. (No change.)

3. Subscriptions are portable, provided that the subscriber remains within the original EDC service territory [and the same geographic limitations (if any) as the community solar pilot project to which they are subscribed]. Appropriate notice of the change in residence and/or location must be provided to the EDC[,] **and subscriber organization** no later than 30 days after the effective date of the change in residence and/or location. [In cases of relocation, subscribers are entitled to one revision per move to their subscription size to account for a change in average consumption.]

4. Subscriptions may be [sold or transferred back to the project owner or community solar subscriber organization] **canceled** 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.)

6. When an EDC account associated with a community solar project is terminated or suspended for any reason, the EDC must notify the subscriber organization of the change within 10 days of the suspension or termination.

(g) In cases of master-metered buildings, the account holder of the master meter shall be allowed to subscribe to community solar subscriptions on behalf of [his or her] **its** tenants. The account holder of the master meter will be required to provide to the **project's** 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.

(h) **A community solar project shall not subscribe to more than 100 percent of the output of the community solar facility at the project's capacity.**

(i) **A subscriber organization may contract with customers placed on a waitlist for a community solar project, to be subscribed upon availability of capacity. The subscriber organization shall notify the**

customer and confirm a customer's eligibility upon activation of a waitlisted subscription.

(j) All community solar projects must have a minimum of 51 percent of project capacity subscribed by LMI subscribers throughout the qualified life of the project. Projects are subject to the provisions at N.J.A.C. 14:8-9.8(e) and (g) if this minimum is not met.

(k) Community solar projects may have subscribers anywhere in the EDC service territory to which they are interconnected, unless they indicated otherwise in their application to participate in the Pilot Program. Projects that elected in their Pilot Program application to place a geographic restriction on the subscribers to the project must maintain that restriction for the lifetime of the project. The Board may waive this geographic restriction during the project's operational period in response to a petition for good cause shown.

(l) Beginning April 1, 2025, a local government may submit a registration for a municipal community solar automatic enrollment project that requests an exemption from the provisions at N.J.A.C. 14:8-13.9(b)1i, which mandate subscriber enrollment through affirmative consent of the subscriber. Unless explicitly stated otherwise, an automatic enrollment project shall be subject to all other rules of the CSEP, as well as to the following provisions:

1. Any registration for an automatic enrollment project must include a municipal ordinance or resolution authorizing the project and application, stating that the local government intends to manage the project as a municipal community solar automatic enrollment project and the mechanism by which it intends to enroll customers. A copy of the ordinance or resolution shall be presented to the SuSI Program registration manager as part of the registration;

2. A local government that developed a project in the CSEP or Pilot Program and wishes to convert it to a municipal community solar automatic enrollment project may provide a resolution or ordinance stating its intention to convert the project as a municipal community solar automatic enrollment project and the mechanism by which it intends to enroll new customers by no later than December 31, 2025;

3. The automatic enrollment project shall be owned and operated by the local government or served by the local government as its subscriber organization for the duration of the project life. Ownership and operation shall nonetheless permit a period of temporary third-party tax credit investor ownership or ownership of the solar panels and related equipment by a third-party in order to improve the financial ability of the automatic enrollment project, subject to contractual provisions that maintain the local government entity's ultimate control of subscriptions for the automatic enrollment project;

4. The automatic enrollment project shall be located within 15 miles of the boundaries of the associated local government;

5. The local government may utilize a public procurement to contract for the third-party design, financing, ownership, construction, operation, and/or maintenance of the automatic enrollment project, as well as for the enrollment and management of project subscribers. Any such contractor, consultant, or other government designee shall execute a confidentiality agreement with the local government entity and provide guarantees of compliance with this subchapter, including the rules relating to consumer privacy and protection at N.J.A.C 14:8-13.9. Any public procurement shall comply with all applicable laws;

6. An automatic enrollment project may not subscribe customers unless the project is billed through consolidated billing and provides a guaranteed bill credit discount to the customers;

7. The local government shall be responsible for identifying the customers that will be automatically enrolled for participation in the automatic enrollment project, subject to the following criteria:

i. The local government may subscribe residential customers and affordable housing providers. At least 80 percent of capacity shall be subscribed by LMI subscribers. Subscribers may not also be net-metering customer-generators;

ii. All customers selected to be automatically enrolled as subscribers to the automatic enrollment project shall be within the geographic boundaries of the local government that owns the

community solar project or serves as the subscriber organization of the project;

iii. Subscribers shall be allowed to decline or opt out from their participation in the automatic enrollment project at any time. If a participating customer opts out of an automatic enrollment project, the solar credit shall be eliminated on a prospective basis in new billing months with no retroactive adjustments, except for billing errors;

iv. Opt-out requests may be submitted by phone, in writing, or online through a designated website designed and maintained by the local government, or its designee. The records of opt-out requests shall be accessible for viewing on an ongoing basis by Board staff; and

v. All customer personal information provided to a subscriber organization shall be deemed confidential and is exempt from the public disclosure requirements of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Such information shall not be used, sold, or disseminated by any person for any purpose other than the facilitation of the automatic enrollment project;

8. Subscribers shall not be charged a fee for their enrollment in the automatic enrollment project or any exit fees or penalties for opting out from the automatic enrollment project. Any other fees or modification thereof must be approved by the Board through a petition submitted no less than 120 days prior to their proposed effective date;

9. The local government, or its designee, if applicable, selected through the public procurement process set forth in this subchapter, shall provide written notice delivered by the United States Postal Service to all selected subscribers of their enrollment in the community solar project no less than 90 days before the subscribers receive their first bill credits for participating in the automatic enrollment project. Another written notice shall be sent by the local government, or its designee, as a reminder of their enrollment no later than 30 days before the subscribers receive their first bill credits for participating in the automatic enrollment project. A draft of the notice and envelope, as well as any subsequent revisions, shall be submitted to the Board and the New Jersey Division of Rate Counsel for comments, revisions, and approval at least 60 days prior to their intended use. The notice shall be sent to prospective subscribers in both English and Spanish and be made available in other languages upon request. The notice shall include the following:

i. A statement that the local government is establishing an automatic enrollment project. The statement shall include a clear definition of community solar, a basic description of the Program and premise that there are potentially other projects and competing subscription opportunities, the date on which the automatic enrollment project was approved by municipal resolution or ordinance, and the date on which the automatic enrollment project was registered with the Board;

ii. A statement that the prospective subscriber has the right to opt out of the automatic enrollment project at any time, but that if no opt out is received, the prospective subscriber will be enrolled in the automatic enrollment project;

iii. A specific written statement of the consolidated billing procedures of the automatic enrollment project;

iv. A statement that subscribers may opt out from their participation in the automatic enrollment project at any time and detailed instructions on how to submit an opt-out request;

v. The estimated start date of their enrollment in the automatic enrollment project; and

vi. A contact name, phone number, and email address for subscriber inquiries and complaints managed by the local government, or their designee;

10. The local government shall provide a contact name, phone number, email address, and website portal for subscribers to submit inquiries or complaints. This information shall figure prominently on the local government website, as well as the website of any contracted subscriber organization;

11. An automatic enrollment project may suspend or cancel a subscription in the event of suspension or cancellation of an EDC account;

12. In the event that an automatic enrollment project is found to be in material violation of any applicable rule, the Board may immediately and permanently cancel the automatic enrollment project's exemption at N.J.A.C. 14:8-9.10(b)1, after notice and failure to remedy the violation. In the event of such cancellation, the automatic enrollment project may be prohibited from employing opt-out subscriber enrollment for the remainder of the automatic enrollment project's life. All subscribers wishing to continue their enrollment in the automatic enrollment project shall be required to affirmatively consent to their re-enrollment pursuant to N.J.A.C. 14:8-9.10(b)1; and

13. The EDCs shall take necessary steps to facilitate local government access to the historic billing usage of customers, point of delivery, identification number, if applicable, and other information required by the local government to subscribe customers in an automatic enrollment project, upon satisfactory evidence that the automatic enrollment project is duly authorized by a local government ordinance or resolution, as appropriate, and by the Board. The EDCs shall provide this information for all residential customers in the municipality, upon the request of the local government, to facilitate the customer identification and enrollment process by the local government. This local government access shall be for the purposes of identifying and enrolling customers and determining subscribers' historic annual usage, in order to appropriately size subscribers' community solar subscriptions in compliance with (f)1 above. The local government shall indemnify the EDC for any breach of customer information. The EDCs shall facilitate the customer billing process.

14:8-9.7 Community solar [bill credits] billing

(a) The value of the bill credit shall be set at the current pre-Sales and Use Tax retail rate[,], inclusive of supply and delivery charges[,], except that for affordable multi-family housing that measures electricity usage with a master meter and is billed on a commercial rate class, the value of the bill credit shall be set at the current pre-Sales and Use Tax retail rate inclusive of supply, delivery, and demand charges. For purposes of the calculation of the bill credit, demand charges shall represent the demand charges paid by all multi-family housing units billed on a commercial rate schedule served by an EDC over the previous energy year divided by the kilowatt-hours used by such units over the previous energy year.

(b) Subscribers shall receive at least the project's guaranteed bill credit discount, as identified in the project's registration, respective to the capacity to which they are subscribed. The Board shall set, by Board Order, a minimum guaranteed bill credit discount applicable to all projects, and projects may establish a higher discount in their registration.

[(b)] (c) (No change in text.)

[(c)] The credit may not be applied to non-by-passable charges.]

(d) The calculation of the bill credit shall not include non-bypassable charges. Non-bypassable charges are the Societal Benefits Charge, established at N.J.S.A. 48:3-60; the Market Transition Charge, established at N.J.S.A. 48:3-61; the Transition Bond Charge, established at N.J.S.A. 48:3-62; the Zero Emissions Certificate, established at N.J.S.A. 48:3-87.5; and any other applicable charges as defined by the Board.

[(d)] (e) An annualized period shall be established for each subscriber.

1. The default annualized period shall begin on the day a subscriber first earns a community solar bill credit based on the delivery of energy.

2. The annualized period shall continue for a period of 12 months, until the subscription ends, [or until] the subscriber's EDC account is closed, or a different annualized period is selected and accepted, whichever occurs earlier.

3. The EDC shall offer each subscriber an opportunity to select a different date as the start of the subscriber's annualized period. A subscriber may submit their annualized period selection to the EDC at any time. However, an EDC is not required to accept a subscriber's selection of an annualized period that begins before the first full day of the first monthly billing period after the submittal of the selection.

4. Alternatively, a project's subscriber organization may set an annualized period for subscribers that is likely to minimize subscribers' excess net bill credits. In the case of an automatic enrollment project, the project's subscriber organization shall determine and set an annualized period for all subscribers that is likely to minimize subscribers' excess net bill credits.

5. If any subscriber has been participating for one monthly billing period, or more, before it submits its annualized period selection, the following shall apply:

i. If the subscriber has been participating for more than 12 monthly billing periods, the time between the selection submittal and the end of the subscriber's most recently ended annualized period shall be treated as one annualized period; and

ii. If the subscriber has been participating for fewer than 12 monthly billing periods, the time between the first day of the first full monthly billing period after the subscriber's subscription began and the selection submittal shall be treated as one annualized period.

[(e)] (f) (No change in text.)

[(f)] (g) 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] as defined at N.J.A.C. 14:8-4.2. The excess compensation must be returned to the subscriber by bill credit, wire transfer, or check.

[(g)] (h) If a subscriber receives net excess credits for each of the [three] two previous consecutive years, the subscriber organization must resize the subscriber's subscription size to ensure it does not exceed 100 percent of historic annual usage, calculated over the past 12 months, available at the time of the reassessment.

[(h)] (i) 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 an [annualized period of up to 12 months] **initial 12-month period after commercial operation**. The banked credits may be distributed by the project operator to any new or existing subscriber during that 12-month period **or the subsequent 12-month period**, in conformance with subscription requirements set forth [in] at N.J.A.C. 14:8-9.6. At the end of the [up to 12-month] **24-month period and thereafter**, any [remaining] **unallocated** 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] as defined at N.J.A.C. 14:8-4.2.

Recodify existing (i)-(j) as (j)-(k) (No change in text.)

[(k)] (l) EDCs must make appropriate data available through the U.S. Department of Energy's Green Button Connect My Data [(Green Button)], subject to appropriate privacy protections[. If], **or an alternative method directed by Board Order** 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)] (m) (No change in text.)

[(m)] (n) Subscriber organizations shall send[,] to the relevant EDC [via] **through** the method determined [in (l)] **at (m)** above[,] a list of subscribers to the project with all appropriate subscriber information[,] no later than 60 days prior to the first monthly billing period for the community solar project. Additionally, subscriber organizations shall send an updated list to the EDC once per month, following the method determined [in (l)] **at (m)** above.

[(n)] (o) The billing process shall be administered by the EDCs, who shall apply the community solar bill credit to subscribers' utility bills in proportion to each subscriber's share of the community solar project as indicated on the most recent list received from the subscriber organization. [Each EDC may decide whether to apply the bill credit as a dollar credit and/or a kWh credit on subscribers' utility bills, so long as the following conditions are met:]

1.-2. (No change.)

(p) The EDCs shall inform the subscriber organization of the bill credit applied to each subscriber's bill, measured in both kWh and dollar amounts.

(q) By no later than January 1, 2025, each EDC shall develop and implement a method for the consolidated billing of a subscriber's utility bill that includes both the applied bill credit and a subscription fee to be paid to the community solar project owner. The consolidated billing shall incorporate a net crediting model, and the following provisions shall apply:

1. All projects shall bill residential customers through utility consolidated billing; non-residential customers may be billed through utility consolidated billing or separate billing.

2. The subscriber organization shall include in its data transmission to the EDC the savings rate for each subscriber. All subscribers shall be billed using consolidated billing.

3. Subscribers to the same community solar project may have different bill credit discounts.

4. The savings rate shall be applied to each subscriber's bill in accordance with the bill credit applied against the initial billed amount. The subscription fee shall be the applied bill credit minus the amount discounted by the savings rate.

5. The bill must clearly indicate the value of the bill credit discount and label it as being part of the community solar subscription.

6. The EDC shall remit to the project owners the subscription fee, less a utility administrative fee.

7. An EDC may charge subscriber organizations a utility administrative fee of no more than one percent of the subscription fee to cover the EDC's costs of implementing and administering consolidated billing.

8. Prior to implementation of consolidated billing, each EDC shall file with the Board a manual containing rules for a subscriber organization to implement consolidated billing and what processes a subscriber organization must follow to facilitate consolidated billing of their projects.

9. All projects in the Pilot Program shall bill residential customers through utility consolidated billing within 12 months of the effective date of consolidated billing.

[(o)] (r) The EDCs may [sync up] **synchronize** the monthly billing period of subscribers and projects, by modifying, with due notice given, the monthly billing period for subscribers upon their first month of participation in the community solar project.

[(p)] (s) (No change in text.)

[(q)] Community solar projects shall be 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.

(r) The project owner retains full ownership and rights to any renewable energy credits associated with the community solar project's renewable energy generation, unless otherwise determined by contract.

(s) The Board may decide to create one or more additional incentive(s) paid and/or credited to community solar developers for specific types of community solar projects, including, but not limited to, community solar projects located in environmental justice communities and/or LMI projects.

(t) Nothing in this section prohibits the inclusion of storage in a community solar project, in accordance with all applicable Federal, State, and local laws, rules, and regulations, and in furtherance of the goals set forth in the Clean Energy Act.]

14:8-9.8 Low- [and] to moderate-income provisions

(a) [A] **For the purposes of this subchapter**, a low- [and] to moderate-income subscriber [for the purposes of this subchapter is as follows] **may be either:**

1. A [low-income household or a] **low- to moderate-income household[.] qualified pursuant to (d) below; or**

2. [Affordable] **A qualified affordable housing provider[s may also]. In order to qualify as an LMI subscriber for the purposes of a community solar project[. In order to do so, they must:], an affordable housing provider shall sign and submit to the Board an affidavit indicating**

that the financial benefits of the community solar subscription will be passed on to their residents/tenants as specific, substantial, identifiable, and quantifiable long-term benefits with a description of such benefits.

[i. Demonstrate in their application to the Board and sign an affidavit that they are passing along specific, substantial, identifiable, and quantifiable long-term benefits to their residents/tenants; and

ii. Sign and submit to the Board, an affidavit indicating that they will pass along said specific, substantial, identifiable, and quantifiable long-term benefits to their residents/tenants.]

(b) [An LMI community solar pilot project is defined as a community solar pilot project] **Unless granted a waiver by the Board, a project in the Community Solar Energy Program must be an LMI community solar project**, in which a minimum 51 percent of project capacity is subscribed by LMI subscribers.

(c) (No change.)

(d) The following LMI [eligibility] **qualification** criteria shall be applied:

1. [If the community solar pilot project is sited on government-owned property, and is serving LMI subscribers living on that property,] **For subscribers that reside in a government-owned property**, the government site owner may provide [a sworn statement] **an affidavit** that those community solar [pilot] project subscribers are considered LMI for the purposes of the [Pilot] Program.

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, **Medicaid, Supplemental Security Income, Social Security Disability Insurance, Special Supplemental Nutrition Program for Women, Infants, and Children, Temporary Assistance for Needy Families, the Low Income Household Water Assistance Program**, 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 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. **Self-attestation by the customer that their household income is less than 80 percent of the area median income, as determined by data from the U.S. Department of Housing and Urban Development, provided on a standard form to be approved by the Board and signed by the customer; or**

[iii.] iv. (No change in text.)

3. Qualification of a household as low-income or moderate-income is required [only once per subscription,] at the time of execution of the subscription agreement or contract, **when a subscriber moves to a new utility account, and on every fifth anniversary of the subscription. A subscriber may not be removed from a community solar project for failure to requalify as low- or moderate-income.**

4. (No change.)

(e) **If a project is less than 51 percent subscribed by LMI customers, the subscriber organization shall, within 30 days, file a plan detailing steps to meet the 51 percent LMI subscription standard with the Board, with notice to the community solar owner and the community solar operator.**

(f) **Board staff, or its agents, may request information regarding subscriptions and subscriber status to ensure compliance with this section.**

(g) **The Board may adjust the SREC-II value for a project that fails to comply with this section. In determining a new SREC-II value, the Board may examine the degree of noncompliance, the community**

solar owner's diligence in remedying the noncompliance after notice, and any other factors the Board may deem relevant.

14:8-9.9 [Codes and standards] **EDC responsibilities and cost recovery**

(a) Community solar [pilot] projects shall comply with all current and future applicable interconnection requirements applicable to each EDC, as set forth [in] at N.J.A.C. 14:8-5, and [shall be processed by the] EDCs **shall process interconnection requests** following normal [interconnection] procedures.

(b) (No change.)

(c) Community solar projects shall be considered as connected to the distribution system.

(d) Each community solar project shall telemeter its production data to the EDC in accordance with EDC EDI procedures.

(e) The EDCs shall be responsible for measuring the metered production of energy by community solar pilot projects, and for verifying that the community solar pilot projects are producing an amount of energy that is greater than or equal to the amount of energy that is being credited to subscribers' bills.

(f) The EDCs shall make available and update, in a commercially reasonable fashion, capacity hosting maps, within 90 days of the beginning of PY1.

(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) Community solar developers and owners are responsible for complying with all applicable Federal and State securities laws, rules, and regulations.]

(c) Electric distribution companies shall, subject to review and approval by the Board, be entitled to full cost recovery for any incremental costs incurred in implementation, compliance, and administration of the Program, in accordance with N.J.S.A. 48:3-87.11.e. EDCs may not set a separate fee or surcharge for community solar projects, other than the consolidated billing administrative fee permitted at N.J.A.C. 14:8-13.6(p), unless explicitly authorized to do so by the Board.

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, **including, but not limited to, N.J.A.C. 13:45A-9 and 13:45D and N.J.S.A. 56:8-2 and 48:3-85.** 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. [A] **Unless affirmatively allowed pursuant to N.J.A.C. 14:8-9.6(l), a community solar subscriber may not be subscribed without their affirmative written consent, either [via] through wet or electronic signature.**

ii.-iv. (No change.)

2. As to marketing, advertising, and solicitations, as follows:

i. (No change.)

ii. **Subscriber organizations shall provide information about the community solar projects that they are marketing in a prominent location on their websites, including projects' name, capacity, address, areas served, and projected or actual commercial operation date.**

Recodify existing ii.-iii. as iii.-iv. (No change in text.)

[iv.] v. Subscriber organizations shall comply with all [FTC] **Federal Trade Commission** telemarketing rules, including, but not limited to, the restriction on telemarketing between the hours of 9:00 P.M. and 8:00 A.M., Eastern Standard Time.

[v.] vi. Subscriber organizations must include in all advertisements, marketing, or sales materials, a toll-free or local telephone number and a link to a website through which customers can obtain further information regarding [their] **the subscriber organizations' product and/or services.**

Recodify existing vi.-vii. as vii.-viii. (No change in text.)

3. As to contracts, as follows:

- i. (No change.)
- ii. Prices, whether in a quote or a contract, must include disclaimers that:

(1) (No change.)

(2) The Board does not regulate the price of community solar subscriptions, nor does it guarantee projected savings **beyond the project's guaranteed minimum bill discount, or the savings indicated in the project's application form.**

iii.-vii. (No change.)

4. As to disclosure statements, as follows:

i. [Board staff will design and approve a specific disclosure statement that subscriber] **Subscriber** organizations must present a **disclosure statement designed by Board staff** to each community solar subscriber at the same time as their subscription contract. Each subscriber must sign an acknowledgement that they have received and read the disclosure statement.

ii.-iii. (No change.)

5. (No change.)

6. As to inquiry and remediation, as follows:

i.-ii. (No change.)

[iii. Community solar developers, operators, owners, and subscriber organizations are subject to formal pleadings and petitions procedures, as set out in N.J.A.C. 14:1-4 and 5.]

7. (No change.)

14:8-9.11 Reporting

(a)-(d) (No change.)

(e) The EDCs shall submit to the Board updated calculations of the bill credit within 30 days of new electricity rates which affect the value of the bill credit taking effect.

SUBCHAPTER 11. SUCCESSOR SOLAR INCENTIVE PROGRAM

14:8-11.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Co-location" means siting two or more SuSI-eligible solar facilities on the same property or on contiguous properties, such that the individual facilities are eligible for a higher incentive value **or different program** than they would be if they were combined into one single facility. In the case of net metered projects, SuSI-eligible solar facilities shall [be] not be deemed co-located if they serve separate net metering customers as defined at N.J.A.C. 14:8-4. **A community solar facility and a net metered facility are not deemed co-located if they serve separate customers.**

...

14:8-11.5 Successor Solar Incentive Program registration process

(a)-(c) (No change.)

(d) The registrant shall meet minimum facility maturity standards **according to the ADI or CSI Program conditions** and provide all **required** documentation [required by Board rule or order] as part of its initial registration package[, including, but not limited to:].

[1. A contract between the primary installer or the third-party owner, as applicable, and the customer of record;

2. A site map;

3. A disclosure statement signed by the customer, the installer, and the third-party SREC-II owner, if applicable, available on the New Jersey Clean Energy Program website;]

1. For net metered projects in the ADI Program, the registrant shall supply the following, and any other information the Board, or its designee, may deem necessary to confirm eligibility for the Program:

[4.] **i.** [For net metered facilities, a] **A utility bill showing the site host's name, address, and electric tariff, if applicable;**

[5.] **ii.** (No change in text.)

[6.] **iii.** For [net metered] facilities sized 25 kW or greater, up to one MW, evidence of having submitted to the relevant EDC [a Part 1 interconnection agreement] **an Attachment A to an Interconnection**

Application and Agreement signed by the customer-generator and the installer;

[7.] **iv.** For [net metered] facilities sized one MW or greater, [an executed Part 1 interconnection agreement] **written authorization from the EDC providing conditional approval to construct** and a Milestone Reporting Form; and

[8.] **v.** (No change in text.)

2. For community solar projects in the ADI Program and CSEP, the registrant shall supply the following, and any other information the Board, or its designee, may deem necessary to confirm eligibility for the Program:

i. A site plan certified by a licensed professional engineer;

ii. For facilities sized up to one MW, evidence of having submitted to the relevant EDC an Attachment A to an Interconnection Application and Agreement signed by the installer;

iii. For facilities sized one MW or greater, written authorization from the EDC providing conditional approval to construct and a Milestone Reporting Form;

iv. Evidence of applications for all discretionary land use approvals and entitlements applicable to the project, such as municipal zoning permit or municipal site plan approval, county site plan approval, soil conservation district approval, and Pinelands Commission or Highlands Commission approval, with a signed list of all permits to be applied for;

v. A community engagement and subscriber acquisition plan;

vi. A guaranteed bill credit discount to be offered to subscribers, given as a percentage to two decimal places; and

vii. For projects on a contaminated site or landfill, an estimated size of the area designated as a "contaminated site" or "properly closed sanitary landfill," a completed New Jersey Department of Environmental Protection permit readiness checklist, and a completed Contaminated Sites and Landfills Eligibility Verification Form.

(e)-(f) (No change.)

(g) Registrants that submit a completed registration package or that cured all minor deficiencies in the time allowed, and that meet the eligibility and qualification requirements for a SuSI market segment pursuant to this subchapter, will be issued a notice of conditional registration by Board staff or the SuSI Program registration manager. The notice of the conditional registration shall:

1.-2. (No change.)

3. Include an expiration date occurring on:

i. (No change.)

ii. The 18-month anniversary of a registrant's notice of conditional registration for community solar facilities **other than those located on contaminated sites or landfills;** or

iii. The [24-month] **36-month** anniversary of a registrant's notice of conditional registration for projects granted conditional certification by the Board as part of the **CSI Program** [Contaminated Sites interim market segment established pursuant to N.J.A.C. 14:8-11.7(b)8; [and] **or**

iv. The 24-month anniversary of a registrant's verification of eligibility by NJDEP for community solar facilities located on contaminated sites or landfills.

4.-5. (No change.)

(h)-(l) (No change.)

14:8-11.7 Market segment megawatt blocks **for the ADI Program**

(a) (No change.)

(b) The Board shall allocate megawatt blocks to the following initial market segments in the ADI Program:

1.-5. (No change.)

6. [LMI] Community Solar, as defined in the [Community Solar Energy Pilot Program or] Community Solar Energy Program **at N.J.A.C. 14:8-9**, as relevant;]. **The Community Solar market segment may be divided into megawatt blocks for each EDC area; and**

[7. Non-LMI Community Solar, as defined in the Community Solar Energy Pilot Program or Community Solar Energy Program, as relevant; and]

[8.] 7. (No change in text.)
(c)-(e) (No change.)

TRANSPORTATION

(a)

**DIVISION OF MULTIMODAL SERVICES
OFFICE OF FIXED GUIDEWAY SAFETY OVERSIGHT
Fixed Guideway State Safety Oversight
Proposed Amendments: N.J.A.C. 16:53E-1.1, 1.4,
and 3.1**

Proposed New Rule: N.J.A.C. 16:53E-3.2

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:25-8c, 48:2-12 and
52:14D-6; 49 U.S.C. § 5329(e) and (k); and 49 CFR Part 674.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2023-093.

Submit written comments by November 17, 2023, to:

Alexander C. Owen
Administrative Practice Officer
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 963-1909
Submit electronically at NJDOTRules@dot.nj.gov.

This rule may be viewed or downloaded from the Department's
website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

The agency proposal follows:

Summary

This chapter establishes rules concerning the State's oversight of the safety of rail fixed guideway systems through the Department of Transportation (Department), designated as the State's oversight agency by Executive Order No. 65 (1997), which conform to the requirements established at 49 U.S.C. § 5329(e) and (k). The Office of Fixed Guideway Oversight in the Department is responsible for the administration of this chapter.

In April 2016, 49 CFR Part 674 replaced 49 CFR Part 659 and significantly strengthened a state safety oversight (SSO) agency's authority to investigate accidents and oversee a rail transit agency's implementation of its System Safety Program Plan (SSPP) and Public Transportation Agency Safety Plan. Pursuant to 49 CFR 674, every state must establish an SSO program and ensure that the state safety oversight agency is financially and legally independent from any rail transit agency that it oversees. The Federal Transit Administration (FTA) reviews and approves each state's SSO program standard, certifying whether states are meeting the statutory criteria. Further, the FTA can impose penalties on those states with non-existent or non-compliant safety oversight programs. The Department adopted and incorporated by reference 49 CFR Part 674 (see 50 N.J.R. 939(a)).

In October 2022, the FTA supplemented 49 U.S.C. § 5329 to include the Risk-Based Inspection Program Toolkit found at Section (k). The FTA requires the Department to update its program standards consistent with the new Federal regulations. In addition, the Federal Transit Administration issued Special Directive No. 22-38 that requires the Department to conduct risk-based inspections, with and without advanced notice, of the rail fixed guideway public transportation system it oversees. The Department is amending N.J.A.C. 16:53E to provide explicit authority to conduct the inspections.

This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, as the Department has provided a 60-day comment period for this notice of proposal.

The proposed amendments and new rule are as follows:

N.J.A.C. 16:53E-1.1 is proposed for amendment to add a reference to the current Federal code (subsection (k)). N.J.A.C. 16:53E-1.4 is proposed for amendment to correct spelling. N.J.A.C. 16:53E-3.1(b) is proposed for amendment to update the contact information of the Department.

Proposed new N.J.A.C. 16:53E-3.2 adds Department inspection language, pursuant to Federal authority, and inspection access.

Social Impact

The proposed amendments and new rule continue to promote safety in the operation of fixed guideway systems by providing for State safety oversight of fixed guideway systems in New Jersey. The transit agencies currently affected by these rules are the Hudson Bergen Light Rail, the Newark Light Rail, and the RiverLINE, which are owned by NJ Transit; the PATCO (Port Authority Transit Corporation) Speedline; and the Pine Creek Railroad, which is owned by the New Jersey Museum of Transportation and regulated pursuant to a memorandum of understanding between the Department and the Department of Community Affairs. These rules benefit the riders of these transit agencies by providing a plan for safety.

Economic Impact

The Department incurs direct and indirect costs for formulation, training, and contract support services for the State safety and security oversight program. Ongoing direct and indirect costs include the costs of personnel, equipment, and training. The proposed amendments and new rule do not change any of these costs.

The Department incurs other direct and indirect costs to comply with 49 CFR Part 674, including the submission of State safety oversight program documents to the FTA, annual reporting to the FTA of oversight activities, including a description of the most common causal factors of accidents and hazards, and periodic reports to the FTA of accidents, hazards, and corrective action plans. The transit agencies have been subject to this regulation since its implementation in 1997. The FTA removed "incidents" from the types of events requiring notification and investigation. This change reduces the administrative burdens on both the oversight agency and the transit agency.

The FTA can impose penalties on those states with non-existent or non-compliant safety oversight programs. Pursuant to 49 CFR 674.21(b), if a state fails to establish an SSO program that has been approved by the Administrator by April 15, 2019, FTA will be prohibited from obligating Federal financial assistance apportioned pursuant to 49 U.S.C. § 5338 to any entity in the state that is otherwise eligible to receive that Federal financial assistance, in accordance with 49 U.S.C. § 5329(e)(3).

Federal Standards Statement

The proposed amendments and new rule establish standards for fixed guideway systems that are consistent with 49 U.S.C. § 5329(e) and (k) and 49 CFR Part 674. The standards imposed by the proposed amendments and new rule do not exceed those set forth in the Federal laws.

Jobs Impact

Department personnel are responsible for the safety oversight of fixed guideway systems, including the review and approval of system safety program plans by transit agencies. Contract services are used, as needed, to provide support functions to the Department to review annual audit reports, conduct safety reviews, prepare safety review findings, establish investigation procedures, conduct investigations, review corrective action plans, and prepare initial or annual submissions to the FTA. Transit agency employees perform similar duties for the fixed guideway system. These duties include preparation and implementation of a system safety program plan, which complies with the State safety oversight program standards and procedures, investigation and reporting of incidents, accidents and hazards, and performance of internal safety audits. The Department does not anticipate that jobs will either be created or lost because of the proposed amendments and new rule.

Agriculture Industry Impact

The proposed amendments and new rule are not intended to regulate farming, crop, or animal production.