

New Jersey Environmental Justice Alliance  
315 W. State Street  
Trenton, NJ 08618

July 31, 2018

Aida Camacho  
Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, Third Floor,  
Site 314, CN 350  
Trenton, New Jersey 08625

Dear Ms. Camacho:

The New Jersey Environmental Justice Alliance (NJEJA) would like to submit these comments to the New Jersey Board of Public utilities (BPU) on its prospective community solar energy pilot program (Docket Number: QO18060646).<sup>1</sup>

NJEJA has been a leader on a local, state and national level in developing public policy from an environmental justice (EJ) perspective.<sup>2</sup> NJEJA has a keen interest in the community solar pilot program for several reasons. First, NJEJA's Sandy Climate Justice Roundtable<sup>3</sup> produced a recommendation that energy efficiency (EE) techniques and renewable energy (RE) should be used extensively in EJ communities (communities Of Color, Indigenous communities and low-income communities) as part of both climate change mitigation and adaptation policy. Second, NJEJA strongly supports the requirement in the Clean Energy Legislation that the community solar program be made accessible to low and moderate-income communities, although the organization believes the requirement should also extend to communities Of Color. In general,

---

<sup>1</sup> NJEJA wants to thank Jonathan Smith of Earthjustice and Molly Greenberg of the New School and NJEJA for helping to research, edit and proofread these comments.

<sup>2</sup> The NJEJA mission statement reads as follows: "The New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. NJEJA will support community efforts to remediate and rebuild impacted neighborhoods, using the community's vision of improvement, through education, advocacy, the review and promulgation of public policies, training, and through organizing and technical assistance."

<sup>3</sup> The initial meeting of the Sandy Climate Justice Roundtable occurred in Newark in the fall of 2013 and involved almost 80 participants. Participants included EJ community residents and members of organizations that work with them. Discussion at the meeting focused on what happened in EJ communities during Sandy and how these communities can be protected from severe storms and other detrimental events and issues that may be connected to climate change. The initial meeting produced numerous recommendations that were prioritized and discussed at subsequent Roundtable meetings. For more information on the initial Roundtable meeting and the recommendations it produced *see* Sheats, N., *Stakeholder Engagement Report: Environmental Justice, Climate Change Preparedness in New Jersey*, New Jersey Climate Adaptation Alliance (2014).

NJEJA believes that EJ and equity should be explicitly integrated into climate change policy because if they are not, and climate change policy is developed in a “business as usual” manner, then the inequalities that currently exist in our nation which are rooted in race and income may be perpetuated or exacerbated by climate change policy.<sup>4</sup> NJEJA hopes that EE and RE will not only be used to reduce emissions of greenhouse gases (GHG) and GHG co-pollutants but also to benefit EJ communities by providing jobs, entrepreneurship opportunities and a chance to link local schools to a critical and growing industry.

NJEJA’s ideas on energy policy including the community solar energy pilot program are evolving and the organization looks forward to maintaining open communication with the BPU on RE and EE related opportunities and climate change policy recommendations. In these comments NJEJA presents some initial thoughts on several issues connected to the community solar pilot program that it feels are particularly important.

---

<sup>4</sup> NJEJA has made this observation about race and income based inequalities in our nation in a number of previous comments that have included footnotes on this topic. One previous set of comments included the following footnote on the subject: “For example, in previous comments we pointed out disparities in health, wealth and pollution exposure that might contribute to a heightened vulnerability to pollution. For more information on health disparities see National Center for Health Statistics. Health, United States, 2012: With Special Feature on Emergency Care (2013); Rachel Morello Frosch et al., *Understanding the Cumulative Impacts of Inequalities In Environmental Health: Implications for Policy* 30 Health Affairs 879, 880-881 (2011); Nancy Adler and David Rehkopf, *US disparities in health: descriptions, causes, and mechanisms*, 29 Annu Rev Public Health 235 (2008); William Dressler, *Race and Ethnicity in Public Health Research: Models to Explain Health Disparities*, 34 Annu. Rev. Anthropol. 231 (2005); Roberta Spalter-Roth, *Race, Ethnicity, and the Health of Americans*, American Sociological Association Series On How Race And Ethnicity Matter, Sydney S. Spivack Program In Applied Social Research And Social Policy (2005); George Mensah, *State of disparities in cardiovascular health in the United States*, 111 Circulation 1233 (No. 10) (2005).

For more information on wealth disparity see Thomas Shapiro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute on Assets and Social Policy (2013).

For information on disparities in exposure to air pollution see generally Michael Ash et al., *Justice in the Air: Tracking Toxic Pollution from America's Industries and Companies to Our States, Cities, and Neighborhoods* (2009); Manuel Pastor et al., *The air is always cleaner on the other side: Race, space, and ambient air toxics exposures in California*, 27 Journal of Urban Affairs 127 (No. 2) (2005); Douglas Houston et al., *Structural disparities of urban traffic in Southern California: implications for vehicle related air pollution exposure in minority and high poverty neighborhoods*, 26 Journal of Urban Affairs 565 (No. 5) (2004); Manuel Pastor et al., *Waiting to Inhale: The Demographics of Toxic Air Release Facilities in 21st-Century California*, 85 Social Science Quarterly 420 (No. 2) (2004); Michael Jarrett et al., *A GIS- environmental justice analysis of particulate air pollution in Hamilton, Canada*, 33 Environment and Planning A 955 (No. 6) (2001); D.R. Wernette and L.A. Nieves, *Breathing Polluted Air*, 18 EPA Journal 16 (1992). These investigations found a racial component to exposure to air pollution. Another study also presented evidence that in California people Of Color households live closer to polluting facilities at all income levels than White residents. See Manuel Pastor et al., *Minding the Climate Gap, What's at Stake if California's Climate Law Isn't Done Right and Right Away*, College of Natural Resources, University of California, Berkeley, USC Program for Environmental & Regional Equity, Minding the Climate Gap Report 4, at 9 (Figure 2).

The previous comments referenced earlier in this footnote are: Nicky Sheats, *Comments on the Newark Bay Partnership LP Application for Permit Renewal and Minor Modification*, Program Interest Number: 07617, Air Pollution Control Bureau of Air Permits Activity Number: BOP 150001 (June 11, 2018), submitted by the New Jersey Environmental Justice Alliance, at pg. 5 fn. 14.

## Definitions of Low-income and Moderate-income for Individuals, Families and Communities

Perhaps the most important aspect of the definitions of low and moderate-income for individual and family eligibility for the community solar program is that they capture the vast majority of New Jersey residents who are struggling or just making ends meet due to a lack of, or a constrained, income. However, another crucial criterion for the definitions should be that they also capture as many people Of Color as possible. This is important because, as indicated above, there are inequalities that persist in our nation which are rooted in race and New Jersey should take every step possible to address this problem in our state. Unfortunately, the New Jersey Department of Environmental Protection has provided evidence that New Jersey communities Of Color do suffer from a disproportionate amount of pollution.<sup>5</sup> NJEJA suggests that BPU examine multiple definitions used for low-and moderate income by the federal and state governments and choose the definitions, or combination of definitions, that yield the highest number of New Jersey low and moderate-income residents and a significant number of people Of Color. Obviously, a certain amount of judgment will have to be used in selecting the “best” definitions and for this and other reasons (see below) NJEJA further suggests that the community solar rule create a stakeholder group to advise the BPU on this complicated issue. As explained below we envision that this stakeholder group would work beyond the time limitation placed on BPU in the Clean Energy Legislation. NJEJA, of course, urges that such a stakeholder group consider the suggestions on the definitions of low and moderate-income presented in these comments. If BPU chooses to include definitions for low and moderate-income in the regulations it will promulgate in December for the pilot program then NJEJA similarly urges that the ideas on that definition presented here be considered.

In addition to the definitions of low and moderate-income that can be applied to individual and family eligibility for the community solar program discussed above, the BPU should also create

---

<sup>5</sup> The New Jersey Department of Environmental Protection (NJDEP) developed a nascent cumulative impacts screening tool that estimated the relative amount of cumulative impacts in every block group in New Jersey. Informally, cumulative impacts can be thought of as a very rough estimate of the total amount of pollution in a neighborhood. More formally, a definition for cumulative impacts is the risk and impacts caused by multiple pollutants, usually emitted by multiple sources of pollution in a neighborhood, and their interaction with each other and with any social vulnerabilities that exist in the neighborhood. *See Cumulative Impacts: Building a Scientific Foundation*, California Environmental Protection Agency (2010), at 3; National Environmental Justice Advisory Council, *Ensuring Risk Reduction In Communities With Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (2204) at 5. In order to examine the relationship between cumulative impacts, race and income in New Jersey, NJDEP graphed the level of cumulative impacts in New Jersey block groups against the number of residents Of Color and low-income residents living in the block groups. The figures show that as the number of Of Color residents or low-income residents living in a block group increases so does the level of cumulative impacts. These figures are part of a technical report and a power point on the cumulative impacts screening tool. They are located on page 5 of the technical report and slide 19 of the power point which can be accessed at [http://www.state.nj.us/dep/ej/docs/ejc\\_screeningmethods20091222.pdf](http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods20091222.pdf) and [http://www.state.nj.us/dep/ej/docs/ejc\\_screeningmethods\\_pp20091222.pdf](http://www.state.nj.us/dep/ej/docs/ejc_screeningmethods_pp20091222.pdf), respectively. Both the report and power point are entitled “A Preliminary Screening Method to Estimate Cumulative Environmental Impacts”. NJEJA advocates that climate change mitigation policy be used to help reduce the disproportionate amount of pollution that is often present in EJ communities by forcing power plants subject to such policy which are located in EJ communities to reduce their emissions.

definitions for low and-moderate income communities. After developing these definitions, the Agency should consider allowing certain institutions located in these communities to be eligible for the community solar program. A geographic definition for a low or moderate-income community could be established by determining how many individuals and families in a geographically defined area satisfy the individual and family definitions for low and moderate-income that the BPU adopts. If the number of low or moderate-income individuals and families exceeds a certain threshold number then the geographically defined area would be considered a low or moderate-income community, for the purposes of the community solar pilot program. The geographically defined area could be based on a census tract or multiple census tracts as long as there is a justification for considering the multiple census tracts a neighborhood. Most likely such a justification would be the boundaries of a historically recognized neighborhood. Certain specified institutions located in a low or moderate-income community that provide a public service for the neighborhood would be eligible for the community solar program. For example, NJEJA recommends that schools, churches, hospitals, day care centers, senior centers, community centers, public housing, governmental offices and non-partisan non-profit organizations located in low and moderate-income neighborhoods should be eligible for the community solar program. The definitions of a low or moderate-income community is another instance where a stakeholder advisory group could play an important role in assisting BPU in the development of the community solar program.

### **Low-and Moderate Income Set Aside**

NJEJA originally supported a 15% set aside for low-income customers,<sup>6</sup> and testified to that effect at the public meeting held by BPU on July 24. However, after more thought and examination of the poverty statistics in New Jersey, NJEJA is now calling for a 24% set aside for low and moderate-income New Jersey residents with at least 10.4 % of the set aside reserved for residents living below the federal poverty line. We believe this is more in line with poverty statistics that showed 10.4% of New Jersey residents living below the 100% poverty line in 2016 and 23.8% of state residents living at less than 200% of the poverty line in the same year.<sup>7</sup> New Jersey Policy Perspective describes these latter residents as “experiencing true hardship”. Arguably, the set aside could be higher in order to reach moderate income residents who may not be “experiencing true hardship” but are just making ends meet. But a 24% set aside for low and moderate-income customers would be a good and perhaps cautious start.

### **Public Participation Process**

NJEJA understands that the timing of the process to gain public input into the development of the community solar pilot program has been dictated by a time limitation placed in the enabling legislation, however, it is still important to note that the process is an obstacle to gaining input from EJ communities and organizations. Typical public participation processes are frequently

---

<sup>6</sup> By a 15% low-income set aside we meant that 15% of the power generated by the community solar pilot program should go to low-income residents.

<sup>7</sup> See Brandon McKoy, *A \$15 Minimum Wage Would Help Over 1 Million Workers and Boost New Jersey's Economy, Raising wages would help fight poverty and improve the well-being of workers & their families*, (February 2018), New Jersey Policy Perspective; see also Meir Rindle, *Why Is NJ'S Poverty Rate So High? And What Can Be Done To Lower It?*, (January 28, 2016), NJSPOTLIGHT.

inadequate to gain meaningful input from residents of EJ communities since they often live with an array of social vulnerabilities that can make it especially difficult to participate in governmental processes. And the current process offers less opportunity for these residents to participate than is typical.

EJ organizations also often have difficulty participating in governmental processes because they are relatively underfunded and understaffed. In addition, the topic of community solar brings substantive challenges to public participation since it is at least partly grounded in technical information that can be difficult for the lay public, and for EJ and environmental advocates that typically don't work on energy issues, to fully understand.

Moving forward, in order to make the current process more amenable to EJ organizations and EJ community residents, the BPU should consider holding regional meetings in the fall. These meeting would be designed not only to gain ideas and input but to also disseminate information and explain concepts involved in community solar projects. The subject of the meetings could also be expanded to include EE and other topics of interest to BPU and community members. The meetings could be held in EJ communities at times that allow residents to attend and advertised to EJ residents and the general public. In addition, specific invitations to attend could be given to EJ and community organizations that operate in the region in which a particular meeting is being held. Pre-meeting stakeholder contact could also be used to develop a meeting agenda that might be particularly interesting to residents of that New Jersey region. NJEJA could help BPU to identify organizations in several regions of the state.

## **Stakeholder Groups**

One way to satisfy the time constraint imposed by the Clean Energy Legislation, while gaining more time to work on complicated issues connected to the pilot community solar project, would be to have the required rule create stakeholder groups to address specific issues. As suggested above, a stakeholder group or groups could be created to develop final definitions for low and moderate-income as they apply to individuals, families and communities. Similar to the enabling Clean Energy Legislation, the rule could place time limitations on the work of the stakeholder groups if BPU feels that is necessary. BPU should also consider whether there are other issues connected to the pilot community solar program that might benefit from the efforts of a stakeholder group that could work beyond the time limitations of the Clean Energy Legislation. The stakeholder groups could also obtain additional input from EJ communities and other stakeholders.<sup>8</sup>

---

<sup>8</sup> The state of New York seems to have implemented a similar idea. They established a “Low-Income customer Collaborative” that helped develop ideas to encourage the participation of low-income customers in community distributed generation. New York Public Service Commission, Case 15-E-0082, Order Establishing a Community Distributed Generation Program and Making Other Findings, at 31 (July 17, 2015). Of course, NJEJA understands that what works in one state does not necessarily work in another but it does seem that New York’s “Low-Income Customer Collaborative” is an idea that has actually already been implemented which is similar to the stakeholder group suggestion presented in these comments.

## **Participation and Ownership**

It is critically important to create definitions for low-and moderate income that ensure that low and moderate-income residents, Of Color residents and certain institutions in low and moderate-income communities are eligible for the community solar program. However, it is equally important to make sure that those eligible institutions and residents can participate in the program. This could involve some type of monetary support or other type of investment. One source of funding that could be used to help guarantee that EJ communities have access to RE and EE is the Clean Energy Fund. NJEJA believes, as do other organizations, that a certain portion of this fund should be used to support that access. The BPU needs to determine what could be other likely barriers to low and moderate-income resident participation in addition to lack of resources and then take steps to address those issues.

As discussed earlier in these comments, NJEJA believes that the use of EE and RE in EJ neighborhoods can directly benefit these communities in several ways besides contributing to overall emissions reductions. In particular, access to and utilization of EE and RE could help improve economic conditions in EJ communities. One way to help accomplish this goal would be to find mechanisms that could promote ownership of the community solar projects by the residents of the communities they are serving. The BPU should consider mechanisms that could be used to promote ownership as well as good jobs, energy education and entrepreneurship. This could be the subject of another stakeholder group.

## **Community Energy Planning**

Typically, energy planning has largely involved utilities, energy service businesses, developers, traditional environmental groups and city staff. While participation in energy planning from these groups is appropriate, there are critical elements missing from this picture. Energy planning should also include community residents, community groups, EJ groups and a focus on equity and EJ. Community energy planning, a concept developed by the Center for Earth, Energy and Democracy in Minneapolis, would include all of these groups in the planning process and explicitly state that justice and equity are central concerns to be addressed. It would allow community members and the groups that work with them to define equity metrics for the solar project in their particular community and explain what they feel the barriers to participation might be.

If this concept is pursued in the community solar program it would place BPU and the state of New Jersey on the ground floor of implementing an idea that could revolutionize the relationship between energy production and local communities. Local communities could move from being solely energy consumers to having an important say in the decision-making process that results in energy production. At the very least, the BPU could require a certain number of projects that are part of the community solar pilot program to undergo a community energy planning process.

## **Conclusion**

NJEJA appreciates the opportunity to comment on the community solar pilot program and would also welcome the opportunity to discuss any ideas contained in these comments with BPU.

Prepared and submitted on behalf of the New Jersey Environmental Justice Alliance by:

Nicky Sheats, Esq., Ph.D.  
Director, Center for the Urban Environment  
John S. Watson Institute for Public Policy at Thomas Edison State University  
609-558-4987 (mobile)