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January 15, 2021

VIA ELECTRONIC MAIL (*rule.comments@bpu.nj.gov*)

The Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: QX20090577
44 S. Clinton Avenue, 9th Floor
Trenton, New Jersey 08625-0350

Re: I/M/O Community Solar Energy Pilot Program Rules
Proposed Amendments: N.J.A.C. 14:8-9.2, 9.3, 9.4, 9.6, 9.8 and 9.10
BPU Docket No. QX20090577
Proposal No.: PRN 2020-108

Dear Secretary Camacho-Welch:

Please accept this letter as the comments of the New Jersey Division of Rate Counsel (“Rate Counsel”) regarding the above-referenced rulemaking. In accordance with the Notice published but the New Jersey Board of Public Utilities (“BPU” or “Board”) in this matters, these comments are being submitted by electronic mail only. Please acknowledge receipt of these comments. Thank you for your consideration and attention to this matter.

INTRODUCTION

The above-referenced rule proposal has been issued by the New Jersey Board of Public Utilities (“BPU” or “Board”) to propose amendments to its Community Solar Energy Pilot Program rules. The Summary section of the rule proposal states that the amendments are intended to “improve the implementation of, and access to, the Pilot Program based on lessons

learned from Program Year 1 (PY1).” As detailed below, Rate Counsel generally supports the proposed amendments.

Deadlines for Completion of Projects

The rule proposal contains changes to N.J.A.C. 14:8-9.3, concerning deadlines for Community Solar projects to begin construction and to become operational. First, under the current rule projects must commence construction within six months of Board approval. Staff may grant one or more two-month extensions. The amendment would eliminate the six-month deadline and substitute a requirement that approved projects provide Staff quarterly updates on the status of the project. Proposed N.J.A.C. 14:8-9.3(c)(7). Second, under the current rule a project must become fully operational within twelve months of Board approval. Board Staff may grant one or more six-month extensions to this deadline. The amendment would change the twelve-month deadline to eighteen months. However, Staff’s authority to grant extensions would be limited on one six-month extension. Further extensions would require Board approval. Proposed N.J.A.C. 14:8-9.3(c)(8).

The Social Impact section of the rule proposal states that these amendments “reflect the reality of community solar development timelines” and will help projects to meet the requirements of the program. The rule changes appear to be a reasonable response to this concern. Developers will have a more realistic timeline to complete construction and begin operations. At the same time, they will be on notice that extensions beyond six months will require a Petition to the Board. This should encourage timely completion of Community Solar projects.

Annual Capacity Limit

N.J.A.C. 14:8-9.4(b) currently requires the Board to set the annual capacity limit for the second and third program years no later than 30 days prior to the start of the program year. The amendment would allow the capacity limit to be set during the program year. Proposed N.J.A.C. 14:8-9.4(b). The Summary section of the rulemaking document states that the proposed amendment “better reflects the Board's actual practices of establishing annual capacity in the year that the solicitation is issued, rather than tying it to the beginning of the calendar year, and allows the Board additional flexibility to reflect changes in the Pilot Program structure.” As indicated by this statement, the Board waived the application of the current rule so that the annual capacity limit for the second program year could be set during that program year. I/M/O the Community Solar Energy Pilot Program, BPU Dkt. Nos. QO18060646 & QO20080556, Order at 8 (Oct. 2, 2020). Since it appears that the current rule has proved unworkable, Rate Counsel does not object to the proposed amendment.

In addition, N.J.A.C. 14:8-9.4(b) currently provides that the annual capacity limit will be divided among the EDCs based on their respective percentages of in-state retail sales. The Board is proposing to add the following language to this subsection:

In the event that there have not been enough applications submitted in a given service territory to provide adequate competition, the Board may, at its discretion, elect to not award any capacity in said service territory, and reallocate the unused capacity.

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

This amendment would provide the Board with some recourse in the event of insufficient competition among Community Solar developers. However, the new language provides only a partial remedy for a lack of competitive bids. The Board would remain constrained by N.J.A.C.

14:8-9.3(c)(5), which provides that projects must be presented to the Board for approval “until the allocated program capacity for that year is filled.” The Board should consider an amendment that would give the Board the flexibility to reject all bids that do not reflect adequate competition.

Exemption to 10-Subscriber Minimum

N.J.A.C. 14:8-9.6(b) requires community solar projects to have a minimum of ten subscribers. This requirement is subject to N.J.A.C. 14:8-9.6(d), which exempts multi-family buildings that “demonstrate in their application that the project is intended to provide specific, identifiable, and quantifiable benefits to the households residing in such buildings.” The Board is proposing to amend N.J.A.C. 14:8-9.6(d) to limit the availability of the exemption to low- and moderate-income (“LMI”) projects.

The Summary section of the rule proposal states that the purpose of the amendment is to limit the exemption to projects that will reduce energy burdens on those who spend the highest portion of their income on electricity. The rule proposal does not explain why the Board believes it is advisable to limit the availability of the exemption. However, the amendment appears consistent with the Board’s objective of encouraging LMI projects, and therefore Rate Counsel does not oppose it.

LMI Eligibility Criteria

The proposal includes amendments to expand the ways for subscribers to be qualified as LMI. Under the current rule version of N.J.A.C. 14:8-9.8, subscribers had to provide either proof of participation in LIHEAP, USF, Comfort Partners or Lifeline Utility Assistance or, alternatively, a copy of the first and second pages of the subscriber’s three previous years’ Federal income tax returns. The amendments would eliminate submission of subscriber tax

returns and a means of qualification. The amendment would also add the PAGE program, the Section 8 housing voucher program, SNAP and the FCC's Universal Service programs to the list of programs that can be used to qualify subscribers as LMI, and would allow blanket qualification of all residences in a census tract in which 80% or more of the households earn less than 80% of the area median income. Finally, there is a "catchall" provision allowing subscriber organizations to propose alternative forms of verification.

The Social Impact section of the rule proposal states that the current limited means of verification have proved to be obstacles to participation in LMI projects. The Summary section cites the option of providing income tax returns as particularly onerous. The proposed amendments appear to be reasonable measures to reduce obstacles to LMI customers' participation in the Community Solar program. Rate Counsel supports these proposed amendments.

Consumer Protection

The Board is proposing to add a subsection to the Consumer Protection provisions in N.J.A.C. 14:8-9.10. New subsection (b)(1)(iv) would require that customers be notified in writing within 30 days if the subscriber organization managing their subscription has changed.

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Rate Counsel supports this proposed amendment, which will enhance the information provided to Community Solar subscribers.

Respectfully submitted,

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