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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: QX20090594
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, 9.4, and 9.8
BPU Docket No. QX20090594
Proposal No.: PRN 2020-109**

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 by the New Jersey Board of Public Utilities (“BPU” or “Board”) in this matter, 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 proposed amendments to its Community Solar Energy Pilot Program rules to provide for a limited test of “opt-out” subscriber enrollment and to authorize penalties for low- and moderate-income (“LMI”) Community Solar projects that fail to meet

their commitments to enroll LMI subscribers. For the reasons explained below, Rate Counsel supports the proposed amendments.

Opt-out Subscriber Enrollment for Municipal LMI Projects

N.J.A.C. 14:8-9.10(b)(1) currently requires subscriber organizations to obtain affirmative consent from all subscribers, either via wet signature or electronic signature. The Board is proposing to add a new subsection (k) to N.J.A.C. 14:8-9.4 to allow municipal governments to seek an exemption from these requirements as part of their project applications. These projects, referred to in the proposed new subsection as “municipal community solar automatic enrollment project[s]” or “automatic enrollment project[s],” would be limited to projects that are owned and operated by New Jersey local municipal governments that serve 100% LMI customers. Proposed Amendments to N.J.A.C. 14:8-9.2 Definitions; proposed new subsection N.J.A.C. 14:8-9.4(k)(4)(i).

The Social Impact section of the rule proposal states that stakeholders have identified “opt-in” enrollment as a lengthy and expensive process, particularly for LMI customers, and have suggested that the Board draw on its experience with Government Energy Aggregation to test new methods of subscriber acquisition. In past comments, Rate Counsel has expressed concerns about the costs of Community Solar. See, e.g., I/M/O Community Solar Energy Pilot Program Rules, BPU Docket No. QO18060646, Proposal No.: PRN 2018-090, Rate Counsel Comments at 3, 5-7 (Nov. 30, 2018). “Opt-out” enrollment could be one means to reduce the costs of Community Solar projects.

Rate Counsel notes that the amendments, as proposed, include a number of consumer safeguards. Automatic enrollment projects would be subject to review by the Board as part of the municipal government’s application for approval of a Community Solar project. Proposed

N.J.A.C. 14:8-9.4(k). The project could be owned initially by a third party to facilitate eligibility for tax credits, but thereafter would have to be owned and operated by the local government. Proposed N.J.A.C. 14:8-9.4(k)(2). Contractors and consultants would have to guarantee compliance with all program rules including the rules relating to customer privacy. Proposed N.J.A.C. 14:8-9.4(k)(3). Subscribers would be permitted to opt out from further participation at any time. Proposed N.J.A.C. 14:8-9.4(k)(4)(iii) & (iv). Subscription fees could not exceed the value of a subscriber's community solar bill credit and enrollment and exit fees would be prohibited. Proposed N.J.A.C. 14:8-9.4(k)(5) & (6). Subscribers selected for automatic enrollment would be entitled to receive detailed information about the project, including information about the cost and about their rights to opt out of participation. Proposed N.J.A.C. 14:8-9.4(k)(7). In the event of a material violation of these conditions, the Board would have the ability to cancel automatic enrollment and require affirmative consent for all subscribers. Proposed N.J.A.C. 14:8-9.4(k)(9).

These and other safeguards included in the proposed amendments should allow the Board to test "opt-out" enrollment while protecting the interests of prospective subscribers. Rate Counsel supports this effort by the Board to explore an approach to reducing the costs of Community Solar projects.

Penalties for Failure to Meet LMI Subscriber Commitments

The Board is proposing to add the following new subsection to N.J.A.C. 14:8-9.8(d) concerning LMI projects:

5. If a project does not meet or maintain LMI subscriber commitments on an annualized basis, or other subscriber acquisition targets as determined in its application to the Board, the project owner may be subject to financial penalties of up to 80 percent of the total bill credit value for the portion of the subscriber base that does not meet the LMI targets. The Board will examine the magnitude

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of the shortfall, the diligence with which the shortfall is being remedied after notice, and any other factors as the Board may deem relevant to determine the appropriate penalty.

Rate Counsel supports this proposed new provision. Projects that seek and receive Board approval based on commitments to enroll LMI subscribers should be subject to consequences if they fail to meet those commitments.

Respectfully submitted,

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