

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## PUBLIC UTILITIES

### (a)

#### BOARD OF PUBLIC UTILITIES COMMUNITY SOLAR ENERGY PILOT PROGRAM 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

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Authority: N.J.S.A. 48:3-87.11.

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

BPU Docket Number: QX20090577.

Proposal Number: PRN 2020-108.

Comments may be submitted through January 15, 2021, by email in Microsoft Word format, or in a format that can be easily converted to Word, to: [rule.comments@bpu.nj.gov](mailto:rule.comments@bpu.nj.gov), or on paper to:

Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
ATTN: BPU Docket Number: QX20090577  
44 South Clinton Avenue, 9th Floor  
PO Box 350  
Trenton, NJ 08625-0350

The agency proposal is as follows:

#### Summary

The Board of Public Utilities (Board) is proposing to amend its existing Community Solar Energy Pilot Program (Pilot Program) rules to improve the implementation of, and access to, the Pilot Program based on lessons learned from Program Year 1 (PY1). The Clean Energy Act of 2018, P.L. 2018, c. 17 (Clean Energy Act), mandated that the Board adopt rules establishing the three-year Pilot Program. The Pilot Program rules became effective upon publication in the New Jersey Register on February 19, 2019. By Board Order dated December 20, 2019, which became effective on December 30, 2019, the Board granted conditional approval for 45 community solar projects, which are currently in various stages of implementation. All 45 projects have committed to allocating at least 51 percent of their capacity to low- and moderate-income (LMI) subscribers.

Lessons learned from these PY1 projects, as well as from stakeholder feedback, have informed the development of the following proposed amendments. In particular, stakeholders and Board staff highlighted concerns with project development timelines, annual capacity allocation, low- and moderate-income eligibility criteria, and the timing requirements

for notification of changes to customer subscriber management organizations.

At N.J.A.C. 14:8-9.2, the Board proposes to add definitions for the terms "Housing Choice Voucher Program Section 8," "low- and moderate-income," "Payment Assistance for Gas and Electric Program," "Supplemental Nutrition Assistance Program," and "Universal Service Administrative Company."

At N.J.A.C. 14:8-9.3, the Board proposes to replace the six-month deadline for approved projects to begin construction with a requirement to provide quarterly updates to the Board. The Board further proposes to extend the deadline for approved projects to become fully operational from 12 to 18 months. Additionally, the Board proposes to limit the number of extensions that Board staff can grant to one, six-month extension. Any subsequent extension may only be granted by the Board upon petition to the Board.

At N.J.A.C. 14:8-9.4, the Board proposes to set the annual capacity limit for PY2 and PY3 during the relevant program year. This change 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. Additionally, the Board proposes that it have discretion to not award capacity in a given service territory where there are not enough applications submitted to provide sufficient competition, and, in that case, be permitted to reallocate the unused capacity to another service territory.

At N.J.A.C. 14:8-9.5, the Board proposes to amend the existing exemption to the 10-subscriber minimum, so that it is only available to LMI projects, to limit the exemption to projects that will reduce the energy burden on those who pay the greatest portion of their income for electricity.

At N.J.A.C. 14:8-9.8, the Board proposes three mechanisms to expand the LMI eligibility criteria, including adding additional programs to the list of programs that automatically qualify a community subscriber as LMI, allowing subscribers to be qualified as LMI, based on publicly accessible information produced by the U.S. Census Bureau and the U.S. Department of Housing and Urban Development, and providing a mechanism through which subscriber organizations may propose alternative income verification methods to the Board. The proposed rule amendments also eliminate the option of requiring the production of subscriber tax returns to demonstrate LMI status, since this has proven to be an onerous burden to access for community solar.

At N.J.A.C. 14:8-9.10, the Board proposes to require that customers be notified in writing within 30 days, if the subscriber organization managing their subscription has changed.

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

### Social Impact

The proposed amendments will have a positive social impact for New Jersey, by streamlining certain provisions relating to the development of community solar projects. The Pilot Program creates an opportunity for access to solar energy to consumers who have previously been unable to place solar on their own property, for reasons that include being renters, having a shaded or unsuitable roof, or being unable to afford the upfront capital costs of a traditional solar installation. Community solar offers these ratepayers an opportunity to purchase or subscribe to a share of solar generation, and receive the associated bill credit, thereby creating the opportunity for new clean energy generation assets that will directly benefit communities in New Jersey.

The proposed amendments also remove barriers to access to LMI consumers. While the PY1 application process provided additional points in the scoring for projects that were defined as LMI projects (at least 51 percent of project capacity is allocated to LMI subscribers), the current LMI verification methods have been perceived as burdensome and onerous, particularly given that non-LMI subscribers are not subject to comparable requirements. The proposed amendments expand the LMI verification methods, and incorporate a flexible approach that allows community solar developers to use publicly available “census tract” data developed by the U.S. Census Bureau and the U.S. Department of Housing and Urban Development to determine eligibility, or to propose other tailored income verification approaches.

Additionally, the proposed amendments eliminate the deadline to begin construction, and extend the deadline for projects to become fully operational, with flexibility for projects to petition the Board for extensions beyond a first extension granted by Board staff. These extended deadlines reflect the reality of community solar development timelines, which increases the likelihood that community solar awardees are able to meet the requirements of the program and secure their financing, thus securing the benefits described throughout this notice of proposal for consumers.

### Economic Impact

The proposed amendments will not change the economic impact of the Community Solar Energy Pilot Program. The proposed amendments are intended to clarify and streamline certain elements relating to implementation of the Pilot Program. The proposed amendments do not impact the calculation or allocation of the community solar bill credits or other State incentive for which community solar projects may be eligible. Individual community solar customers may benefit because the proposed amendments make community solar savings available to a wider array of customers and potentially reduce the costs associated with signing up subscribers, which should lead to lower project development costs and, therefore, higher customer savings on their electric bills.

### Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 require State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Community Solar Energy Pilot Program rules have no Federal analogue and are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 do not require a Federal standards analysis for the proposed amendments.

### Jobs Impact

The proposed amendments are anticipated to have a positive impact on jobs. The proposed streamlining of certain requirements is expected to have a positive impact on the ability of developers to design and market community solar, with an attendant uptick in jobs relating to the construction and operation of community solar projects. The Pilot Program, as a whole, is designed to operate within, and expand, the solar market in New Jersey, by enabling access to solar energy for customers unable to benefit from traditional solar.

### Agriculture Industry Impact

The proposed amendments do not impact the Pilot Program’s existing provisions regarding agriculture.

### Regulatory Flexibility Statement

The proposed amendments 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. With regard to utilities and businesses that qualify as small businesses under the Act, the subchapter establishes a voluntary program and, as such, will not impose any requirements on any utility that chooses not to participate in the program.

### Housing Affordability Impact Analysis

The proposed amendments are not anticipated to have any impact on the affordability of housing in New Jersey or on the average cost of housing in the State, as proposed amendments update the Pilot Program.

### Smart Growth Development Impact Analysis

The proposed amendments will have no impact on smart growth development in New Jersey. There is an extreme unlikelihood that the rules would 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 the proposed amendments is limited to updating the Pilot Program.

### Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Board has evaluated the proposed amendments and determined that they 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 9. COMMUNITY SOLAR ENERGY PILOT PROGRAM RULES

### 14:8-9.2 Definitions

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

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

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

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

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

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

14:8-9.3 Pilot Program structure

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

(c) For each of the three program years, Board staff shall initiate an annual application process pursuant to the Clean Energy Act as follows:

1.-6. (No change.)

[7. Approved projects are expected to begin construction within six months of their approval by the Board. Board staff may approve one or more two-month extensions if substantial progress is shown towards beginning construction within the initial six month-period, as determined upon review by Board staff based on the specific circumstances of the project.]

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

8. Approved projects are expected to become fully operational (up to and including having subscribers receive bill credits for their subscription to the project) within [12] **18** months of their approval by the Board. Board staff may approve one [or more] six-month extension[s] if substantial progress is demonstrated towards becoming fully operational within the initial [12-month] **18-month** period, as determined upon review by Board staff based on the specific circumstances of the project. **The Board may grant subsequent extensions if it deems warranted upon review of a petition submitted to the Board.**

9.-11. (No change.)

(d)-(e) (No change.)

14:8-9.4 Pilot Program capacity limits

(a) (No change.)

(b) [No later than 30 days prior to the start of PY2 and PY3, the] **The** Board shall set by Board Order an annual capacity limit for community solar projects approved for participation in the Pilot Program during PY2 and PY3. The annual capacity limit for PY2 and PY3 shall be at least 75 MW per program year, defined as the sum of the nameplate capacity in DC rating of all PV panels in projects approved for participation.

(c) (No change.)

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

1.-4. (No change.)

(e)-(j) (No change.)

14:8-9.6 Subscription requirements

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

(d) Multi-family buildings with [a] **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)-(g) (No change.)

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

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

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

1. (No change.)

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

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

[ii. A copy of the first and second page of the subscriber's three previous years' Federal income tax returns. The second page must be signed if self-prepared. The returns shall be submitted directly to the subscriber organization, along with a sworn statement that the information contained within the tax returns is true and accurate. Tax returns are to be treated as confidential under all applicable Federal and State laws. For subscribers that are not required to file, a non-filing verification letter from the IRS would need to be provided.]

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

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

3.-4. (No change.)

14:8-9.10 Consumer protection

(a) (No change.)

(b) Community solar subscriber organizations must comply with all applicable laws, rules, and regulations governing advertising, marketing, and fair business practices. Additionally, the following consumer protection measures shall apply to all subscriber organizations, and any agent, contractor, subcontractor, or affiliated person.

1. As to subscriptions, as follows:

i.-ii. (No change.)

iii. A subscriber organization may not add a new charge or make any other material change to the content of the contract or subscription without first obtaining affirmative written consent via wet or electronic signature from the subscriber, whether it be for a new service, existing service, or service option[;].

**iv. Customers must be notified in writing within 30 days if the subscriber organization managing their subscription has changed;**

2.-7. (No change.)

**(a)**

**BOARD OF PUBLIC UTILITIES  
COMMUNITY SOLAR ENERGY PILOT PROGRAM  
Community Solar Energy Pilot Program Rules  
Proposed Amendments: N.J.A.C. 14:8-9.2, 9.4, and  
9.8**

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Authority: N.J.S.A. 48:3-87.11.

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

BPU Docket Number: QX20090594.

Proposal Number: PRN 2020-109.