

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**

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: QX20090594.

Proposal Number: PRN 2020-109.

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, or on paper to:

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: QX20090594
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 test a new method of subscriber enrollment within the context of the Pilot Program. 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. During project year 1 (PY1), which ran from February 19, 2019 through December 30, 2019, the Board granted conditional approval for 45 community solar projects. Lessons learned from these PY1 projects, as well as from stakeholder feedback, have informed the development of the following proposed amendments.

At N.J.A.C. 14:8-9.2, the Board proposes to add definitions for the terms “Community solar consolidated billing,” “local government entity,” and “municipal community solar automatic enrollment project.”

At N.J.A.C. 14:8-9.4, the Board proposes to establish rules and a process by which municipal-owned 100 percent low- and moderate-income (LMI) projects may submit an application for a project that automatically enrolls customers and then allows them to “opt-out” from participating in the project. These projects would be required to provide guaranteed savings to subscribers, so as to ensure that participants are not financially harmed by their automatic enrollment. Because affirmative consent of individuals is not possible for this method of subscriber enrollment, the Board proposes to exempt these projects from the provisions at N.J.A.C. 14:8-9.10(b)1 mandating subscriber enrollment through affirmative consent.

At N.J.A.C. 14:8-9.8, the Board further proposes the establishment of penalties for projects that fail to meet their LMI commitments.

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 testing a new method of subscriber enrollment designed to remove barriers to access by 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), stakeholders have identified subscriber enrollment as a lengthy and expensive process. Several stakeholders have recommended that the Board draw from the experience of its Government Energy Aggregation (GEA) Program to test new methods of subscriber acquisition for LMI projects. The proposed amendments, therefore, would create a process for municipalities to develop municipally owned 100 percent LMI opt-out projects, referred to as municipal community solar automatic enrollment projects, or automatic enrollment projects. Automatic enrollment projects would allow municipalities to enroll customers in the community solar project without needing their affirmative consent, but protect individual choice by allowing participants in these municipally owned projects to opt out of participating. Automatic enrollment projects would be limited to projects that commit to allocating all capacity to LMI subscribers, thus increasing the access to the Pilot Program by LMI customers. The new proposed penalties for projects that fail to meet their LMI requirements will provide additional assurances that selected projects will uphold their commitments to serving LMI ratepayers.

Economic Impact

The proposed amendments will not change the economic impact of the Community Solar Energy Pilot Program. The proposed amendments are intended to test a new method of subscriber acquisition in the context 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. Further, allowing automatic enrollment projects would potentially reduce the costs associated with signing up subscribers, which should lead to lower project development costs and, therefore, higher customer savings. Individual community solar customers may benefit because the proposed amendments require that automatic enrollment projects guarantee savings to their subscribers.

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 not anticipated to have a measureable impact on jobs. It is possible that allowing automatic enrollment may reduce the need for subscriber acquisition organizations to find, market, and enroll customers. However, the expected number of municipal community solar automatic enrollment projects is small, and it is likely that these projects will continue to hire third-party assistance for customer management.

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, this 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 the amendments pertain to changes in 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 changes in 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**):

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.

...
 “Community solar consolidated billing” refers to the practice of incorporating the community solar subscription fee directly on a subscriber’s utility bill.

...
 “Local government entity” or “local government” for purposes of the Pilot Program refers to a New Jersey municipal government, including boroughs, towns, townships, cities, and villages.

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

...

14:8-9.4 Pilot Program capacity limits

(a)-(j) (No change.)

(k) A local government may submit an application for a project that requests an exemption from the provisions at N.J.A.C. 14:8-9.10(b)1, which mandate subscriber enrollment through affirmative consent of the subscriber. This type of project shall be known as a municipal community solar automatic enrollment project, or automatic enrollment project. Unless explicitly stated otherwise, an automatic enrollment project shall be subject to all of the rules of the Community Solar Energy Pilot Program, as well as to the following conditions:

1. Any application for an automatic enrollment project must include a municipal ordinance or resolution authorizing the project and application. A copy of the ordinance or resolution shall be presented to the Board as part of the application;

2. The automatic enrollment project shall be owned and operated by the local government for the duration of the project life, which shall be no more than 20 years from the date of commercial operation of the project or the period until the project is decommissioned, whichever comes first. Ownership and operation shall nonetheless permit a period of temporary third-party tax credit investor ownership in order to maximize the financeability of the automatic enrollment project, subject to appropriate contractual provisions that maintain the local government entity’s ultimate control of the automatic enrollment project;

3. The local government may utilize a public procurement to contract for the design, financing, 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, particularly the rules relating to consumer privacy and protection. Any public procurement shall comply with all applicable laws and rules;

4. 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. All subscribers shall be LMI customers as defined by the Pilot Program rules;

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 project;

iii. Subscribers shall be allowed to opt-out from their participation in the automatic enrollment project at any time. Subscribers who opt-out from the automatic enrollment project within 60 days of receiving

their first bill for the cost of their subscription to the automatic enrollment project shall be exempted, or reimbursed, for said first subscription payment and for any subsequent subscription payment charged within those 60 days. This in no way eliminates the requirement for the subscriber to pay their regular utility bill. If a subscriber opts-out from the automatic enrollment project at a later date, the opt-out shall take effect upon the next available billing cycle, or earlier, if practicable;

iv. Opt-out requests shall be submitted either in writing or online through a designated website designed and maintained by the local government or its designee. The database 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;

5. Enrollment in the automatic enrollment project may include a requirement for subscribers to pay a monthly community solar subscription fee. However, for the life of the automatic enrollment project, the monthly subscription fee may never exceed the value of the community solar bill credit in each and every month provided on the subscriber’s utility bill pursuant to N.J.A.C. 14:8-9.7;

6. Subscribers may not be charged a fee for their enrollment in the automatic enrollment project or an exit fee or penalty for opting out from the automatic enrollment project. All fees must be presented to the Board for approval as part of the initial automatic enrollment project application; any modifications to these Board-approved subscriptions or fees must be approved by the Board through a petition submitted no less than 120 days prior to their proposed implementation;

7. The local government, or its designee, if applicable, selected through the public procurement process set forth in this subchapter shall provide written notice by the United States Postal Service to 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. The written notice shall be re-sent 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 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, 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 approved by 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 cost to subscribers of participation in the automatic enrollment project. The statement shall explicitly state that enrolled subscribers will receive, and be expected to pay, a bill separate from their utility bill for the cost of their participation in the automatic enrollment project, unless or until community solar consolidated billing is enacted;

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;

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

vii. A Community Solar Energy Pilot Program Automatic Enrollment Summary and Disclosure Form that summarizes all relevant opt-out project provisions;

8. 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;

9. 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 cancelation, the automatic enrollment project shall 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

10. All public utilities subject to regulation by the Board shall take necessary steps to facilitate local government access to the historic billing usage of customers enrolled in an automatic enrollment project upon satisfactory evidence that the automatic enrollment project is duly authorized by a municipal ordinance or resolution, as appropriate, and by the Board. This local government access shall be for the sole limited purpose of determining subscribers' historic annual usage, in order to appropriately size subscribers' community solar subscriptions in compliance with N.J.A.C. 14:8-9.6(f)1.

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

(a)-(c) (No change)

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

1.-4. (No change)

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 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.

(a)

**BOARD OF PUBLIC UTILITIES
Notice of Proposed Substantial Changes Upon
Adoption to Proposed Amendments
Energy Competition Standards
Licensing and Registration**

Proposed Changes: N.J.A.C. 14:4-1.2 and 5

Proposed: February 3, 2020, at 52 N.J.R. 130(a).

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

Authority: N.J.S.A. 48:2-2-1 et seq., and P.L. 2019, c. 100 and 101. BPU Docket Number: AX19091003.

Submit written comments by January 15, 2021, by e-mail in Microsoft Word format, or in a format that can be easily converted to Word, to: rule.comments@bpu.nj.gov, or on paper to:

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: AX19091003

44 S. Clinton Ave.
PO Box 350
Trenton, NJ 08625-0350

Take notice that the Board of Public Utilities ("BPU" or "Board") proposed amendments to N.J.A.C. 14:4-1.2 and 5 on February 3, 2020, at 52 N.J.R. 130(a). The proposed amendments generally concern energy competition, primarily at N.J.A.C. 14:4-5, Energy Licensing and Registration. As of July 9, 2019, pursuant to N.J.S.A. 48:3-78 and 79, third-party electric power and natural gas supplier licenses issued by the Board may be renewed without expiring if certain conditions are met.

The purpose of the proposed rule amendments published at 52 N.J.R. 130(a) is to conform the rules to the new law. The Board's amendments provide that a license shall not expire, so long as the licensee pays, to the Board, a license renewal fee accompanied by a timely and complete annual information update on a form prescribed by the Board. The renewal fee and annual information update form must be submitted within 30 days prior to the anniversary date of the last approved licensing application. In addition, the amendments are also applied to registrants for consistency. The amendments included other updates to reflect current Board policies.

The BPU is proposing substantial changes to the amendments in response to comments received. A summary of the comments that prompted changes, and the agency response to those, is provided below. This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the notice of proposal:

1. Steve Goldenberg and Paul Forshay, on behalf of the New Jersey Large Energy Users Coalition (NJLEUC);
2. Murray Bevan, on behalf of the Retail Energy Supply Association (RESA); and
3. Maura Caroselli, on behalf of the New Jersey Division of Rate Counsel (RC).

Subchapter 1. General Provisions and Definitions

N.J.A.C. 14:4-1.2

1. COMMENT: The amended rule contains proposed definitions for a "self-supply load serving entity end-user customer" and a "self-supply gas end-user customer." NJLEUC does not take issue with these definitions, as they are consistent with the definitions proposed in our prior comments and with the business practices of our members. (NJLEUC)

RESPONSE: Although the Board appreciates this comment in support of the proposed definitions, the Board finds that further internal and stakeholder discussions are necessary based upon the other comments received on the rulemaking and is, thus, deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end-user customer, including the proposed definitions, from the proposed rules.

2. COMMENT: Upon review of this proposed rulemaking, RESA is concerned that the qualification thresholds of 5,000 therms for "self-supply gas end-user customer" and 50 kilowatts for "self-supply load serving entity end-user customer" is far too low as these are the definitions for small commercial customers rather than "large volume end-users." In addition, the proposed rules seem to allow self-suppliers to aggregate multiple loads across the State. Such a low threshold, combined with the ability to aggregate load, may undermine important consumer protections and convert self-suppliers into proxy TPSs. (RESA)

RESPONSE: Based upon the comments received, the Board finds that further internal and stakeholder discussions are necessary and is, thus, deleting all sections regarding self-supply gas end user customer and self-supply load serving entity end user customer from the proposed rules.

3. COMMENT: Rate Counsel contends that the language in these definitions and at N.J.A.C. 14:4-5.1(c) is unclear, as it could leave self-supply end users vulnerable to additional Board requirements, such as the State's Renewable Portfolio Standards (RPS). Leaving self-supply end-users in the State vulnerable to obligations under the RPS would essentially create a cost-prohibitive tax on many small and large businesses who have made the business decision to become self-supply end-users. The RPS obligations are currently not applicable to these