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## **PUBLIC UTILITIES**

### **BOARD OF PUBLIC UTILITIES**

#### **COMMUNITY SOLAR ENERGY PILOT PROGRAM Community Solar Energy Pilot Program Rules**

#### **Proposed Amendments: 14:8-9.2, 14:8-9.4, 14:8-9.8**

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: XXX

Comments may be submitted through XXXX, by e-mail 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: QO18060646

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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”) rule 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 and regulations establishing the three-year Pilot Program. The Pilot Program rules became effective upon publication in the New Jersey Register on February 19, 2019. During Program 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% 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 via 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.

### **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% 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% 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**

N.J.S.A. 52:14B-23 requires 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, N.J.S.A. 52:14B-23 does 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 new 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, as they do not affect the cost of 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 Plans in New Jersey; the scope of the proposed amendments is limited to establishing a Community Solar Energy Pilot Program.

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

The Board has evaluated the proposed new rules 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.

...

**“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 via 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 rules and regulations 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, defined as 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 the Pilot Program rules, particularly those relating to consumer privacy and protection. Any public procurement shall comply with applicable laws, rules, and regulations.**

**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 via 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.**

**iv. 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 via a petition submitted no less than 120 days prior to their proposed implementation.**

**7. The local government or its designee, if applicable, selected via the public procurement process described above shall provide written notice via 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 date of start of their enrollment in the automatic enrollment**

**project.**

**vi. A contact name, phone number, and e-mail address for subscriber inquiries and complaints managed by the local government or their designee.**

**vii. A Community Solar Energy Pilot Program Automatic Enrollment Summary and Disclosure Form that summarizes all relevant opt-out project provisions in a document developed by the local government or their designee, and approved by Board staff.**

**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 or regulation, the Board may immediately and permanently cancel the automatic enrollment project's exemption from 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).**

**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 the rules at 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% 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.**