

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Notice of Administrative Corrections Community Solar Energy Program

N.J.A.C. 14:8-9.3, 9.5, 9.6, 9.10, and 11.5

Authorized By: New Jersey Board of Public Utilities, Joseph L.

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Authority: N.J.S.A. 48:3-87.11, 48:3-115, and 48:3-116.

BPU Docket Number: QX23070434.

Proposal Number: PRN 2023-095.

The deadline for comments on this notice is December 1, 2023 (5:00 P.M. if submitted other than through U.S. mail). While all comments will be given equal consideration and will be made part of the final record of this proceeding, the preferred method of transmittal is through the Board of Public Utilities' (Board) Public Document Search tool, by searching for the specific docket listed above and using the "Post Comments" button. Written comments may also be submitted. Please include subject matter and docket number and submit to:

Secretary of the Board
New Jersey Board of Public Utilities
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All comments are considered "public documents" for purposes of the State's Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth at N.J.A.C. 14:1-12.3.

The Board originally published a notice of proposal pertaining to the Community Solar Energy Program on September 18, 2023 (see 55 N.J.R. 1985(a)). Upon reviewing the final notice of proposal from the Office of Administrative Law (OAL), the Board discovered several errors that need to be corrected for the notice of proposal to make sense and to allow for proper public input. There is one substantial correction (at N.J.A.C. 14:8-11.5(d)) and several technical corrections.

Upon the initial review of the filed notice of proposal by the OAL, the notice submitted by the Board did not correctly depict the existing New Jersey Administrative Code text at N.J.A.C. 14:8-11.5(d). The corrections by the OAL did not correctly show the intent of the Board, which was to codify existing paragraphs (d)1, 2, and 3 as subparagraphs (d)1i, ii, and iii, respectively (as the Board was adding new paragraph (d)1). These corrections are reflected below. In addition, at subparagraph (g)3iii, the OAL inadvertently did not add the proper closing bracket to fully show the deletion.

The additional corrections at N.J.A.C. 14:8-9.3, 9.5, 9.6, and 9.10 make technical corrections to remove a defined acronym, remove errant commas, and a misplaced hyphen. At N.J.A.C. 14:8-9.3(c)2, a grammatical correction by the OAL changing the phrase from "... determine if the total of applications ..." to "... determine if the total number of applications..." was not accurate; the addition of "number" is being changed to "capacity"; therefore, the sentence clause will read "... and determine if the total capacity of applications for each megawatt block exceeds ..." At N.J.A.C. 14:8-9.5(c) and 9.6(h), the sentences are revised for clarity. Finally, at N.J.A.C. 14:8-9.6(l)3, the notice submitted to the OAL stated "... to improve the financeability of the automatic enrollment project ..." and the word "financeability" was inadvertently corrected to "financial ability"; however, in this notice of administrative correction, "financial ability" is changed back to "financeability."

The existing notice of proposal can be found at 55 N.J.R. 1985(a). The rule text shown below is intended to replace the rule text in the notice of proposal pertaining to N.J.A.C. 14:8-9.3, 9.5, 9.6, 9.10, and 11.5 (there is

no separate indication of how the original published notice of proposal differs from this published rule text).

Full text of the corrected rule text follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 9. COMMUNITY SOLAR ENERGY [PILOT] PROGRAM [RULES]

14:8-9.3 Community Solar Energy Program registration process

(a) All forms and instructions regarding the CSEP registration process shall be found on the Board's New Jersey Clean Energy Program website at www.njcleanenergy.com. Facilities seeking eligibility for the CSEP shall submit a complete registration package to the Board, or its designee, to the Successor Solar Incentive Program in accordance with Board rules at N.J.A.C. 14:8-11.5, except as specified in this subsection and Board Orders.

(b) Registration packages submitted to the community solar segment of the ADI Program shall be reviewed by the SuSI Program registration manager on a first-come, first-served basis, except as described at (c) below.

(c) For each Program solicitation, Board staff shall initiate an application process as follows:

1. The Board shall open an initial registration period for the Program at the start of each energy year or when appropriate by Board Order. The duration of the initial registration period shall be specified in the Board Order.

2. Following the end of the initial registration period, Board staff shall review the submissions for each community solar megawatt block set by Board Order pursuant to N.J.A.C. 14:8-11.7(b) and determine if the total capacity of applications for each megawatt block exceeds the capacity limit for the block.

3. If a megawatt block has not received enough complete registrations to meet its capacity limit, all complete and eligible registrants shall be conditionally accepted into the Program and the megawatt block shall remain open to registrations until the segment is fully subscribed. A megawatt block will be defined as being fully subscribed when the last registration received in the registration portal causes the total capacity of all registrations in that segment to exceed the capacity allocation for said segment.

4. If the complete registrations for a megawatt block exceed the capacity limit for that megawatt block, projects will be reviewed and accepted in the order of their stated guaranteed bill credit discount, beginning with the registrant with the greatest guaranteed bill credit discount, until the allocated segment capacity for that year is fully subscribed.

5. The Board may modify the procedure for project application by Board Order.

(d) Projects previously approved for participation in the Community Solar Energy Pilot Program that did not reach commercial operation by their Pilot Program deadline are permitted to register in the CSEP and ADI Program irrespective of megawatt block capacity limits, provided that all CSEP and ADI Program requirements are met. Such projects' capacities will not count toward the megawatt block capacity limits.

(e) Project applicants provided conditional registration in the CSEP shall post escrow with the Board in an amount set by Board Order, which amount shall be stated as a dollars per kilowatt rate and shall be uniform for all projects. The escrow amount shall be reimbursed to the applicant in full upon commencement of commercial operation of the community solar facility. The escrow amount shall be forfeited to the State if the facility does not commence commercial operation by the expiration of the notice of conditional registration. This escrow requirement shall not apply to projects owned by public entities or registered 501(c)(3) non-profit organizations, subject to Board staff's determination that the non-profit organization is a community-based organization that is run by members of the community and whose benefits accrue to the community.

14:8-9.5 Community Solar Energy Program eligibility

(a) The CSEP is open to community solar projects with a capacity of five MW or less, measured as the sum of the nameplate capacity in DC rating of all PV panels comprising the community solar facility.

(b) The CSEP is open only to new facilities that have not commenced commercial operation prior to conditional registration, unless the Board grants a waiver in response to a petition. A planned facility that has been conditionally awarded an incentive in the Successor Solar Incentive Program or Transition Incentive Program may not qualify until its initial conditional registration expiration date has passed.

(c) Community solar facilities that meet the requirements of this section are eligible to register in the ADI Program as described at N.J.A.C. 14:8-11.4. Community solar projects may receive SREC-IIs or Class I RECs, as applicable.

(d) Unless modified by Board Order or by a waiver granted by the Board, a community solar project may be located on:

1. A rooftop;
2. A carport or canopy over impervious surfaces;
3. A contaminated site or landfill, where associated disturbed areas constitute a maximum of 10 percent of the total area dedicated to solar development, and that excludes farmland; or
4. A body of water that has little to no established floral and faunal resources, such as a water treatment reservoir or dredge pond.

(e) Regarding projects located on a contaminated site or landfill:

1. Facilities shall comply with the requirements for soil erosion and sediment control, in accordance with the New Jersey Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) and the implementing rules at N.J.A.C. 2:90;

2. Facilities shall, as part of the development of a comprehensive siting plan, assess existing drainage conditions, and identify any areas where surface runoff currently exists or where proposed grades will create surface runoff concentration. All such areas shall be designed to prevent onsite erosion, as well as protect offsite areas from erosion and flooding;

3. Facilities shall comply with the NJDEP's Stormwater Management Rules at N.J.A.C. 7:8;

4. Facility panel drip lines shall be protected against scour; and

5. Facilities shall complete a post-construction NJDEP compliance form.

(f) Community solar projects shall be considered connected to the distribution system.

(g) Community solar facilities are not considered co-located if they are located on rooftops of separate buildings on different properties with different beneficial owners.

(h) EDCs are not allowed to develop, own, or operate community solar projects beyond the billing and other responsibilities set forth in this subchapter.

14:8-9.6 Subscription requirements

(a) All subscription requirements pertaining to the CSEP and Pilot Program shall apply to both the original subscription and to all subsequent subscriptions enacted throughout the lifetime of a project, unless expressly determined otherwise by rule or Board Order.

(b) (No change.)

(c) [The] **There is no** maximum number of participating subscribers for each community solar project [shall be set at 250 subscribers per one MW installed capacity (prorated to project capacity)].

(d) [Multi-family] **Community solar projects sited on the property of multi-family** buildings [with 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) All rate classes, **except lighting customers**, are eligible for participation in a community solar project. [In PY2 and PY3, the Board may set a minimum percentage requirement for residential subscribers.]

(f) The following [subscription] requirements **regarding subscribers** shall apply:

1. Community solar [pilot] project subscriptions shall not exceed 100 percent of the subscriber's historic annual usage, **excluding net-metered generation**, calculated over the past 12 months, available at the time of the application. In cases where a 12-month history is not available, the community solar subscriber organization shall estimate, in a commercially reasonable manner, a subscriber's load based on available history or projections.

2. (No change.)

3. Subscriptions are portable, provided that the subscriber remains within the original EDC service territory [and the same geographic limitations (if any) as the community solar pilot project to which they are subscribed]. Appropriate notice of the change in residence and/or location must be provided to the EDC[,] **and subscriber organization** no later than 30 days after the effective date of the change in residence and/or location. [In cases of relocation, subscribers are entitled to one revision per move to their subscription size to account for a change in average consumption.]

4. Subscriptions may be [sold or transferred back to the project owner or community solar subscriber organization] **canceled** by subscribers as specified in their subscription agreements. Subscribers may not sell or transfer a subscription to another party other than the project owner or community solar subscriber organization.

5. (No change.)

6. **When an EDC account associated with a community solar project is terminated or suspended for any reason, the EDC must notify the subscriber organization of the change within 10 days of the suspension or termination.**

(g) In cases of master-metered buildings, the account holder of the master meter shall be allowed to subscribe to community solar subscriptions on behalf of [his or her] **its** tenants. The account holder of the master meter will be required to provide to the **project's** subscriber organization [identified for the project to which they are subscribed], an affidavit that will be made available to the Board that specific, identifiable, sufficient, and quantifiable benefits of the community solar subscription are being passed through to the tenants. Nothing in this subsection prohibits the account holder [of the master meter] from signing a separate subscription for the separately metered building common areas.

(h) **A community solar project shall not enroll customers that subscribe to more than 100 percent of the output of the community solar facility at the project's capacity.**

(i) A subscriber organization may contract with customers placed on a waitlist for a community solar project, to be subscribed upon availability of capacity. The subscriber organization shall notify the customer and confirm a customer's eligibility upon activation of a waitlisted subscription.

(j) All community solar projects must have a minimum of 51 percent of project capacity subscribed by LMI subscribers throughout the qualified life of the project. Projects are subject to the provisions at N.J.A.C. 14:8-9.8(e) and (g) if this minimum is not met.

(k) **Community solar projects may have subscribers anywhere in the EDC service territory to which they are interconnected, unless they indicated otherwise in their application to participate in the Pilot Program. Projects that elected in their Pilot Program application to place a geographic restriction on the subscribers to the project must maintain that restriction for the lifetime of the project. The Board may waive this geographic restriction during the project's operational period in response to a petition for good cause shown.**

(l) **Beginning April 1, 2025, a local government may submit a registration for a municipal community solar automatic enrollment project that requests an exemption from the provisions at N.J.A.C. 14:8-13.9(b)1i, which mandate subscriber enrollment through affirmative consent of the subscriber. Unless explicitly stated otherwise, an automatic enrollment project shall be subject to all other rules of the CSEP, as well as to the following provisions:**

1. **Any registration for an automatic enrollment project must include a municipal ordinance or resolution authorizing the project and application, stating that the local government intends to manage the project as a municipal community solar automatic enrollment project and the mechanism by which it intends to enroll customers. A**

copy of the ordinance or resolution shall be presented to the SuSI Program registration manager as part of the registration;

2. A local government that developed a project in the CSEP or Pilot Program and wishes to convert it to a municipal community solar automatic enrollment project may provide a resolution or ordinance stating its intention to convert the project as a municipal community solar automatic enrollment project and the mechanism by which it intends to enroll new customers by no later than December 31, 2025;

3. The automatic enrollment project shall be owned and operated by the local government or served by the local government as its subscriber organization for the duration of the project life. Ownership and operation shall nonetheless permit a period of temporary third-party tax credit investor ownership or ownership of the solar panels and related equipment by a third party in order to improve the financeability of the automatic enrollment project, subject to contractual provisions that maintain the local government entity's ultimate control of subscriptions for the automatic enrollment project;

4. The automatic enrollment project shall be located within 15 miles of the boundaries of the associated local government;

5. The local government may utilize a public procurement to contract for the third-party design, financing, ownership, 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, including the rules relating to consumer privacy and protection at N.J.A.C. 14:8-13.9. Any public procurement shall comply with all applicable laws;

6. An automatic enrollment project may not subscribe customers unless the project is billed through consolidated billing and provides a guaranteed bill credit discount to the customers;

7. 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. At least 80 percent of capacity shall be subscribed by LMI subscribers. Subscribers may not also be net-metering customer-generators;

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 community solar project or serves as the subscriber organization of the project;

iii. Subscribers shall be allowed to decline or opt out from their participation in the automatic enrollment project at any time. If a participating customer opts out of an automatic enrollment project, the solar credit shall be eliminated on a prospective basis in new billing months with no retroactive adjustments, except for billing errors;

iv. Opt-out requests may be submitted by phone, in writing, or online through a designated website designed and maintained by the local government, or its designee. The records 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;

8. Subscribers shall not be charged a fee for their enrollment in the automatic enrollment project or any exit fees or penalties for opting out from the automatic enrollment project. Any other fees or modification thereof must be approved by the Board through a petition submitted no less than 120 days prior to their proposed effective date;

9. The local government, or its designee, if applicable, selected through the public procurement process set forth in this subchapter, shall provide written notice delivered by the United States Postal

Service to all 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. Another written notice shall be sent by the local government, or its designee, 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 the New Jersey Division of 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, a basic description of the Program and premise that there are potentially other projects and competing subscription opportunities, 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 registered with 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 consolidated billing procedures of the automatic enrollment project;

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; and

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

10. 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;

11. An automatic enrollment project may suspend or cancel a subscription in the event of suspension or cancellation of an EDC account;

12. 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 cancellation, the automatic enrollment project may 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

13. The EDCs shall take necessary steps to facilitate local government access to the historic billing usage of customers, point of delivery, identification number, if applicable, and other information required by the local government to subscribe customers in an automatic enrollment project, upon satisfactory evidence that the automatic enrollment project is duly authorized by a local government ordinance or resolution, as appropriate, and by the Board. The EDCs shall provide this information for all residential customers in the municipality, upon the request of the local government, to facilitate the customer identification and enrollment process by the local government. This local government access shall be for the purposes of identifying and enrolling customers and determining subscribers' historic annual usage, in order to appropriately size subscribers' community solar subscriptions in compliance with (f)1 above. The local government shall indemnify the

EDC for any breach of customer information. The EDCs shall facilitate the customer billing process.

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, **including, but not limited to, N.J.A.C. 13:45A-9 and 13:45D and N.J.S.A. 56:8-2 and 48:3-85.** 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. **[A] Unless affirmatively allowed pursuant to N.J.A.C. 14:8-9.6(l), a community solar subscriber may not be subscribed without their affirmative written consent, either [via] through wet or electronic signature.**

ii.-iv. (No change.)

2. As to marketing, advertising, and solicitations, as follows:

i. (No change.)

ii. Subscriber organizations shall provide information about the community solar projects that they are marketing in a prominent location on their websites, including projects' name, capacity, address, areas served, and projected or actual commercial operation date.

Recodify existing ii.-iii. as **iii.-iv.** (No change in text.)

[iv.] v. Subscriber organizations shall comply with all [FTC] Federal Trade Commission telemarketing rules, including, but not limited to, the restriction on telemarketing between the hours of 9:00 P.M. and 8:00 A.M., Eastern Standard Time.

[v.] vi. Subscriber organizations must include in all advertisements, marketing, or sales materials, a toll-free or local telephone number and a link to a website through which customers can obtain further information regarding [their] the subscriber organizations' product and/or services.

Recodify existing vi.-vii. as **vii.-viii.** (No change in text.)

3. As to contracts, as follows:

i. (No change.)

ii. Prices, whether in a quote or a contract, must include disclaimers that:

(1) (No change.)

(2) **The Board does not regulate the price of community solar subscriptions, nor does it guarantee projected savings beyond the project's guaranteed minimum bill discount or the savings indicated in the project's application form.**

iii.-vii. (No change.)

4. As to disclosure statements, as follows:

i. **[Board staff will design and approve a specific disclosure statement that subscriber] Subscriber organizations must present a disclosure statement designed by Board staff to each community solar subscriber at the same time as their subscription contract. Each subscriber must sign an acknowledgement that they have received and read the disclosure statement.**

ii.-iii. (No change.)

5. (No change.)

6. As to inquiry and remediation, as follows:

i.-ii. (No change.)

[iii. Community solar developers, operators, owners, and subscriber organizations are subject to formal pleadings and petitions procedures, as set out in N.J.A.C. 14:1-4 and 5.]

7. (No change.)

SUBCHAPTER 11. SUCCESSOR SOLAR INCENTIVE PROGRAM

14:8-11.5 Successor Solar Incentive Program registration process

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

(d) The registrant shall meet minimum facility maturity standards **according to the ADI or CSI Program conditions** and provide all **required** documentation [required by Board rule or order] as part of its initial registration package[, including, but not limited to:].

1. For net metered projects in the ADI Program, the registrant shall supply the following, and any other information the Board, or

its designee, may deem necessary to confirm eligibility for the Program:

Recodify existing 1.-3. as **i.-iii.** (No change in text.)

[4.] iv. [For net metered facilities, a] A utility bill showing the site host's name, address, and electric tariff, if applicable;

[5.] v. (No change in text.)

[6.] vi. For [net metered] facilities sized 25 kW or greater, up to one MW, evidence of having submitted to the relevant EDC [a Part 1 interconnection agreement] an Attachment A to an Interconnection Application and Agreement signed by the customer-generator and the installer;

[7.] vii. For [net metered] facilities sized one MW or greater, [an executed Part 1 interconnection agreement] written authorization from the EDC providing conditional approval to construct and a Milestone Reporting Form; and

[8.] viii. (No change in text.)

2. For community solar projects in the ADI Program and CSEP, the registrant shall supply the following, and any other information the Board, or its designee, may deem necessary to confirm eligibility for the Program:

i. A site plan certified by a licensed professional engineer;

ii. For facilities sized up to one MW, evidence of having submitted to the relevant EDC an Attachment A to an Interconnection Application and Agreement signed by the installer;

iii. For facilities sized one MW or greater, written authorization from the EDC providing conditional approval to construct and a Milestone Reporting Form;

iv. Evidence of applications for all discretionary land use approvals and entitlements applicable to the project, such as municipal zoning permit or municipal site plan approval, county site plan approval, soil conservation district approval, and Pinelands Commission or Highlands Commission approval, with a signed list of all permits to be applied for;

v. A community engagement and subscriber acquisition plan;

vi. A guaranteed bill credit discount to be offered to subscribers, given as a percentage to two decimal places; and

vii. For projects on a contaminated site or landfill, an estimated size of the area designated as a "contaminated site" or "properly closed sanitary landfill," a completed New Jersey Department of Environmental Protection permit readiness checklist, and a completed Contaminated Sites and Landfills Eligibility Verification Form.

(e)-(f) (No change.)

(g) Registrants that submit a completed registration package or that cured all minor deficiencies in the time allowed, and that meet the eligibility and qualification requirements for a SuSI market segment pursuant to this subchapter will be issued a notice of conditional registration by Board staff or the SuSI Program registration manager. The notice of the conditional registration shall:

1.-2. (No change.)

3. Include an expiration date occurring on:

i. (No change.)

ii. The 18-month anniversary of a registrant's notice of conditional registration for community solar facilities **other than those located on contaminated sites or landfills;** or

iii. The [24-month] **36-month** anniversary of a registrant's notice of conditional registration for projects granted conditional certification by the Board as part of the [Contaminated Sites interim market segment established pursuant to N.J.A.C. 14:8-11.7(b)8] **CSI Program;** [and] or

iv. The 24-month anniversary of a registrant's verification of eligibility by NJDEP for community solar facilities located on contaminated sites or landfills.

4.-5. (No change.)

(h)-(l) (No change.)