

or seminar that the licensee has not taught previously in any educational setting. One credit for each hour of a presentation shall be given for subsequent sessions involving substantially identical subject matter up to a maximum of 10 credits, provided the original material has been updated and subject to the credit limits of [N.J.A.C. 13:39A-9.3] **this section**;

4.-7. (No change.)

(d) A licensed physical therapist who becomes certified or recertified in a clinical specialty by the American Board of Physical Therapy Specialties shall receive 15 continuing education **and competency** credits for the biennial licensure period in which it takes place.

(e) A licensed physical therapist who successfully completes a residency or fellowship approved by the American Physical Therapy Association (APTA) shall receive 15 continuing education **and competency** credits for the biennial licensure period in which the residency takes place.

(f) A licensed physical therapist who completes the Federation of State Boards of Physical Therapy (FSBPT) [Practice Review Tool (PRT)] **oPTion** shall receive [10] **three** continuing education **and competency** credits for the biennial licensure period in which the [PRT] **oPTion** is taken.

(g)-(h) (No change.)

(i) The Board may review and approve courses, programs, and seminars, which are not pre-approved pursuant to (b) above, when such courses, programs, and seminars are submitted for approval by a licensee for continuing professional education **and competency** credit. The licensee shall submit, on a form approved by the Board, the title, date, and location of the course, program, or seminar for which approval is being sought and the information required of a continuing professional education **and competency** provider pursuant to N.J.A.C. 13:39A-9.6(a)1.

(j) Continuing education **and competency** courses, programs, and seminars shall be offered on a nondiscriminatory basis. Membership organizations may discount the cost of attending continuing education **and competency** courses, programs, and seminars for dues-paying members.

13:39A-9.4 Documentation of continuing education **and competency** credits

(a) Each licensee shall maintain a record of all continuing education **and competency** activity completed and shall submit evidence of completion of the credit requirements to the Board upon request. Each licensee shall obtain from the continuing education **and competency** course, program, or seminar provider and retain for a period of at least four years following the license renewal a record of attendance which shall include, at a minimum, the following:

1.-5. (No change.)

6. The number of continuing education **and competency** credits awarded; and

7. (No change.)

(b)-(e) (No change.)

(f) The Board shall monitor compliance with the mandatory continuing education **and competency** requirements by conducting a random audit of licensees, who, upon request, shall provide proof of successful completion of continuing education **and competency** credits.

(g)-(i) (No change.)

13:39A-9.5 Waiver of continuing education **and competency** requirements

(a) The Board may waive, extend, or otherwise modify the time period for completion of the continuing education **and competency** requirements on an individual basis for reasons of hardship, such as illness, disability, or active service in the military.

(b) A licensee who seeks a waiver, extension, or modification of the time period for the completion of the continuing education **and competency** requirements shall provide to the Board in writing, no less than two months prior to the end of the licensure period, the specific reasons for requesting the waiver, extension, or modification and such additional information as the Board may require in support of the request.

13:39A-9.6 Responsibilities of continuing education **and competency** providers

(a) All providers of continuing education **and competency** not included in N.J.A.C. 13:39A-9.3(b) shall:

1.-6. (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Tariff Filings or Petitions Which Propose Increases in Charges to Customers

Notice to Reopen Public Comment Period for Reproposed Amendment: N.J.A.C. 14:1-5.12

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. 48:2-13.

BPU Docket Number: AX1750469.

Proposal Number: PRN 2018-018.

Take notice that the New Jersey Board of Public Utilities (“BPU” or “Board”) seeks further input on rulemaking that was published on February 5, 2018, at 50 N.J.R. 709 (PRN 2018-018), regarding the reproposed amendment to N.J.A.C. 14:1-5.12, Tariff filings or petitions which propose increases in charges to customers. In particular, this rulemaking concerns the Board’s filing requirements in a utility base rate case to inform a consolidated tax adjustment (CTA) analysis.

Comments that have been properly submitted during the initial comment period will be considered by the Board unless supplemented, amended, or otherwise superseded as requested by commenters in comments submitted in the comment period identified herein.

Comments may be submitted for a period of 60 days following publication of this notice, through November 30, 2018, 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: AX1750469
44 S. Clinton Ave., 3rd Floor, Suite 314
PO Box 350
Trenton, NJ 08625-0350

(b)

BOARD OF PUBLIC UTILITIES

COMMUNITY SOLAR ENERGY PILOT PROGRAM

Community Solar Energy Pilot Program Rules

Proposed New Rules: N.J.A.C. 14:8-9

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

Authority: N.J.S.A. 48:2-13.

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

BPU Docket Number: QO18060646.

Proposal Number: PRN 2018-090.

Two **public hearings** will be held on the proposed new rules on the following date at the following location and times:

Thursday, November 8, 2018
1:00 P.M. and 5:30 P.M.

Florio Forum

Edward J. Bloustein School of Planning and Public Policy

Rutgers University
33 Livingston Ave.
New Brunswick, NJ 08901
<http://bloustein.rutgers.edu/>

Comments may be submitted through November 30, 2018, 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: QO18060646
44 S. Clinton Ave., 3rd Floor, Suite 314
PO Box 350
Trenton, NJ 08625-0350

The agency proposal is as follows:

Summary

The Board of Public Utilities (Board) is proposing new rules establishing a Community Solar Energy Pilot Program (Pilot Program), by proposing N.J.A.C. 14:8-9. These proposed rules are designed to bring the Board's rules into compliance with P.L. 2018, c. 17 (the Clean Energy Act).

At N.J.A.C. 14:8-9, the proposed rules establish a three-year Community Solar Energy Pilot Program to enable electric utility customers to participate in a solar energy project that may be remotely located from their properties but is within their electric public utility service territory. Participating customers (known as subscribers) will receive a credit on their utility bills for their participation in a community solar project. Thus, a community solar project will enable access to solar energy to electric utility customers who have previously been unable to participate in solar energy due to a variety of barriers. A full-scale Community Solar Energy Program will be developed no later than 36 months after the effective date of the rules establishing the Community Solar Energy Pilot Program, drawing upon the experiences and lessons learned from the Pilot Program.

In developing the proposed rules for the Community Solar Energy Pilot Program, the Board has examined and drawn from the experiences of existing community solar programs in other states, while crafting a program that reflects the goals and circumstances specific to New Jersey. Thus, where appropriate, the proposed rules draw upon industry standards and precedent, within the framework of a New Jersey-specific program.

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

The following is a summary of the substantive provisions to the proposed rules:

N.J.A.C. 14:8-9.1 establishes the purpose and scope of N.J.A.C. 14:8-9.

N.J.A.C. 14:8-9.2 sets forth the applicable definitions for N.J.A.C. 14:8-9.

N.J.A.C. 14:8-9.3 lays out the structure for the Community Solar Energy Pilot Program. It limits the Pilot Program to three years (known as "Program Year 1," "Program Year 2," and "Program Year 3") beginning on January 1, 2019. It establishes the structure for approval of projects to participate in the Pilot Program, via an annual competitive application process. It entitles electric distribution companies (EDCs) to full cost recovery incurred in implementation, compliance, and administration of the Pilot Program.

N.J.A.C. 14:8-9.4 sets forth the annual capacity limit for community solar projects approved for participation in the Pilot Program at 75 megawatts (MW) for Program Year 1, and at least 75 MW per program year for Program Years 2 and 3. The annual capacity limit will be divided among each EDC based on their average respective percentages of in-State retail electric sales. At least 40 percent of total annual capacity shall be allocated to low- and moderate-income (LMI) projects, with an additional 10 percent of total annual capacity able to be set aside by the Board for low-income community solar projects. The maximum size for individual community solar projects is set at five MW.

N.J.A.C. 14:8-9.5 sets forth siting restrictions on community solar projects. Additionally, the distance between the project and its subscribers may be anywhere within the EDC service territory in which

the project is located, unless indicated otherwise in the project's application approved by the Board.

N.J.A.C. 14:8-9.6 sets forth subscription requirements for community solar projects, including a 10-subscriber minimum per project and 250-subscriber maximum per one MW installed capacity, and limits to the size of individual subscriptions.

N.J.A.C. 14:8-9.7 sets forth the value of the community solar bill credit at retail rate net metering, inclusive of supply and delivery charges. The bill credit may not be applied to fixed, non-by-passable charges and shall remain in effect for the life of the project. This section also establishes standards for the administration of the bill credit, by creating an annualized period for each subscriber, setting the conditions for carrying over credits, and determining a process for compensation for excess or unallocated credits. Subscribers must have an active EDC account within the EDC service territory of the community solar project to which they are subscribed and agree to the installation of a remote read smart meter upon EDC request. Additionally, this section directs Board staff to work with the EDCs to develop a process by which community solar subscriber organizations and EDCs shall exchange information pertaining to project subscribers and subscriptions and mandates the use of said process by subscriber organizations. The EDCs shall administer the billing process and may sync up the monthly billing periods of subscribers and projects. Community solar projects are eligible to apply, via a one-time election prior to the delivery of any energy from the facility, for SRECs or Class I RECs. The Board may create one or more additional incentive(s) for specific types of community solar projects.

N.J.A.C. 14:8-9.8 creates provisions of access for low- and moderate-income customers, by defining a low- and moderate-income subscriber, defining a low- and moderate-income community solar project, and setting eligibility standards for LMI subscribers.

N.J.A.C. 14:8-9.9 identifies codes and standards applicable to community solar projects, including, but not limited to, interconnection requirements, licensing, and Federal and State securities regulations. Community solar projects shall be considered as connected to the distribution system. Each community solar project is required to telemeter production data to the EDC on a monthly basis, and the EDCs are responsible for measuring the metered production of energy by community solar projects. Additionally, this section directs the EDCs to make available, and update in a commercially reasonable fashion, capacity hosting maps within 90 days of the beginning of Program Year 1.

N.J.A.C. 14:8-9.10 creates consumer protection standards for community solar subscribers and establishes a registration process for community solar subscriber organizations.

N.J.A.C. 14:8-9.11 establishes the reporting standards for EDCs and community solar developers, owners, operators, and subscriber organizations.

Social Impact

The proposed new rules will have a positive social impact for New Jersey, by creating an opportunity for access to solar energy to consumers who have previously been excluded. New Jerseyans who are unable to place solar on their own property, including, but not limited to, because they are renters, have a shaded or unsuitable roof, or are unable to afford the upfront capital costs, will now be able to purchase or subscribe to a share of solar generation, and receive the associated bill credit. Community solar creates the opportunity for new clean energy generation assets that will directly benefit communities in New Jersey.

Additionally, the Community Solar Energy Pilot Program is designed to specifically provide the opportunity for inclusion of LMI households. A significant proportion (at least 40 percent of the overall program capacity) of the Pilot Program will be reserved for LMI projects, with particular attention paid to ensuring that benefits are passed along to the LMI participants.

Finally, the Board is proposing rules to establish a three-year pilot program, as set forth in the Clean Energy Act. Projects will be selected via a competitive scoring process, with different criteria given different weights. This will enable the Board to test different types of projects, with the aim of implementing best practices and lessons learned when

the Pilot Program is converted into a full-scale Community Solar Energy Program.

Economic Impact

The proposed new rules will provide the opportunity for the development of a new market for solar generation. In conformance with the Clean Energy Act, the proposed rules establish a value of the credit on each subscriber's bill. This value, set at retail rate net metering minus fixed, non-by-passable charges, has been selected based on reasonable and prudent estimates of the cost of community solar project development. Additionally, the proposed credit and annual capacity set forth in this subchapter are within the scope of the existing solar Renewable Portfolio Standard (RPS). The majority of those costs and impacts have already been accounted for in previous rulemaking proceedings. The Community Solar Energy Pilot Program may be subject to changes to existing solar compensation mechanisms (including, but not limited to, Solar Renewable Energy Certificates (SRECs) and the RPS) as they may be modified. Finally, the three-year pilot program will generate actual market information and data that will be used to inform the development of the full-scale Community Solar Energy Program, including an evaluation of the value of the bill credit.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., 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-1 et seq., do not require a Federal standards analysis for the proposed amendments.

Jobs Impact

The proposed new rules are 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. The proposed new rules are designed to operate within the existing solar RPS, and, thus, contribute to the associated impacts on jobs in the development, construction, and operation of solar facilities, and in the sales and management of community solar subscriptions.

Agriculture Industry Impact

The proposed new rules establish standards for the preservation of farmland in New Jersey. Specifically, the proposed new rules prohibit the siting of community solar projects on land designated as preserved farmland. The proposed new rules do not place an outright prohibition on siting of community solar projects on any and all farmland in New Jersey, with the intention of encouraging applications for projects that make creative use of marginal or low-value lands.

Regulatory Flexibility Statement

The proposed new rules 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 new rules are unlikely to have any impact on the affordability of housing in New Jersey, nor is it anticipated that they will have any impact on the average cost of housing. The proposed new rules address only renewable energy programs and do not directly affect housing prices or the housing market.

Smart Growth Development Impact Analysis

The proposed new rules 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 rules 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 proposed new rules follows:

SUBCHAPTER 9. COMMUNITY SOLAR ENERGY PILOT PROGRAM RULES

14:8-9.1 Purpose and scope

This subchapter sets forth the rules for the establishment of a Community Solar Energy Pilot Program, in accordance with N.J.S.A. 48:3-87.11.

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.

"Advertising" shall have the same meaning as set forth in N.J.A.C. 14:4-1.2.

"Affordable housing," shall have the same meaning as "affordable," as set forth in N.J.A.C. 5:80-1.2.

"Affordable housing provider" refers to any person or entity that owns, operates, or manages affordable housing units. Affordable housing providers may qualify as LMI participants in an LMI community solar pilot project, under the condition that they demonstrate in their application to the Board that they are passing along specific, identifiable, and quantifiable long-term benefits to their tenants/residents (see N.J.A.C. 14:8-9.8(a)).

"Annual net energy" means the total amount of energy produced by the community solar facility on an annual basis, measured at the EDCs' meter.

"Annualized period" means a period of 12 consecutive monthly billing periods.

"Avoided cost of wholesale power," shall have the same meaning as set forth in N.J.A.C. 14:8-4.2.

"Basic generation service" or "BGS" shall have the same meaning as set forth in N.J.A.C. 14:4-1.2.

"Bill credit" refers to the credit placed on community solar subscribers' utility bills by their EDC, calculated according to the bill credit value as established in this subchapter.

"Board" or "BPU" shall have the same meaning as set forth in N.J.A.C. 14:3-1.1.

"Capacity" shall mean the nameplate capacity, measured as the sum of the nameplate capacities in DC rating of all individual photovoltaic panels physically interconnected to make up a community solar facility.

"Clean Energy Act" shall mean P.L. 2018, c.17, signed into law on May 23, 2018.

"Co-location" is defined as having two or more independent community solar facilities providing subscriptions to two separate and distinct subscriber groups that are sited on the same parcel or contiguous parcels.

"Community solar developer" or "developer" means an entity that is duly authorized to do business in the State of New Jersey and constructs a community solar facility within the State of New Jersey.

"Community Solar Energy Pilot Program" or "Pilot Program" refers to the program being established in this subchapter.

"Community Solar Energy Program" refers to the full-scale community solar program for which the Board shall adopt rules no later than (36 months after the effective date of rules and regulations establishing the Pilot Program).

"Community solar facility" refers to the physical equipment, including, but not limited to, panels, inverters, racking, and balance of

systems, which constitutes a solar facility used for community solar, with a nameplate capacity in DC rating not to exceed five MW.

“Community solar operator” means the entity in charge of the day-to-day oversight, safety, and control of the community solar project. The community solar operator may or may not have an ownership stake in the community solar project.

“Community solar owner” means the entity that legally and financially controls the community solar project. The “community solar owner” can be distinguished from the “community solar site owner.”

“Community solar pilot project,” “community solar project,” or “project” refers to a community solar project approved by the Board for participation in the Pilot Program, including, but not limited to, the community solar facility, project participants, and subscribers.

“Community solar site owner” or “site owner” means the entity that legally and financially owns the real property on which the community solar facility exists.

“Community solar subscriber organization” or “subscriber organization” means the entity, duly registered with the Board that works to acquire original subscribers for the community solar project and/or acquires replacement subscribers over the lifetime of the community solar project and/or manages subscriptions for a community solar project. The community solar subscriber organization may or may not be, in whole, in part, or not at all, organized by the community solar developer, community solar owner, or community solar operator.

“Community solar subscriber” or “subscriber” refers to any person or entity who participates in a community solar project by means of the purchase or payment for a portion of the capacity and/or energy produced by a community solar facility. One electric meter denotes one subscriber.

“Community solar subscription” or “subscription” refers to participation in a community solar project, by which the subscriber receives a bill credit for a share for community solar capacity and/or energy produced by a community solar facility. A subscription may be measured as capacity in kW and/or energy in kWh, ownership of a panel or panels in a community solar facility, ownership of a share of a community solar project, or a fixed and/or variable monthly payment to the project operator.

“Customer information,” shall have the same meaning as set forth in N.J.A.C. 14:4-1.2.

“Days” means calendar days, unless otherwise specified.

“DEP” means the New Jersey Department of Environmental Protection.

“Electric distribution company” or “EDC” shall have the same meaning as an “electric public utility” provided in N.J.S.A. 48:3-51.

“Electric distribution system,” shall have the same meaning as set forth in N.J.A.C. 14:5-1.2.

“Electronic Data Interchange” or “EDI” refers to the direct computer-to-computer exchange and processing of standard business forms from one business application to another, as defined and administered by the Board’s Division of Energy.

“Entity” is defined as a natural person or persons or a legal person or persons.

“Existing solar project,” for the purposes of the Community Solar Energy Pilot Program, refers to a solar project having begun operation and/or been approved by the Board for connection to the distribution system prior to January 1, 2019.

“Farmland,” shall have the same meaning as set forth in N.J.A.C. 14:8-1.2.

“Good utility practice” shall have the same meaning as set forth in N.J.A.C. 14:8-5.1.

“Government entity,” shall have the same meaning as set forth in N.J.S.A. 48:3-51.

“Green Acres preserved open space” means land classified as either “funded parkland” or “unfunded parkland” under N.J.A.C. 7:36, or land purchased by the State with “Green Acres funding” (as defined at N.J.A.C. 7:36).

“Green Button” is the energy industry-led effort initiated by the U.S. Department of Energy to provide utility customers with easy and secure access to their energy usage information in a standardized, consumer-friendly, and computer-friendly format.

“Historic annual usage” means the average amount of electricity supplied by an electric power supplier or basic generation service provider to the customer over the most recent 12-month period.

“Historic fill,” shall have the same meaning as set forth in N.J.S.A. 48:3-51.

“HUD” means the United States Department of Housing and Urban Development.

“In-State retail electric sales” means the electricity sold by third party suppliers or BGS providers directly to end-use consumers within EDC service territories in the State of New Jersey.

“Interconnection agreement” means an agreement between a generator and an EDC, which governs the connection of the generator facility to the electric distribution system, as well as the ongoing operation of the generator facility after it is connected to the system. An interconnection agreement shall follow the standard form agreement developed by the Board and available from each EDC.

“kW” means kilowatts, a unit of power representing 1,000 watts. A kW equals 1/1000 of a MW.

“kWh” means kilowatt-hours, a unit of energy representing 1,000 watt-hours. A kWh equals 1/1000 of a MWh.

“Low-income household” means a household with adjusted gross income at or below 200 percent of the Federal poverty level.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent, but less than 80 percent of the median income, as determined by annual HUD income limits.

“Multi-family buildings” or “multiple dwellings” are defined as having three or more independent resident housing units, as per N.J.S.A. 55:13A-3(k) and the 2015 New Jersey International Building Code definition for Residential Group R-2.

“MW” means megawatts, a unit of power representing 1,000,000 watts. A MW equals 1,000 kW.

“Nameplate capacity” means the maximum rated output of an electric power generator under specific conditions designated by the manufacturer and usually indicated on a nameplate physically attached to the power production equipment.

“Open space” refers to land designated as “open” or a synonymous term in a municipal or county master plan or easement.

“Preserved farmland” means land from which a permanent development easement was conveyed and a deed of easement was recorded with the county clerk’s office pursuant to N.J.S.A. 4:1C-11 et seq., land subject to a farmland preservation program agreement recorded with the county clerk’s office pursuant to N.J.S.A. 4:1C-24, land from which development potential has been transferred pursuant to N.J.S.A. 40:55D-113 et seq. or 40:55D-137 et seq., or land conveyed or dedicated by agricultural restriction pursuant to N.J.S.A. 40:55D-39.1.

“Program year” or “PY” means the 12-month period from the official launch of the Community Solar Energy Pilot Program on January 1, 2019. Each of the three program years for the Pilot Program shall be numbered PY1, PY2, and PY3, respectively.

“Regulated entity” shall have the same meaning as set forth in N.J.A.C. 14:3-1.1.

“Regulated service” shall have the same meaning as set forth in N.J.A.C. 14:3-1.1.

“Renewable Portfolio Standard” or “RPS” means the program established by N.J.A.C. 14:8-2.1.

“Residential customer” shall have the same meaning as set forth in N.J.A.C. 14:3-1.1.

“Sanitary landfill” shall have the same meaning as set forth in N.J.A.C. 7:26-1.4.

“Service area” means the entire geographic area over which a gas or electric light, heat, or power company has a privilege or franchise granted by the State or by any political subdivision of the State, in accordance with the provisions of N.J.S.A. 48:2-13 and 14.

“Societal benefits charge” shall have the same meaning as set forth in N.J.S.A. 48:3-51.

“Solar panel” shall have the same meaning as set forth in P.L. 2018, c. 17.

“Solar power” shall have the same meaning as set forth in P.L. 2018, c. 17.

“Solar renewable energy certificate” or “SREC” shall have the same meaning as set forth in N.J.S.A. 48:3-51.

“Telemarketing sales call” shall have the same meaning as set forth in N.J.A.C. 14:4-7.2.

“Unallocated/reallocated capacity” is defined as program capacity that is either not allocated to a community solar project approved within a given program year, or which was allocated to a community solar project approved within a given program year that has been deemed by the Board or Board staff, in its sole reasonable discretion, as no longer able to be completed.

“Unsolicited advertisement” shall have the same meaning as set forth in N.J.A.C. 14:4-7.2.

14:8-9.3 Pilot Program structure

(a) The Pilot Program shall run for a period of no more than 36 months, divided into Program Year 1 (PY1), Program Year 2 (PY2), and Program Year 3 (PY3). Program Year 1 shall begin January 1, 2019 and last for the full calendar year, until December 31, 2019.

(b) No later than (36 six months after the effective date of this subchapter), the Board shall adopt rules to convert the Pilot Program to a Community Solar Energy Program.

(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. Board staff shall present to the Board for approval the application for participation in the Pilot Program and the criteria for evaluation of said applications.

2. Board staff shall open applications for the Pilot Program for a length of time to be enacted at the official approval of the application.

3. Following the close of the application period, Board staff will evaluate and score projects based on criteria identified in the application. Only applications that are substantively complete by the close of the application period will be considered for participation in the Pilot Program for that program year.

4. Board staff will not accept applications for EDCs to develop, own, or operate community solar projects beyond the billing and other responsibilities set forth in this subchapter.

5. Projects will be presented to the Board for approval for participation in the Pilot Program beginning with the highest-scored project, and until the allocated program capacity for that year is filled.

6. Board staff may reject applications that are substantively incomplete at the close of the application period, that are not in compliance with this subchapter, or that do not meet a minimum standard for selection, as set forth in the application. The Board reserves the right to request additional or modified information to complete an application.

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.

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 months of their approval by the Board. Board staff may approve one or more six-month extensions if substantial progress is demonstrated towards becoming fully operational within the initial 12-month period, as determined upon review by Board staff based on the specific circumstances of the project.

9. Board staff may initiate more than one application period per Program Year.

10. The application periods for PY2 and PY3 may be opened as early as 90 days prior to the end of the previous program year.

11. In the approval process, Board staff may determine that it is appropriate to limit the number of projects approved for a single developer in a program year, in order to promote a diverse pool of developers.

(d) Electric distribution companies shall, subject to review and approval by the Board, be entitled to full cost recovery for any incremental costs incurred in implementation, compliance, and administration of the Pilot Program. EDCs may not set a separate fee or

surcharge for community solar projects unless explicitly authorized to do so by the Board.

(e) The Board shall publish information pertaining to the New Jersey Community Solar Energy Pilot Program on its website including, but not limited to:

1. Application requirements and forms and evaluation criteria.

2. The list of approved community solar projects, including names, locations, and sizes.

3. The total capacity of approved projects for each program year.

4. Contact information for community solar projects currently seeking subscribers.

14:8-9.4 Pilot Program capacity limits

(a) The annual capacity limit for all community solar projects approved for participation in the Pilot Program during PY1 shall not exceed 75 MW, defined as the sum of the nameplate capacity in DC rating of all PV panels in projects approved for participation.

(b) No later than 30 days prior to the start of PY2 and PY3, 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) Unallocated capacity at the end of a program year may be reallocated to subsequent program years.

(d) The annual capacity limit will be divided among each EDC area based on their average respective percentages of in-State retail electric sales. The anticipated PY1 breakdown is as follows:

1. Atlantic City Electric	12.8%
2. Jersey Central Power & Light	27.5%
3. Public Service Electric & Gas	57.2%
4. Rockland Electric Co.	2.5%

(e) At least 40 percent of the annual capacity limit shall be allocated to LMI projects.

(f) In the application process approved by the Board, the Board may set aside up to an additional 10 percent of the annual capacity limit, in order to test new models for low-income community solar projects including, but not limited to, ownership of community solar assets by low-income subscribers. The application and criteria for these low-income projects shall be developed by the Board.

(g) The capacity limit for individual community solar pilot projects is set at a maximum of five MWs per project, measured as the sum of the nameplate capacity in DC rating of all PV panels comprising the community solar facility.

(h) Each project shall be equipped with at least one utility grade meter.

(i) Existing solar projects may not apply to requalify as a community solar project.

(j) Co-location of solar facilities shall be permitted, subject to specific review and permission by the Board through the application process.

14:8-9.5 Project siting requirements

(a) Community solar projects may have subscribers anywhere in the EDC service territory in which they are located, unless they have indicated otherwise in their application to participate in the Pilot Program. Projects that have elected, in their application, to place a geographic restriction on the subscribers to the project must maintain that restriction for the lifetime of the Pilot Project. The Board may consider waiving this restriction during the project’s operational period upon special request.

(b) For the purposes of this section, the location of a subscriber and/or a community solar project is identified by the location of its physical utility meter.

(c) The following siting restrictions shall apply to community solar projects:

1. Community solar projects shall not be allowed on preserved farmland.

2. Community solar projects shall only be allowed on land designated as Green Acres preserved open space, or on land owned by the New Jersey Department of Environmental Protection, by special approval of the DEP.

14:8-9.6 Subscription requirements

(a) All subscription requirements pertaining to the 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) The minimum number of participating subscribers for each community solar project shall be set at 10 subscribers.

(c) The 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 buildings with a 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 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 shall apply:

1. Community solar pilot project subscriptions shall not exceed 100 percent of the subscriber's historic annual usage, 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.

2. No single subscriber shall subscribe to more than 40 percent of a community solar project's total annual net energy.

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, 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 by subscribers. Subscribers may not sell or transfer a subscription to another party other than the project owner.

5. A subscriber may not participate in more than one community solar project. It is the responsibility of the subscriber organization to verify that their subscribers are not already subscribed to another community solar project.

(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 tenants. The account holder of the master meter will be required to demonstrate, in his or her application to the Board and with a signed affidavit, 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.

14:8-9.7 Community solar bill credits

(a) The value of the bill credit shall be set at retail rate net metering, inclusive of supply and delivery charges.

(b) The calculation of the value of the bill credit shall remain in conformance with retail rate net metering, as determined in (a) above and shall remain in effect for the life of the project.

(c) The credit may not be applied to fixed, non-by-passable charges.

(d) An annualized period shall be established for each subscriber.

1. The annualized period shall begin on the day a subscriber first earns a community solar bill credit based on the delivery of energy.

2. The annualized period shall continue for a period of 12 months, until the subscription ends, or until the subscriber's EDC account is closed, whichever occurs earlier.

(e) Credits shall carry over from monthly billing period to monthly billing period, with the balance of credits accumulating until the earlier of:

1. The end of the annualized period;
2. The closure of the subscriber's EDC account; or

3. The end of the subscriber's community solar subscription.

(f) At the end of the annualized period and/or when a subscriber's EDC account is closed and/or at the end of the subscriber's community solar subscription, any excess net bill credits greater than the sum of all appropriate billable charges shall be compensated at the EDC's or BGS provider's avoided cost of wholesale power, as determined from time-to-time, calculated at the nearest node to the point of delivery of the community solar project. The excess compensation must be returned to the subscriber following his or her preferred method, wire transfer, or check.

(g) If a subscriber receives net excess credits for each of the three previous consecutive years, the subscriber organization must resize the subscriber's subscription size to ensure it does not exceed 100 percent of historic annual usage, calculated over the past 12 months, available at the time of the reassessment.

(h) Any generation delivered to the grid that has not been allocated to a subscriber may be "banked" by the project operator in a dedicated project EDC account for a period of up to 12 months. The banked credits may be distributed by the project operator to any new or existing subscriber during that 12-month period, in conformance with subscription requirements set forth in N.J.A.C. 14:8-9.6. At the end of the up to 12-month period, any remaining generation credits shall be compensated at the EDC's or BGS provider's avoided cost of wholesale power, calculated at the nearest node to the point of delivery of the community solar project.

(i) Subscribers must have an active EDC account within the EDC service territory of the community solar project to which they are subscribed.

(j) Subscribers must agree to a remote read smart meter upon EDC request, purchased and installed at EDC cost.

(k) EDCs must make appropriate data available through Green Button, subject to appropriate privacy protections. If Green Button capabilities are not available or are insufficient, the EDCs will work with Board staff to determine data sharing mechanisms and requirements between the EDCs and developers.

(l) Board staff shall work with the EDCs to develop a standardized process for sharing subscriber information between subscriber organizations and the EDCs in a way that minimizes errors and administrative costs. As part of this process, the EDCs shall present to Board staff a process by which subscriber organizations can submit the lists of subscribers. This process shall include:

1. A list of all appropriate subscriber information that must be transmitted to the EDC;
2. The standardized form for submission of subscriber information; and
3. The method of submission.

(m) Subscriber organizations shall send, to the relevant EDC via the method determined in (l) above, a list of subscribers to the project with all appropriate subscriber information, no later than 60 days prior to the first monthly billing period for the community solar project. Additionally, subscriber organizations shall send an updated list to the EDC once per month, following the method determined in (l) above.

(n) The billing process shall be administered by the EDCs, who shall apply the community solar bill credit to subscribers' utility bills in proportion to each subscriber's share of the community solar project as indicated on the most recent list received from the subscriber organization. Each EDC may decide whether to apply the bill credit as a dollar credit and/or a kWh credit on subscribers' utility bills, so long as the following conditions are met:

1. The method of application of the bill credit (whether as a dollar credit and/or a kWh credit) shall be the same for all community solar projects in the EDC service territory; and

2. The community solar bill credit shall be specifically identified as the community solar bill credit in a separate line on the subscribers' utility bills.

(o) The EDCs may sync up the monthly billing period of subscribers and projects, by modifying, with due notice given, the monthly billing period for subscribers upon their first month of participation in the community solar project.

(p) The Board may modify standards to ensure billing accuracy and information sharing.

(q) Community solar projects shall be eligible to apply, via a one-time election prior to the delivery of any energy from the facility, for SRECs or Class I RECs, as applicable, or to any subsequent revision to the solar compensation mechanisms as determined by the Board pursuant to the Clean Energy Act.

(r) The project owner retains full ownership and rights to any renewable energy credits associated with the community solar project's renewable energy generation, unless otherwise determined by contract.

(s) The Board may decide to create one or more additional incentive(s) paid and/or credited to community solar developers for specific types of community solar projects, including, but not limited to, community solar projects located in environmental justice communities and/or LMI projects.

(t) Nothing in this section prohibits the inclusion of storage in a community solar project, in accordance with all applicable Federal, State, and local laws, rules, and regulations, and in furtherance of the goals set forth in the Clean Energy Act.

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

(a) A low- and moderate-income subscriber for the purposes of this chapter is as follows:

1. A low-income residential household or a moderate-income residential household as determined by annual adjusted HUD income limits.

2. Affordable housing providers may also qualify as an LMI subscriber for the purposes of a community solar project. In order to do so, they must:

i. Demonstrate in their application to the Board and sign an affidavit that they are passing along specific, substantial, identifiable, and quantifiable long-term benefits to their residents/tenants; and

ii. Sign and submit to the Board, an affidavit indicating that they will pass along said specific, substantial, identifiable, and quantifiable long-term benefits to their residents/tenants.

(b) An LMI community solar pilot project is defined as a community solar pilot project in which a minimum 51 percent of project capacity is subscribed by LMI subscribers.

(c) An LMI community solar project may not accept participation by a non-LMI subscriber if doing so would cause LMI participation in the project to fall below 51 percent of project capacity.

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

1. If the community solar pilot project is sited on government-owned property, and is serving LMI subscribers living on that property, the government site owner may provide a sworn statement that those community solar pilot project subscribers are considered LMI for the purposes of the Pilot Program.

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; 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.

3. Qualification of a household as low-income or moderate-income is required only once per subscription, at the time of execution of the subscription agreement or contract.

4. A community solar subscriber whose subscription has, for any reason, ended must re-submit a new application along with LMI qualifying criteria if applicable.

14:8-9.9 Codes and standards

(a) Community solar pilot projects shall comply with all current and future applicable interconnection requirements applicable to each EDC, as set forth in N.J.A.C. 14:8-5 and shall be processed by the EDCs following normal interconnection procedures.

(b) Community solar projects must conform to all codes, standards, and licensing requirements that were applicable when the project was constructed.

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

(d) Each community solar project shall telemeter its production data to the EDC on a monthly basis in accordance with EDC EDI procedures.

(e) The EDCs shall be responsible for measuring the metered production of energy by community solar pilot projects, and for verifying that the community solar pilot projects are producing an amount of energy that is greater than or equal to the amount of energy that is being credited to subscribers' bills.

(f) The EDCs shall make available and update, in a commercially reasonable fashion, capacity hosting maps, within 90 days of the beginning of PY1.

(g) A community solar project shall not subscribe more than 100 percent of the project's nameplate capacity in DC rating.

(h) Community solar developers and owners are responsible for complying with all applicable Federal and State securities laws, rules, and regulations.

14:8-9.10 Consumer protection

(a) Board staff shall develop a standard registration form for subscriber organizations. Subscriber organizations shall be required to complete and submit this form at least 30 days prior to first doing community solar business operations in New Jersey. Failure to comply may result in a temporary or permanent prohibition from conducting business related to community solar in New Jersey. Subscriber organizations must submit the form only once, unless there is material change to the content of the registration form, at which time a new registration form must be submitted.

(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. A community solar subscriber may not be subscribed without their affirmative written consent, either via wet or electronic signature.

ii. If a subscriber organization uses electronic methods to sign up, renew, or switch subscribers, the subscriber organization shall comply with the Uniform Electronic Transaction Act, N.J.S.A. 12A:12-1 through 26.

iii. A subscriber organization may not add a new charge 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;

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

i. Subscriber organizations may market and advertise community solar project(s). Under no circumstances can subscriber organizations, or any agent, contractor, subcontractor, or affiliated person knowingly make false or misleading marketing claims or suggestions, engage in marketing or advertising practices that are unfair, misleading, or deceptive, or in any way violate consumer protection laws and/or rules implemented or enforced by the New Jersey Division of Consumer Affairs.

ii. Subscriber organizations or any agent, contractor, subcontractor, or affiliated person must clearly identify themselves by the name of the subscriber organization, as registered with the Board. They may not falsely represent themselves as another party, including an EDC or a New Jersey government entity, such as the "New Jersey Board of Public Utilities" or the "New Jersey Clean Energy Program."

iii. Subscriber organizations may not use high-pressure sales tactics, including, but not limited to, excessive number of communications,

whether in-person, by phone, e-mail, mail, and/or other forms of communications.

iv. Subscriber organizations shall comply with all FTC 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. Subscriber organizations must include in all advertisements, marketing, or sales materials, a toll-free or local telephone number and/or a link to a website through which customers can obtain further information regarding their product and/or services.

vi. Subscriber organizations are prohibited from contacting a potential subscriber by telephone for the purpose of making an unsolicited advertisement, if the subscriber organization does not have an existing business relationship with the potential subscriber and the potential subscriber's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to N.J.S.A. 56:8-127 or any successor statute, or the national do-not-call registry as maintained by the Federal Trade Commission. Any violation of this provision shall be forwarded to the Division of Consumer Affairs for further investigation.

vii. Subscriber organizations shall not contact, market to, or engage potential subscribers prior to registration with the Board under (a) above;

3. As to contracts, as follows:

i. Contracts must contain a plain-language description of the subscription agreement, including the type of agreement, date of enactment of the contract, duration of the contract, payment and pricing calculations, a good-faith written estimate of the savings a subscriber will earn per year (if applicable) and its disclosed assumptions, a clear description of the billing arrangements, and a complete list of any other fees, including, but not limited to, any applicable transfer and/or cancellation fees, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and any interest charges. The contract must also contain the specific conditions under which such penalties and/or fees can be imposed.

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

(1) Utility rates and projected savings are subject to change; and

(2) The Board does not regulate the price of community solar subscriptions, nor does it guarantee projected savings.

iii. Under no circumstances shall the contract contain a statement or provision by which a subscriber waives any rights they have under New Jersey or Federal consumer protection laws, rules, and/or regulations. The contract also may not include provisions (sometimes referred to as "material change notices") that permit the subscriber organization to change material terms of the contract without the subscriber's affirmative consent, unless the change is required by operation of law. "Material terms of a contract" include, but are not limited to, terms regarding the price, deliverability, or time period of the contract.

iv. The use of robo-signing is prohibited: contracts must be signed either by a wet signature or by requiring the signer to take an affirmative action (at least a click) at each location in the document where the signatures and/or initials appear; if the signature is electronic, the software used must provide a digital certificate of the number of times each signature and set of initials was applied to the document.

v. Subscribers will have a seven-calendar-day rescission period, during which they may cancel their contract with no penalty. This rescission period must be clearly communicated to subscribers in the original signed contract.

vi. Contracts must include a toll-free or local telephone number and/or e-mail address through which subscribers can request information, address complaints, and cancel or renew their subscription consistent with the terms of their contract.

vii. Subscribers must receive, via electronic means and/or mail, a copy of the signed applicable contract and disclosure statement, no later than two calendar days after signing the contract and disclosure statement;

4. As to disclosure statements, as follows:

i. Board staff will design and approve a specific disclosure statement that subscriber organizations must present 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. Disclosure statements are intended to provide subscribers with an accurate overview of the subscription contract and shall include a plain-language summary of key provisions from said community solar subscription contract.

iii. Disclosure statements must be made available to a subscriber in Spanish, upon request of the subscriber;

5. As to non-discrimination, as follows:

i. Subscriber organizations may not discriminate against any customer on the basis of race, origin, gender, religion, sexual orientation, age, or engage in any other discriminatory practice.

ii. Subscriber organizations must apply uniform income, security deposit, and credit standards when deciding whether to offer a subscription to customers within a given customer class (low-income, moderate-income, or other). The subscriber organization may, however, apply separate sets of uniform standards for the purpose of promoting participation by low- and moderate-income residential customers.

iii. While a subscriber organization may market services on a geographic basis, they may not refuse to provide service to a customer based on the economic character of a geographic area or the collective credit reputation of the area;

6. As to inquiry and remediation, as follows:

i. Community solar developers, operators, owners, and/or subscriber organizations shall use good faith efforts to respond to and resolve all complaints promptly.

ii. The Board may revoke a subscriber organization's registration, as set forth under (a) above, resulting in a temporary or permanent prohibition from conducting business related to community solar in New Jersey, if said subscriber organization has been found by the Board to have engaged in fraud, deception, misrepresentation, false promise or pretense, repeated acts of negligence, submissions of incorrect or incomplete data, significantly deficient service, sales, or commercial practices that are unethical, misleading, or illegal, or having been engaged in and/or having been convicted of any crime or offensive action involving moral turpitude or relating adversely to the entity's or person's business.

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. As to document retention, as follows:

i. Signed contracts and disclosure forms, and the signed approval of any changes made to the original contract, must be kept by the subscriber organization for a minimum six years following the expiration of said contract, and be made available to the Board and Board staff upon request.

ii. Proof of eligibility for LMI subscribers must be collected by the subscriber organization and be kept by the subscriber organization for a minimum of six years following the expiration of the contract with said subscriber and be made available to the Board and Board staff upon request.

14:8-9.11 Reporting

(a) EDCs are required to submit monthly electronic reports to the Board on community solar pilot project interconnections and energy production, within 30 days of the end of the calendar month being reported upon. The content of the reports shall include, but not be limited to:

1. A list of community solar projects that submitted an interconnection application, including name, location, and proposed capacity;

2. A list of community solar facilities interconnected over the previous month, including name, location, and capacity;

3. The estimated kilowatt hours supplied to the distribution system by community solar facilities over the previous month, and a description of the estimation methodology used;

4. The total number of community solar subscribers, and estimated total community solar bill credits distributed to community solar subscribers, over the previous month;

5. The estimated “excess” kilowatt hours, that is, estimated kilowatt hours produced by a community solar facility that were not allocated to a community solar subscriber; and

6. The cumulative totals since the beginning of the Pilot Program. This shall include the total number of community solar interconnection applications received, total number of community solar facilities interconnected, total capacity of community solar facilities interconnected, estimated total kilowatt hours supplied to the distribution system by community solar facilities, estimated total community solar bill credits distributed to community solar subscribers, and estimated total number of community solar subscribers.

(b) The Board must be notified, in writing, of any change to the project developer, owner, or operator in case of sale, transfer, contract modification, or other material change to the parties initially listed in the community solar application. Specifically:

1. Within 30 days of a material change in control of the owner, such new “beneficial owners” are required to notify the Board of their individual and/or corporate names, tax ID, address, contact phone, and percent of ownership of the project.

2. Within 30 days of a material change in the community solar project operator, such new project operator is required to notify the Board of their individual and/or corporate names, tax ID, address, and contact phone.

3. The Board shall be kept apprised of all major project developments and milestones via written notification (e-mail or letter).

(c) Each EDC shall retain a record of the community solar project generation that was applied to each subscriber’s bills for a period of six years.

(d) Each community solar subscriber organization, and any successor, shall retain a record of all subscriber contracts, disclosure forms, LMI proof of eligibility, and generation allocation lists for a period of at least six years from the date of their expiration. Each of these documents must be made available without delay upon request from the Board or Board staff.

TREASURY—GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY

Division of Purchase and Property: Purchase Bureau and Contract Compliance and Administration Unit; Surplus Property Unit, Computer Distribution Program

Proposed Readoption with Amendments: N.J.A.C. 17:12

Proposed New Rules: N.J.A.C. 17:12-1A.4, 1A.6, 1B, and 2.9

Authorized By: Elizabeth Maher Muoio, Acting State Treasurer.

Authority: N.J.S.A. 10:5-36(k) and (o); 52:18A-30(d); 52:25-1 et seq., 52:25-16.1, 52:32-17 et seq., 52:34-6 et seq., 52:34-6.2(d), 52:34-10.4, 52:34-10.10, 52:34-12(a), and 52:34-13; and Executive Orders No. 34 (1976) and No. 189 (1988).

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

Proposal Number: PRN 2018-089.

Submit written comments by November 30, 2018, by e-mail in Microsoft Word format, or in a format that can be easily converted to Word, to DPPRule.Comments@treas.nj.gov or on paper to:

Maurice A. Griffin, Acting Director
Division of Purchase and Property
33 West State Street, 8th Floor
PO Box 039
Trenton, NJ 08625-0039

The agency proposal follows:

Summary

The Division of Purchase and Property (Division), the centralized procurement agency for the State of New Jersey, proposes the re-adoption with amendments and new rules of N.J.A.C. 17:12 to clarify and update the processes related to the award and administration of State contracts. N.J.A.C. 17:12 was scheduled to expire March 9, 2019, pursuant to N.J.S.A. 52:14B-5.1. As the Division filed this notice of proposal prior to the expiration date, that date is extended 180 days to September 5, 2019, pursuant to N.J.A.C. 52:14B-5.1.c(2). The Division of Purchase and Property has determined these rules to be necessary, reasonable, efficient, understandable, and responsive for the purpose for which they were originally promulgated.

The rules proposed for re-adoption with amendments and new rules govern general procurement methodology refines the terminology used to distinguish between two complementary programs, namely, the assistance provided to local governmental entities within the State of New Jersey and out-of-State multi-jurisdiction procurements to which the Division of Purchase and Property is a party. New terminology clarifies the distinctions between the programs, but makes no substantive edits to the scope of either program. An amendment and new rule is proposed clarifying the Director of the Division of Purchase and Property’s authority to solicit and award contracts in which other jurisdictions participate and clarifying the distinction between joining and leading a multi-jurisdiction procurement. Similarly, amendments are proposed to the rule regarding the Director’s authority to extend State contracts to clarify that the Director may open State contracts for local intra-State use and out-of-State governmental entity use.

New Subchapter 1B is proposed, comprised of two rules regarding standard terms and conditions, updates thereto, and prohibited terms. N.J.A.C. 17:12-1B.1 states where the Division’s standard terms and conditions are maintained; reserves the right to update the standard terms and conditions; and reserves the discretion to revise or approve changes to the standard terms and conditions where appropriate and not contrary to law. N.J.A.C. 17:12-1B.2 states that neither the Director, nor anyone negotiating a contract on behalf of the Director, shall approve or agree to enter into any contract that requires the State to indemnify or hold harmless a contractor, or other person or business entity, except where applicable law authorizes the State to agree to indemnify or hold another party harmless. The provision establishes that even where a contract includes such a term, the term is void, but the contract is still otherwise enforceable as if it did not include the term. The proposed new rule reflects the State’s standard position on this issue, but formal promulgation of the position will promote fair competition.

New N.J.A.C. 17:12-2.9, Lowest price, responsive procurements, is based on the approach used by New Jersey local government entities and the Federal government. This proposed new rule codifies an award methodology standard that focuses only on price, in contrast to the Division of Purchase and Property’s standard approach of evaluating “price and other factors.” Notwithstanding the broad grant of discretion, the Division of Purchase and Property has determined that some procurements do not require a detailed evaluation of technical proposals. Namely, commodities and commodity-like trades and general services often require only proof that the good or service proposed is what is being sought. Accordingly, the proposed new rule provides a streamlined procedure for lowest price, responsive procurements whereby proposals that are deemed responsive to the RFP’s mandatory requirements are awarded based on price alone. There would be no bypass of “higher ranked” proposals, although bypass based on a bidder’s poor performance would still be permitted. The proposed new rule would permit clarifications and negotiations, consistent with the Division’s usual practice and procedure.

A summary of the rules as proposed for re-adoption with amendments and new rules follows:

Subchapter 1. Description of Organization; Means of Procurement

N.J.A.C. 17:12-1.1 provides the general course and methods of procurement by the Division. Proposed amendments to subsections (a) and (b) serve to clarify the Division’s organizational structure and ensure continuity of terminology used throughout the chapter. The deletion of “a program support unit,” is proposed in subsection (a) as it is no longer