

Summary of Draft “Community Solar Gardens Act”
Proposed by the Coalition of Sustainable Communities New Mexico

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The proposed “Community Solar Gardens Act” bill (Act) is driven by community and customer demand for legislation that allows broader participation in solar electric generation by renters, low-income and moderate-income residents, municipalities, counties, Native American communities, and other customers of electric public utilities than is currently provided by their ability to install photovoltaic electric generation facilities on their premises.

The current draft of the Act was developed with the assistance of regulatory legal counsel by the recently formed “Coalition of Sustainable Communities New Mexico” (Coalition) which seeks to include communities that represent geographically and culturally diverse cities, counties and Native Americans communities. It is based on input from representatives of the Cities of Santa Fe, Albuquerque and Las Cruces, who represent likely founding members, and other stakeholders that have expressed an interest in customer access to community-based solar resources.

From a “supply-side” perspective, the proposed Act is modeled on features in existing Minnesota and Colorado community solar gardens statutes. Under this structure, the development of CSGs in any community in the service area of an investor-owned electric public utility (IOU) is not controlled by the IOU through its request for proposals process, but rather is left to the competitive market and the ability of developers of CSGs (acting as “subscriber organizations”) to obtain a prescribed minimum number of “subscribers” for the capacity of their CSGs at “subscription” prices offered by them.

As currently drafted, the Act would:

(i) allow duly authorized Native American Pueblos, Nations and Tribes or their entities, municipalities, counties, for-profit and nonprofit entities authorized to transact business in New Mexico and “low-income service organizations” that certify that they provide services or assistance to “low-income customers” (defined as customers with an annual household income at or below 200% of the federal poverty level, as published by the U.S. Department of Health and Human Services), acting as a “subscription organization,” to construct, own and operate, or contract with other parties to construct, own and operate, CSGs with a maximum capacity of 10 MW-ac at a single location connected to an IOU’s Distribution-voltage (lower than 115 kV) system within or adjacent to a customer’s community, without being regulated as a “public utility” under the Public Utility Act;

¹ Mr. Throne has a contract to provide the Coalition with regulatory counsel assistance regarding the draft Act.

(ii) allow “subscription organizations” to contract with residential and other customers of any of the IOUs for “subscriptions” to the capacity of a CSG for no more than 120% of the subscriber’s average annual electric power consumption, including a deduction for any solar facilities existing on a subscriber’s property, subject to additional restrictions designed to ensure that a reasonable amount of each CSG’s capacity will be offered to residential and other relatively small electric usage customers and will not be fully subscribed by a relatively few, large power usage customers (no more than 60% of any CSG’s capacity can be allocated to a single customer/subscriber or to subscriptions larger than 25 kilowatts, with exemptions for CSGs located on Native American lands);

(iii) require the PRC to adopt regulations implementing the Act by no later than November 1, 2019, including standard subscription forms, customer protections and rules addressing a utility’s processing of applications by “subscription organizations” for interconnection of CSGs to its Distribution systems within a reasonable time period, not to exceed six months from date on which a completed application is submitted to the utility;

(iv) require each of the IOUs to file an application with the PRC by February 1, 2020 for approval of its plan to administer a community solar garden program in accordance with the Act and the PRC’s implementing regulations;

(v) provide that each of the IOUs acquire the entire output (kWhs) of a CSG in the form of a “net metering bill credit,” as defined in Section 3.M of the Act, on its monthly bills that is determined by the PRC in accordance with the Act (based on the metered amount of electricity actually provided by a CSG each month, the utility’s PRC-approved cost of supplying “system generation resources,” associated fuel and “transmission” service to the subscriber’s applicable “rate class,” and giving “due consideration to any other reasonably determinable benefits” of the subscription to the utility, such as the value of any renewable energy certificates acquired by the utility that it can use to satisfy its Renewable Portfolio Standard under the N.M. Renewable Energy Act or sell for the benefit of its customers generally);

(vi) provide that IOUs purchase any unsubscribed energy from a CSG at the utility’s approved “avoided” energy cost rate;

(vii) provide that the PRC will *not* regulate the price of subscriptions (i.e., the price for capacity from a CSG), but *will* regulate subscribers’ “net metering bill credit” and all other charges for “net metering” the power provided by CSG subscriptions, including a utility’s recovery of its reasonable costs for distributing and “net metering” power produced by CSGs connected to its Distribution system and administering its CSG program;

(viii) require the PRC to adopt regulations that encourage accessibility to CSGs by qualifying “low-income customers” through reasonable mechanisms, including (without limitation) mandatory reservations of capacity and discounted subscription rates for “low-income customers” and “low-income service organizations” and priority in a utility’s queue for

interconnection of CSGs that offer reservations of capacity, discounted subscription rates or other special opportunities for low-income customers ;

(ix) limit the size (capacity) of a CSG at a single location to 10 MW-ac, but would not set a cumulative limit on the number of CSGs or CSG capacity (MWs) within an IOU's service area;

(x) provide an exception for co-location of CSGs located on Native American lands due to the distinct nature of those lands;

(xi) allow subscription organizations to co-locate "energy storage" facilities with CSGs;
and

(xii) provide that, *at its election*, a rural electric distribution cooperative *may* allow the development of CSGs within its service territory in New Mexico (Section. 9).²

² Section 9 was included by the Coalition in the current draft of the Act at the request of a representative of the All Pueblo Council of Governments and other stakeholders. The Coalition provided a draft of the Act to representatives of the New Mexico Rural Electric Cooperative Ass'n. (NMRECA) on November 19, 2018. It is the Coalition's understanding that NMRECA members will be reviewing the draft Act at their December 8-9, 2018 meeting and that, as of the date of this Summary, none of NMRECA's members has determined its position regarding Section 9.