

1 SENATE BILL 342

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR GARDENS
12 ACT; AMENDING SECTION 62-8-6 NMSA 1978 (BEING LAWS 1941,
13 CHAPTER 84, SECTION 42, AS AMENDED) RELATED TO PUBLIC
14 UTILITIES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
18 through 7 of this act may be cited as the "Community Solar
19 Gardens Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Community Solar Gardens Act:

22 A. "community solar garden" means a solar electric
23 generation facility that has subscribers who are allocated a
24 share of the electricity generated in proportion to the size of
25 their subscription;

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1 B. "commission" means the public regulation
2 commission;

3 C. "low-income residential customer" means a
4 customer with an annual household income at or below the median
5 household income for New Mexico, as published by the United
6 States census bureau;

7 D. "public utility" means an entity certified by
8 the commission to provide retail electric service in New Mexico
9 pursuant to the Public Utility Act but does not include a rural
10 electric cooperative;

11 E. "subscriber" means a retail customer of a public
12 utility who owns one or more subscriptions to a community solar
13 garden and who has identified one or more physical service
14 locations to which each subscription is attributed;

15 F. "subscriber organization" means an entity that
16 owns or operates one or more community solar gardens; and

17 G. "subscription" means a proportional interest in
18 solar electric generation facilities installed at a community
19 solar garden, together with the renewable energy credits
20 associated with or attributable to such facilities.

21 **SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR GARDEN**
22 **REQUIREMENTS.--**

23 A. A community solar garden shall have a nameplate
24 rating of ten megawatts or less and shall not be co-located
25 with another community solar garden where that limit is

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1 exceeded in the aggregate.

2 B. A community solar garden shall be located in the
3 service territory of a public utility.

4 C. A community solar garden shall have at least ten
5 subscribers.

6 D. No single subscriber shall hold more than a
7 forty percent interest in a community solar garden.

8 E. No more than forty percent of the capacity of a
9 community solar garden may be allocated to subscriptions larger
10 than twenty-five kilowatts.

11 F. A subscriber may change the premises to which a
12 subscription is attributed if the premises are within the
13 service territory of the public utility.

14 G. Each subscription shall be sized to:

15 (1) represent at least one kilowatt of the
16 community solar garden's generating capacity; and

17 (2) supply no more than one hundred percent of
18 the average annual consumption of electricity by the subscriber
19 at the premises to which the subscription is attributed, with a
20 deduction for the amount of any existing solar facilities at
21 the premises.

22 H. Subscriptions to a community solar garden may be
23 transferred or assigned to a subscriber organization or to any
24 person who qualifies to be a subscriber pursuant to the
25 Community Solar Gardens Act.

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1 SECTION 4. ~~[NEW MATERIAL]~~ OWNERSHIP OF COMMUNITY SOLAR
2 GARDENS.--

3 A. A community solar garden shall be owned by a
4 public utility, an affiliate of a public utility or a
5 subscriber organization.

6 B. A community solar garden may be built, owned and
7 operated by a third party under contract with a subscriber
8 organization.

9 C. The owners of and the subscribers to a community
10 solar garden shall not be considered public utilities subject
11 to regulation by the commission solely as a result of their
12 interest in the community solar garden.

13 D. Prices paid for subscriptions to community solar
14 gardens shall not be subject to regulation by the commission.

15 E. Neither the costs nor the revenues attributable
16 to a community solar garden owned by a public utility or public
17 utility affiliate shall be considered in determining a public
18 utility's cost of service.

19 F. The commission shall assure that competition
20 among developers and owners of community solar gardens is not
21 compromised by the actions of any public utility.

22 SECTION 5. ~~[NEW MATERIAL]~~ PURCHASES FROM COMMUNITY SOLAR
23 GARDENS.--

24 A. The output from a community solar garden shall
25 be sold only to the public utility serving the geographic area

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1 where the community solar garden is located. The public
2 utility shall purchase all of the electricity and renewable
3 energy credits generated by a community solar garden at a rate
4 equal to the rate established by commission rules implementing
5 18 C.F.R. 292.304. At the request of a subscriber
6 organization, the public utility shall purchase the receivables
7 associated with subscriptions from a community solar garden at
8 a discount rate approved by the commission.

9 B. The amount of electricity and renewable energy
10 credits generated by a community solar garden shall be
11 determined by a production meter installed by a public utility
12 or third-party system owner; the cost of the production meter
13 and its installation shall be paid for by the owner of the
14 community solar garden.

15 C. A public utility shall sell the electricity
16 acquired pursuant to Subsection A of this section to each
17 community solar garden subscriber, in an amount equal to the
18 subscriber's proportional share of the energy produced by the
19 community solar garden. The public utility shall sell the
20 electricity at the same rate as for the public utility's
21 purchases pursuant to Subsection A of this section, with
22 adjustments as determined by the commission to cover the public
23 utility's cost of delivering electricity to the subscriber's
24 premises, integrating the community solar garden with the
25 public utility's system and administering contracts for

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1 community solar gardens and subscribers. A public utility
2 shall file its rate for charges in excess of the cost of
3 acquisition, which rate may vary by size or distance, but shall
4 not otherwise be specific to an individual community solar
5 garden or its subscribers. A rate filed pursuant to this
6 subsection shall be subject to the same provision review and
7 approval as for other rates. The commission shall ensure that
8 charges authorized by this subsection do not reflect costs that
9 are already recovered by the public utility from the subscriber
10 through other charges.

11 D. To the extent the electricity available to a
12 subscriber from the subscriber's interest in a community solar
13 garden exceeds the subscriber's consumption for electricity
14 from the public utility during a billing period, the subscriber
15 shall not be required to purchase the excess electricity during
16 that billing period. The subscriber shall be permitted to make
17 an equivalent purchase of electricity in a subsequent billing
18 period that is no more than twelve months later during which
19 the subscriber's electricity demand from the public utility
20 exceeds the subscriber's share of the production of the
21 community solar garden.

22 E. The owner of a community solar garden with a
23 nameplate capacity above two megawatts shall provide real-time
24 production data to the public utility to facilitate
25 incorporation of the community solar garden's generation of

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1 electricity into the public utility's operation of its electric
2 system.

3 F. The subscriber organization for a community
4 solar garden shall, on a monthly basis, provide to a public
5 utility the kilowatt hours of electrical generation
6 attributable to each subscriber participating in the community
7 solar garden, in accordance with the subscriber's share of the
8 output of the community solar garden. The subscriber
9 organization shall electronically transmit such documentation
10 to the public utility monthly, in a format approved by the
11 commission, so that the public utility can reflect the proper
12 allocation on the subscriber's utility bill.

13 SECTION 6. [NEW MATERIAL] LOW-INCOME RESIDENTIAL
14 CUSTOMERS.--

15 A. To the extent practical and achievable, the
16 commission shall ensure that ten percent of the total
17 generating capacity of a community solar garden operated
18 pursuant to the Community Solar Gardens Act is made available
19 to low-income residential customers or entities serving such
20 customers.

21 B. To the extent not otherwise prohibited by law,
22 funds available for low-income energy-assistance programs may
23 be used to enable the participation of low-income residential
24 customers in programs authorized by the Community Solar Gardens
25 Act.

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1 SECTION 7. ~~[NEW MATERIAL]~~ COMMISSION RULES.--

2 A. On or before October 1, 2017, the commission
3 shall commence a rulemaking proceeding to adopt rules as
4 necessary to implement the Community Solar Gardens Act and
5 shall adopt appropriate rules on or before May 1, 2018.

6 B. Rules adopted by the commission pursuant to
7 Subsection A of this section shall facilitate the financing of
8 subscriber-owned community solar gardens. Such rules shall
9 include:

10 (1) minimum capitalization;

11 (2) the share of a community solar garden's
12 eligible solar electric generation facilities that a subscriber
13 organization may at any time own in its own name; and

14 (3) authorization for subscriber organizations
15 to enter into leases, sale-and-leaseback transactions,
16 operating agreements and other ownership arrangements with
17 third parties.

18 C. Rules adopted by the commission pursuant to
19 Subsection A of this section shall address procedures by which
20 a subscriber who ceases to be a customer at the premises on
21 which the subscription is based but, within a reasonable period
22 as determined by the commission, becomes a customer at another
23 premises in the service territory of the public utility, may
24 transfer the subscription.

25 D. The commission shall:

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1 (1) develop rules to facilitate the
2 participation of low-income residential customers in programs
3 authorized by the Community Solar Gardens Act and entities
4 serving low-income residential customers;

5 (2) develop rules ensuring that all rate
6 classes may participate in community solar gardens;

7 (3) establish uniform standards, fees and
8 processes for the interconnection of community solar garden
9 facilities that will allow a public utility to recover a
10 reasonable interconnection cost for each community solar
11 garden;

12 (4) identify the information that shall be
13 provided to potential subscribers to ensure fair disclosure of
14 the estimated future cost and benefits of subscriptions; and

15 (5) prevent public utilities and their
16 affiliates from unfairly competing with non-utility subscriber
17 organizations, including prohibiting public utilities and their
18 affiliates from making improper use of customer information
19 that is not publicly available.

20 **SECTION 8.** Section 62-8-6 NMSA 1978 (being Laws 1941,
21 Chapter 84, Section 42, as amended) is amended to read:

22 "62-8-6. DISCRIMINATION.--No public utility shall, as to
23 rates or services, make or grant any unreasonable preference or
24 advantage to any corporation or person within any
25 classification or subject any corporation or person within any

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1 classification to any unreasonable prejudice or disadvantage.
2 No public utility shall establish and maintain any unreasonable
3 differences as to rates of service either as between localities
4 or as between classes of service. Nothing shall prohibit,
5 however, the commission from approving economic development
6 rates and rates designed to retain load or from approving
7 energy efficiency programs designed to reduce the burden of
8 energy costs on low-income customers pursuant to the Efficient
9 Use of Energy Act or to enable the participation of customers
10 in programs authorized pursuant to the Community Solar Gardens
11 Act."

12 SECTION 9. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2017.