

HOUSE FLOOR COMMITTEE SUBSTITUTE FOR
HOUSE BILL 210

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR ACT;
CREATING REQUIREMENTS FOR THE ESTABLISHMENT AND INTERCONNECTION
OF COMMUNITY SOLAR FACILITIES; PROVIDING RULEMAKING AUTHORITY
TO THE PUBLIC REGULATION COMMISSION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Community Solar Act".

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

A. "affiliated interest" means a person who
directly or indirectly, through one or more intermediaries,
controls or is controlled by or is under common control with a
public utility as defined in Section 62-3-3 NMSA 1978;

B. "affordable housing provider" means a

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1 governmental housing agency, regional housing authority, tribal
2 housing agency, or a corporation, limited liability company,
3 partnership, joint venture, syndicate, association or nonprofit
4 organization that satisfies the requirements of a qualifying
5 grantee as provided in the Affordable Housing Act;

6 C. "commission" means the public regulation
7 commission;

8 D. "common control" means that a person who is an
9 officer, director, partner, trustee or person of similar status
10 or function in one community solar facility also owns, directly
11 or indirectly, or has a beneficial financial interest in
12 another community solar facility;

13 E. "community solar bill credit" means the credit
14 per kilowatt-hour to a subscriber on the qualifying utility's
15 monthly billing cycle as required by the Community Solar Act;

16 F. "community solar credit rate" means the
17 dollar-per-kilowatt-hour rate determined by the commission that
18 is used to calculate a subscriber's community solar bill
19 credit;

20 G. "community solar energy" means the number of
21 kilowatt-hours produced by a community solar facility allocated
22 to a subscriber determined by multiplying the ratio of the
23 subscriber's kilowatt subscription to the total community solar
24 facility's kilowatt capacity by the monthly metered
25 kilowatt-hour production output of the community solar

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1 facility;

2 H. "community solar facility" means a solar
 3 electric generation facility that is interconnected with the
 4 distribution system of a qualified utility in the service
 5 territory of customers of the qualified utility that subscribe
 6 for a portion of the capacity of the community solar facility;

7 I. "community solar program" or "program" means a
 8 rate schedule of a qualifying utility approved by the
 9 commission that provides its customers with the voluntary
 10 option of accessing solar energy produced by a community solar
 11 facility through a subscription process in accordance with the
 12 Community Solar Act and may include co-location of a community
 13 solar facility and energy storage;

14 J. "energy storage" means technology that allows
 15 the capture of energy produced at one time for use at a later
 16 time;

17 K. "fuel and power cost adjustment" means an
 18 adjustment in a qualifying utility's rate schedule approved by
 19 the commission that contains the parameters under which the
 20 qualifying utility's fuel and purchased power cost adjustment
 21 factor is determined and applied to a utility's established
 22 class of customers;

23 L. "low-income customer" means a residential
 24 customer of a qualifying utility with an annual household
 25 income at or below two hundred percent of the federal poverty

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1 level as published by the United States department of health
2 and human services;

3 M. "low-income service organization" means an
4 organization or nonprofit entity that certifies to a qualifying
5 utility that it provides services, assistance or housing to
6 low-income customers;

7 N. "qualifying utility" means an investor-owned
8 electric public utility certified by the commission to provide
9 retail electric service in New Mexico pursuant to the Public
10 Utility Act but does not include a rural electric distribution
11 cooperative or a public utility that does not have advanced
12 metering infrastructure to enable two-way communications of
13 usage data installed for at least seventy-five percent of its
14 electric customers;

15 O. "subscriber" means a retail customer of a
16 qualifying utility, low-income service organization or
17 affordable housing provider that contracts with a subscriber
18 organization for one or more subscriptions to the capacity of a
19 community solar facility and has identified one or more
20 physical retail service locations in the service territory of
21 the qualifying utility to which the subscription is attributed
22 that is in the same county as, or a county adjacent to, the
23 community solar facility;

24 P. "subscriber organization" means an entity,
25 including a municipality, county, Indian nation, tribe or

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1 pueblo, a for-profit or nonprofit entity or organization
 2 authorized to transact business in New Mexico or within the
 3 jurisdiction of an Indian nation, tribe or pueblo located in
 4 New Mexico, a low-income service organization or an affordable
 5 housing provider, or a partnership of entities, that owns or
 6 operates a community solar facility;

7 Q. "subscription" means a written contract between
 8 a subscriber and a subscriber organization that allocates to a
 9 subscriber a proportional interest in the nameplate capacity of
 10 a community solar facility that, at the election of a
 11 subscriber organization, may include the renewable energy
 12 certificates, as defined in Section 62-16-3 NMSA 1978,
 13 attributable to the electricity generated by a community solar
 14 facility and states the per-kilowatt subscription rate to be
 15 paid by the subscriber for the capacity;

16 R. "system integration" means services and costs
 17 that are reasonably required or a reasonable consequence of
 18 interconnecting a community solar facility to the distribution
 19 system of a qualifying utility to manage the variability and
 20 uncertainty of the production of energy from a community solar
 21 facility in order to maintain electric system reliability and
 22 the adequacy of service, including any effects on the
 23 distribution, transmission or generation components of the
 24 electric system; and

25 S. "unsubscribed output" means electricity,

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1 measured in kilowatt hours, generated by a community solar
2 facility that is not allocated to a subscriber.

3 SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR FACILITY--
4 REQUIREMENTS.--

5 A. A community solar facility shall:

6 (1) have a nameplate rating of ten megawatts
7 alternating current or less;

8 (2) be located in the service territory in New
9 Mexico of a qualifying utility; and

10 (3) be connected to the electric distribution
11 system of a qualifying utility.

12 B. Except for a community solar facility located on
13 the lands of Indian nations, tribes or pueblos exclusively
14 serving subscribers on those lands:

15 (1) a community solar facility shall have at
16 least ten subscribers;

17 (2) no single subscriber shall be allocated or
18 acquire more than a forty percent interest in the capacity of a
19 community solar facility;

20 (3) no more than sixty percent of the capacity
21 of a community solar facility may be allocated to subscriptions
22 larger than twenty-five kilowatts;

23 (4) a community solar facility shall not be
24 co-located with another community solar facility on a single
25 parcel or contiguous parcels of land if the nameplate rating of

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1 ten megawatts is exceeded in the aggregate; and

2 (5) subscriber organizations under common
3 control shall not develop, own or operate more than one
4 community solar facility on contiguous parcels of land or
5 parcels of land within one mile of each other.

6 C. Energy storage may be co-located with a
7 community solar facility.

8 SECTION 4. [NEW MATERIAL] OWNERSHIP OF COMMUNITY SOLAR
9 FACILITIES--SUBSCRIBER ORGANIZATIONS.--

10 A. A community solar facility may be owned and
11 operated by:

- 12 (1) a subscriber organization;
- 13 (2) a third party under contract with a
14 subscriber organization;
- 15 (3) an unregulated affiliated interest of a
16 qualifying utility; provided that the qualifying utility
17 demonstrates to the commission that it has made available to
18 any other unregulated entity or organization that requests it,
19 the same customer-related information and information about its
20 distribution system provided to its affiliated interest in
21 connection with its affiliated interest's development of the
22 solar facility; or
- 23 (4) a qualifying utility if the qualifying
24 utility demonstrates to the commission that it is in the public
25 interest to allow the qualifying utility to own the community

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1 solar facility.

2 B. Subscriber organizations may enter into leases,
3 sale-and-leaseback transactions, operating agreements and other
4 ownership arrangements with third parties relative to community
5 solar facilities.

6 C. A subscriber organization is encouraged to and
7 may set aside and offer a portion of the capacity of a
8 community solar facility to low-income customers at a discount
9 off of the per kilowatt subscription rate offered to other
10 subscribers for an unlimited or limited time period; provided
11 that the subscriber organization shall disclose to all
12 subscribers the amount of that discount and, if applicable, the
13 method by which it intends to fully recover the cost of that
14 discount from its subscribers that are not low-income
15 customers.

16 SECTION 5. [NEW MATERIAL] SUBSCRIBERS--SUBSCRIPTIONS.--

17 A. Each subscription shall be sized to:

18 (1) represent at least one kilowatt of the
19 community solar facility's generating capacity; and

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

25 B. A qualifying utility may bill a subscriber for

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1 the subscription price on the utility's monthly bill pursuant
 2 to an agreement between the qualifying utility and the
 3 subscriber organization. If the qualifying utility collects
 4 the subscription price from the subscriber, the qualifying
 5 utility shall remit the subscription price collected to the
 6 subscriber organization within a reasonable period of time
 7 after its receipt.

8 C. A subscriber may change from time to time the
 9 retail service location to which electricity generated by a
 10 community solar facility is attributed so long as the retail
 11 service location is within the geographical limits allowed for
 12 a subscriber.

13 D. Subject to reasonable terms or conditions in an
 14 individual customer's subscription, subscriptions to a
 15 community solar facility may be transferred or assigned to a
 16 subscriber organization or to any person or entity that
 17 qualifies as a subscriber pursuant to the Community Solar Act.

18 SECTION 6. [NEW MATERIAL] NOT SUBJECT TO COMMISSION
 19 REGULATION.--

20 A. The owners or operators of and the subscribers
 21 to a community solar facility shall not be considered public
 22 utilities subject to regulation by the commission under the
 23 Public Utility Act.

24 B. Rates paid for subscriptions shall not be
 25 subject to regulation by the commission.

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1 SECTION 7. [NEW MATERIAL] ACQUISITION OF OUTPUT FROM
2 COMMUNITY SOLAR FACILITIES--BILL CREDIT--UNSUBSCRIBED OUTPUT--
3 COST RECOVERY--RENEWABLE ENERGY CERTIFICATES.--

4 A. For the first three years after the effective
5 date of the Community Solar Act, a qualifying utility shall not
6 be obligated to purchase unsubscribed output from more than six
7 megawatts of newly installed community solar facility
8 generation notwithstanding whether the community solar
9 facilities are owned by the qualifying utility or any other
10 for-profit or nonprofit entity, including a subscriber
11 organization. Thereafter, the commission shall determine the
12 maximum purchases of electrical output from newly installed
13 community solar facilities of different output capacity that
14 the qualifying utility shall plan to acquire, without regard to
15 the six-megawatt ceiling of the first three years.

16 B. A qualifying utility shall acquire the entire
17 output of a community solar facility connected to its
18 distribution system in accordance with the Community Solar Act
19 subject to the acquisition ceiling for total output of
20 community solar facilities in its service territory.

21 C. The purchase of the output of a community solar
22 facility by a qualifying utility shall take the form of a bill
23 credit against the qualifying utility's electric bill to each
24 community solar facility subscriber at the premises set forth
25 in the subscriber's subscription. The bill credit shall be

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1 calculated by multiplying the subscriber's share of the
2 electricity production from the community solar facility by an
3 avoided cost of electricity determined by the commission. The
4 avoided cost of electricity shall be determined by the
5 commission in an appropriate proceeding that includes the
6 taking of evidence and a hearing before the qualifying utility
7 is required to provide any credit to community solar facility
8 subscribers. In setting the avoided cost, the commission shall
9 consider the cost to acquire solar energy in the most recent
10 electric resource plans of investor-owned utilities and
11 include, as offsets, the cost of delivering to the community
12 solar facility's subscribers' premises the renewable energy
13 generated by the community solar facility, the cost of
14 integrating the generation from the community solar facility
15 into the utility's system and the cost of administering the
16 community solar facility's contracts and bill credits. The
17 costs included in setting the bill credit shall not reflect
18 costs that are already recovered by the qualifying utility from
19 community solar facility subscribers through other charges.
20 The community solar facility customer credit determination
21 shall ensure that the cost of the solar facility and
22 subscriptions will not be subsidized by customers that do not
23 subscribe.

24 D. A subscriber organization shall provide the
25 commission and a qualifying utility with:

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1 (1) real-time production data to facilitate
2 acceptance and integration of the electricity output of a
3 community solar facility into the qualifying utility's
4 distribution system and to facilitate the provision of
5 community solar bill credits to subscribers;

6 (2) on a monthly basis and within reasonable
7 periods, the percentage of shares that should be used to
8 determine the community solar bill credit to each subscriber;
9 and

10 (3) the per kilowatt subscription rate and
11 contractual term of each subscriber's subscription for purposes
12 of billing a subscriber for the subscription price, if agreed
13 to by the qualifying utility and subscriber organization.

14 E. A qualifying utility shall:

15 (1) purchase any unsubscribed output of a
16 community solar facility connected to its distribution system
17 pursuant to a community solar program rate schedule approved by
18 the commission in accordance with the Community Solar Act at
19 the lower of the Palo Verde hourly energy rate, even if the
20 rate is negative, or the qualifying utility's applicable
21 avoided cost of energy rate, taking into consideration the cost
22 to acquire solar energy in the qualifying utility's most recent
23 electric resource plans as approved by the commission; and

24 (2) pay a subscriber organization the
25 reasonable value of any unsubscribed capacity of a community

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1 solar facility if it is reasonably determined, in accordance
2 with the commission's rules addressing purchases from
3 facilities, that the capacity purchase enables the qualifying
4 utility to avoid procurement of new capacity within the next
5 three years.

6 F. Notwithstanding any other provision in the
7 Community Solar Act, any payments by a qualifying utility to a
8 subscriber organization shall be fully recoverable in rates
9 from all customers.

10 G. Qualifying utilities shall be eligible for
11 incentives through rates in an amount determined by the
12 commission on all energy and renewable energy credits purchased
13 from community solar facilities, if the qualifying utility
14 demonstrates to the commission that its ownership has provided
15 economic development benefits to communities served by the
16 community solar facilities.

17 H. A qualifying utility shall conduct due diligence
18 on proposed contracts with new community solar facility owners
19 to reasonably ensure that the community solar facility owner
20 and community solar facility subscriber organization have
21 sufficient resources to successfully construct and commence
22 operations of the community solar facility. Except for
23 community solar facilities owned by governmental or
24 quasi-governmental entities, the qualifying utility shall be
25 deemed to have conducted sufficient due diligence by requiring

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1 from the community solar facility owner documentation of
2 escrowed funds of not less than one hundred dollars (\$100) per
3 kilowatt of the community solar facility's nameplate rating.
4 The escrow shall be maintained by its terms until such time as
5 the community solar facility commences commercial operation as
6 certified by the qualifying utility's acceptance of renewable
7 energy generated by the community solar facility.

8 I. A qualifying utility may recover from a
9 subscriber organization:

10 (1) the reasonable costs of necessary
11 interconnection facilities, including additions or upgrades of
12 the qualifying utility's distribution system necessary to
13 physically and electrically interconnect the community solar
14 facility to the utility's distribution system;

15 (2) the reasonably determined cost of system
16 integration, giving due consideration to any energy storage
17 co-located with a community solar facility; and

18 (3) the cost of any production capacity that
19 may become redundant or uneconomic as a result of the community
20 solar capacity.

21 J. The amount of electricity and renewable energy
22 certificates generated by each community solar facility shall
23 be determined by a production meter installed by the qualifying
24 utility and paid for by the owner of the community solar
25 facility. All renewable energy certificates associated with

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1 the energy produced by a community solar facility are the
 2 property of the subscriber organization and, at the subscriber
 3 organization's discretion, may be accumulated, sold, retired or
 4 transferred to subscribers or to a qualifying utility with the
 5 agreement of the qualifying utility.

6 SECTION 8. [NEW MATERIAL] QUALIFYING UTILITY--COMMUNITY
 7 SOLAR PROGRAM--RATE SCHEDULES--COMMISSION APPROVAL--
 8 INTERCONNECTION APPLICATION.--

9 A. A qualifying utility shall file by February 1,
 10 2020 an application with the commission for approval of a plan
 11 and rate schedule, including a bill credit schedule, to
 12 administer a community solar program in accordance with the
 13 Community Solar Act and applicable commission rules for
 14 implementation within a reasonable time period after commission
 15 approval of the plan and rate schedule. The plan and rate
 16 schedule shall be predicated on a full allocation, consistent
 17 with the allocating methodologies approved in the qualifying
 18 utility's last general rate case and taking into consideration
 19 the contribution of the solar facility generation to meet the
 20 qualifying utility's system peak demand to the community solar
 21 class of the qualifying utility's fixed costs of providing
 22 generation, transmission, distribution and customer service.

23 B. The commission shall approve or modify a
 24 qualifying utility's proposed community solar program plan and
 25 rate schedule after notice and hearing within one hundred

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1 eighty days from the date on which the qualifying utility's
2 application is filed with the commission; provided that the
3 commission may approve a qualifying utility's proposed
4 community solar plan and rate schedule without a hearing if,
5 within thirty days of the date on which a qualifying utility
6 provides notice to the public of its application as ordered by
7 the commission, no protest of the proposed plan and rate
8 schedule is filed that demonstrates to the commission's
9 reasonable satisfaction that a hearing is necessary.

10 C. A qualifying utility's community solar program
11 plan and rate schedule shall:

12 (1) include an implementation schedule and
13 provide interconnection applications and community solar bill
14 credits within ninety days of the commission's approval of the
15 plan;

16 (2) identify all applicable terms, conditions,
17 rules, fees and charges of the program in accordance with the
18 Community Solar Act; provided that a qualifying utility shall
19 recover the reasonable costs of administering a community solar
20 program, but shall not recover fees and charges from a
21 subscriber that are recovered by the utility from the
22 subscriber through any other charges and may recover the
23 reasonable costs of administering a community solar program;

24 (3) explain the manner in which the qualifying
25 utility may bill subscribers for the price of subscriptions on

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1 its monthly utility bills, pursuant to an agreement with a
 2 subscriber organization, and remit those amounts collected to
 3 the appropriate subscriber organization within a reasonable
 4 time period after their receipt;

5 (4) identify the means by which the program
 6 will be promoted to potential subscribers; and

7 (5) reasonably allow for the creation,
 8 financing and accessibility of community solar facilities in a
 9 way that encourages robust consumer participation and also
 10 protects consumers.

11 D. A qualifying utility shall approve
 12 interconnection of a community solar facility to the qualifying
 13 utility's distribution system within a reasonable time period,
 14 but no longer than six months after the utility's receipt of a
 15 complete application for interconnection and on a first-come,
 16 first-served order per feeder and per substation based on the
 17 utility's date- and time-stamp of the application; provided
 18 that a complete application submitted by a subscriber
 19 organization that is a low-income service organization or an
 20 affordable housing provider that offers capacity reservations,
 21 subscription discounts or other special opportunities for
 22 subscriptions by low-income customers or individuals qualifying
 23 for assistance pursuant to the Affordable Housing Act shall be
 24 given priority in a utility's interconnection queue. A
 25 qualifying utility shall maintain a publicly available

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1 community solar facility project queue on its website.

2 E. A qualifying utility shall not interconnect the
3 next community solar facility in the queue until the previous
4 community solar facility is fully subscribed.

5 SECTION 9. [NEW MATERIAL] COMMISSION--DUTIES--
6 RULEMAKING--REPORT TO LEGISLATURE.--

7 A. By no later than November 1, 2019, the
8 commission shall adopt rules to carry out the provisions of the
9 Community Solar Act.

10 B. The commission shall develop rules that:

11 (1) establish reasonable and uniform customer
12 disclosure forms, in the English and Spanish languages and,
13 when appropriate, Native American or indigenous languages, that
14 identify the minimum information that must be provided by
15 subscriber organizations to potential subscribers to ensure
16 fair disclosure of the future costs and benefits of
17 subscriptions and subscribers' rights and obligations
18 pertaining to subscriptions;

19 (2) provide subscription requirements for
20 subscriber organizations and customer protections;

21 (3) establish reasonable uniform, non-
22 discriminatory application forms, requirements, standards, fees
23 and processes for approval by a qualifying utility of the
24 interconnection of community solar facilities to a qualifying
25 utility's distribution system;

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1 (4) ensure that a qualifying utility recovers
2 from subscribers the reasonably determined cost component of
3 its commission-approved total cost of service;

4 (5) ensure that a qualifying utility recovers
5 the costs of delivering to the community solar facility's
6 subscribers' premises the renewable energy generated by the
7 community solar facility, integrating the generation from the
8 community solar facility into the utility's system and
9 administering the contracts with community solar facility
10 owners and billing credits;

11 (6) ensure that the cost of the community
12 solar facility and subscriptions will not be subsidized by
13 customers that do not subscribe;

14 (7) establish how a qualifying utility shall
15 reasonably determine in its community solar program plan the
16 value of the reasonably determinable benefits to it
17 attributable to a customer's subscription;

18 (8) provide a procedure by which persons
19 interested in the development of community solar facilities are
20 notified by a subscriber organization of its application for
21 interconnection of a community solar facility within thirty
22 days after the subscriber organization submits a completed
23 application for interconnection to a qualifying utility;

24 (9) ensure that all community solar program
25 conditions, terms and provisions are consistent with the

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1 Community Solar Act and the public interest; and

2 (10) establish a reasonable process,
3 commencing no later than two years after the commission's
4 adoption of rules pursuant to this section, for the commission
5 to review, on at least a biennial basis, the status of the
6 development of community solar facilities in accordance with
7 the Community Solar Act and for interested persons to submit
8 comments to the commission concerning the effectiveness of its
9 rules to accomplish the objectives of the Community Solar Act,
10 including the status of participation by low-income customers,
11 low-income service organizations and affordable housing
12 providers in each qualifying utility's community solar program.

13 C. The commission shall encourage accessibility to
14 community solar programs by low-income customers, low-income
15 service organizations and affordable housing providers through
16 reasonable mechanisms, as provided by rule, including, to the
17 extent not otherwise prohibited by law:

18 (1) setting mandatory reservations of capacity
19 for low-income subscribers and establishing:

20 (a) a statewide capacity requirement of
21 low-income subscriptions based on the number of low-income
22 customers in each utility's service area;

23 (b) an annual statewide requirement of
24 at least twenty-five percent low-income subscriptions based on
25 the aggregate capacity of each community solar facility in the

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1 state; and

2 (c) individualized low-income
3 subscription requirements for each qualifying utility in order
4 to reach the annual statewide requirement;

5 (2) allowing funds available for low-income
6 energy-assistance programs to be used to enable the
7 participation of low-income residential customers in programs
8 authorized by the Community Solar Act; and

9 (3) allowing priority in a qualifying
10 utility's queue for interconnection of community solar
11 facilities by low-income service organizations and affordable
12 housing providers that offer reservations of capacity,
13 discounted subscription rates or other special opportunities
14 for low-income customers and persons who qualify for assistance
15 pursuant to the Affordable Housing Act.

16 D. By no later than November 1, 2023, the
17 commission shall provide a report to the appropriate interim
18 legislative committee that deals with energy issues that
19 addresses the status of the development of community solar
20 facilities in accordance with the Community Solar Act, the
21 effectiveness of its rules to accomplish the objectives of the
22 Community Solar Act, including the status of participation by
23 low-income customers, low-income service organizations and
24 affordable housing providers in each qualifying utility's
25 community solar program and any recommended changes.

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1 SECTION 10. [NEW MATERIAL] UTILITY LOADS AND RESOURCES
2 TABLES--INTEGRATED RESOURCE PLANS.--

3 A. A qualifying utility shall include and address
4 the effects of the development of community solar facilities
5 pursuant to the Community Solar Act in its loads and resources
6 tables, integrated resource planning processes and integrated
7 resource plans.

8 B. A qualifying utility shall notify the commission
9 and participants in the commission's public advisory process,
10 in accordance with the commission's applicable integrated
11 resource plan rules, of any development of community solar
12 facilities pursuant to the Community Solar Act that would have
13 the effect of changing the results of the utility's most recent
14 integrated resource plan filed with the commission.

15 SECTION 11. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION
16 COOPERATIVES.--At its election, a rural electric distribution
17 cooperative may allow the construction, connection and
18 operation of community solar facilities within its service
19 territory.

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