AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR ACT; PROVIDING FOR THE ESTABLISHMENT OF A COMMUNITY SOLAR PROGRAM TO FACILITATE THE DEVELOPMENT AND INTERCONNECTION OF COMMUNITY SOLAR FACILITIES; REQUIRING RULEMAKING BY THE PUBLIC REGULATION COMMISSION; PROVIDING FOR PROGRAM REVIEW, REPORTS AND EVALUATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Community Solar Act".

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

A. "affordable housing provider" means a person that owns, operates or manages affordable housing units and is...
certified as a United States department of housing and urban
development housing authority;

B. "applicable bill credit rate" means the dollar-
per-kilowatt-hour rate determined by the commission that is
used to calculate a subscriber's community solar bill credit;

C. "bill credit" means a monetary credit to a
subscriber on the qualifying utility's monthly billing cycle;

D. "commission" means the public regulation
commission;

E. "community solar facility" means a solar
electric generation facility that is interconnected with the
distribution system of a qualifying utility in the service
territory of customers of the qualifying utility that subscribe
for a portion of the capacity of the facility;

F. "community solar program" or "program" means a
program created through the commission's adoption of rules that
facilitates the development and interconnection of community
solar facilities in the service territory of a qualifying
utility in accordance with the Community Solar Act;

G. "energy storage" means technology that captures
energy produced at one time for use at a later time;

H. "Indian nation, tribe or pueblo" means a
federally recognized Indian nation, tribe or pueblo located
wholly or partially in New Mexico;

I. "low-income customer" means a residential
customer of a qualifying utility with an annual household income at or below eighty percent of county area median income, as published by the United States department of housing and urban development;

J. "low-income project" means a community solar facility that is at least fifty-one percent subscribed to by a combination of low-income customers, low-income service organizations and affordable housing providers that are qualified by the commission to participate, with at least ten percent of the subscribers being low-income customers;

K. "low-income service organization" means an organization that certifies to a qualifying utility that it provides services, assistance or housing to low-income customers and includes a local or central tribal government, a chapter house or an Indian housing authority;

L. "native community solar project" means a community solar facility that is sited in New Mexico on the land of an Indian nation, tribe or pueblo and that is:

(1) at least forty percent subscribed to by an Indian nation, tribe or pueblo; or

(2) owned or operated by a subscriber organization that is an Indian nation, tribe or pueblo;

M. "qualifying utility" means an investor-owned electric public utility or a rural electric distribution cooperative certified by the commission to provide retail electricity.
electric service pursuant to the Public Utility Act;

N. "subscriber" means a retail electric customer of a qualifying utility that contracts with a subscriber organization for one or more subscriptions to a community solar facility interconnected with that utility;

O. "subscriber organization" means an entity, including a municipality, county, affordable housing provider, Indian nation, tribe or pueblo or other entity authorized to transact business in New Mexico, that owns or operates a community solar facility, but does not include an investor-owned utility;

P. "subscription" means a written contract between a subscriber and a subscriber organization that allocates to the subscriber a proportional interest in the nameplate capacity of a community solar facility;

Q. "total aggregate retail rate" means the total amount of a qualifying utility's demand, energy and other charges, exclusive of charges described on a qualifying utility's rate schedule as minimum monthly charges, such as customer or service availability charges, converted to a kilowatt-hour rate, but does not include energy efficiency program riders or other charges not related to a qualifying utility's power production or transmission functions, as approved by the commission, or franchise fees and tax charges on utility bills; and
R. "unsubscribed electricity" means electricity, measured in kilowatt-hours, generated by a community solar facility that is not allocated to a subscriber.

SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR FACILITY--SUBSCRIBER ORGANIZATIONS--SUBSCRIPTIONS--REQUIREMENTS.--

A. A community solar facility:

(1) shall have a nameplate capacity rating of five megawatts alternating current or less;

(2) shall be interconnected to the electric distribution grid of the qualifying utility and metered;

(3) may be co-located with energy storage;

(4) shall have at least ten subscribers; and

(5) shall not be owned or operated by an investor-owned utility.

B. A subscriber organization shall:

(1) register with the commission and keep its registration in good standing in order to participate in the community solar program; and

(2) make at least sixty percent of the total generating capacity of a community solar facility available in subscriptions of twenty-five kilowatts or less.

C. A subscription shall:

(1) be attributed to a location in the same qualifying utility service territory where the community solar facility is located;
HENRC/HB 9

(2) be sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the subscriber at the location to which the subscription is attributed, with a deduction for the amount of any existing solar facilities located at the physical location;

(3) account for no more than forty percent of the generating capacity of the community solar facility;

(4) be transferable and portable, and may be retained by the subscriber if the subscriber moves within the same qualifying utility service territory; and

(5) include a termination clause.

D. A customer with a premise-sited renewable energy distributed generation facility may subscribe to a community solar facility.

E. The commission shall provide exemptions to the requirements of this section for community solar facilities located on the lands of Indian nations, tribes or pueblos serving subscribers on those lands.

F. Nothing in the Community Solar Act shall preclude an Indian nation, tribe or pueblo from hosting a community solar facility on the land of the Indian nation, tribe or pueblo in partnership with a third-party entity or subscribers.

SECTION 4. [NEW MATERIAL] COMMUNITY SOLAR PROGRAM ADMINISTRATION--BILL CREDITS--ENVIRONMENTAL ATTRIBUTES.--
A. A qualifying utility shall:

(1) provide a bill credit to a subscriber's subsequent monthly electric bill for that proportion of the output of a community solar facility attributable to that subscriber and generated in the previous cycle. The bill credit shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the community solar facility by the applicable bill credit rate, which shall be the qualifying utility's total aggregate retail rate minus a commission-approved distribution cost rate. Any amount of the bill credit that exceeds the subscriber's monthly bill shall be carried over and applied to the next month's bill. On an annual basis, any excess bill credits shall be paid to the subscriber at the utility's avoided cost;

(2) apply bill credits to subscriber bills within one billing cycle following the cycle during which the energy was generated by the community solar facility;

(3) provide bill credits to a community solar facility's subscribers for not less than twenty-five years from the date the community solar facility is first commercially operational; and

(4) on a monthly basis and in a standardized electronic format, provide to the subscriber organization a report indicating the total value of bill credits generated by the community solar facility in the prior month as well as the
amount of the bill credit applied to each subscriber.

B. A subscriber organization shall provide to the qualifying utility:

(1) on a monthly basis and in a standardized electronic format, a subscriber list indicating the proportional output of a community solar facility attributable to each subscriber. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers; and

(2) real-time production data to facilitate incorporation of the community solar facility into the utility's operation of its electric distribution system.

C. A subscriber organization may accumulate community solar bill credits in the event that all of the electricity by a community solar facility is not allocated to subscribers in a given month. On an annual basis, a subscriber organization shall provide the qualifying utility allocation instructions for distributing excess community solar bill credits to subscribers. Excess community solar bill credits that are not reallocated shall be considered unsubscribed electricity and shall be purchased by the qualifying utility at its commission-approved avoided cost of energy.

D. All environmental attributes associated with a community solar facility, including renewable energy certificates, shall be considered the property of the subscriber organization. At the subscriber organization's
discretion, the environmental attributes may be sold, accumulated, retired or transferred to subscribers or to a qualifying utility. A qualifying utility may develop, and file with the commission, a standard offer to purchase renewable energy credits from community solar facilities to help meet the state's renewable portfolio standard.

SECTION 5. [NEW MATERIAL] COMMUNITY SOLAR FACILITY--LOCATION LIMITATIONS.--

A. An entity, affiliated entity or entities under common control shall not develop, own or operate more than one community solar facility on the same parcel of land or on contiguous parcels of land.

B. This section does not apply to community solar facilities located on the lands of Indian nations, tribes or pueblos serving exclusively subscribers on those lands.

SECTION 6. [NEW MATERIAL] COMMUNITY SOLAR PROGRAM--COMMISSION RULEMAKING.--

A. The commission shall adopt rules to implement the Community Solar Act by no later than June 30, 2021. The commission shall solicit input from the energy, minerals and natural resources department and other relevant state agencies, utilities, low-income stakeholders and disproportionately environmentally impacted communities, potential owners or operators of community solar facilities, Indian nations, tribes or pueblos and any other interested stakeholders in its
rulemaking process.

B. The rules shall:

(1) require a qualifying utility to file tariffs, agreements or forms necessary for implementation of the community solar program;

(2) allocate a statewide annual capacity cap of fifty megawatts alternating current of community solar facility capacity proportionately across the state's investor-owned electric public utilities; provided that native community solar projects and community solar facilities within the territory of a rural electric distribution cooperative shall not be included in the annual capacity caps;

(3) set a publicly available community solar bill credit rate for each jurisdictional electric utility that ensures:

   (a) only distribution costs are subtracted from the total aggregate retail rate; and

   (b) the successful creation, financing and accessibility of community solar facilities in a way that encourages robust consumer participation across the utility's customer classes;

(4) establish a request for proposals process for community solar facilities that is administered by an independent evaluator and that:

   (a) uses clear, quantifiable and
objective qualifications and evaluation criteria for proposals and includes the weight given to each criterion;

(b) ensures that thirty percent of the annual statewide capacity is allocated to low-income projects; and

(c) includes eligibility requirements that include demonstrable and verifiable initial project maturity development milestones in order for subscriber organizations to submit projects to participate in the community solar program;

(5) establish a process to guarantee participation for Indian nations, tribes or pueblos in the service territory of rural electric cooperatives after consideration of a rural electric cooperative's existing contractual obligations. This process shall consider opt-out options only after a rural electric cooperative's self-generation limits are reached;

(6) establish reasonable, uniform, efficient and non-discriminatory standards, fees and processes for the interconnection of community solar facilities that allow a qualifying utility to recover reasonable interconnection costs for each community solar facility;

(7) allow a qualifying utility to recover reasonable costs of administering the community solar program;

(8) identify and allow financial incentives or
mechanisms to:

(a) encourage robust development of community solar facilities and community solar program access for all customer classes;

(b) support the successful creation, financing and accessibility of community solar facilities in a way that encourages robust consumer participation and a sustainable market-based community solar program;

(c) encourage participation by a diversity of subscriber types, especially low-income customers; and

(d) subsidize low-income customers' participation in a community solar facility;

(9) establish a low-income subsidy fund;

(10) provide consumer protections for subscribers, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms and other relevant but reasonable information pertaining to the subscription;

(11) include a list of approved low-income services or nonprofit service providers that may pre-qualify
individuals or families as low-income customers;

   (12) establish criteria to qualify affordable
housing providers for participation in low-income projects,
including consideration of whether the affordable housing
providers pass specific, identifiable and quantifiable long-
term benefits of participation in a community solar facility to
their tenants or residents; and

   (13) provide a process for the commission to
receive and publish on its website information on community
solar facilities that are seeking subscribers and any
additional relevant information about the community solar
program.

C. By no later than November 1, 2025, the
commission shall develop a report in consultation with the
appropriate state agencies and provide the report to the
appropriate interim legislative committees that address energy
issues. The report shall:

   (1) incorporate information submitted as part
of a qualifying utility's annual status report;

   (2) address the status of the development of
community solar facilities in accordance with the Community
Solar Act, including participation by low-income customers and
low-income service organizations in each qualifying utility's
community solar program;

   (3) evaluate the effectiveness of existing
mechanisms to support the participation by a diversity of subscriber types, especially low-income customers;

(4) evaluate the effectiveness of existing mechanisms to support successful creation, financing and accessibility of community solar facilities in a way that encourages robust consumer participation and a sustainable market-based community solar program;

(5) identify siting, implementation and interconnection challenges;

(6) identify mechanisms to promote the geographic diversity of projects across both urban and rural areas;

(7) evaluate the effectiveness of the current request for proposals process;

(8) assess whether current annual capacity is meeting consumer demand;

(9) in consultation with the consumer and environmental protection division of the office of the attorney general, assess the adequacy of existing consumer protection measures; and

(10) evaluate the overall effectiveness of the commission's rules to implement the Community Solar Act and any recommended changes.

SECTION 7. [NEW MATERIAL] QUALIFYING UTILITY--FILING REQUIREMENTS--REPORT.
A. A qualifying utility shall file with the commission any tariffs, agreements or forms necessary for the implementation of the community solar program in its service territory as prescribed by the commission.

B. A qualifying utility shall not remove a customer from the customer's otherwise applicable customer class as a consequence of the customer subscribing to a community solar facility.

C. On an annual basis, commencing no later than two years after the commission's adoption of rules creating the community solar program, a qualifying utility shall submit to the commission, and make publicly available, a status report on the qualifying utility's implementation of the community solar program. The report shall include:

(1) the total number of participating customers by customer class;

(2) the total number of community solar facilities, low-income projects and native community solar projects and associated project capacity, reported in alternating current;

(3) the number of participating low-income customers, affordable housing providers, low-income service organizations and Indian nations, tribes or pueblos and their entities and tribal members and residents;

(4) the total program capacity subscribed by...
low-income customers, affordable housing providers, low-income
service organizations and Indian nations, tribes or pueblos and
their entities and tribal members and residents;
(5) the number of co-located energy storage
projects;
(6) the average number of days between
interconnection of a community solar facility and the date on
which subscribers start to receive bill credits; and
(7) interconnection costs paid by subscriber
organizations.

SECTION 8. [NEW MATERIAL] COMMISSION REGULATION--
SUBSCRIBER ORGANIZATIONS--SUBSCRIBERS--SUBSCRIPTION RATES.--
A. Subscriber organizations, or the subscribers to
a community solar facility, shall not be considered public
utilities subject to regulation by the commission under the
Public Utility Act solely as a result of their ownership
interest in, operation of or subscription to a community solar
facility.
B. Rates paid for subscriptions shall not be
subject to regulation by the commission.

SECTION 9. [NEW MATERIAL] UTILITY LOADS AND RESOURCE
TABLES--INTEGRATED RESOURCE PLANS.--A qualifying utility shall:
A. include community solar facilities pursuant to
the Community Solar Act in its loads and resources tables,
integrated resource planning processes and integrated resource
plans; and

B. notify the commission and participants in the commission's public advisory process, in accordance with the commission's applicable integrated resource plan rules, of the development of community solar facilities pursuant to the Community Solar Act that would have the effect of changing the results of the utility's most recent integrated resource plan filed with the commission.

SECTION 10. Section 62-17-10 NMSA 1978 (being Laws 2005, Chapter 341, Section 10) is amended to read:

"62-17-10. INTEGRATED RESOURCE PLANNING.--Pursuant to the commission's rulemaking authority, public utilities supplying electric or natural gas service to customers shall periodically file an integrated resource plan with the commission. Utility integrated resource plans shall evaluate renewable energy, energy efficiency, load management, distributed generation, community solar facilities and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of fuel supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The preparation of resource plans shall incorporate a public advisory process. Nothing in this section shall prohibit public utilities from implementing cost-effective energy
efficiency and load management programs and the commission from
approving public utility expenditures on energy efficiency
programs and load management programs prior to the commission
establishing rules and guidelines for integrated resource
planning. The commission may exempt public utilities with
fewer than five thousand customers and distribution-only public
utilities from the requirements of this section. The
commission shall take into account a public utility's resource
planning requirements in other states and shall authorize
utilities that operate in multiple states to implement plans
that coordinate the applicable state resource planning
requirements. The requirements of this section shall take
effect one year following the commission's adoption of rules
implementing the provisions of this section."