

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 9

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54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

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

1 certified as a United States department of housing and urban
2 development housing authority;

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

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

8 D. "commission" means the public regulation
9 commission;

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

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

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

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

25 I. "low-income customer" means a residential

1 customer of a qualifying utility with an annual household
2 income at or below eighty percent of county area median income,
3 as published by the United States department of housing and
4 urban development;

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

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

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

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

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

23 M. "qualifying utility" means an investor-owned
24 electric public utility or a rural electric distribution
25 cooperative certified by the commission to provide retail

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1 electric service pursuant to the Public Utility Act;

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

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

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

16 Q. "total aggregate retail rate" means the total
17 amount of a qualifying utility's demand, energy and other
18 charges, exclusive of charges described on a qualifying
19 utility's rate schedule as minimum monthly charges, such as
20 customer or service availability charges, converted to a
21 kilowatt-hour rate, but does not include energy efficiency
22 program riders or other charges not related to a qualifying
23 utility's power production or transmission functions, as
24 approved by the commission, or franchise fees and tax charges
25 on utility bills; and

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1 R. "unsubscribed electricity" means electricity,
2 measured in kilowatt-hours, generated by a community solar
3 facility that is not allocated to a subscriber.

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

6 A. A community solar facility:

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

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

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

12 (4) shall have at least ten subscribers; and

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

15 B. A subscriber organization shall:

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

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

22 C. A subscription shall:

23 (1) be attributed to a location in the same
24 qualifying utility service territory where the community solar
25 facility is located;

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

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

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

11 (5) include a termination clause.

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

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

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

24 SECTION 4. [NEW MATERIAL] COMMUNITY SOLAR PROGRAM
25 ADMINISTRATION--BILL CREDITS--ENVIRONMENTAL ATTRIBUTES.--

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1 A. A qualifying utility shall:

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

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

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

22 (4) on a monthly basis and in a standardized
23 electronic format, provide to the subscriber organization a
24 report indicating the total value of bill credits generated by
25 the community solar facility in the prior month as well as the

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1 amount of the bill credit applied to each subscriber.

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

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

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

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

22 D. All environmental attributes associated with a
23 community solar facility, including renewable energy
24 certificates, shall be considered the property of the
25 subscriber organization. At the subscriber organization's

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1 discretion, the environmental attributes may be sold,
 2 accumulated, retired or transferred to subscribers or to a
 3 qualifying utility. A qualifying utility may develop, and file
 4 with the commission, a standard offer to purchase renewable
 5 energy credits from community solar facilities to help meet the
 6 state's renewable portfolio standard.

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

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

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

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

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

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1 rulemaking process.

2 B. The rules shall:

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

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

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

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

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

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

25 (a) uses clear, quantifiable and

1 objective qualifications and evaluation criteria for proposals
2 and includes the weight given to each criterion;

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

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

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

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

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

25 (8) identify and allow financial incentives or

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1 mechanisms to:

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

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

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

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

14 (9) establish a low-income subsidy fund;

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

24 (11) include a list of approved low-income
25 services or nonprofit service providers that may pre-qualify

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1 individuals or families as low-income customers;

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

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

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

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

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

25 (3) evaluate the effectiveness of existing

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1 mechanisms to support the participation by a diversity of
2 subscriber types, especially low-income customers;

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

8 (5) identify siting, implementation and
9 interconnection challenges;

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

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

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

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

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

24 SECTION 7. [NEW MATERIAL] QUALIFYING UTILITY--FILING
25 REQUIREMENTS--REPORT.--

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1 A. A qualifying utility shall file with the
2 commission any tariffs, agreements or forms necessary for the
3 implementation of the community solar program in its service
4 territory as prescribed by the commission.

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

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

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

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

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

25 (4) the total program capacity subscribed by

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1 low-income customers, affordable housing providers, low-income
2 service organizations and Indian nations, tribes or pueblos and
3 their entities and tribal members and residents;

4 (5) the number of co-located energy storage
5 projects;

6 (6) the average number of days between
7 interconnection of a community solar facility and the date on
8 which subscribers start to receive bill credits; and

9 (7) interconnection costs paid by subscriber
10 organizations.

11 SECTION 8. [NEW MATERIAL] COMMISSION REGULATION--
12 SUBSCRIBER ORGANIZATIONS--SUBSCRIBERS--SUBSCRIPTION RATES.--

13 A. Subscriber organizations, or the subscribers to
14 a community solar facility, shall not be considered public
15 utilities subject to regulation by the commission under the
16 Public Utility Act solely as a result of their ownership
17 interest in, operation of or subscription to a community solar
18 facility.

19 B. Rates paid for subscriptions shall not be
20 subject to regulation by the commission.

21 SECTION 9. [NEW MATERIAL] UTILITY LOADS AND RESOURCE
22 TABLES--INTEGRATED RESOURCE PLANS.--A qualifying utility shall:

23 A. include community solar facilities pursuant to
24 the Community Solar Act in its loads and resources tables,
25 integrated resource planning processes and integrated resource

1 plans; and

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

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

11 "62-17-10. INTEGRATED RESOURCE PLANNING.--Pursuant to the
12 commission's rulemaking authority, public utilities supplying
13 electric or natural gas service to customers shall periodically
14 file an integrated resource plan with the commission. Utility
15 integrated resource plans shall evaluate renewable energy,
16 energy efficiency, load management, distributed generation,
17 community solar facilities and conventional supply-side
18 resources on a consistent and comparable basis and take into
19 consideration risk and uncertainty of fuel supply, price
20 volatility and costs of anticipated environmental regulations
21 in order to identify the most cost-effective portfolio of
22 resources to supply the energy needs of customers. The
23 preparation of resource plans shall incorporate a public
24 advisory process. Nothing in this section shall prohibit
25 public utilities from implementing cost-effective energy

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1 efficiency and load management programs and the commission from
2 approving public utility expenditures on energy efficiency
3 programs and load management programs prior to the commission
4 establishing rules and guidelines for integrated resource
5 planning. The commission may exempt public utilities with
6 fewer than five thousand customers and distribution-only public
7 utilities from the requirements of this section. The
8 commission shall take into account a public utility's resource
9 planning requirements in other states and shall authorize
10 utilities that operate in multiple states to implement plans
11 that coordinate the applicable state resource planning
12 requirements. The requirements of this section shall take
13 effect one year following the commission's adoption of rules
14 implementing the provisions of this section."

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