

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 84

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR ACT;
PRESCRIBING REQUIREMENTS FOR COMMUNITY SOLAR FACILITIES,
SUBSCRIBER ORGANIZATIONS AND SUBSCRIPTIONS; PRESCRIBING
REQUIREMENTS FOR ADMINISTRATION OF A COMMUNITY SOLAR PROGRAM;
PROVIDING THAT RENEWABLE ENERGY CERTIFICATES ASSOCIATED WITH A
COMMUNITY SOLAR FACILITY ARE THE PROPERTY OF THE QUALIFYING
UTILITY; PROVIDING EXCEPTIONS FOR NATIVE COMMUNITY SOLAR

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PROJECTS; DIRECTING THE PUBLIC REGULATION COMMISSION TO ADOPT RULES TO IMPLEMENT A COMMUNITY SOLAR PROGRAM; ALLOWING THE COMMISSION TO ESTABLISH AND COLLECT FROM SUBSCRIBER ORGANIZATIONS REASONABLE APPLICATION FEES.

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. "commission" means the public regulation commission;
- B. "community solar bill credit" means the credit value of the electricity generated by a community solar facility and allocated to a subscriber to offset the subscriber's electricity bill on the qualifying utility's monthly billing cycle as required by the Community Solar Act;
- C. "community solar 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;
- D. "community solar facility" means a facility that generates electricity by means of a solar photovoltaic device, and subscribers to the facility receive a bill credit for the

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electricity generated in proportion to the subscriber's share of the facility's kilowatt-hour output;

E. "community solar program" or "program" means the program created through the adoption of rules by the commission that allows for the development of community solar facilities and provides customers of a qualifying utility with the option of accessing solar energy produced by a community solar facility in accordance with the Community Solar Act;

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

G. "low-income customer" means a residential customer of a qualifying utility with an annual household income at or below eighty percent of area median income, as published by the United States department of housing and urban development, or that is enrolled in a low-income program facilitated by the state or a low-income energy program led by the qualifying utility or as determined by the commission;

H. "low-income service organization" means an organization that provides services, assistance or housing to low-income customers and may include a local or central tribal government, a chapter house or a tribally designated housing entity;

I. "nameplate capacity" means the maximum rated output of electric power production equipment that is commonly

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indicated on a nameplate physically attached to the generator and expressed in megawatts alternating current;

J. "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 owned or operated by a subscriber organization that is an Indian nation, tribe or pueblo or a tribal entity or in partnership with a third-party entity;

K. "qualifying utility" means an investor-owned electric public utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act or a rural electric distribution cooperative that has opted in to the community solar program;

L. "subscriber" means a retail customer of a qualifying utility that owns a subscription to a community solar facility ~~HSEIC~~~~HENRC~~~~from a subscriber organization~~~~HENRC~~~~HSEIC~~ ~~HENRC~~~~Sfll~~~~; Sfll Sfll~~~~, and the customer is by rate class:~~~~Sfll~~~~HENRC~~
~~HSEIC~~~~HENRC~~~~HENRC~~~~; HENRC~~~~HENRC~~~~HSEIC~~ ~~HSEIC~~~~HENRC~~~~and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or apolitical subdivision of an Indian nation, tribe or pueblo or a governmental entity, including a state educational institution, a public school, a public~~

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~~housing authority or other political subdivision of the state or agency, instrumentality or institution of a political subdivision;~~ ←HENRC ←HSEIC

HSEIC → HSEIC → ~~from a subscriber organization;~~ ←HSEIC ←HSEIC

HSEIC → and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or tribal entity, a municipality or a county in the state, a charter, private or public school as defined in Section 22-1-2 NMSA 1978, a community college as defined in Section 21-13-2 NMSA 1978 or a public housing authority; ←HSEIC

HENRC → Sfl1 → ~~(1) a residential retail customer;~~

~~or~~

~~(2) a small commercial retail customer;~~

~~provided that small commercial retail customers shall not consume more than forty percent of the aggregate of energy produced from each community solar facility;~~ ←Sfl1 ←HENRC

M. "subscriber organization" means an entity that owns or operates a community solar facility and may include HENRC → a qualifying utility, ←HENRC a HENRC → Sfl1 → qualifying utility ←Sfl1 ←HENRC municipality, a county, a for-profit or nonprofit entity or organization, an Indian nation, tribe, or pueblo, a local tribal governance structure or other tribal entity authorized to transact business in New Mexico;

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N. "subscription" means a contract for a community solar subscription entered into between a subscriber and a subscriber organization for a share of the nameplate capacity from a community solar facility;

O. "total aggregate retail rate" means the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

P. "tribal entity" means an enterprise, a nonprofit entity or organization or a political subdivision formed under the inherent sovereignty of an Indian nation, tribe or pueblo; and

Q. "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

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REQUIREMENTS.--

A. A community solar facility shall:

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

(2) be located in the service territory of the qualifying utility and be interconnected to the electric distribution system of that qualifying utility;

(3) have at least ten subscribers;

(4) have the option to be co-located with other energy resources, but shall not be co-located with other community solar facilities;

(5) not allow a single subscriber to be allocated more than forty percent of the generating capacity of the facility; and

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

B. The provisions of this section shall not apply to a native community solar project; provided that a native community solar project shall be located in the service territory of a qualifying utility and be interconnected to the electric distribution system of that qualifying utility.

SECTION 4. [NEW MATERIAL] OWNERSHIP OF COMMUNITY SOLAR FACILITIES.--

A. A community solar facility shall be owned or

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operated by a subscriber organization.

B. Third-party entities or subscriber organizations developing projects on the land of an Indian nation, tribe, or pueblo are subject to tribal jurisdiction.

HENRC→C. Notwithstanding any provision of the Public Utility Act to the contrary, a person not otherwise a public utility shall not be deemed to be a public utility subject to the provisions of the Public Utility Act solely because the person owns, controls or operates all or any part of a community solar facility.←HENRC

SECTION 5. [NEW MATERIAL] SUBSCRIPTION REQUIREMENTS.--

A. A subscription shall be:

(1) sized to supply no more than one hundred Sfll→twenty←Sfll percent of the subscriber's average annual electricity consumption HENRC→Sfll→, including the percentage of renewable energy provided pursuant to the renewable energy portfolio standard of the Energy Transition Act←Sfll←HENRC ;

and

(2) transferable and portable within the qualifying utility service territory.

B. The provisions of this section shall not apply to a native community solar project; provided that subscriptions to a native community solar project shall be transferable and portable within the qualifying utility service territory.

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SECTION 6. [NEW MATERIAL] COMMUNITY SOLAR PROGRAM

ADMINISTRATION.--

A. A qualifying utility shall:

(1) acquire the entire output of a community solar facility connected to its distribution system;

(2) apply community solar 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 community solar 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 interconnected;

(4) carry over any amount of a community solar bill credit that exceeds the subscriber's monthly bill and apply it to the subscriber's next monthly bill unless and until the subscriber cancels service with the qualifying utility; and

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

B. A subscriber organization shall, on a monthly basis and in a standardized electronic format, provide to the

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qualifying utility a list indicating the kilowatt-hours of generation attributable to each subscriber. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.

C. If a community solar facility is not fully subscribed in a given month, the unsubscribed energy may be rolled forward on the community solar facility account for up to one year from its month of generation and allocated by the subscriber organization to subscribers at any time during that period. At the end of that period, any undistributed bill credit shall be removed, and the unsubscribed energy shall be purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the commission.

D. The environmental attributes, including renewable energy certificates, associated with a community solar facility shall be owned by the qualifying utility to whose electric distribution system the community solar facility is interconnected; provided that environmental attributes associated with a native community solar project shall be owned by the owner of the native community solar project.

E. Nothing in the Community Solar Act shall preclude an Indian nation, tribe or pueblo from using financial mechanisms other than subscription models, including virtual and aggregate net-metering, for native community solar projects.

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SECTION 7. [NEW MATERIAL] PUBLIC REGULATION COMMISSION--
HSEIC→ENFORCEMENT AND←HSEIC RULEMAKING.--

HSEIC→A. The commission shall administer and enforce the rules and provisions of the Community Solar Act, including regulation of subscriber organizations in accordance with the Community Solar Act and oversight and review of the consumer protections established for the community solar program.←HSEIC

HSEIC→A.←HSEIC HSEIC→B.←HSEIC The commission shall adopt rules to establish a community solar program by no later than April 1, 2022. The rules shall:

(1) provide an initial HSEIC→annual←HSEIC statewide capacity program cap of HSEIC→one hundred←HSEIC HSEIC→two hundred←HSEIC megawatts alternating current proportionally allocated to investor-owned utilities until November 1, 2024. The HSEIC→annual←HSEIC statewide capacity program cap shall exclude native community solar projects and rural electric distribution cooperatives;

(2) establish an annual statewide capacity program cap to be in effect after November 1, 2024;

(3) require Sfl1→a target thirty percent annual statewide carve-out of the annual statewide capacity program cap←Sfl1 Sfl1→thirty percent of electricity produced from each community solar facility←Sfl1 to be reserved for low-income customers and low-income service organizations. Sfl1→In

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~~facilitation of this target, the~~ ←Sfll Sfll→ ~~The~~ ←Sfll commission shall issue guidelines to ensure the carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers;

(4) establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap Sfll→, consistent with Section 13-1-21 NMSA 1978 regarding resident business and resident veteran business preferences ←Sfll ;

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

(6) establish reasonable, uniform, efficient and non-discriminatory standards, fees and processes for the interconnection of community solar facilities that are consistent with the commission's existing interconnection rules and interconnection manual that allows a qualifying utility to recover reasonable costs for administering the community solar program and interconnection costs for each community solar facility HENRC→Sfll→, ~~such that a qualifying facility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organization pursuant to this paragraph~~ ←Sfll ←HENRC HENRC→, such that a qualifying utility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organization

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pursuant to this paragraph←HENRC ;

(7) 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 Sfl1→, security interests←Sfl1 and other relevant but reasonable information pertaining to the subscription Sfl1→, as well as grievance and enforcement procedures←Sfl1 ;

(8) provide a community solar bill credit rate mechanism for subscribers derived from the qualifying utility's total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and charges HENRC→Sfl1→, and provided that non-subscribers do not subsidize costs attributable to subscribers←Sfl1←HENRC HSEIC→HENRC→, provided that non-subscribers do not unduly subsidize costs attributable to subscribers←HENRC←HSEIC ; HSEIC→provided that non-subscribers shall not subsidize costs attributable to subscribers; and provided further that if the commission determines that it is in the public interest for non-subscribers to subsidize subscribers, non-subscribers shall not be charged more than three percent of the non-subscribers'

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aggregate retail rate on an annual basis to subsidize subscribers;

(9) reasonably allow for the creation, financing and accessibility of community solar facilities; and

(10) provide requirements for the siting and co-location of community solar facilities with other energy resources; provided that community solar facilities shall not be co-located with other community solar facilities.

The commission may through rule establish a reasonable application fee for subscriber organizations that is designed to cover a portion of the administrative costs of the commission in carrying out the community solar program. Application fees collected by the commission shall be remitted to the state treasurer no later than the day after their receipt.

The commission shall solicit input from relevant state agencies, public utilities, low-income stakeholders, disproportionately impacted communities, potential owners or operators of community solar facilities, Indian nations, tribes and pueblos and other interested parties in its rulemaking process.

By no later than November 1, 2024, the commission shall provide to the appropriate interim legislative committee a report on the status of the community solar program, including the

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development of community solar facilities, the participation of investor-owned utilities and rural electric distribution cooperatives, low-income participation, the adequacy of facility size, proposals for alternative rate structures and bill credit mechanisms, cross-subsidization issues, local developer project selection and expansion of the local solar industry, community solar facilities' effect on utility compliance with the renewable portfolio standard and an evaluation of the effectiveness of the commission's rules to implement the Community Solar Act and any recommended changes.

SECTION 8. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION COOPERATIVES.--A rural electric distribution cooperative may opt in to the community solar program and provide interconnection and retail electric services to community solar developments on a per-project or system-wide basis within its service territory. The decision of a rural electric distribution cooperative to opt in to the community solar program shall be in the sole discretion of the cooperative's governing board.

Sf11 → ~~SECTION 9. [NEW MATERIAL] EXCLUSION FROM COMMISSION REGULATION.~~---Subscriber organizations and 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

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~~facility. Rates paid for subscriptions shall not be subject to regulation by the commission.~~ ←Sf11

SECTION Sf11→10. ←Sf11 Sf11→9. ←Sf11 Section 62-15-35 NMSA 1978 (being Laws 2007, Chapter 4, Section 2, as amended by Laws 2015, Chapter 64, Section 1 and by Laws 2015, Chapter 71, Section 1) is amended to read:

"62-15-35. RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--The public regulation commission shall establish:

A. a system of renewable energy certificates that can be used by a distribution cooperative to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any region in which a rural electric cooperative is located. The kilowatt-hour value of renewable energy certificates may be varied by renewable energy resource or technology; provided that:

(1) each renewable energy certificate shall have a minimum value of one kilowatt-hour for purposes of compliance with the renewable portfolio standard;

(2) three thousand four hundred twelve British thermal units of useful thermal energy is equivalent to one kilowatt hour for purposes of compliance with the renewable portfolio standard; and

(3) the following equation shall be used to

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calculate the annual renewable energy certificate value for a geothermal heat pump system: (coefficient of performance of heat pump unit - 1) X (ton rating of heat pump unit/.9) = number of megawatt-hours of renewable energy certificates; and

B. requirements and procedures concerning renewable energy certificates that include the provisions that:

(1) renewable energy certificates:

(a) are owned by the generator of the renewable energy unless: 1) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator; 2) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the distribution cooperative purchaser of the renewable energy unless retained by the generator through specific agreement with the distribution cooperative purchaser of the energy; ~~or~~ 3) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the renewable energy certificates are owned by the purchaser of the energy for the term of such contract; or 4) the generator is a community solar facility, excluding a native community solar project, as those terms are defined in the Community Solar Act, in which case the renewable energy certificates are owned by the distribution cooperative to whose electric distribution system the community solar facility is

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interconnected;

(b) may be traded, sold or otherwise transferred by their owner to any other party; provided that the transfers and use of the certificate by a distribution cooperative for compliance with the renewable energy portfolio standard shall require the electric or useful thermal energy represented by the certificate to be contracted for delivery or consumed, or generated by an end-use customer of the distribution cooperative in New Mexico unless the commission determines that the distribution cooperative is participating in a national or regional market for exchanging renewable energy certificates;

(c) that are used for the purpose of meeting the renewable portfolio standard shall be registered, beginning January 1, 2008, with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity or useful thermal energy associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate;

(d) that are used once by a distribution cooperative to satisfy the renewable portfolio standard and are retired or that are traded, sold or otherwise transferred by

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the distribution cooperative shall not be further used by the distribution cooperative; and

(e) that are not used by a distribution cooperative to satisfy the renewable portfolio standard or that are not traded, sold or otherwise transferred by the distribution cooperative may be carried forward for up to four years from the date of issuance and, if not used by that time, shall be retired by the distribution cooperative; and

(2) a distribution cooperative shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party."

SECTION ~~Sf11~~→~~11.~~←~~Sf11~~ Sf11→10.←Sf11 Section 62-16-5 NMSA 1978 (being Laws 2004, Chapter 65, Section 5, as amended) is amended to read:

"62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION DUTIES.--

A. The commission shall establish:

(1) a system of renewable energy certificates that can be used by a public utility to establish compliance with the renewable portfolio standard and that may include certificates that are monitored, accounted for or transferred by or through a regional system or trading program for any

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region in which a public utility is located; and

(2) requirements and procedures concerning requirements for renewable energy certificates pursuant to Subsections B and C of this section.

B. Renewable energy certificates:

(1) are owned by the generator of the renewable energy unless:

(a) the renewable energy certificates are transferred to the purchaser of the electricity through specific agreement with the generator;

(b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy; ~~or~~

(c) a contract for the purchase of renewable energy is in effect prior to July 1, 2019, in which case the renewable energy certificates are owned by the purchaser of the electricity for the term of such contract, unless otherwise agreed to in a contract approved by the commission; or

(d) the generator is a community solar facility, excluding a native community solar project, as those terms are defined in the Community Solar Act, in which case the renewable energy certificates are owned by the public utility

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to whose electric distribution system the community solar facility is interconnected;

(2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail customer for retirement under a voluntary program for purchasing renewable energy approved by the commission. A utility shall not claim that it is providing renewable energy from generation resources for which it has traded, sold or transferred the associated renewable energy certificates. The commission shall not disallow the recovery of the cost associated with any expired renewable energy certificate. The public utility shall annually file a report with the commission discussing:

(a) its use, sale, trading or transfer of renewable energy certificates; and

(b) whether and how its public claims of renewable energy generation account for renewable energy

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certificates that it has traded, sold or transferred;

(3) that are used for the purpose of meeting the renewable portfolio standard shall be registered with a renewable energy generation information system that is designed to create and track ownership of renewable energy certificates and that, through the use of independently audited generation data, verifies the generation and delivery of electricity associated with each renewable energy certificate and protects against multiple counting of the same renewable energy certificate; and

(4) may be carried forward for up to four years from the date of issuance to establish compliance with the renewable portfolio standard, after which they shall be deemed retired by the public utility.

C. A public utility shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources."

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