

HOUSE BILL 210

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

INTRODUCED BY

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and Andrea Romero

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

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

C. "commission" means the public regulation commission;

D. "community solar bill credit" means the credit HJC→per kilowatt-hour←HJC to a subscriber on the qualifying utility's monthly billing cycle as required by the Community Solar Act;

E. "community solar 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;

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

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facility;

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

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

I. "distribution cost component" means the amount of a qualifying utility's total cost of service that a qualified utility is allowed by the commission to recover in its total aggregate retail rate, identified and approved by the commission in the qualifying utility's most recent general rate case as being reasonably related to the qualifying utility's power distribution function converted to a kilowatt-hour rate and does not include any distribution function-related costs a qualifying utility is allowed to recover from any charge to its customers described in its rate schedules as a monthly minimum charge, such as a customer or service availability charge;

J. "energy storage" means technology that allows

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the capture of energy produced at one time for use at a later time;

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

L. "low-income customer" means a residential customer of a qualifying utility with an annual household income at or below two hundred percent of the federal poverty level as published by the United States department of health and human services;

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

N. "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 but does not include a rural electric distribution cooperative;

O. "subscriber" means a retail customer of a qualifying utility, low-income service organization or affordable housing provider that contracts with a subscriber

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organization for one or more subscriptions to the capacity of a community solar facility and has identified one or more physical retail service locations in the service territory of the qualifying utility to which the subscription is attributed that is in the same county as, or a county adjacent to, the community solar facility;

P. "subscriber organization" means an entity, including a municipality, county, Indian nation, tribe or pueblo, a for-profit or nonprofit entity or organization authorized to transact business in New Mexico or within the jurisdiction of an Indian nation, tribe or pueblo located in New Mexico, a low-income service organization or an affordable housing provider, or a partnership of entities, that owns or operates a community solar facility;

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

R. "system integration" means services that are reasonably required or a reasonable consequence of

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interconnecting a community solar facility to the distribution system of a qualifying utility to manage the variability and uncertainty of the production of energy from a community solar facility in order to maintain electric system reliability;

S. "total aggregate retail rate" means the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate that includes fuel and power cost adjustments and other charges set forth in a qualifying utility's effective rate schedule applicable to a customer, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, such as customer or service availability charges, or other charges, including energy efficiency program charges, that the commission determines cannot be avoided by a subscriber to a community solar facility; and

T. "unsubscribed output" 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-- REQUIREMENTS.--

A. A community solar facility shall:

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

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

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

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

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

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

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

(4) a community solar facility shall not be co-located with another community solar facility on a single parcel or contiguous parcels of land if the nameplate rating of ten megawatts is exceeded in the aggregate; and

(5) subscriber organizations under common control shall not develop, own or operate more than one community solar facility on contiguous parcels of land.

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

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

A. A community solar facility may be HJC→owned and

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operated by←HJC:

(1) HJC→~~owned by~~←HJC a subscriber organization
HJC→~~whose purpose is to beneficially own and operate a
community solar facility;~~

~~(2) built, owned and operated by a third party
under contract with a subscriber organization;~~←HJC

HJC→~~(3)~~←HJC HJC→(2)←HJC HJC→~~owned by~~←HJC an
unregulated affiliated interest of a qualifying utility;
provided that the qualifying utility demonstrates to the
commission that it has made available to any other unregulated
entity or organization that requests it, the same
customer-related information and information about its
distribution system provided to its affiliated interest in
connection with its affiliated interest's development of the
solar facility; or

HJC→~~(4)~~←HJC HJC→(3)←HJC HJC→~~owned and
operated by~~←HJC a qualifying utility if the qualifying utility
demonstrates to the commission that:

(a) unregulated owners and operators of
community solar facilities participating in the utility's
community solar program have not reasonably provided low-income
customers, low-income service organizations, affordable housing
providers or other customers in its service territory with
opportunities to obtain the benefits of a community solar
facility;

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(b) the cost of the solar facility and subscriptions will not be subsidized by customers that do not subscribe; and

(c) it is in the public interest to allow the qualifying utility to own the community solar facility.

B. Subscriber organizations HJC→, **unregulated affiliated interests of qualifying utilities and qualifying utilities" and after "into", insert "construction agreements,**←HJC may enter into HJC→**construction agreements,**←HJC leases, sale-and-leaseback transactions, operating agreements and other ownership HJC→**and operating**←HJC arrangements with third parties relative to community solar facilities.

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

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

A. Each subscription shall be sized to:

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

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

B. A qualifying utility may bill a subscriber for the subscription price on the utility's monthly bill pursuant to an agreement between the qualifying utility and the subscriber organization. If the qualifying utility collects the subscription price from the subscriber, the qualifying utility shall remit the subscription price collected to the subscriber organization within a reasonable period of time after its receipt.

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

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

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SECTION 6. [NEW MATERIAL] NOT SUBJECT TO COMMISSION

REGULATION.--

A. The owners or operators of 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 or operation of or subscription to a community solar facility.

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

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

A. A qualifying utility shall acquire the entire output of a community solar facility connected to its distribution system in accordance with the Community Solar Act.

B. A qualifying utility's acquisition of the output of a community solar facility shall take the form of a community solar bill credit on the qualifying utility's monthly bill to a subscriber for electric service at the premises identified in the subscriber's subscription. A community solar bill credit shall be determined by:

(1) deducting the qualifying utility's distribution cost component from its total aggregate retail rate;

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HJC→~~(2) giving due consideration to any additional reasonably determinable benefits to the qualifying utility attributable to the customer's subscription, including:~~

~~(a) the value of any renewable energy certificates produced by the community solar facility if transferred to the qualifying utility;~~

~~(b) any reduction of the qualifying utility's need to make additional capital investments in centralized utility-scale electric generation resources to satisfy its planning reserve margin or other service requirements;~~

~~(c) any reduction of the qualifying utility's energy or capacity costs;~~

~~(d) any reduction of the qualifying utility's system line losses of energy for its customers generally; or~~

~~(e) any benefits of system integration or other benefits to the qualifying utility from energy storage that is co-located with a community solar facility;~~←HJC

HJC→~~(3)~~←HJC HJC→~~(2)~~←HJC converting the HJC→~~combined~~←HJC amount determined in HJC→~~Paragraphs~~←HJC HJC→~~Paragraph~~←HJC (1) HJC→~~and (2)~~←HJC of this subsection to a kilowatt-hour community solar credit rate; and

HJC→~~(4)~~←HJC HJC→~~(3)~~←HJC multiplying the

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community solar credit rate by the kilowatt-hours of community solar energy produced by the community solar facility.

C. To the extent a subscriber's community solar bill credit exceeds the amount of the utility's bill to the subscriber in any billing period, the subscriber's community solar bill credit shall be carried forward and applied against future bills by the qualifying utility to the subscriber.

D. A subscriber organization shall provide a qualifying utility with:

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

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

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

E. A qualifying utility shall:

(1) purchase any unsubscribed output of a community solar facility connected to its distribution system

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pursuant to a community solar program rate schedule approved by the commission in accordance with the Community Solar Act at the qualifying utility's applicable avoided cost of energy rate as approved by the commission; and

(2) pay a subscriber organization the reasonable value of any unsubscribed capacity of a community solar facility if it is reasonably determined, in accordance with the commission's rules addressing purchases from facilities, that the capacity purchase enables the qualifying utility to avoid procurement of new capacity.

F. A qualifying utility may recover from a subscriber organization:

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

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

G. The amount of electricity and renewable energy certificates generated by each community solar facility shall be determined by a production meter installed by the qualifying utility or the owner of the community solar facility and paid for by the owner of the community solar facility. All

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renewable energy certificates associated with the energy produced by a community solar facility are the property of the subscriber organization and, at the subscriber organization's discretion, may be accumulated, sold, retired or transferred to subscribers or to a qualifying utility.

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

A. A qualifying utility shall file by February 1, 2020 an application with the commission for approval of a plan and rate schedule to administer a community solar program in accordance with the Community Solar Act and applicable commission rules for implementation within a reasonable time period after commission approval of the plan and rate schedule.

B. The commission shall approve or modify a qualifying utility's proposed community solar program plan and rate schedule after notice and hearing within one hundred eighty days from the date on which the qualifying utility's application is filed with the commission; provided that the commission may approve a qualifying utility's proposed community solar plan and rate schedule without a hearing if, within thirty days of the date on which a qualifying utility provides notice to the public of its application as ordered by the commission, no protest of the proposed plan and rate schedule is filed that demonstrates to the commission's

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reasonable satisfaction that a hearing is necessary.

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

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

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

(3) explain the manner in which the qualifying utility may bill subscribers for the price of subscriptions on its monthly utility bills, pursuant to an agreement with a subscriber organization, and remit those amounts collected to the appropriate subscriber organization within a reasonable time period after their receipt;

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

(5) allow all customer classes to participate in the community solar program and rate schedule and shall not require a customer to be removed from the customer's otherwise

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applicable customer class in order to subscribe to a community solar facility;

(6) not limit the number of nor cumulative generating capacity of community solar facilities in a qualifying utility's service territory; and

(7) reasonably allow for the creation, financing and accessibility of community solar facilities in a way that encourages robust consumer participation.

D. A qualifying utility shall approve interconnection of a community solar facility to the qualifying utility's distribution system within a reasonable time period, but no longer than six months after the utility's receipt of a complete application for interconnection and on a first-come, first-served order per feeder and per substation based on the utility's date- and time-stamp of the application; provided that HJC→, to the extent not otherwise prohibited by law,←HJC a complete application submitted by a subscriber organization that is a low-income service organization or an affordable housing provider that offers capacity reservations, subscription discounts or other special opportunities for subscriptions by low-income customers or individuals qualifying for assistance pursuant to the Affordable Housing Act shall be given priority in a utility's interconnection queue. A qualifying utility shall maintain a publicly available community solar facility project queue on its website.

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SECTION 9. [NEW MATERIAL] COMMISSION--DUTIES--

RULEMAKING--REPORT TO LEGISLATURE.--

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

B. The commission shall develop rules that:

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

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

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

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

HJC → ~~(5) establish how a qualifying utility~~

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~~shall reasonably determine in its community solar program plan
the value of the reasonably determinable benefits to it
attributable to a customer's subscription pursuant to
Subsection B of Section 7 of the Community Solar Act;~~←HJC

HJC→(6)←HJC HJC→(5)←HJC provide a procedure
by which persons interested in the development of community
solar facilities are notified by a subscriber organization of
its application for interconnection of a community solar
facility within thirty days after the subscriber organization
submits a completed application for interconnection to a
qualifying utility;

HJC→(7)←HJC HJC→(6)←HJC ensure that all
community solar program conditions, terms and provisions are
consistent with the Community Solar Act and the public
interest; and

HJC→(8)←HJC HJC→(7)←HJC establish a
reasonable process, commencing no later than two years after
the commission's adoption of rules pursuant to this section,
for the commission to review, on at least a biennial basis, the
status of the development of community solar facilities in
accordance with the Community Solar Act and for interested
persons to submit comments to the commission concerning the
effectiveness of its rules to accomplish the objectives of the
Community Solar Act, including the status of participation by
low-income customers, low-income service organizations and

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affordable housing providers in each qualifying utility's community solar program.

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

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

(a) a statewide capacity target of low-income subscriptions for the first two years after enactment of the Community Solar Act, based on the number of low-income customers in each utility's service area; and

(b) two years after enactment of the Community Solar Act: 1) an annual statewide target of at least twenty-five percent low-income subscriptions based on the aggregate capacity of all community solar facilities in the state over the previous two years; and 2) individualized low-income subscription targets for each qualifying utility in order to reach the annual statewide target;

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

(3) allowing priority in a qualifying

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utility's queue for interconnection of community solar facilities by low-income service organizations and affordable housing providers that offer reservations of capacity, discounted subscription rates or other special opportunities for low-income customers and persons who qualify for assistance pursuant to the Affordable Housing Act.

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

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

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

B. A qualifying utility shall notify the commission and participants in the commission's public advisory process,

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in accordance with the commission's applicable integrated resource plan rules, of any 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 11. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION COOPERATIVES.--At its election, a rural electric distribution cooperative may allow the construction, connection and operation of community solar facilities within its service territory.