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HOUSE BILL 210

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

INTRODUCED BY

Patricia Roybal Caballero and Elizabeth "Liz" Stefanics
and Andrea Romero

AN ACT

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

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

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

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

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

B. "affordable housing provider" means a

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

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

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

11 E. "community solar credit rate" means the
12 dollar-per-kilowatt-hour rate determined by the commission that
13 is used to calculate a subscriber's community solar bill
14 credit;

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

22 G. "community solar facility" means a solar
23 electric generation facility that is interconnected with the
24 distribution system of a qualified utility in the service
25 territory of customers of the qualified utility that subscribe

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1 for a portion of the capacity of the community solar facility;

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

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

20 J. "energy storage" means technology that allows
21 the capture of energy produced at one time for use at a later
22 time;

23 K. "fuel and power cost adjustment" means an
24 adjustment in a qualifying utility's rate schedule approved by
25 the commission that contains the parameters under which the

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1 qualifying utility's fuel and purchased power cost adjustment
2 factor is determined and applied to a utility's established
3 class of customers;

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

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

13 N. "qualifying utility" means an investor-owned
14 electric public utility certified by the commission to provide
15 retail electric service in New Mexico pursuant to the Public
16 Utility Act but does not include a rural electric distribution
17 cooperative;

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

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1 community solar facility;

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

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

19 R. "system integration" means services that are
20 reasonably required or a reasonable consequence of
21 interconnecting a community solar facility to the distribution
22 system of a qualifying utility to manage the variability and
23 uncertainty of the production of energy from a community solar
24 facility in order to maintain electric system reliability;

25 S. "total aggregate retail rate" means the total

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1 amount of a qualifying utility's demand, energy and other
2 charges converted to a kilowatt-hour rate that includes fuel
3 and power cost adjustments and other charges set forth in a
4 qualifying utility's effective rate schedule applicable to a
5 customer, but does not include charges described on a
6 qualifying utility's rate schedule as minimum monthly charges,
7 such as customer or service availability charges, or other
8 charges, including energy efficiency program charges, that the
9 commission determines cannot be avoided by a subscriber to a
10 community solar facility; and

11 T. "unsubscribed output" means electricity,
12 measured in kilowatt hours, generated by a community solar
13 facility that is not allocated to a subscriber.

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

16 A. A community solar facility shall:

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

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

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

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

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

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

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

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

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

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

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

20 A. A community solar facility may be:

21 (1) owned by a subscriber organization whose
22 purpose is to beneficially own and operate a community solar
23 facility;

24 (2) built, owned and operated by a third party
25 under contract with a subscriber organization;

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

9 (4) owned and operated by a qualifying utility
10 if the qualifying utility demonstrates to the commission that:

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

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

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

24 B. Subscriber organizations may enter into leases,
25 sale-and-leaseback transactions, operating agreements and other

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1 ownership arrangements with third parties relative to community
2 solar facilities.

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

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

13 A. Each subscription shall be sized to:

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

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

21 B. A qualifying utility may bill a subscriber for
22 the subscription price on the utility's monthly bill pursuant
23 to an agreement between the qualifying utility and the
24 subscriber organization. If the qualifying utility collects
25 the subscription price from the subscriber, the qualifying

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1 utility shall remit the subscription price collected to the
2 subscriber organization within a reasonable period of time
3 after its receipt.

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

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

14 SECTION 6. [NEW MATERIAL] NOT SUBJECT TO COMMISSION
15 REGULATION.--

16 A. The owners or operators of and the subscribers
17 to a community solar facility shall not be considered public
18 utilities subject to regulation by the commission under the
19 Public Utility Act solely as a result of their ownership
20 interest or operation of or subscription to a community solar
21 facility.

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

24 SECTION 7. [NEW MATERIAL] ACQUISITION OF OUTPUT FROM
25 COMMUNITY SOLAR FACILITIES--BILL CREDIT--UNSUBSCRIBED OUTPUT--

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1 COST RECOVERY--RENEWABLE ENERGY CERTIFICATES.--

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

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

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

14 (2) giving due consideration to any additional
15 reasonably determinable benefits to the qualifying utility
16 attributable to the customer's subscription, including:

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

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

25 (c) any reduction of the qualifying

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1 utility's energy or capacity costs;

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

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

8 (3) converting the combined amount determined
9 in Paragraphs (1) and (2) of this subsection to a kilowatt-hour
10 community solar credit rate; and

11 (4) multiplying the community solar credit
12 rate by the kilowatt-hours of community solar energy produced
13 by the community solar facility.

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

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

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

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

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

9 E. A qualifying utility shall:

10 (1) purchase any unsubscribed output of a
11 community solar facility connected to its distribution system
12 pursuant to a community solar program rate schedule approved by
13 the commission in accordance with the Community Solar Act at
14 the qualifying utility's applicable avoided cost of energy rate
15 as approved by the commission; and

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

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

24 (1) the reasonable costs of necessary
25 interconnection facilities, including additions or upgrades of

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1 the qualifying utility's distribution system necessary to
2 physically and electrically interconnect the community solar
3 facility to the utility's distribution system; and

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

7 G. The amount of electricity and renewable energy
8 certificates generated by each community solar facility shall
9 be determined by a production meter installed by the qualifying
10 utility or the owner of the community solar facility and paid
11 for by the owner of the community solar facility. All
12 renewable energy certificates associated with the energy
13 produced by a community solar facility are the property of the
14 subscriber organization and, at the subscriber organization's
15 discretion, may be accumulated, sold, retired or transferred to
16 subscribers or to a qualifying utility.

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

20 A. A qualifying utility shall file by February 1,
21 2020 an application with the commission for approval of a plan
22 and rate schedule to administer a community solar program in
23 accordance with the Community Solar Act and applicable
24 commission rules for implementation within a reasonable time
25 period after commission approval of the plan and rate schedule.

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

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

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

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

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

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

9 (5) allow all customer classes to participate
10 in the community solar program and rate schedule and shall not
11 require a customer to be removed from the customer's otherwise
12 applicable customer class in order to subscribe to a community
13 solar facility;

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

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

20 D. A qualifying utility shall approve
21 interconnection of a community solar facility to the qualifying
22 utility's distribution system within a reasonable time period,
23 but no longer than six months after the utility's receipt of a
24 complete application for interconnection and on a first-come,
25 first-served order per feeder and per substation based on the

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1 utility's date- and time-stamp of the application; provided
2 that a complete application submitted by a subscriber
3 organization that is a low-income service organization or an
4 affordable housing provider that offers capacity reservations,
5 subscription discounts or other special opportunities for
6 subscriptions by low-income customers or individuals qualifying
7 for assistance pursuant to the Affordable Housing Act shall be
8 given priority in a utility's interconnection queue. A
9 qualifying utility shall maintain a publicly available
10 community solar facility project queue on its website.

11 SECTION 9. [NEW MATERIAL] COMMISSION--DUTIES--
12 RULEMAKING--REPORT TO LEGISLATURE.--

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

16 B. The commission shall develop rules that:

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

25 (2) provide subscription requirements for

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1 subscriber organizations and customer protections;

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

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

10 (5) establish how a qualifying utility shall
11 reasonably determine in its community solar program plan the
12 value of the reasonably determinable benefits to it
13 attributable to a customer's subscription pursuant to
14 Subsection B of Section 7 of the Community Solar Act;

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

21 (7) ensure that all community solar program
22 conditions, terms and provisions are consistent with the
23 Community Solar Act and the public interest; and

24 (8) establish a reasonable process, commencing
25 no later than two years after the commission's adoption of

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1 rules pursuant to this section, for the commission to review,
2 on at least a biennial basis, the status of the development of
3 community solar facilities in accordance with the Community
4 Solar Act and for interested persons to submit comments to the
5 commission concerning the effectiveness of its rules to
6 accomplish the objectives of the Community Solar Act, including
7 the status of participation by low-income customers, low-income
8 service organizations and affordable housing providers in each
9 qualifying utility's community solar program.

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

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

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

21 (b) two years after enactment of the
22 Community Solar Act: 1) an annual statewide target of at least
23 twenty-five percent low-income subscriptions based on the
24 aggregate capacity of all community solar facilities in the
25 state over the previous two years; and 2) individualized

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1 low-income subscription targets for each qualifying utility in
2 order to reach the annual statewide target;

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

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

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

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

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

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

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