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SENATE BILL 80

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

INTRODUCED BY

William P. Soules and Antoinette Sedillo Lopez

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR ACT;
PROVIDING FOR THE ESTABLISHMENT AND INTERCONNECTION OF
COMMUNITY SOLAR FACILITIES; PROVIDING RULEMAKING AUTHORITY TO
THE PUBLIC REGULATION COMMISSION; CREATING THE COMMUNITY SOLAR
ENERGY ASSISTANCE FUND; ESTABLISHING THAT RENEWABLE ENERGY
CERTIFICATES FROM COMMUNITY SOLAR FACILITIES ARE OWNED BY THE
PUBLIC UTILITY; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 11 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

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1 commission;

2 B. "community solar bill credit" means a credit to
3 a subscriber on the qualifying utility's monthly billing cycle;

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

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

13 E. "community solar program" means the program
14 created through the commission's adoption of rules that allows
15 for the development of community solar facilities and provides
16 customers of a qualifying utility with the option of accessing
17 solar energy produced by a community solar facility through a
18 subscription process;

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

22 G. "low-income customer" means a residential
23 customer of a qualifying utility who is enrolled in one or more
24 of the following types of public assistance:

25 (1) temporary assistance for needy families;

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- 1 (2) general assistance;
2 (3) supplemental nutritional assistance
3 program;
4 (4) supplemental security income;
5 (5) federal food distribution program on
6 Indian reservations; or
7 (6) low income home energy assistance program;

8 H. "low-income service organization" means an
9 organization that provides services, assistance or housing to
10 low-income customers;

11 I. "qualifying utility" means an investor-owned
12 electric public utility certified by the commission to provide
13 retail electric service in New Mexico pursuant to the Public
14 Utility Act or a cooperative organized under the Rural Electric
15 Cooperative Act that has not been granted an exemption from the
16 commission pursuant to Section 10 of the Community Solar Act;

17 J. "subscriber" means a retail customer of a
18 qualifying utility that contracts with a subscriber
19 organization for one or more subscriptions to the capacity of a
20 community solar facility;

21 K. "subscriber organization" means an entity,
22 including a municipality, county, Indian nation, tribe or
23 pueblo, a for-profit or nonprofit entity or organization
24 authorized to transact business in New Mexico or within the
25 jurisdiction of an Indian nation, tribe or pueblo located in

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1 New Mexico or a partnership of entities, that owns or operates
2 a community solar facility; and

3 L. "subscription" means a written contract between
4 a subscriber and a subscriber organization that allocates to
5 the subscriber a proportional interest in the nameplate
6 capacity of a community solar facility.

7 SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR FACILITY--
8 REQUIREMENTS.--

9 A. A community solar facility shall:

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

12 (2) be located in the service territory of a
13 qualifying utility and be interconnected to the electric
14 distribution system of that qualifying utility.

15 B. Except for a community solar facility located on
16 the land of an Indian nation, tribe or pueblo exclusively
17 serving subscribers on that land:

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

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

23 (3) a community solar facility shall not be
24 co-located with another community solar facility on a single
25 parcel or contiguous parcels of land if the nameplate rating of

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1 ten megawatts is exceeded in the aggregate.

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

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

6 A. A community solar facility shall be owned or
7 operated by a subscriber organization.

8 B. A subscriber organization may enter into
9 construction agreements, leases, sale-and-leaseback
10 transactions, operating agreements or other ownership and
11 operating arrangements with third parties relative to community
12 solar facilities.

13 SECTION 5. [NEW MATERIAL] SUBSCRIPTIONS.--A subscription
14 shall:

15 A. be sized to:

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

18 (2) supply no more than one hundred twenty
19 percent of the previous year's consumption of electricity by
20 the subscriber at the physical retail location to which the
21 subscription is attributed, with a deduction for the amount of
22 any existing solar facilities located at the physical retail
23 location;

24 B. identify one or more retail locations in the
25 service territory of the qualifying utility to which the

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1 subscription is attributed; and

2 C. state the per kilowatt rate to be paid by the
3 subscriber for the nameplate capacity of the community solar
4 facility allocated to the subscriber.

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

7 A. Subscriber organizations, or the subscribers to
8 a community solar facility, shall not be considered public
9 utilities subject to regulation by the commission under the
10 Public Utility Act solely as a result of their ownership
11 interest in, operation of or subscription to a community solar
12 facility.

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

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

18 A. A qualifying utility shall:

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

21 (2) provide a community solar bill credit to a
22 subscriber's monthly electric bill for the proportional output
23 of a community solar facility attributable to that subscriber
24 for the previous month. The value of the community solar bill
25 credit for the subscriber shall be calculated by multiplying

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1 the subscriber's portion of the kilowatt-hour electricity
2 production from the community solar facility by the applicable
3 community solar bill credit rate for the subscriber. The
4 utility shall apply community solar bill credits to subscriber
5 bills within one billing cycle of that in which the energy was
6 generated by the community solar facility. Any amount of a
7 community solar bill credit that exceeds a subscriber's monthly
8 electric bill shall be handled in accordance with the
9 procedures for crediting a customer for excess output from an
10 interconnected renewable energy distributed generation
11 facility;

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

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

22 B. A subscriber organization shall:

23 (1) provide a qualifying utility with
24 real-time production data to facilitate acceptance and
25 integration of the electricity output of a community solar

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1 facility into the qualifying utility's distribution system and
2 to facilitate the provision of community solar bill credits to
3 subscribers; and

4 (2) on a monthly basis and in a standardized
5 electronic format, provide to the qualifying utility a list
6 indicating the kilowatt hours of generation attributable to
7 each subscriber. Subscriber lists shall be updated monthly to
8 reflect canceling subscribers and new subscribers.

9 C. A subscriber organization may accumulate
10 community solar bill credits in the event that all of the
11 electricity generated by a community solar facility is not
12 allocated to subscribers in a given month. On an annual basis,
13 the subscriber organization shall provide the qualifying
14 utility allocation instructions for distributing excess
15 community solar bill credits to subscribers.

16 D. A qualifying utility and subscriber organization
17 may agree that the subscriber organization provide the per
18 kilowatt subscription rate and contractual terms of each
19 subscription for purposes of billing a subscriber for the
20 subscription price; provided that in no case shall the
21 provision of subscription rates and contractual terms be a
22 prerequisite for either the qualifying utility or the
23 subscriber organization for interconnection or other
24 requirements of the Community Solar Act.

25 E. Renewable energy certificates associated with a

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1 community solar facility shall be the property of the
2 qualifying utility to which the community solar facility is
3 interconnected.

4 SECTION 8. [NEW MATERIAL] PUBLIC REGULATION COMMISSION--
5 RULEMAKING--REPORTS.--

6 A. The commission shall adopt rules to establish a
7 community solar program by no later than January 1, 2021. The
8 rules shall:

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

12 (2) reasonably allow for the creation and
13 financing of community solar facilities;

14 (3) allow all customer classes to participate
15 in the community solar program and ensure participation
16 opportunities for all customer classes. A customer shall not
17 be removed from its otherwise applicable customer class in
18 order to subscribe to a community solar facility;

19 (4) allow a qualifying utility to establish an
20 annual cap on new community solar installations of no less than
21 five megawatts per year or five percent of the qualifying
22 utility's peak demand in New Mexico per year, whichever is
23 greater;

24 (5) reasonably allow for the transferability
25 and portability of subscriptions, including allowing a

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1 subscriber to retain a subscription to a community solar
2 facility if the subscriber moves within the same qualifying
3 utility territory;

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

8 (7) provide for consumer protection in
9 accordance with existing laws;

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

12 (9) ensure non-discriminatory and efficient
13 requirements and procedures for interconnecting community solar
14 facilities;

15 (10) include a community solar program
16 implementation schedule; and

17 (11) establish a reasonable process,
18 commencing no later than two years after the commission's
19 adoption of rules pursuant to this section, for the commission
20 to review, on at least a biennial basis, the status of the
21 development of community solar facilities, including the status
22 of participation by low-income customers and low-income service
23 organizations in each qualifying utility's community solar
24 program. Interested persons shall be provided with the
25 opportunity to submit comments to the commission concerning the

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1 effectiveness of its rules to implement the Community Solar
2 Act.

3 B. By no later than November 1, 2023, the
4 commission shall provide a report to the appropriate interim
5 legislative committee that addresses energy issues. The report
6 shall address the status of the development of community solar
7 facilities in accordance with the Community Solar Act,
8 including the status of participation by low-income customers
9 and low-income service organizations in each qualifying
10 utility's community solar program, the effectiveness of the
11 commission's rules to implement the Community Solar Act and any
12 recommended changes.

13 C. Within one hundred eighty days of finalization
14 of the commission's rules for the community solar program, a
15 qualifying utility shall begin crediting the subscriber
16 accounts of each community solar facility interconnected in its
17 service territory.

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

20 A. include and address the effects of the
21 development of community solar facilities pursuant to the
22 Community Solar Act in its loads and resources tables,
23 integrated resource planning processes and integrated resource
24 plans; and

25 B. notify the commission and participants in the

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

7 SECTION 10. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION
8 COOPERATIVES.--

9 A. A rural electric distribution cooperative may
10 request of the commission an exemption from participation in
11 the community solar program for a period of up to five years.
12 The commission may grant an exemption if the rural electric
13 distribution cooperative:

14 (1) demonstrates that it is limited in its
15 ability to participate in the program because of the amount of
16 contracted generation on its system and the limits imposed by
17 those contracts; or

18 (2) provides other reasons for its inability
19 to accommodate community solar facilities and the commission
20 finds the reasons compelling.

21 B. A rural electric distribution cooperative that
22 intends to opt out of participation in the community solar
23 program shall apply for an exemption prior to April 1, 2021.

24 SECTION 11. [NEW MATERIAL] COMMUNITY SOLAR ENERGY
25 ASSISTANCE FUND--CREATED--PURPOSE.--

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1 A. The "community solar energy assistance fund" is
2 created as a nonreverting fund in the state treasury. The fund
3 consists of gifts, grants, donations and appropriations. The
4 energy, minerals and natural resources department shall
5 administer the fund, and money in the fund is appropriated to
6 the energy, minerals and natural resources department to assist
7 low-income customers in subscribing to the capacity of a
8 community solar facility as provided in this section.
9 Disbursements from the fund shall be made by warrant of the
10 secretary of finance and administration pursuant to vouchers
11 signed by the secretary of energy, minerals and natural
12 resources or the secretary's authorized representative.

13 B. Money in the community solar energy assistance
14 fund may be used to pay up to twenty-five percent of the
15 subscription rate for a low-income customer to participate in a
16 community solar facility as a subscriber.

17 C. The energy, minerals and natural resources
18 department shall establish processes for:

19 (1) low-income customers and low-income
20 service organizations to apply for funds from the community
21 solar energy assistance fund; and

22 (2) dispersal of the community solar energy
23 assistance fund. Priority shall be given to those applications
24 that include matching gifts, grants or donations from
25 organizations or local governments that seek to make solar

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1 energy accessible to low-income customers.

2 SECTION 12. Section 62-16-5 NMSA 1978 (being Laws 2004,
3 Chapter 65, Section 5, as amended) is amended to read:

4 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
5 DUTIES.--

6 A. The commission shall establish:

7 (1) a system of renewable energy certificates
8 that can be used by a public utility to establish compliance
9 with the renewable portfolio standard and that may include
10 certificates that are monitored, accounted for or transferred
11 by or through a regional system or trading program for any
12 region in which a public utility is located; and

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

16 B. Renewable energy certificates:

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

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

22 (b) the generator is a qualifying
23 facility, as defined by the federal Public Utility Regulatory
24 Policies Act of 1978, or a community solar facility in which
25 case the renewable energy certificates are owned by the public

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1 utility purchaser of the renewable energy; or

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

8 (2) may be traded, sold or otherwise
9 transferred by their owner, unless the certificates are from a
10 rate-based public utility plant, in which case the entirety of
11 the renewable energy certificates from that plant shall be
12 retired by the utility on behalf of itself or its customers.
13 Any contract to purchase renewable energy entered into by a
14 public utility on or after July 1, 2019 shall include
15 conveyance to the purchasing utility of all renewable energy
16 certificates, and the entirety of those certificates shall be
17 retired by that utility on behalf of itself or its customers or
18 subsequently transferred to a retail customer for retirement
19 under a voluntary program for purchasing renewable energy
20 approved by the commission. A utility shall not claim that it
21 is providing renewable energy from generation resources for
22 which it has traded, sold or transferred the associated
23 renewable energy certificates. The commission shall not
24 disallow the recovery of the cost associated with any expired
25 renewable energy certificate. The public utility shall

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1 annually file a report with the commission discussing:

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

4 (b) whether and how its public claims of
5 renewable energy generation account for renewable energy
6 certificates that it has traded, sold or transferred;

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

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

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

24 SECTION 13. Section 62-17-10 NMSA 1978 (being Laws 2005,
25 Chapter 341, Section 10) is amended to read:

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1 "62-17-10. INTEGRATED RESOURCE PLANNING.--Pursuant to the
2 commission's rulemaking authority, public utilities supplying
3 electric or natural gas service to customers shall periodically
4 file an integrated resource plan with the commission. Utility
5 integrated resource plans shall evaluate renewable energy,
6 energy efficiency, load management, distributed generation,
7 community solar facilities and conventional supply-side
8 resources on a consistent and comparable basis and take into
9 consideration risk and uncertainty of fuel supply, price
10 volatility and costs of anticipated environmental regulations
11 in order to identify the most cost-effective portfolio of
12 resources to supply the energy needs of customers. The
13 preparation of resource plans shall incorporate a public
14 advisory process. Nothing in this section shall prohibit
15 public utilities from implementing cost-effective energy
16 efficiency and load management programs and the commission from
17 approving public utility expenditures on energy efficiency
18 programs and load management programs prior to the commission
19 establishing rules and guidelines for integrated resource
20 planning. The commission may exempt public utilities with
21 fewer than five thousand customers and distribution-only public
22 utilities from the requirements of this section. The
23 commission shall take into account a public utility's resource
24 planning requirements in other states and shall authorize
25 utilities that operate in multiple states to implement plans

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1 that coordinate the applicable state resource planning
2 requirements. The requirements of this section shall take
3 effect one year following the commission's adoption of rules
4 implementing the provisions of this section."

5 SECTION 14. APPROPRIATION.--Ten million dollars
6 (\$10,000,000) is appropriated from the general fund to the
7 community solar energy assistance fund for expenditure in
8 fiscal year 2021 and subsequent fiscal years to carry out the
9 purposes of the fund. Any unexpended or unencumbered balance
10 remaining at the end of a fiscal year shall not revert to the
11 general fund.