F I S C A L I M P A C T R E P O R T

SPONSOR Soules/Sedillo Lopez **ORIGINAL DATE** 2/14/2020 **LAST UPDATED** **HB**

SHORT TITLE Community Solar Act **SB** 80

ANALYST Martinez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	**FY21**		
	$10,000.0	$10,000.0	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		$100.0	$100.0	$300.0	Recurring	PRC General Fund
		$80.0	$80.0	$240.0	Recurring	EMNRD General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: HB9, SB114, SB143

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Energy Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

Senate Bill 80 appropriates $10 million dollars from the general fund to the Energy Minerals and Natural Resources Department for the community solar assistance fund.

SB80 creates a new Community Solar Act which provides for the independent development and operation of community solar facilities within the service territory of investor-owned electric

utilities. A community solar facility is a solar electric generation facility, where an energy storage facility may be co-located, owned or operated by a subscriber organization. A subscriber organization, while not a public utility subject to regulatory oversight, may enter into various agreements with third-parties regarding the financing, ownership or operation of the facility. Rates paid by subscribers are not to be subject to regulation by the Public Regulation Commission (PRC). The public utility serving the area where the community solar facility is located shall acquire all of the output from the community solar facility and shall provide community solar bill credits to its customers who are also subscribers to the community solar facility in proportion to each subscriber's interest in the community solar facility.

Community solar facilities are solar electric generation facilities with nameplate rated production capacity of ten (10) megawatts or less each, located within the service territory of an investor-owned electric utility. Community solar facilities are to be interconnected with the utility's distribution system. Shares of the energy produced by a community solar facility are effectively made available to subscribers based on their relative interest. Any retail customer of the public utility which serves the area where the facility is located can be a subscriber. Each subscription shall be sized to represent at least one kilowatt (1 kW) of the community solar facility's generating capacity and may not supply more than 120 percent of the electricity at the premises to which the subscription is attributed on a rolling 12-month basis, after adjusting for the generation of any existing solar facilities located at the retail location.

At least 10 subscribers must be associated with a single facility and no single subscriber may be allocated more than 60 percent of the facility's capacity. More than one community solar facility may not co-located on a single or continuous parcels such that the aggregate nameplate rating exceeds ten (10) megawatts. These conditions do not apply to community solar facilities located on the land of an Indian nation, tribe or pueblo which exclusively serve subscribers on that land.

A subscriber to a community solar facility shall identify a retail location to which the subscription is attributed.

All output from a community solar facility shall be acquired by the public utility which serves the geographic area where the facility is located through the issuance of unregulated community solar bill credits to subscribing customers. The public utility shall issue these credits to its retail customers who are also subscribers based on their proportional share of the energy generated by the facility. The public utility and the subscriber are required to exchange the information necessary for the public utility to issue the correct community solar bill credits to those retail customers who are also subscribers. The public utility is to provide a monthly report to the subscriber organization about the total value of the community solar bill credits for the month as well as the amount of the community solar bill credits applied to each customer while the subscriber organization is to provide the public utility with real-time production data, monthly generation data with the amounts attributable to each subscriber.

All renewable energy certificates (RECs) generated from a community solar facility are the property of the public utility to which the facility is interconnected.

SB80 requires that the PRC develop rules to establish a community solar program by January 1, 2021 which address several matters including: 1) requiring qualifying utilities to file tariffs, agreements and forms necessary to implement the community solar program; 2) allowing for the creation and financing of community solar facilities; 3) allowing all customer classes and

ensuring opportunities for such participation; 4) establishing by a utility of an annual cap on new community solar installations of five megawatts or five percent of the utility's peak demand, whichever is greater; 5) addressing the transferability and portability of subscriptions; 6) establishing standards, fees and processes for the interconnection of community solar facilities; 7) providing for consumer protection; 8) allowing the utility to recover costs of administering the community solar program: 9) ensuring non-discriminatory and efficient requirements and procedures for the interconnection of community solar facilities; 10) providing a community solar program implementation schedule; and 11) establishing a process for a biennial PRC review about the development of community solar facilities, including access of low income customers and low-income service organizations to each utility's community solar program.

SB80 also requires that the PRC shall provide a report to the appropriate interim legislative committee by November 1, 2023 addressing the development of community solar facilities including access of low income customers and low-income service organizations to each utility's community solar program, and addressing the effectiveness of the PRC's rules implementing the Community Solar Act.

Within 180 days of finalization of the PRC's rules for the community solar program, a utility shall is to begin crediting the subscriber accounts for each of its interconnected community solar facilities.

SB80 provides for a qualifying public utility to include in its integrated resource planning process the effects of the development of community solar facilities. This includes notifying the PRC and the participants in the public advisory process of any impact from the development of community soar facilities on the most recent integrated resource plan filed with the PRC.

SB80 also provides for certain conditions under which a rural electric distribution cooperative may request from the PRC by April 1, 2021 an exemption from participation in the community solar program for up to five years.

SB80 creates the community solar assistance fund consisting of gifts, grants, donations and appropriations, and administered by the Energy, Minerals, and Natural Resources Department for the purpose of assisting low-income customers in subscribing to the capacity of a community solar facility. Money in the fund can be used to pay up to 25 percent of the subscription rate of a low-income customer. Any unexpended or unencumbered balance does not revert to the general fund.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The appropriation of $10 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal shall not revert to the general fund.

<u>Continuing Appropriations language</u>

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created

funds, as earmarking reduces the ability of the legislature to establish spending priorities.
The PRC notes that SB80 will require approximately one additional full time staff person per year to handle the resulting implications at a cost of $100 thousand as noted in the table on page 1.

EMNRD notes that it will need to hire program staff to establish the program rules and to administer the community solar energy assistance fund. These costs are based on hiring a staff manager at range 75, with an hourly rate of $27.50/hr. plus fringe benefits, which equates to $74,360, plus operating costs of $5,640 for program implementation and statewide travel, a total operating budget impact of $80 thousand per year for EMNRD

SIGNIFICANT ISSUES

The Public Regulation Commission notes:

> A significant issue is that SB80 states in Section 6 that subscriber organizations or subscribers to a community solar facility are not a "public utility" as defined by the Public Utility Act Section 62-3-3 (G) NMSA 1978 however, it does not specifically amend Section 62-3-3 (G) to exclude "subscriber organizations" or "subscribers" from the definition of "public utility". This is a technical issue that could be fixed before final passage of the bill and without making this clear, may result in litigation.
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> Another significant issue is that there is no geographic limitation about the location of the community solar facility relative to the subscriber other than both have to be interconnected with the distribution grid of the same public utility. This could for example lead to a community solar facility being very remotely connected with a subscriber thus relying extensively on the public utility's grid to take the electricity generated by the facility and to provide electricity to the subscriber in a manner that may be inconsistent with the public utility's obligation to serve its customers in the most cost effective manner possible.
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> SB 80 in Section 3 (B) (3) states that 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. This language could be clarified to state there is no aggregating of community solar facilities even if not contiguous otherwise it is unclear whether or not an entity could build multiple ten (10) megawatt community solar facilities, within some proximity of each other, and the public utility would be required to acquire or purchase all the energy generated.
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> Another issue is that pursuant to the current Efficient Use of Energy Act, Section 62-17-10 NMSA 1978 (EUEA) utilities are required to periodically file an "integrated resource plan" (IRP) that evaluates conventional resources and renewable energy and energy efficient resources. The NMPRC has promulgated IRP Rules that provides for utilities, stakeholders and ratepayers to collaborate in the long-term development of adequate resources to meet projected load. SB80 creates the independent development of community solar facilities, however, according to Section 9 a qualifying utility is required to include and address the effects of the development of community solar facilities in its IRP and is required to notify the commission and participants in the commission's public advisory process, in accordance with of any development of

community solar facilities that would have the effect of changing the results of the utility's most recent integrated resource plan. Section 9 effectively requires the utility's resource planning process to work around and accommodate the community solar facilities even if the utility had other resource plans. Another issue is that subscriber organizations, under SB80, can add generation capacity to the utility's generation portfolio without paying attention to the utility's requirement, under the IRP law and Rule, to serve its customers with the most reasonable and cost effective mix of generation resources.

Another significant issue is that SB80 provides for a regulated utility to issue unregulated community solar bill credits to subscribers for the subscription price on the utility's monthly bill and remit the collected funds to the subscriber organizations. However, the Commission is not authorized to regulate the community solar bill credit. The utility therefore would be providing a credit that is not approved by the Commission. This is inconsistent with the Commission's authority to approve all rates and charges that appear on Commission approved form (other than government imposed charges such franchise fees or GRT). This will result in a public utility retail bill that will consist of a blend of regulated and unregulated charges. There is therefore a risk that the public utility will look to the PRC to resolve issues from the bill over which the PRC has no jurisdiction.

A further significant procedural issue concerning rules is that the requirement in SB80 for the Commission to promulgate rules by January 1, 2020. Given that this bill would only become effective on July 1, 2020, that would provide up to six months to complete the rulemaking. Rulemakings proceedings are inherently complex multi-step proceedings that require significant due process including rounds of public notice, stakeholder deliberations, Commission action, and official recording on the New Mexico Administrative Code. It would be very difficult to reasonably complete this process within six months and this could be fixed by changing the date to July 1, 2021.

Another issue is that SB80 in Section 4 allows subscriber organizations to enter into a range of agreements with third parties concerning financing, operations and ownership of community solar facilities. This does not appear to exclude a public utility or its affiliate from being the owner and/or operator of a community solar facility. Under this circumstance, the public utility or its affiliate would be both the seller and the buyer (or the related seller or the related buyer) of the energy generated by the community solar facility which raises the issue of whether this may risk increased costs to retail customers.

SB80 in Section 5 B provides for a subscription to identify one or more retail locations in the service territory of the public utility to which the subscription is attributed. This does not appear to limit the number of retail locations that may be attributed to a single subscription. This could lead to a concentration of large subscriptions thus limiting access to community solar programs.

Finally, it would be helpful to add language to make it clear that SB80 requires community solar facilities owned operated by utilities are subject to Commission approval of a Certificate of Convenience and Necessity pursuant to the Public Utility Act, Section 62-9-1 NMSA 1978.

The Energy Minerals and Natural Resources Department notes:

SB80 intends to provide grants from the community solar energy assistance fund directly to individuals and private organizations, and thus may violate the anti-donation clause of the New Mexico Constitution. The New Mexico Constitution N.M. Const. art. IX, section 14. prohibits the state from making "any donation to or in aid of any person, association or public or private corporation."

ADMINISTRATIVE IMPLICATIONS

While the PRC regulates "public utilities" as defined by the Public Utility Act, Section 62-3-3 (G) NMSA 1978, the PRC does not regulate affiliates of public utilities or 3rd parties, both of which may own or operate community solar facilities. To the extent that both regulated and un-regulated entities can play in the role in the development and operation of community solar facilities, there can potentially be disputes with respect to community solar facilities that are similar but are subject to different regulatory oversight by the PRC. While the PRC would have jurisdiction over a number of facets of the relationship between the subscriber and the community solar facility owner/operator, the insertion of 3rd parties including affiliates of public utilities into these relationships raises questions about the PRC's authority over possible disputes.

EMNRD notes that it will need fiscal support for fund administration, including administrative responsibilities, developing and promulgating rules, developing application process and packets, and oversight, beginning in FY 2021.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to: HB9, SB114, SB143

TECHNICAL ISSUES

The Public Regulation Commission notes:

See the Significant Issues regarding the definition of "public utility" and the discussion concerning aggregation of community solar facilities. Both issues could be fixed by the addition of specific language.

The interplay between the current law on distributed generation of electricity, Section 62-13-13.1, its definition of "renewable energy distributed generation facility" to mean a facility that produces electric energy by the use of renewable energy and that is sized to supply no more than one hundred twenty percent of the average annual consumption of electricity by the host at the site of the renewable energy distributed generation facility in accordance with applicable interconnection rules, and the definition of "community solar facility" in SB 80 could be unclear. This could be fixed by stating that community solar facilities are not covered by the provisions of Section 62-13-13.1 (C) (2) and are excluded from the definition of "renewable energy distributed generation facility"

SB80 defines "qualifying utility" in part as an investor-owned electric public utility "certified" by the PRC to provide retail electric service. Utilities are not "certified" by the PRC. Rather, they are subject to the PRC's regulatory oversight pursuant to the Public

Utility Act.

OTHER SUBSTANTIVE ISSUES

As with prior rulemakings before the Commission concerning renewable energy, future rulemakings about community solar facilities are likely to be costly in terms of PRC resources.

ALTERNATIVES

The Public Regulation Commission notes:

> If SB80 is not enacted, the NMPRC has, within the limits of its present authority, the ability to promulgate rules regarding the development and regulation of community solar facilities. The NMPRC currently has a pending Notice of Inquiry docket that is investigating this issue, Case No. 15-00355-UT, *In the Matter of a Commission Inquiry into Public Utilities Constructing and Owning Distributed Generation Dedicated to Serving One or More Retail Customers*.

The Energy Minerals and Natural Resources Department notes:

> Currently, there are several solar generation facilities in New Mexico which operate on a similar subscription model to what is suggested in this bill. All those facilities, however, are operated by local service area utilities and are properly structured for interconnection with the larger electric grid. These projects include a 98-kilowatt system in Taos owned by Kit Carson Electric Coop, a 24-kilowatt system in Hobbs owned by Xcel Energy, a 5-megawatt system at Holloman Air Force Base constructed by El Paso Electric, and a 50-megawatt facility in Rio Arriba County, currently being built by PNM, which will supply the City of Albuquerque. This utility-regulated version of community solar could be expanded.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The Public Regulation Commission notes that there is a significant potential for further penetration of distributed generation throughout the New Mexico service territories of the 3 investor-owned electric utilities by the building of community solar facilities in accordance with existing laws.

JM/al