

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 210

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

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 or entity
under common control with a public utility as defined in
Section 62-3-3 NMSA 1978;

B. "affordable housing provider" means an
organization that satisfies the requirements of a qualifying

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1 grantee as provided in the Affordable Housing Act;

2 C. "commission" means the public regulation
3 commission;

4 D. "community solar bill credit" means the credit
5 to a subscriber on the qualifying utility's monthly billing
6 cycle as required by the Community Solar Act;

7 E. "community solar credit rate" means the
8 dollar-per-kilowatt-hour rate determined by the commission that
9 is used to calculate a subscriber's community solar bill
10 credit;

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

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

23 H. "community solar program" or "program" means a
24 rate schedule of a qualifying utility approved by the
25 commission that provides its customers with the voluntary

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1 option of accessing solar energy produced by a community solar
2 facility through a subscription process in accordance with the
3 Community Solar Act;

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

15 J. "energy storage" means technology that allows
16 the capture of energy produced at one time for use at a later
17 time;

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

24 L. "low-income customer" means a residential
25 customer of a qualifying utility with an annual household

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1 income at or below two hundred percent of the federal poverty
2 level as published by the United States department of health
3 and human services;

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

8 N. "qualifying utility" means an investor-owned
9 electric public utility certified by the commission to provide
10 retail electric service in New Mexico pursuant to the Public
11 Utility Act but does not include a rural electric distribution
12 cooperative;

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

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

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1 jurisdiction of an Indian nation, tribe or pueblo located in
2 New Mexico, a low-income service organization or an affordable
3 housing provider, or a partnership of entities, that owns or
4 operates a community solar facility;

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

14 R. "system integration" means services that are
15 reasonably required or a reasonable consequence of
16 interconnecting a community solar facility to the distribution
17 system of a qualifying utility;

18 S. "total aggregate retail rate" means the total
19 amount of a qualifying utility's demand, energy and other
20 charges converted to a kilowatt-hour rate that includes fuel
21 and power cost adjustments and other charges set forth in a
22 qualifying utility's effective rate schedule applicable to a
23 customer, but does not include charges described on a
24 qualifying utility's rate schedule as minimum monthly charges,
25 such as customer or service availability charges, or other

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1 charges, including energy efficiency program charges, that the
2 commission determines cannot be avoided by a subscriber to a
3 community solar facility; and

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

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;

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

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

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

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

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

24 (3) no more than sixty percent of the capacity
25 of a community solar facility may be allocated to subscriptions

1 larger than twenty-five kilowatts;

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

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

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

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

13 A. A community solar facility may be owned or
14 operated by:

15 (1) a subscriber organization; or

16 (2) an unregulated affiliated interest of a
17 qualifying utility; provided that the qualifying utility
18 demonstrates to the commission that it has made available to
19 any other unregulated entity or organization that requests it,
20 the same customer-related information and information about its
21 distribution system provided to its affiliated interest in
22 connection with its affiliated interest's development of the
23 solar facility.

24 B. Subscriber organizations, unregulated affiliated
25 interests of qualifying utilities and qualifying utilities may

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1 enter into construction agreements, leases, sale-and-leaseback
2 transactions, operating agreements and other ownership and
3 operating arrangements with third parties relative to community
4 solar facilities.

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

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

15 A. Each subscription shall 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 average annual consumption of electricity by
20 each subscriber at the premises to which the subscription is
21 attributed, with a deduction for the amount of any existing
22 solar facilities located at the premises.

23 B. A qualifying utility may bill a subscriber for
24 the subscription price on the utility's monthly bill pursuant
25 to an agreement between the qualifying utility and the

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1 subscriber organization. If the qualifying utility collects
2 the subscription price from the subscriber, the qualifying
3 utility shall remit the subscription price collected to the
4 subscriber organization within a reasonable period of time
5 after its receipt.

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

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

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

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

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

25 SECTION 7. [NEW MATERIAL] ACQUISITION OF OUTPUT FROM

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1 COMMUNITY SOLAR FACILITIES--BILL CREDIT--UNSUBSCRIBED OUTPUT--
2 COST RECOVERY--RENEWABLE ENERGY CERTIFICATES.--

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

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

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

15 (2) converting the amount determined in
16 Paragraph (1) of this subsection to a kilowatt-hour community
17 solar credit rate; and

18 (3) multiplying the community solar credit
19 rate by the kilowatt-hours of community solar energy produced
20 by the community solar facility.

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

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

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

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

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

16 E. A qualifying utility shall:

17 (1) purchase any unsubscribed output of a
18 community solar facility connected to its distribution system
19 pursuant to a community solar program rate schedule approved by
20 the commission in accordance with the Community Solar Act at
21 the qualifying utility's applicable avoided cost of energy rate
22 as approved by the commission; and

23 (2) pay a subscriber organization the
24 reasonable value of any unsubscribed capacity of a community
25 solar facility if it is reasonably determined, in accordance

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1 with the commission's rules addressing purchases from
2 facilities, that the capacity purchase enables the qualifying
3 utility to avoid procurement of new capacity.

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

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

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

14 G. The amount of electricity and renewable energy
15 certificates generated by each community solar facility shall
16 be determined by a production meter installed by the qualifying
17 utility or the owner of the community solar facility and paid
18 for by the owner of the community solar facility. All
19 renewable energy certificates associated with the energy
20 produced by a community solar facility are the property of the
21 subscriber organization and, at the subscriber organization's
22 discretion, may be accumulated, sold, retired or transferred to
23 subscribers or to a qualifying utility.

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

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1 INTERCONNECTION APPLICATION.--

2 A. A qualifying utility shall file by February 1,
 3 2020 an application with the commission for approval of a plan
 4 and rate schedule to administer a community solar program in
 5 accordance with the Community Solar Act and applicable
 6 commission rules for implementation within a reasonable time
 7 period after commission approval of the plan and rate schedule.

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

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

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

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

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

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

16 (5) allow all customer classes to participate
17 in the community solar program and rate schedule and shall not
18 require a customer to be removed from the customer's otherwise
19 applicable customer class in order to subscribe to a community
20 solar facility;

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

24 (7) reasonably allow for the creation,
25 financing and accessibility of community solar facilities in a

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1 way that encourages robust consumer participation.

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

19 SECTION 9. [NEW MATERIAL] COMMISSION--DUTIES--
 20 RULEMAKING--REPORT TO LEGISLATURE.--

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

24 B. The commission shall develop rules that:

25 (1) establish reasonable and uniform customer

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1 disclosure forms, in the English and Spanish languages and,
2 when appropriate, Native American or indigenous languages, that
3 identify the minimum information that must be provided by
4 subscriber organizations to potential subscribers to ensure
5 fair disclosure of the future costs and benefits of
6 subscriptions and subscribers' rights and obligations
7 pertaining to subscriptions;

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

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

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

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

24 (6) ensure that all community solar program
25 conditions, terms and provisions are consistent with the

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1 Community Solar Act and the public interest; and

2 (7) establish a reasonable process, commencing
3 no later than two years after the commission's adoption of
4 rules pursuant to this section, for the commission to review,
5 on at least a biennial basis, the status of the development of
6 community solar facilities in accordance with the Community
7 Solar Act and for interested persons to submit comments to the
8 commission concerning the effectiveness of its rules to
9 accomplish the objectives of the Community Solar Act, including
10 the status of participation by low-income customers, low-income
11 service organizations and affordable housing providers in each
12 qualifying utility's community solar program.

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

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

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

24 (b) two years after enactment of the
25 Community Solar Act: 1) an annual statewide target of at least

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1 twenty-five percent low-income subscriptions based on the
2 aggregate capacity of all community solar facilities in the
3 state over the previous two years; and 2) individualized
4 low-income subscription targets for each qualifying utility in
5 order to reach the annual statewide target;

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

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

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

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1 community solar program and any recommended changes.

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

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

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

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

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