

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 80

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

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 SECTION 4. [NEW MATERIAL] OWNERSHIP OF COMMUNITY SOLAR
3 FACILITIES--SUBSCRIBER ORGANIZATIONS.--A community solar
4 facility shall be owned or operated by a subscriber
5 organization.

6 SECTION 5. [NEW MATERIAL] SUBSCRIPTIONS.--A subscription
7 shall:

8 A. be sized to:

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

11 (2) supply no more than one hundred twenty
12 percent of the previous year's consumption of electricity by
13 the subscriber at the physical location to which the
14 subscription is attributed, with a deduction for the amount of
15 any existing solar facilities located at the physical location;
16 and

17 B. state the per kilowatt rate to be paid by the
18 subscriber for the nameplate capacity of the community solar
19 facility allocated to the subscriber.

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

22 A. Subscriber organizations, or the subscribers to
23 a community solar facility, shall not be considered public
24 utilities subject to regulation by the commission under the
25 Public Utility Act solely as a result of their ownership

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1 interest in, operation of or subscription to a community solar
2 facility.

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

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

8 A. A qualifying utility shall:

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

11 (2) provide a community solar bill credit to a
12 subscriber's monthly electric bill for the proportional output
13 of a community solar facility attributable to that subscriber
14 for the previous month. The value of the community solar bill
15 credit for the subscriber shall be calculated by multiplying
16 the subscriber's portion of the kilowatt-hour electricity
17 production from the community solar facility by the applicable
18 community solar bill credit rate for the subscriber. The
19 utility shall apply community solar bill credits to subscriber
20 bills within one billing cycle of that in which the energy was
21 generated by the community solar facility. Any amount of a
22 community solar bill credit that exceeds a subscriber's monthly
23 electric bill shall be handled in accordance with the
24 procedures for crediting a customer for excess output from an
25 interconnected renewable energy distributed generation

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1 facility;

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

6 (4) on a monthly basis and in a standardized
 7 electronic format, provide to the subscriber organization a
 8 report indicating the total value of community solar bill
 9 credits generated by the community solar facility in the prior
 10 month and the amount of the community solar bill credits
 11 applied to each subscriber.

12 B. A subscriber organization shall:

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

19 (2) on a monthly basis and in a standardized
 20 electronic format, provide to the qualifying utility a list
 21 indicating the kilowatt hours of generation attributable to
 22 each subscriber. Subscriber lists shall be updated monthly to
 23 reflect canceling subscribers and new subscribers.

24 C. A subscriber organization may accumulate
 25 community solar bill credits in the event that all of the

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1 electricity generated by a community solar facility is not
2 allocated to subscribers in a given month. On an annual basis,
3 the subscriber organization shall provide the qualifying
4 utility allocation instructions for distributing excess
5 community solar bill credits to subscribers.

6 D. A qualifying utility and subscriber organization
7 may agree that the subscriber organization provide the per
8 kilowatt subscription rate and contractual terms of each
9 subscription for purposes of billing a subscriber for the
10 subscription price; provided that in no case shall the
11 provision of subscription rates and contractual terms be a
12 prerequisite for either the qualifying utility or the
13 subscriber organization for interconnection or other
14 requirements of the Community Solar Act.

15 E. Renewable energy certificates associated with a
16 community solar facility shall be the property of the
17 qualifying utility to which the community solar facility is
18 interconnected.

19 SECTION 8. [NEW MATERIAL] PUBLIC REGULATION COMMISSION--
20 RULEMAKING--REPORTS.--

21 A. The commission shall adopt rules to establish a
22 community solar program by no later than January 1, 2021. The
23 rules shall:

24 (1) require a qualifying utility to file the
25 tariffs, agreements or forms necessary for implementation of

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1 the community solar program;

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

7 (3) reasonably allow for the transferability
 8 and portability of subscriptions, including allowing a
 9 subscriber to retain a subscription to a community solar
 10 facility if the subscriber moves within the same qualifying
 11 utility territory;

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

16 (5) allow a qualifying utility to recover
 17 reasonable costs of administering the community solar program.

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

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1 commission's rules to implement the Community Solar Act and any
2 recommended changes.

3 C. Within one hundred eighty days of finalization
4 of the commission's rules for the community solar program, a
5 qualifying utility shall begin crediting the subscriber
6 accounts of each community solar facility interconnected in its
7 service territory.

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

10 A. include and address the effects of the
11 development of community solar facilities pursuant to the
12 Community Solar Act in its loads and resources tables,
13 integrated resource planning processes and integrated resource
14 plans; and

15 B. notify the commission and participants in the
16 commission's public advisory process, in accordance with the
17 commission's applicable integrated resource plan rules, of the
18 development of community solar facilities pursuant to the
19 Community Solar Act that would have the effect of changing the
20 results of the utility's most recent integrated resource plan
21 filed with the commission.

22 SECTION 10. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION
23 COOPERATIVES.--

24 A. A rural electric distribution cooperative may
25 request of the commission an exemption from participation in

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1 the community solar program for a period of up to five years.
 2 The commission may grant an exemption if the rural electric
 3 distribution cooperative:

4 (1) demonstrates that it is limited in its
 5 ability to participate in the program because of the amount of
 6 contracted generation on its system and the limits imposed by
 7 those contracts; or

8 (2) provides other reasons for its inability
 9 to accommodate community solar facilities and the commission
 10 finds the reasons compelling.

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

14 SECTION 11. [NEW MATERIAL] COMMUNITY SOLAR ENERGY
 15 ASSISTANCE FUND--CREATED--PURPOSE.--

16 A. The "community solar energy assistance fund" is
 17 created as a nonreverting fund in the state treasury. The fund
 18 consists of gifts, grants, donations and appropriations. The
 19 energy, minerals and natural resources department shall
 20 administer the fund, and money in the fund is appropriated to
 21 the energy, minerals and natural resources department to assist
 22 low-income customers in subscribing to the capacity of a
 23 community solar facility as provided in this section.

24 Disbursements from the fund shall be made by warrant of the
 25 secretary of finance and administration pursuant to vouchers

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1 signed by the secretary of energy, minerals and natural
2 resources or the secretary's authorized representative.

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

7 C. The energy, minerals and natural resources
8 department shall establish processes for:

9 (1) low-income customers and low-income
10 service organizations to apply for funds from the community
11 solar energy assistance fund; and

12 (2) dispersal of the community solar energy
13 assistance fund. Priority shall be given to those applications
14 that include matching gifts, grants or donations from
15 organizations or local governments that seek to make solar
16 energy accessible to low-income customers.

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

19 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
20 DUTIES.--

21 A. The commission shall establish:

22 (1) a system of renewable energy certificates
23 that can be used by a public utility to establish compliance
24 with the renewable portfolio standard and that may include
25 certificates that are monitored, accounted for or transferred

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1 by or through a regional system or trading program for any
2 region in which a public utility is located; and

3 (2) requirements and procedures concerning
4 requirements for renewable energy certificates pursuant to
5 Subsections B and C of this section.

6 B. Renewable energy certificates:

7 (1) are owned by the generator of the
8 renewable energy unless:

9 (a) the renewable energy certificates
10 are transferred to the purchaser of the electricity through
11 specific agreement with the generator;

12 (b) the generator is a qualifying
13 facility, as defined by the federal Public Utility Regulatory
14 Policies Act of 1978, or a community solar facility in which
15 case the renewable energy certificates are owned by the public
16 utility purchaser of the renewable energy; or

17 (c) a contract for the purchase of
18 renewable energy is in effect prior to July 1, 2019, in which
19 case the renewable energy certificates are owned by the
20 purchaser of the electricity for the term of such contract,
21 unless otherwise agreed to in a contract approved by the
22 commission;

23 (2) may be traded, sold or otherwise
24 transferred by their owner, unless the certificates are from a
25 rate-based public utility plant, in which case the entirety of

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1 the renewable energy certificates from that plant shall be
2 retired by the utility on behalf of itself or its customers.
3 Any contract to purchase renewable energy entered into by a
4 public utility on or after July 1, 2019 shall include
5 conveyance to the purchasing utility of all renewable energy
6 certificates, and the entirety of those certificates shall be
7 retired by that utility on behalf of itself or its customers or
8 subsequently transferred to a retail customer for retirement
9 under a voluntary program for purchasing renewable energy
10 approved by the commission. A utility shall not claim that it
11 is providing renewable energy from generation resources for
12 which it has traded, sold or transferred the associated
13 renewable energy certificates. The commission shall not
14 disallow the recovery of the cost associated with any expired
15 renewable energy certificate. The public utility shall
16 annually file a report with the commission discussing:

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

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

22 (3) that are used for the purpose of meeting
23 the renewable portfolio standard shall be registered with a
24 renewable energy generation information system that is designed
25 to create and track ownership of renewable energy certificates

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1 and that, through the use of independently audited generation
2 data, verifies the generation and delivery of electricity
3 associated with each renewable energy certificate and protects
4 against multiple counting of the same renewable energy
5 certificate; and

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

10 C. A public utility shall be responsible for
11 demonstrating that a renewable energy certificate used for
12 compliance with the renewable portfolio standard is derived
13 from eligible renewable energy resources."

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

16 "62-17-10. INTEGRATED RESOURCE PLANNING.--Pursuant to the
17 commission's rulemaking authority, public utilities supplying
18 electric or natural gas service to customers shall periodically
19 file an integrated resource plan with the commission. Utility
20 integrated resource plans shall evaluate renewable energy,
21 energy efficiency, load management, distributed generation,
22 community solar facilities and conventional supply-side
23 resources on a consistent and comparable basis and take into
24 consideration risk and uncertainty of fuel supply, price
25 volatility and costs of anticipated environmental regulations

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1 in order to identify the most cost-effective portfolio of
2 resources to supply the energy needs of customers. The
3 preparation of resource plans shall incorporate a public
4 advisory process. Nothing in this section shall prohibit
5 public utilities from implementing cost-effective energy
6 efficiency and load management programs and the commission from
7 approving public utility expenditures on energy efficiency
8 programs and load management programs prior to the commission
9 establishing rules and guidelines for integrated resource
10 planning. The commission may exempt public utilities with
11 fewer than five thousand customers and distribution-only public
12 utilities from the requirements of this section. The
13 commission shall take into account a public utility's resource
14 planning requirements in other states and shall authorize
15 utilities that operate in multiple states to implement plans
16 that coordinate the applicable state resource planning
17 requirements. The requirements of this section shall take
18 effect one year following the commission's adoption of rules
19 implementing the provisions of this section."

20 SECTION 14. APPROPRIATION.--Ten million dollars
21 (\$10,000,000) is appropriated from the general fund to the
22 community solar energy assistance fund for expenditure in
23 fiscal year 2021 and subsequent fiscal years to carry out the
24 purposes of the fund. Any unexpended or unencumbered balance
25 remaining at the end of a fiscal year shall not revert to the

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1 general fund.

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