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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR ACT;
PRESCRIBING REQUIREMENTS FOR COMMUNITY SOLAR FACILITIES,
SUBSCRIBER ORGANIZATIONS AND SUBSCRIPTIONS; PRESCRIBING
REQUIREMENTS FOR ADMINISTRATION OF A COMMUNITY SOLAR PROGRAM;
DIRECTING THE PUBLIC REGULATION COMMISSION TO ADOPT RULES TO
IMPLEMENT A COMMUNITY SOLAR PROGRAM.

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. "commission" means the public regulation
commission;

B. "community solar bill credit" means the credit

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1 value of the electricity generated by a community solar
2 facility and allocated to a subscriber to offset the
3 subscriber's electricity bill on the qualifying utility's
4 monthly billing cycle as required by the Community Solar Act;

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

9 D. "community solar facility" means a facility that
10 generates electricity by means of a solar photovoltaic device,
11 and subscribers to the facility receive a bill credit for the
12 electricity generated in proportion to the size of a
13 subscription;

14 E. "community solar program" or "program" means the
15 program created through the adoption of rules by the commission
16 that allows for the development of community solar facilities
17 and provides customers of a qualifying utility with the option
18 of accessing solar energy produced by a community solar
19 facility in accordance with the Community Solar Act;

20 F. "Indian nation, tribe or pueblo" means a
21 federally recognized Indian nation, tribe or pueblo located
22 wholly or partially in New Mexico;

23 G. "low-income customer" means a residential
24 customer of a qualifying utility with an annual household
25 income at or below eighty percent of county area median income,

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1 as published by the United States department of housing and
2 urban development, or that is enrolled in a low-income program
3 facilitated by the state or a low-income energy program led by
4 the qualifying utility or as determined by the commission;

5 H. "low-income service organization" means an
6 organization that provides services, assistance or housing to
7 low-income customers and may include a local or central tribal
8 government, a chapter house or a tribally designated housing
9 entity;

10 I. "native community solar project" means a
11 community solar facility that is sited in New Mexico on the
12 land of an Indian nation, tribe or pueblo and that is owned or
13 operated by a subscriber organization that is an Indian nation,
14 tribe or pueblo or a tribal entity or in partnership with a
15 third-party entity;

16 J. "qualifying utility" means an investor-owned
17 electric public utility certified by the commission to provide
18 retail electric service in New Mexico pursuant to the Public
19 Utility Act or a rural electric distribution cooperative that
20 has opted-in to the community solar program;

21 K. "subscriber" means a retail customer of a
22 qualifying utility that owns a subscription to a community
23 solar facility from a subscriber organization;

24 L. "subscriber organization" means an entity that
25 owns or operates a community solar facility and may include a

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1 municipality, a county, a for-profit or nonprofit entity or
2 organization, an Indian nation, tribe, or pueblo, a local
3 tribal governance structure or other tribal entity authorized
4 to transact business in New Mexico;

5 M. "subscription" means a contract for a community
6 solar subscription entered into between a subscriber and a
7 subscriber organization for a share of the nameplate capacity
8 from a community solar facility;

9 N. "total aggregate retail rate" means the total
10 amount of a qualifying utility's demand, energy and other
11 charges converted to a kilowatt-hour rate, but does not include
12 charges described on a qualifying utility's rate schedule as
13 minimum monthly charges, such as customer or service
14 availability charges, energy efficiency program riders or other
15 charges not related to a qualifying utility's power production
16 or distribution functions, as approved by the commission,
17 franchise fees and tax charges on utility bills;

18 O. "tribal entity" means an enterprise, a nonprofit
19 entity or organization or a political subdivision formed under
20 the inherent sovereignty of an Indian nation, tribe or pueblo;
21 and

22 P. "unsubscribed electricity" means electricity,
23 measured in kilowatt-hours, generated by a community solar
24 facility that is not allocated to a subscriber.

25 SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR FACILITY

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1 REQUIREMENTS.--

2 A. A community solar facility shall:

3 (1) have a nameplate rating of five megawatts
4 alternating current or less;

5 (2) be located in the service territory of the
6 qualifying utility and be interconnected to the electric
7 distribution system of that qualifying utility;

8 (3) have at least ten subscribers;

9 (4) have the option to be co-located with
10 other energy resources;

11 (5) not allow a single subscriber to be
12 allocated more than forty percent of the generating capacity of
13 the facility; and

14 (6) make at least forty percent of the total
15 generating capacity of a community solar facility available in
16 subscriptions of twenty-five kilowatts or less.

17 B. The provisions of this section shall not apply
18 to a native community solar project; provided that a native
19 community solar project shall be located in the service
20 territory of a qualifying utility and be interconnected to the
21 electric distribution system of that qualifying utility.

22 SECTION 4. [NEW MATERIAL] OWNERSHIP OF COMMUNITY SOLAR
23 FACILITIES.--

24 A. A community solar facility shall be owned or
25 operated by a subscriber organization.

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1 B. Third-party entities or subscriber organizations
2 developing projects on the land of an Indian nation, tribe, or
3 pueblo are subject to tribal jurisdiction.

4 SECTION 5. [NEW MATERIAL] SUBSCRIPTION REQUIREMENTS.--

5 A. A subscription shall be:

6 (1) sized to supply no more than one hundred
7 twenty percent of the subscriber's average annual electricity
8 consumption; and

9 (2) transferable and portable within the
10 qualifying utility service territory.

11 B. The provisions of this section shall not apply
12 to a native community solar project; provided that
13 subscriptions to a native community solar project shall be
14 transferable and portable within the qualifying utility service
15 territory.

16 SECTION 6. [NEW MATERIAL] COMMUNITY SOLAR PROGRAM
17 ADMINISTRATION.--

18 A. A qualifying utility shall:

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

21 (2) apply community solar bill credits to
22 subscriber bills within one billing cycle following the cycle
23 during which the energy was generated by the community solar
24 facility;

25 (3) provide community solar bill credits to a

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1 community solar facility's subscribers for not less than
2 twenty-five years from the date the community solar facility is
3 first interconnected;

4 (4) carry over any amount of a community solar
5 bill credit that exceeds the subscriber's monthly bill and
6 apply it to the subscriber's next monthly bill; and

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

13 B. A subscriber organization shall, on a monthly
14 basis and in a standardized electronic format, provide to the
15 qualifying utility a list indicating the kilowatt-hours of
16 generation attributable to each subscriber. Subscriber lists
17 may be updated monthly to reflect canceling subscribers and to
18 add new subscribers.

19 C. If a community solar facility is not fully
20 subscribed in a given month, the unsubscribed energy may be
21 rolled forward on the community solar facility account for up
22 to one year from its month of generation and allocated by the
23 subscriber organization to subscribers at any time during that
24 period. At the end of that period, any undistributed bill
25 credit shall be removed, and the unsubscribed energy shall be

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1 purchased by the qualifying utility at its applicable avoided
2 cost of energy rate as approved by the commission.

3 D. The environmental attributes, including
4 renewable energy certificates, associated with a community
5 solar facility may be sold or transferred by the owner of the
6 community solar facility to the qualifying utility.

7 E. Nothing in the Community Solar Act shall
8 preclude an Indian nation, tribe or pueblo from using financial
9 mechanisms other than subscription models, including virtual
10 and aggregate net-metering, for native community solar
11 projects.

12 SECTION 7. [NEW MATERIAL] PUBLIC REGULATION COMMISSION--
13 RULEMAKING.--

14 A. The commission shall adopt rules to establish a
15 community solar program by no later than November 1, 2021. The
16 rules shall:

17 (1) provide an initial annual statewide
18 capacity program cap of one hundred megawatts proportionally
19 allocated to investor-owned utilities until November 1, 2024.
20 The annual statewide capacity program cap shall exclude native
21 community solar projects and rural electric distribution
22 cooperatives;

23 (2) establish an annual statewide capacity
24 program cap to be in effect after November 1, 2024;

25 (3) require a target thirty percent annual

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1 statewide carve-out of the annual statewide capacity program
2 cap to be reserved for low-income customers and low-income
3 service organizations. In facilitation of this target, the
4 commission shall issue guidelines to ensure the carve-out is
5 achieved each year and develop a list of low-income service
6 organizations and programs that may pre-qualify low-income
7 customers;

8 (4) establish a process for the selection of
9 community solar facility projects and allocation of the
10 statewide capacity program cap;

11 (5) require a qualifying utility to file the
12 tariffs, agreement or forms necessary for implementation of the
13 community solar program;

14 (6) establish reasonable, uniform, efficient
15 and non-discriminatory standards, fees and processes for the
16 interconnection of community solar facilities that are
17 consistent with the commission's existing interconnection rules
18 and interconnection manual that allows a qualifying utility to
19 recover reasonable costs for administering the community solar
20 program and interconnection costs for each community solar
21 facility;

22 (7) provide consumer protections for
23 subscribers, including a uniform disclosure form that
24 identifies the information that shall be provided by a
25 subscriber organization to a potential subscriber, in both

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1 English and Spanish, and when appropriate, native or indigenous
2 languages, to ensure fair disclosure of future costs and
3 benefits of subscriptions, key contract terms and other
4 relevant but reasonable information pertaining to the
5 subscription;

6 (8) provide a community solar bill credit rate
7 mechanism for subscribers derived from the qualifying utility's
8 total aggregate retail rate on a per-customer-class basis, less
9 the commission-approved distribution cost components, and
10 identify all proposed rules, fees and charges;

11 (9) reasonably allow for the creation,
12 financing and accessibility of community solar facilities; and

13 (10) provide requirements for the siting and
14 co-location of community solar facilities.

15 B. The commission shall solicit input from relevant
16 state agencies, public utilities, low-income stakeholders,
17 disproportionately impacted communities, potential owners or
18 operators of community solar facilities, Indian nations, tribes
19 and pueblos and other interested parties in its rulemaking
20 process.

21 C. By no later than November 1, 2024, the
22 commission shall provide to the appropriate interim legislative
23 committee a report on the status of the community solar
24 program, including the development of community solar
25 facilities, the participation of investor-owned utilities and

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1 rural electric distribution cooperatives, low-income
2 participation, the adequacy of facility size, proposals for
3 alternative rate structures and bill credit mechanisms, cross-
4 subsidization issues, community solar facilities' effect on
5 utility compliance with the renewable portfolio standard and an
6 evaluation of the effectiveness of the commission's rules to
7 implement the Community Solar Act and any recommended changes.

8 SECTION 8. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION
9 COOPERATIVES.--A rural electric distribution cooperative may
10 opt-in to the community solar program and provide
11 interconnection and retail electric services to community solar
12 developments on a per-project or system-wide basis within its
13 service territory.

14 SECTION 9. [NEW MATERIAL] EXCLUSION FROM COMMISSION
15 REGULATION.--Subscriber organizations, or the subscribers to a
16 community solar facility, shall not be considered public
17 utilities subject to regulation by the commission under the
18 Public Utility Act solely as a result of their ownership,
19 interest in, operation of or subscription to a community solar
20 facility. Rates paid for subscriptions shall not be subject to
21 regulation by the commission.