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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;
PROVIDING THAT RENEWABLE ENERGY CERTIFICATES ASSOCIATED WITH
A COMMUNITY SOLAR FACILITY ARE THE PROPERTY OF THE QUALIFYING
UTILITY; PROVIDING EXCEPTIONS FOR NATIVE COMMUNITY SOLAR
PROJECTS; DIRECTING THE PUBLIC REGULATION COMMISSION TO ADOPT
RULES TO IMPLEMENT A COMMUNITY SOLAR PROGRAM; ALLOWING THE
COMMISSION TO ESTABLISH AND COLLECT FROM SUBSCRIBER
ORGANIZATIONS REASONABLE APPLICATION FEES.

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

SECTION 1. SHORT TITLE.--Sections 1 through 9 of this
act may be cited as the "Community Solar Act."

SECTION 2. DEFINITIONS.--As used in the Community Solar
Act:

- A. "commission" means the public regulation
commission;
- B. "community solar bill credit" means the credit
value of the electricity generated by a community solar
facility and allocated to a subscriber to offset the
subscriber's electricity bill on the qualifying utility's
monthly billing cycle as required by the Community Solar Act;

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

5 D. "community solar facility" means a facility
6 that generates electricity by means of a solar photovoltaic
7 device, and subscribers to the facility receive a bill credit
8 for the electricity generated in proportion to the
9 subscriber's share of the facility's kilowatt-hour output;

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

17 F. "Indian nation, tribe or pueblo" means a
18 federally recognized Indian nation, tribe or pueblo located
19 wholly or partially in New Mexico;

20 G. "low-income customer" means a residential
21 customer of a qualifying utility with an annual household
22 income at or below eighty percent of area median income, as
23 published by the United States department of housing and
24 urban development, or that is enrolled in a low-income
25 program facilitated by the state or a low-income energy

1 program led by the qualifying utility or as determined by the
2 commission;

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

8 I. "nameplate capacity" means the maximum rated
9 output of electric power production equipment that is
10 commonly indicated on a nameplate physically attached to the
11 generator and expressed in megawatts alternating current;

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

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

23 L. "subscriber" means a retail customer of a
24 qualifying utility that owns a subscription to a community
25 solar facility and that is by rate class a residential retail

1 customer or a small commercial retail customer or, regardless
2 of rate class, is a nonprofit organization, a religious
3 organization, an Indian nation, tribe or pueblo or tribal
4 entity, a municipality or a county in the state, a charter,
5 private or public school as defined in Section 22-1-2 NMSA
6 1978, a community college as defined in Section 21-13-2 NMSA
7 1978 or a public housing authority;

8 M. "subscriber organization" means an entity that
9 owns or operates a community solar facility and may include a
10 qualifying utility, a municipality, a county, a for-profit or
11 nonprofit entity or organization, an Indian nation, tribe, or
12 pueblo, a local tribal governance structure or other tribal
13 entity authorized to transact business in New Mexico;

14 N. "subscription" means a contract for a community
15 solar subscription entered into between a subscriber and a
16 subscriber organization for a share of the nameplate capacity
17 from a community solar facility;

18 O. "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, including fuel and
21 power cost adjustments, the value of renewable energy
22 attributes and other charges of a qualifying utility's
23 effective rate schedule applicable to a given customer rate
24 class, but does not include charges described on a qualifying
25 utility's rate schedule as minimum monthly charges, including

1 customer or service availability charges, energy efficiency
2 program riders or other charges not related to a qualifying
3 utility's power production, transmission or distribution
4 functions, as approved by the commission, franchise fees and
5 tax charges on utility bills;

6 P. "tribal entity" means an enterprise, a
7 nonprofit entity or organization or a political subdivision
8 formed under the inherent sovereignty of an Indian nation,
9 tribe or pueblo; and

10 Q. "unsubscribed electricity" means electricity,
11 measured in kilowatt-hours, generated by a community solar
12 facility that is not allocated to a subscriber.

13 SECTION 3. COMMUNITY SOLAR FACILITY REQUIREMENTS.--

14 A. A community solar facility shall:

15 (1) have a nameplate capacity rating of five
16 megawatts alternating current or less;

17 (2) be located in the service territory of
18 the qualifying utility and be interconnected to the electric
19 distribution system of that qualifying utility;

20 (3) have at least ten subscribers;

21 (4) have the option to be co-located with
22 other energy resources, but shall not be co-located with
23 other community solar facilities;

24 (5) not allow a single subscriber to be
25 allocated more than forty percent of the generating capacity

1 of the facility; and

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

5 B. The provisions of this section shall not apply
6 to a native community solar project; provided that a native
7 community solar project shall be located in the service
8 territory of a qualifying utility and be interconnected to
9 the electric distribution system of that qualifying utility.

10 SECTION 4. OWNERSHIP OF COMMUNITY SOLAR FACILITIES.--

11 A. A community solar facility shall be owned or
12 operated by a subscriber organization.

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

16 C. Notwithstanding any provision of the Public
17 Utility Act to the contrary, a person not otherwise a public
18 utility shall not be deemed to be a public utility subject to
19 the provisions of the Public Utility Act solely because the
20 person owns, controls or operates all or any part of a
21 community solar facility.

22 SECTION 5. SUBSCRIPTION REQUIREMENTS.--

23 A. A subscription shall be:

24 (1) sized to supply no more than one hundred
25 percent of the subscriber's average annual electricity

1 consumption; and

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

4 B. The provisions of this section shall not apply
5 to a native community solar project; provided that
6 subscriptions to a native community solar project shall be
7 transferable and portable within the qualifying utility
8 service territory.

9 SECTION 6. COMMUNITY SOLAR PROGRAM ADMINISTRATION.--

10 A. A qualifying utility shall:

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

13 (2) apply community solar bill credits to
14 subscriber bills within one billing cycle following the cycle
15 during which the energy was generated by the community solar
16 facility;

17 (3) provide community solar bill credits to
18 a community solar facility's subscribers for not less than
19 twenty-five years from the date the community solar facility
20 is first interconnected;

21 (4) carry over any amount of a community
22 solar bill credit that exceeds the subscriber's monthly bill
23 and apply it to the subscriber's next monthly bill unless and
24 until the subscriber cancels service with the qualifying
25 utility; and

1 (5) on a monthly basis and in a standardized
2 electronic format, provide to the subscriber organization a
3 report indicating the total value of community solar bill
4 credits generated by the community solar facility in the
5 prior month as well as the amount of the community solar bill
6 credits applied to each subscriber.

7 B. A subscriber organization shall, on a monthly
8 basis and in a standardized electronic format, provide to the
9 qualifying utility a list indicating the kilowatt-hours of
10 generation attributable to each subscriber. Subscriber lists
11 may be updated monthly to reflect canceling subscribers and
12 to add new subscribers.

13 C. If a community solar facility is not fully
14 subscribed in a given month, the unsubscribed energy may be
15 rolled forward on the community solar facility account for up
16 to one year from its month of generation and allocated by the
17 subscriber organization to subscribers at any time during
18 that period. At the end of that period, any undistributed
19 bill credit shall be removed, and the unsubscribed energy
20 shall be purchased by the qualifying utility at its
21 applicable avoided cost of energy rate as approved by the
22 commission.

23 D. The environmental attributes, including
24 renewable energy certificates, associated with a community
25 solar facility shall be owned by the qualifying utility to

1 whose electric distribution system the community solar
2 facility is interconnected; provided that environmental
3 attributes associated with a native community solar project
4 shall be owned by the owner of the native community solar
5 project.

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

11 SECTION 7. PUBLIC REGULATION COMMISSION--ENFORCEMENT
12 AND RULEMAKING.--

13 A. The commission shall administer and enforce the
14 rules and provisions of the Community Solar Act, including
15 regulation of subscriber organizations in accordance with the
16 Community Solar Act and oversight and review of the consumer
17 protections established for the community solar program.

18 B. The commission shall adopt rules to establish a
19 community solar program by no later than April 1, 2022. The
20 rules shall:

21 (1) provide an initial statewide capacity
22 program cap of two hundred megawatts alternating current
23 proportionally allocated to investor-owned utilities until
24 November 1, 2024. The statewide capacity program cap shall
25 exclude native community solar projects and rural electric

1 distribution cooperatives;

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

4 (3) require thirty percent of electricity
5 produced from each community solar facility to be reserved
6 for low-income customers and low-income service
7 organizations. The commission shall issue guidelines to
8 ensure the carve-out is achieved each year and develop a list
9 of low-income service organizations and programs that may
10 pre-qualify low-income customers;

11 (4) establish a process for the selection of
12 community solar facility projects and allocation of the
13 statewide capacity program cap, consistent with Section
14 13-1-21 NMSA 1978 regarding resident business and resident
15 veteran business preferences;

16 (5) require a qualifying utility to file the
17 tariffs, agreement or forms necessary for implementation of
18 the community solar program;

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

1 community solar facility, such that a qualifying utility and
2 its non-subscribing customers do not subsidize the costs
3 attributable to the subscriber organization pursuant to this
4 paragraph;

5 (7) provide consumer protections for
6 subscribers, including a uniform disclosure form that
7 identifies the information that shall be provided by a
8 subscriber organization to a potential subscriber, in both
9 English and Spanish, and when appropriate, native or
10 indigenous languages, to ensure fair disclosure of future
11 costs and benefits of subscriptions, key contract terms,
12 security interests and other relevant but reasonable
13 information pertaining to the subscription, as well as
14 grievance and enforcement procedures;

15 (8) provide a community solar bill credit
16 rate mechanism for subscribers derived from the qualifying
17 utility's total aggregate retail rate on a per-customer-class
18 basis, less the commission-approved distribution cost
19 components, and identify all proposed rules, fees and
20 charges; provided that non-subscribers shall not subsidize
21 costs attributable to subscribers; and provided further that
22 if the commission determines that it is in the public
23 interest for non-subscribers to subsidize subscribers,
24 non-subscribers shall not be charged more than three percent
25 of the non-subscribers' aggregate retail rate on an annual

1 basis to subsidize subscribers;

2 (9) reasonably allow for the creation,
3 financing and accessibility of community solar facilities;
4 and

5 (10) provide requirements for the siting and
6 co-location of community solar facilities with other energy
7 resources; provided that community solar facilities shall not
8 be co-located with other community solar facilities.

9 C. The commission may through rule establish a
10 reasonable application fee for subscriber organizations that
11 is designed to cover a portion of the administrative costs of
12 the commission in carrying out the community solar program.
13 Application fees collected by the commission shall be
14 remitted to the state treasurer no later than the day after
15 their receipt.

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

22 E. By no later than November 1, 2024, the
23 commission shall provide to the appropriate interim
24 legislative committee a report on the status of the community
25 solar program, including the development of community solar

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

11 SECTION 8. RURAL ELECTRIC DISTRIBUTION COOPERATIVES.--

12 A rural electric distribution cooperative may opt in to the
13 community solar program and provide interconnection and
14 retail electric services to community solar developments on
15 a per-project or system-wide basis within its service
16 territory. The decision of a rural electric distribution
17 cooperative to opt in to the community solar program shall be
18 in the sole discretion of the cooperative's governing board.

19 SECTION 9. Section 62-15-35 NMSA 1978 (being Laws 2007,
20 Chapter 4, Section 2, as amended by Laws 2015, Chapter 64,
21 Section 1 and by Laws 2015, Chapter 71, Section 1) is amended
22 to read:

23 "62-15-35. RENEWABLE ENERGY CERTIFICATES--COMMISSION
24 DUTIES.--The public regulation commission shall establish:

25 A. a system of renewable energy certificates that

1 can be used by a distribution cooperative to establish
2 compliance with the renewable portfolio standard and that may
3 include certificates that are monitored, accounted for or
4 transferred by or through a regional system or trading
5 program for any region in which a rural electric cooperative
6 is located. The kilowatt-hour value of renewable energy
7 certificates may be varied by renewable energy resource or
8 technology; provided that:

9 (1) each renewable energy certificate shall
10 have a minimum value of one kilowatt-hour for purposes of
11 compliance with the renewable portfolio standard;

12 (2) three thousand four hundred twelve
13 British thermal units of useful thermal energy is equivalent
14 to one kilowatt hour for purposes of compliance with the
15 renewable portfolio standard; and

16 (3) the following equation shall be used to
17 calculate the annual renewable energy certificate value for a
18 geothermal heat pump system: (coefficient of performance of
19 heat pump unit - 1) X (ton rating of heat pump unit/.9) =
20 number of megawatt-hours of renewable energy certificates;
21 and

22 B. requirements and procedures concerning
23 renewable energy certificates that include the provisions
24 that:

25 (1) renewable energy certificates:

1 (a) are owned by the generator of the
2 renewable energy unless: 1) the renewable energy
3 certificates are transferred to the purchaser of the energy
4 through specific agreement with the generator; 2) the
5 generator is a qualifying facility, as defined by the federal
6 Public Utility Regulatory Policies Act of 1978, in which
7 case the renewable energy certificates are owned by the
8 distribution cooperative purchaser of the renewable energy
9 unless retained by the generator through specific agreement
10 with the distribution cooperative purchaser of the energy; 3)
11 a contract for the purchase of renewable energy is in effect
12 prior to January 1, 2004, in which case the renewable energy
13 certificates are owned by the purchaser of the energy for the
14 term of such contract; or 4) the generator is a community
15 solar facility, excluding a native community solar project,
16 as those terms are defined in the Community Solar Act, in
17 which case the renewable energy certificates are owned by the
18 distribution cooperative to whose electric distribution
19 system the community solar facility is interconnected;

20 (b) may be traded, sold or otherwise
21 transferred by their owner to any other party; provided that
22 the transfers and use of the certificate by a distribution
23 cooperative for compliance with the renewable energy
24 portfolio standard shall require the electric or useful
25 thermal energy represented by the certificate to be

1 contracted for delivery or consumed, or generated by an
2 end-use customer of the distribution cooperative in
3 New Mexico unless the commission determines that the
4 distribution cooperative is participating in a national or
5 regional market for exchanging renewable energy certificates;

6 (c) that are used for the purpose of
7 meeting the renewable portfolio standard shall be registered,
8 beginning January 1, 2008, with a renewable energy generation
9 information system that is designed to create and track
10 ownership of renewable energy certificates and that, through
11 the use of independently audited generation data, verifies
12 the generation and delivery of electricity or useful thermal
13 energy associated with each renewable energy certificate and
14 protects against multiple counting of the same renewable
15 energy certificate;

16 (d) that are used once by a
17 distribution cooperative to satisfy the renewable portfolio
18 standard and are retired or that are traded, sold or
19 otherwise transferred by the distribution cooperative shall
20 not be further used by the distribution cooperative; and

21 (e) that are not used by a distribution
22 cooperative to satisfy the renewable portfolio standard or
23 that are not traded, sold or otherwise transferred by the
24 distribution cooperative may be carried forward for up to
25 four years from the date of issuance and, if not used by that

1 time, shall be retired by the distribution cooperative; and

2 (2) a distribution cooperative shall be
3 responsible for demonstrating that a renewable energy
4 certificate used for compliance with the renewable portfolio
5 standard is derived from eligible renewable energy resources
6 and has not been retired, traded, sold or otherwise
7 transferred to another party."

8 SECTION 10. Section 62-16-5 NMSA 1978 (being Laws 2004,
9 Chapter 65, Section 5, as amended) is amended to read:

10 "62-16-5. RENEWABLE ENERGY CERTIFICATES--COMMISSION
11 DUTIES.--

12 A. The commission shall establish:

13 (1) a system of renewable energy
14 certificates that can be used by a public utility to
15 establish compliance with the renewable portfolio standard
16 and that may include certificates that are monitored,
17 accounted for or transferred by or through a regional system
18 or trading program for any region in which a public utility
19 is located; and

20 (2) requirements and procedures concerning
21 requirements for renewable energy certificates pursuant to
22 Subsections B and C of this section.

23 B. Renewable energy certificates:

24 (1) are owned by the generator of the
25 renewable energy unless:

1 (a) the renewable energy certificates
2 are transferred to the purchaser of the electricity through
3 specific agreement with the generator;

4 (b) the generator is a qualifying
5 facility, as defined by the federal Public Utility Regulatory
6 Policies Act of 1978, in which case the renewable energy
7 certificates are owned by the public utility purchaser of the
8 renewable energy;

9 (c) a contract for the purchase of
10 renewable energy is in effect prior to July 1, 2019, in which
11 case the renewable energy certificates are owned by the
12 purchaser of the electricity for the term of such contract,
13 unless otherwise agreed to in a contract approved by the
14 commission; or

15 (d) the generator is a community solar
16 facility, excluding a native community solar project, as
17 those terms are defined in the Community Solar Act, in which
18 case the renewable energy certificates are owned by the
19 public utility to whose electric distribution system the
20 community solar facility is interconnected;

21 (2) may be traded, sold or otherwise
22 transferred by their owner, unless the certificates are from
23 a rate-based public utility plant, in which case the entirety
24 of the renewable energy certificates from that plant shall be
25 retired by the utility on behalf of itself or its customers.

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

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

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

20 (3) that are used for the purpose of meeting
21 the renewable portfolio standard shall be registered with a
22 renewable energy generation information system that is
23 designed to create and track ownership of renewable energy
24 certificates and that, through the use of independently
25 audited generation data, verifies the generation and delivery

1 of electricity associated with each renewable energy
2 certificate and protects against multiple counting of the
3 same renewable energy certificate; and

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

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

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