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IN THE MATTER OF THE COMMISSION'S ADOPTION OF RULES PURSUANT TO THE COMMUNITY SOLAR ACT	**)** **)** **)**	**Docket No. 21-00112-UT**

Please file the attached ORDER ADOPTING RULE into the above captioned case.

Thank you.

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NEW MEXICO PUBLIC REGULATION COMMISSION

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE COMMISSION'S ADOPTION OF RULES PURSUANT TO THE COMMUNITY SOLAR ACT	**)** **)** **)**	**Docket No. 21-00112-UT**

ORDER ADOPTING RULE

THIS MATTER comes before the New Mexico Public Regulation Commission (the "Commission") upon the Commission's own motion, upon consideration of the comments filed in the record and the comments made at the public hearing in this matter, and upon the recommendations of the Community Solar Action Team (the "Team").

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. During its 2021 session, the Legislature passed Senate Bill 84, the "Community Solar Act," which was signed by the Governor on April 5, 2021, and which became effective on June 18, 2021 (the "Act"). The Act has been codified by the New Mexico Compilation Commission at 62-16B-1 *et seq*., NMSA 1978.

2. The Act provides that the Commission "shall administer and enforce the rules and provisions of the [Act], including regulation of subscriber organizations in accordance with the [Act] and oversight and review of the consumer protections established for the community solar program." NMSA 1978, § 62-16B-7(A).

3. The Act requires the Commission to adopt rules to establish a community solar program no later than April 1, 2022, which rules must: (1) provide an initial statewide capacity program cap of two hundred megawatts alternating current proportionally allocated to investor-owned utilities until November 1, 2024, which cap must exclude native community solar projects and rural electric distribution cooperatives; (2) establish an annual statewide capacity program cap

to be in effect after November 1, 2024; (3) require thirty percent of electricity produced from each community solar facility to be reserved for low-income customers and low income service organizations, including guidelines to ensure that the thirty percent is achieved every year and development of a list of low-income service organizations and programs that may pre-qualify low-income customers; (4) establish a process for the selection of community solar facility projects and allocation of the statewide capacity program cap, consistent with 13-1-21 NMSA 1978 regarding resident business and resident veteran business preferences; (5) require a qualifying utility to file the tariffs, agreement or forms necessary for implementation of the community solar program; (6) establish reasonable, uniform, efficient and non-discriminatory standards, fees and processes for the interconnection of community solar facilities that are consistent with the Commission's existing interconnection rules and interconnection manual that allows a qualifying utility to recover reasonable costs for administering the community solar program and interconnection costs for each community solar facility, such that the qualifying utility and its non-subscribing customers do not subsidize the costs attributable to the subscriber organizations by more than 3%; (7) provide consumer protections for subscribers, including disclosures described in the Act, as well as grievance and enforcement procedures; (8) provide a community solar bill credit rate mechanism for subscribers as described in detail in the Act; (9) reasonably allow for the creation, financing and accessibility of consumer solar facilities; and (10) provide requirements for the siting and co-location of community solar facilities with other energy resources, provided that community solar facilities shall not be co-located with other community solar facilities. NMSA 1978, § 62-16B-7(B).

4. The Act further provides that the Commission "may through rule establish a reasonable application fee for subscriber organizations that is designed to cover a portion of the

administrative costs of the [C]ommission in carrying out the community solar program." NMSA 1978, § 62-16B-7(C).

5. On October 27, 2021, after an extensive informal proceeding, the Commission issued its Order Issuing Notice of Proposed Rulemaking, commencing the formal rulemaking proceeding by issuance of the Notice of Proposed Rulemaking (the "NOPR"). Included with the Order Issuing NOPR was the Commission's Proposed Rule, which had been recommended to the Commission by the Team. Also included with the order was a set of "Additional Issues to be Addressed in Formal Comment Process," consisting of issues not addressed in the Proposed Rule.

6. The Order Issuing NOPR included a schedule for the filing of written comments, which schedule was later amended by the Commission in its Order Granting Motion for an Extension of Time to File Response and Reply Comments Filed by Coalition for Community Solar Access. The schedule provided for the filing of Initial Comments, Response Comments, and Reply Comments, as well as a public comment hearing.

7. On December 9, 2021, Initial Comments were timely filed by Staff of the Utility Division of the Commission ("Staff"), El Paso Electric Company ("EPE"), Public Service Company of New Mexico ("PNM"), Southwestern Public Service Company ("SPS"), the City of Las Cruces ("CLC"), Yellow Bird Services, LLC ("YBS"), Renewable Energy Industries Association ("REIA"), Kit Carson Electric Cooperative, Inc. ("KCEC"), New Energy Economy ("NEE"), PACE Fund NM ("PACE"), International Center for Appropriate and Sustainable Technology ("ICAST"), New Mexico Department of Cultural Affairs ("NMDCA"), McSherry Properties, LLC ("MSP"), John R. Buchser ("Mr. Buchser"), Energy Management, Inc. ("EMI"), All Pueblo Council of Governors (with Sovereign Energy and NAVA Education Project) (collectively, "APCG"), Bernalillo County Democratic Party Ward 17B ("BCDPW"), the

Coalition for Community Solar Access (with the Coalition of Sustainable Communities New Mexico, Conservation Voters New Mexico, GRID Alternatives, the Solar Energy Industries Association, and Vote Solar) ("CCSA"), United States Solar Corporation ("USSC"), Cypress Creek Renewables ("CCR"), SunVest Solar, LLC ("SVS"), Barbara Fix ("Ms. Fix"), and Arcadia, Inc. ("Arcadia").

8. On January 6, 2022, the Commission held a public comment hearing via the Zoom online platform, which was presided over by Commissioner Cynthia B. Hall. Oral comments were made at the hearing on behalf of Syncarpha Solar ("Syncarpha") and Prosperity Works ("PW").

9. On January 12, 2022, Response Comments were timely filed by Staff, EPE, PNM, SPS, CLC, BCDPW, CCR, KCEC, CCSA, REIA, Nexamp, Forefront Power ("FP"), USSC, Coalition for Clean Affordable Energy ("CCAE"), and Western Resource Advocates ("WRA").

10. On January 13, 2022, the New Mexico Attorney General (the "NMAG") untimely filed his Response Comments. The Commission considers these comments in this Order despite the late filing.

11. On January 20, 2022, ICAST timely filed its Reply Comments.

12. On January 25, 2022, Reply Comments were timely filed by Staff, EPE, PNM, SPS, REIA, CCR, SynerGen Solar, LLC ("SGS"), CCSA, YBS, KCEC, CLC, Pivot Energy ("Pivot"), Nexamp, and APCG.

13. On January 26, 2022, the record closed, as per the Order Issuing NOPR.

14. The record of the rulemaking is complete, and the Commission has considered the record for the purpose of adopting a Community Solar Rule (the "Rule") in this Order.

15. The following discussion of the comments in the record is organized broadly by subject matter and more specifically by the issues to be addressed within each subject matter area.

At the beginning of each subject matter section, the portion(s) of the Act relevant to the matter are as well as any relevant portion(s) of the Proposed Rule and the Additional Issues to be Addressed in Formal Comment Process (the "Additional Issues"). For each issue or set of related issues within each subject matter area, there is a summary of the relevant comments, the Team's recommendations to the Commission and the reasoning supporting such recommendations, and finally, the Commission's decision.

16. The rule adopted by the Commission in this Order (the "Rule") is attached hereto as **Exhibit A.** To the extent that the Rule departs from the Proposed Rule, all such changes are indicated as redlined changes. The Rule, when published, will incorporate such changes without redlines.

Subject No. 1 - Administration of the Community Solar Program

17. Regarding the Commission's administrative duties associated with the community solar program, the Act provides:

> **62-16B-7. Public regulation commission; enforcement and rulemaking.**
>
> A. The commission shall administer and enforce the rules and provisions of the Community Solar Act, including regulation of subscriber organizations in accordance with the Community Solar Act and oversight and review of the consumer protections established for the community solar program.

NMSA 1978, § 62-16B-7(A).

18. The above subsection employs two terms that are specially defined in the Act: "subscriber organization" and the "community solar program." "Subscriber organization" is defined as:

> an entity that owns or operates a community solar facility and may include a qualifying utility, a municipality, a county, a for-profit or nonprofit entity or

> organization, an Indian nation, tribe, or pueblo, a local tribal governance structure or other tribal entity authorized to transact business in New Mexico.

NMSA 1978, § 62-16B-2(M). The "community solar program" is defined as:

> the program created through the adoption of rules by the commission that allows for the development of community solar facilities and provides customers of a qualifying utility with the option of accessing solar energy produced by a community solar facility in accordance with the Community Solar Act.

NMSA 1978, § 62-16B-2(E).

19. Both of the definitions above contain two terms that are themselves specially defined in the Act: "community solar facility" and "qualifying utility." "Community solar facility" is defined as:

> a facility that generates electricity by means of a solar photovoltaic device, and subscribers to the facility receive a bill credit for the electricity generated in proportion to the subscriber's share of the facility's kilowatt-hour output.

NMSA 1978, § 62-16B-2(D). "Qualifying utility" is defined as:

> an investor-owned electric public utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] or a rural electric distribution cooperative that has opted in to the community solar program.

NMSA 1978, § 62-16B-2(K).

20. The above definition of "community solar facility" itself contains a specially defined term, "subscriber," which is defined as:

> a retail customer of a qualifying utility that owns a subscription to a community solar facility and that is by rate class a residential retail customer or a small commercial retail customer or, regardless of rate class, is a nonprofit organization, a religious organization, an Indian nation, tribe or pueblo or tribal entity, a municipality or a county in the state, a charter, private or public school as defined in Section 22-1-2 NMSA 1978, a community college as defined in Section 21-13-2 NMSA 1978 or a public housing authority;

NMSA 1978, § 62-16B-2(L).

21. Regarding the costs associated with fulfilling such administrative duties, the Act provides:

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

NMSA 1978, § 62-16B-7(C).

22. The Proposed Rule included the following language relevant to this subject matter:

> **17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:**
>
> A. The commission shall engage a third-party administrator to manage an unbiased and nondiscriminatory process for selection of community solar facilities.

[Proposed Rule, 17.9.573.12(A).]

23. The Additional Issues included the following issues relevant to this subject matter:

> The language of the Community Solar Act makes it clear that the Commission has sole authority to administer and enforce rules and provisions of the Act; but the funding of program administration is unclear.
>
> a. Should the Commission take on the full responsibility of administering the Community Solar program with internal staff, based on its existing or to-be approved budget allocations?
> b. Should the Commission engage a third-party administrator for all or part of the program?
> If so, what components of the program would be most appropriate for third-party administration? (ex., solicitation and selection of Community Solar projects? Consumer outreach and education to establish a pre-qualified pool of Subscribers? Ongoing program administration for the initial period of the program through November 1, 2024?)
> c. Should the Community Solar program be administered by the investor-owned utilities, with cost recovery considered in their next General Rate Case?
> d. Are there other options for administration the Commission should consider?

[Additional Issues, first page.]

Comments Relevant to Program Administration

24. Staff commented in favor of using a third-party administrator for the program, with the third party either having responsibility for all administrative tasks or sharing the responsibility with the Commission, depending upon the Commission's budgetary limitations. Specifically, Staff believed that a third party should conduct the request-for-proposal ("RFP") process for selection of community solar projects, facilitate the participation of low-income customers, monitoring compliance by subscriber organizations, and monitoring compliance with limitations upon co-location of facilities. If the Commission's budget were insufficient, then Staff would suggest that the three qualifying utilities pay for the administrator, with the Commission allowing recovery of such costs in rates. SPS, on the other hand, would resolve any funding issues by having the Commission collect from subscriber organizations.

25. Many other commenters agreed with Staff to differing degrees. CCSA commented that an experienced third-party administrator would be the most efficient and effective option, particularly for the process of subscriber organization procurement. CCSA was in favor of assigning the "bulk" of administrative duties to a third party, commenting that the Commission's responsibilities should be to issue rules, to establish bid criteria and to oversee consumer education.

26. SPS commented in favor of using a third-party independent evaluator to monitor a procurement process that would be run by the utilities themselves. SPS recommends that the third party also provide customer outreach and education. The other qualifying utilities, PNM and EPE, expressed no preference between the choice of the Commission or a third party as administrator. However, as discussed below, SPS and PNM were in favor of administration by the utilities themselves.

27. KCEC commented in favor of a third-party administrator having responsibility for solicitation of project proposals, community outreach, verification of low-income eligibility, compilation of reports, and ongoing administration of the program. KCEC was in favor of the Commission, particularly Commission Staff, focusing upon handling complaints and enforcing standards. As for the utilities' responsibilities, they should include only administration of interconnection and the application of solar bill credits.

28. CLC commented in favor of an experienced third-party administrator having responsibility for the development of disclosure forms and agreements, while emphasizing the importance of using such an experienced third party for the selection of project proposals and the oversight of projects. CLC acknowledged that the Commission may lack sufficient funding as well as expertise in the administration of a community solar program. However, CLC suggested that the Commission identify low-income community outreach organizations and maintain a list of them on the Commission's website. CLC surmised that the utilities would not be interested in assuming administrative duties and added that, if they assumed such duties, potential conflicts of interest would be raised concerning bidding and access to customer information.

29. NEE similarly commented that a third-party administrator with expertise should have responsibility for the selection of projects. As for any funding issues, NEE recommended that the Commission seek a budgetary appropriation. Like CLC, NEE commented that utilities should not administer the program due to potential conflicts of interest, adding that utilities acting as administrators would send the wrong signal to communities otherwise interested in participating in the program.

30. Arcadia commented in favor of a third-party administrator having responsibility for recruiting subscribers and managing the customers' experience, suggesting itself for the position.

REIA commented in favor of a third-party administrator being compensated from fees paid by subscriber organizations, particularly emphasizing the need for an experienced third-party administrator's expertise to manage both the solicitation of and the scoring of project bids. Such an administrator would report to the Commission.

31. Other commenters had similar recommendations for a third-party administrator with limited duties, typically focused upon determining criteria for selecting projects and/or conducting the selection process. SVS and USSC commented in favor of a third party having responsibility for determining selection criteria, and SVS would add subscriber eligibility verification duties as well. YBS, on the other hand, would assign project selection to a third party but not subscriber outreach efforts. CCR was in favor of a third-party administrator that would oversee the program with regard to all three qualifying utilities but would itself be subject to the Commission's oversight.

32. PNM commented that the utilities themselves should administer only operational issues, including ensuring the reliability of facilities and managing the interconnection queue. SPS favored allowing each utility to administer the program in its territory, with each utility's administrative costs, including costs of compensating third parties, being reimbursed through a rate case with minimal Commission review. SPS strongly preferred that the utilities manage the process of solicitation of projects.

The Team's Recommendations

33. The Team recommends that the Commission adopt the Proposed Rule language quoted above for the Rule and additional language as provided in **Exhibit A**. This includes the addition of language clarifying that the Commission will have no involvement in the project selection process except to the extent that the administrator or any participant in the process may

raise before the commission an issue that is not fully addressed in this rule and that the commission finds, in its discretion, that it should address.

34. There was widespread support among the commenters for the Commission to employ a third-party administrator and widespread opposition to utilities administering the program.

The Commission's Decision

35. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

36. Regarding potential funding issues, the Commission notes that the comments were received while there was still uncertainty about the Commission's access to funding for administration of the program, and the comments reflect that uncertainty. The Commission subsequently secured funding for this purpose from the Legislature. Given the urgency involved in implementing the program, the Commission solicited proposals from and selected short-term contractors for community outreach identification and training, as well as for the development of request-for-proposal ("RFP") materials for subscriber organizations.

37. The Commission proceeded only with short-term contracts so as to retain flexibility in case the Commission decided, upon consideration of the comments, not to contract with a third-party administrator on a long-term basis. The Commission will conduct an RFP for a contract with a long-term administrator.

/ / /

Subject No. 2 - Consumer/Subscriber Protection

38. Regarding the Commission's consumer/subscriber[1] protection duties, the Act provides:

> **62-16B-7. Public regulation commission; enforcement and rulemaking.**
>
> A. The commission shall administer and enforce the rules and provisions of the Community Solar Act, *including regulation of subscriber organizations* in accordance with the Community Solar Act and *oversight and review of the consumer protections established for the community solar program*.
>
> B. The commission shall adopt rules to establish a community solar program by no later than April 1, 2022. The rules shall:
>
> . . .
>
> (7) *provide consumer protections for subscribers*, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures; [and]
>
> (8) provide a community solar bill credit rate mechanism for subscribers derived from the qualifying utility's total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and charges . . ..

NMSA 1978, § 62-16B-7(A), (B)(7) & (8) (italics added).

[1] The Commission interprets the term "consumer protection," as used in the Act, to refer to measures designed to protect *subscribers* as the Act expressly states that the consumer protections will be "for subscribers." NMSA 1978, § 62-16B-7(B)(7). as they will be the consumers of the energy to be produced in the community solar program. The provisions of the Act preventing or limiting subsidization of community solar costs by non-subscribing ratepayers are also consumer protection measures in a broader sense as, in most instances, all ratepayers are considered consumers. The Act, however, is understandably focused upon the protection of subscribers as a newly arising group facing new and unique challenges and potential problems.

39. The above subsection employs a specially defined term, "community solar bill credit rate," which is defined as:

> the dollar-per-kilowatt-hour rate determined by the commission that is used to calculate a subscriber's community solar bill credit.

NMSA 1978, § 62-16B-2(C). The above definition itself employs a specially defined term, "community solar bill credit," which is defined as:

> 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.

NMSA 1978, § 62-16B-2(B).

40. In addition to the subsections of Section 62-16B-7 quoted above, Section 62-16B-5 includes the following subscriber protection provisions:

> **62-16B-5. Subscription requirements.**
>
> A. A subscription shall be:
>
> (1) sized to supply no more than one hundred percent of the subscriber's average annual electricity consumption; and
>
> (2) transferable and portable within the qualifying utility service territory.

NMSA 1978, § 62-16B-5(A).

41. The above subsection employs two terms that are specially defined in the Act: "subscriber" and "subscription." The special definition of "subscriber" is stated above. "Subscription" is defined as:

> a contract for a community solar subscription entered into between a subscriber and a subscriber organization for a share of the nameplate capacity from a community solar facility.

NMSA 1978, § 62-16B-2(N).

42. In addition to the above quoted portions of Sections 62-16B-5 and -7, Section 62-16B-6 contains the following provisions that are clearly intended to protect subscribers:

> **62-16B-6. Community solar program administration.**
>
> A. A qualifying utility shall:
>
> . . .
>
> (2) apply community solar bill credits to subscriber bills within one billing cycle following the cycle during which the energy was generated by the community solar facility;
>
> (3) provide community solar bill credits to a community solar facility's subscribers for not less than twenty-five years from the date the community solar facility is first interconnected; [and]
>
> (4) carry over any amount of a community solar bill credit that exceeds the subscriber's monthly bill and apply it to the subscriber's next monthly bill unless and until the subscriber cancels service with the qualifying utility.

NMSA 1978, § 62-16B-6(A)(2), (3), & (4).

43. The Proposed Rule included the following language relevant to this subject matter:

> **17.9.573.16 SUBSCRIBER PROTECTIONS:** The commission will issue a uniform disclosure form, or set of forms, identifying the information to be provided by subscriber organizations to potential subscribers, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures.
>
> **17.9.573.17 SUBSCRIBER AGREEMENTS:** Each subscriber organization shall develop and implement a written subscriber agreement containing the organization's terms and conditions for subscribing to its project.
>
> A. The subscriber agreement must include the following terms, at a minimum:
>
> (1) general project information;
> (2) the effective date and term of the agreement;
> (3) identification of all charges and fees;
> (4) payment details;
> (5) information about the bill credit mechanism;

(6) a comparison of the subscriber's net bill with and without the subscription;
(7) the terms and conditions of service;
(8) the process for customer notification if the community solar facility is out of service;
(9) the customer protections provided;
(10) contact information for questions and complaints; and
(11) the subscriber organization's commitment to notify the subscriber of changes that could impact the subscriber.

B. The commission may consider additional required terms in a future proceeding.

[Proposed Rule, 17.9.573.16 & .17.]

44. The Additional Issues included the following issues relevant to this subject matter:

Consumer Protection

a. The Proposed Rule in Section 17.9.573.17 establishes a set of elements that should be clearly disclosed to Community Solar project Subscribers. Is this list complete? Are there elements that should be added? Are there elements that are unnecessary?

b. Should the PRC pre-approve the terms of Subscriber Agreements (excluding subscription fees charged to customers) described in 17.9.573.XX?

c. Aside from the dispute resolution provisions included in the Subscriber Agreement, what should the enforcement mechanism be for ensuring that Subscribers are protected?

d. Should the Commission require Community Solar project developers/Subscriber Organizations to post proof of insurance or a surety bond to cover unexpected disruptions to delivery, or bankruptcy/termination of projects?

e. If so, what is an appropriate level of coverage for such bonding?

[Additional Issues, first page.]

Comments Relevant to Consumer Protection - Sets (a) (re disclosures to subscribers) and (b) (re pre-approval and terms of subscriber agreements)

45. Regarding Commission pre-approval of subscriber agreements, Staff recommended that "a template for subscriber agreements be created that will standardize a format for subscriber organizations to provide at least the minimum content described in 17.9.573.17(A) to consumers."

46. CCSA commented that the Commission should avoid regulating the private contract between subscribers and subscriber organizations. CCSA argued that such regulation would be "unduly onerous, contrary to the Community Solar Act, and far beyond what other regulators do in existing and functional community solar programs."

47. The three qualifying utilities were in favor of Commission pre-approval of agreements and generally favored more extensive regulation of subscriber organizations, as described below.

48. KCEC also commented in favor of Commission preapproval of the terms and conditions of subscriber agreements and provided proposed language to add to subpart 17.9.573.17 of the Proposed Rule requiring that any written subscription agreement offered by a subscriber organization be pre-approved by the Commission.

49. CLC commented that Commission preapproval should not be necessary if the Commission modifies the Proposed Rule to provide that subscriber agreements that materially depart from "disclosure form terms" will be deemed unreasonable.

50. REIA commented that community solar programs in other states typically don't have a preapproval requirement, instead establishing basic requirements for residential (i.e., consumer) subscription agreements. and may require operators to file a copy of their basic residential subscription with the Commission upon the Commission's request (e.g., in the event of a consumer complaint). Comments at 10.

51. Regarding required disclosures and terms in subscription agreements, Staff commented that subpart 17.9.573.17(A)(6) of the Proposed Rule should be clarified by modifying it to read: "a comparison of the subscriber's net bill with and without the subscription in the current year using actual rates currently in place by the appropriate interconnected utility."

52. Staff also recommended adding the following to the list in subpart 17.9.573.17(A) of the Proposed Rule:

> (12) Anticipated in-service date of project (Subscriber Organizations should provide updates to pre-enrolled subscribers at least every three months until operation begins; updates should summarize any delays, changes to schedule, and the impact of any deviations from the original schedule to subscribers);
>
> (13) Subscription price and escalator if applicable;
>
> (14) Early termination fees or cancellation terms;
>
> (15) Explanation of roles of parties, who to contact for what, and contact information;
>
> (16) Portability of subscription within service territory and process for doing so; and
>
> (17) Guaranteed subscriber savings (if applicable)

53. CCSA commented that the Commission should adopt best practices from states that have community solar programs in place. This would not include regulation of the contracts between subscriber organizations and subscriber, which, CCSA commented, would not be authorized by the Act. CCSA argued that the Act limits the Commission's authority in this area to the development of a "uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber." NMSA 1978, § 62-16B-7(A).

54. CCSA acknowledged that the Act includes "two discrete requirements for all subscriber agreements [at Section 62-16B-5(A)], prescriptive regulation of all terms within all subscriber agreements is beyond the Commission's statutory authority under the Act." CCSA added that no other jurisdiction that operates a similar community solar program requires pre-

approval of subscriber agreements as contemplated by the Proposed Rule. CCSA further commented that "[p]rescriptively regulating subscriber agreements would also likely discourage private financing of community solar projects," which would be contrary to the Act's admonition to the Commission to "reasonably allow for the creation, financing and accessibility of community solar facilities." NMSA 1978, § 62-16B-7(B)(9).

55. With regard to the uniform disclosure form, CCSA recommended that the Commission modify the subscription agreement requirements in the Proposed Rule for inclusion on a disclosure form and to "reflect the actual nature of the relationship between subscribers and subscriber organizations." CCSA commented that the form should address "grievance and enforcement procedures," cancelation and transferability of subscriptions, the possibility that solar bill credits may change over time, and an estimate of the anticipated savings.

56. PNM commented that subscription agreements should specify which problems and questions should be addressed to subscriber organizations and which should be addressed to utilities. PNM added that the agreement should clarify that the utility would be responsible only for responding to complaints pertaining to the solar bill rate credit mechanism or the community solar bill rider and that the utility would not be responsible for responding to complaints regarding the administration of the program on behalf of the Commission or others.

57. SPS commented that the Proposed Rule would leave "consumers unprotected from unfair, deceptive, discriminatory, and inappropriate marketing practices." SPS commented that the Proposed Rule "does not actually provide any consumer protections," instead stating that the Commission will issue a disclosure form at some unspecified future date and requiring the subscriber organizations to develop agreements covering basic contract terms.

58. SPS referenced issues that one state, with a restructured retail electric service market, addressed through regulation when it was starting up a community solar pilot program. SPS recommended that the Commission regulate: (1) who is marketing to consumers; (2) how they are marketing to consumers; and (3) how consumers can receive help from the Commission. SPS pointed to Maryland as a model, noting that Maryland's rules for its community solar pilot program address "nineteen important substantive issues, nearly all of which are entirely unaddressed" in the Proposed Rule. These include: 1. Unauthorized Subscriptions, 2. Advertising and Solicitation Practices, 3. Subscriber Organization Creditworthiness Practices, 4. Geographic Marketing Practices to Prevent Economic Discrimination, 5. General Discrimination Prohibitions, 6. Required Disclosures, 7. Minimum Contract Requirements and Other Contract Parameters, 8. Share Transfers and Portability, 9. Disclosure of Subscriber Information, 10. Handling of Subscription Fees, 11. Notice of Contract Expiration or Cancellation, 12. Assignment of Subscription Contracts, 13. Subscription Dispute Handling, 14. Subscriber Organization Responsibility for the Actions of Its Agents, 15. Agent Qualifications and Standards, 16. Agent Training, 17. Agent Identification and Misrepresentation, 18. Door-to-Door Sales, and 19. Notifications Regarding Door-to-Door Activity. SPS commented that Maryland's requirement that marketers be licensed provides "some initial screening against marketers who have already hurt customers through unfair trade practices in other jurisdictions." SPS urged the Commission to adopt a level of consumer protection at least as stringent as that adopted in Maryland, and recommends going beyond that level as "New Mexico's consumers are otherwise unprotected from inappropriate marketing practices."

59. SPS included recommended Rule language including provisions addressing a variety of consumer protection issues not including the provisions adopted in Maryland, which SPS also recommended for incorporation into the Rule.

60. EPE rejected CCSA's contention that the Act limits the Commission's authority in this area such that the Commission can prescribe the language of only the standard disclosure form. The Act, according to EPE, gives the Commission broad authority to provide consumer protections for subscribers, with the standard disclosure form being only one measure that is to be "include[d]" among consumer protections provided by the Commission. NMSA 1978, § 62-16B-7(B)(7)

61. Regarding complaint and enforcement procedures, EPE recommended that the Commission establish a complaint process to resolve disputes between subscribers and subscriber organizations. EPE further recommended that the subscription agreement include a requirement that subscribers and subscriber organizations engage in mediation or other dispute resolution processes. EPE recommended that the Commission adopt a standard complaint form.

62. EPE also expressed its disagreement with CCSA's argument that the Act does not provide the Commission with "formal complaint and enforcement authority" over subscriber organizations. EPE commented that the Act expressly requires the Commission to adopt rules that provide for: (1) consumer protections for subscribers, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous language, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant and other relevant but reasonable information pertaining to the subscription, and (2) grievance and enforcement procedures. NMSA 1978, §62-16B-7(B)(7). EPE commented that "[t]he specific grant of authority to the Commission to adopt rules establishing

grievance and enforcement procedures would be superfluous if the Commission's authority was restricted to referring subscribers to the appropriate government agency with authority over consumer actions against private companies."

63. EPE recommended that the Commission add rule language "to ensure that subscriber organizations and other Community Solar stakeholders who run afoul of consumer protections cannot evade Commission sanctions simply by forming new affiliates."

64. CLC clarified the functions of and recommended content for a standard subscription agreement and for a uniform disclosure form. CLC commented that the form need not and should not cover all of the terms of the subscription agreement.

65. CLC recommended that the disclosure form present information in three main areas: "(1) an explanation of what a community solar subscription is; (2) a comparison of the costs to the customer under utility service and the net costs to the customer as a community solar subscriber, as well as the guaranteed savings offered by the subscriber organization, if any; and (3) a summary of the 'key contract terms' in non-technical language as briefly as possible." CLC added that the disclosure form should provide cross-references to the more detailed relevant provisions of the subscriber agreement. CLC commented that the list of subscriber agreement terms listed in Proposed Rule 17.9.573.17 is "a good starting point for the information that should be included in the disclosure form described more generally in Proposed Rule 17.9.573.16."

66. CLC recommended that the form should "educate[] subscribers or potential subscribers about their rights, obligations, and risks as community solar participants." CLC recommended beginning with a concise description of the nature of community solar in New Mexico generally, followed by a description of the particular community solar project, then a

description of costs and benefits, and finally, a description of how the subscriber will receive those costs and benefits.

67. CLC further commented that "[t]he most important disclosures have to do with comparing the subscriber's net utility bill, with and without the charges and credits associated with the community solar subscription." For this purpose, CLC was wary of comparisons based on an "average" customer's savings, which can be misleading. CLC recommended disclosure of the "fluctuating seasonal impact of the community solar subscription on utility bills generally and also should be advised of the possibility that the customer's own usage patterns—daily, monthly, seasonally, and yearly—will affect the results that the customer realizes."

68. CLC commented in favor of extensive disclosures concerning limitations on termination of subscriptions. CLC recommended that the Commission require subscription agreements to be terminable at the subscriber's option, with no penalties of any sort, upon notice to the subscriber of bankruptcy or a change in ownership of the community solar facility or a change in the costs or charges from the subscription organization to the subscriber not quantified in the subscriber agreement.

69. Noting that the Proposed Rule included "guaranteed savings" in two of the community solar project bid evaluation criteria, under Proposed Rule 17.9.573.13(D)(1)(a), (D)(2)(b) NMAC, CLC recommended that subscriber organizations be required projected future costs and benefits in subscription agreements. CLC argued that "subscriber organizations have knowledge of the economics of their community solar projects and the ability to structure their subscriber agreements in ways that facilitate such savings guarantees."

70. CLC further recommended that subscriber agreements be required to address the subscriber organization's policies on privacy and data sharing.

71. YBS commented that the Commission should not require a bill comparison on a personalized basis, but an example bill comparison should be allowed at the subscriber organization's option. YBS argued that a requirement to compare each individual bill will be overly burdensome and expensive.

The Team's Recommendations

72. The Team recommends that the Commission adopt the relevant language of the Proposed Rule with ten additional items for disclosure for subpart 17.9.573.16, elaborating upon the "key contract terms" to be disclosed: Subscription Size (kW DC), Estimated Contract Effective Date, Contract Term (months or years), Option to Renew Y/N?, Enrollment Costs/Subscription Fees, Payment Terms, Rate Discount, Estimated One Year Payments, Early Termination Fees or Cancellation Terms, and Subscription Portability or Transferability.

73. Attached as **Exhibit B** hereto is a Subscriber Information Disclosure Form that the Team recommends for adoption by the Commission. If adopted by the Commission, this form would be the English version of the uniform disclosure form that Section 62-16B-7(B)(7) of the Act directs the Commission to adopt for mandatory use by subscriber organizations.

74. The extensive requirements for subscription agreements and the extensive regulation of subscriber organizations recommended by the utilities are beyond the ability of the Commission to enforce effectively, particularly considering the Commission's strained resources. To the extent that such recommendations would have the Commission dictate the terms of the subscriber agreements, they imply a role for the Commission that is more extensive than the Commission envisions under the Act. Though the Commission agrees with EPE's comment that the uniform disclosure form is just one form of consumer protection available to the Commission, the Commission does not believe that the Legislature intended for the Commission to extend its

regulatory reach far beyond disclosure requirements and establish an extensive regulatory regime for subscriber organizations.

The Commission's Decision

75. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Consumer Protection - Set (c) (re enforcement of subscriber agreements)

76. Staff commented that, if the Commission determines that a subscriber organization is acting in bad faith, is failing to comply with the Rule, or has been identified for performance related issues, then the subscriber organization should be placed on "disciplinary probation." Staff's conception of disciplinary probation was as "a status wherein the Subscriber Organization is required to report to the Commission, or the Commission appointed program administrator, on a monthly basis, the steps that they are taking to address the issues that resulted in their probation." Staff added that failure to adequately address the issues should result in revocation of the subscriber organization's permission to operate.

77. Staff further commented that, if a subscriber organization "has engaged in misleading or deceptive marketing practices or violated any other federal, state or local laws regarding truth in advertising, consumer protection, contracts, contractor licensing or building and electrical codes, the Commission should reserve the right to refer these instances of misconduct to the New Mexico Attorney General (the "AG"), consumer protection groups, or other state and local authorities."

78. PNM added that the agreement should clarify that the utility would be responsible only for responding to complaints pertaining to the solar bill rate credit mechanism or the

community solar bill rider, not complaints regarding the administration of the program on behalf of the Commission or others.

79. SPS added that the Commission should establish a clear framework for receiving and handling consumer complaints, including the participation of the Attorney General's office. Similarly, CCSA recommended mediation of informal complaints, with referral of formal or unresolved complaints to the AG.

80. EPE recommended that the Commission establish a complaint process to resolve disputes between subscribers and subscriber organizations. EPE further recommended that the subscription agreement include a requirement that subscribers and subscriber organizations engage in mediation or other dispute resolution processes. EPE recommended that the Commission adopt a standard complaint form.

81. EPE also expressed its disagreement with CCSA's argument that the Act does not provide the Commission with "formal complaint and enforcement authority" over subscriber organizations. EPE commented that the Act expressly requires the Commission to adopt rules that provide for: (1) consumer protections for subscribers, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous language, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant and other relevant but reasonable information pertaining to the subscription, and (2) grievance and enforcement procedures. NMSA 1978, §62-16B-7(B)(7). EPE commented that "[t]he specific grant of authority to the Commission to adopt rules establishing grievance and enforcement procedures would be superfluous if the Commission's authority was

restricted to referring subscribers to the appropriate government agency with authority over consumer actions against private companies."

82. EPE recommended that the Commission add rule language "to ensure that subscriber organizations and other Community Solar stakeholders who run afoul of consumer protections cannot evade Commission sanctions simply by forming new affiliates."

83. KCEC commented that, to the extent a subscriber organization fails to meet the specific subscription allocations established under the Act, the subscriber organization should be deemed to have forfeited its ability to manage the project. KCEC further commented that the Commission should exercise its authority to disqualify any subscriber organization that fails to comply with the Rule.

84. CLC recommended that the Commission integrate its dispute resolution rule provisions into the Rule.

85. NEE commented that the Commission should encourage mediation, but also recommended that the Commission include in the Rule an option to impose fines upon findings of fraud or other unfair business practices by subscriber organizations.

86. YBS recommended a process that begins with informal dispute resolution followed by binding arbitration should informal efforts fail.

The Team's Recommendations

87. The Team recommends that the Commission accept informal complaints by subscribers against subscriber organizations for informal dispute resolution by the Commission's Consumer Relations Division. The Team further recommends referral of serious issues to the AG for enforcement.

88. The Team recognizes that the Act provides to the Commission only limited authority over subscriber organizations. The Team's recommended approach to grievance and enforcement procedures is consistent with the Team's recommendations, above, for a regulatory regime for subscriber organizations that focuses upon disclosure and refrains from micromanagement of the relationship between the subscriber organization and the subscriber.

89. Providing an informal dispute resolution forum through the Commission's Consumer Relations Division is consistent with the Team's understanding of the Commission's role in regulating subscriber organizations. The Team anticipates that most disputes will be able to be resolved through such means.

90. The Team's recommendations would include an important enforcement role for the Commission in that the Commission would determine which grievances were sufficiently "serious" to be referred to the AG for enforcement proceedings. The Commission may consider an issue to be sufficiently serious based upon, for example, the degree of harm to the complaining subscriber(s), the potential for harm to other subscribers, and the importance of the issue for the overall success of the program. The AG's role and expertise as a consumer advocate are well suited to vindicating the rights and interests of subscribers vis-à-vis subscriber organizations.

91. The Team's recommendations are also consistent with the Commission's limited resources and substantial array of regulatory duties. Commenter recommendations such as including "binding arbitration" as an option are not practical for the Commission as the Commission does not itself have sufficient personnel to provide such services and lacks the financial ability to contract with a provider of such services.

92. Concerning the recommendation that the Commission clarify that complaints against utilities under the Act are limited to issues concerning solar bill credits, the Team does not

recommend that such language be included in the Rule. The Team concurs in the understanding that solar bill credit issues appear to be the only new issues presented by the Act that may give rise to complaints against the utilities. However, the Team does not believe that additional rule language is needed as the solar bill credit will be the only new item to appear on subscribing ratepayers' bills as a result of the Act. There is thus no reason to expect that subscribing ratepayers will bring inappropriate complaints against utilities based upon a misunderstanding of the utility's role under the Act. Moreover, such complaints should be treated procedurally as any other ratepayer billing complaint against the utility, subject to the Commission's existing complaint procedures under the Commission's Rules of Procedure, 1.2.2 NMAC. Therefore, the Team recommends that the Rule address only the procedures for complaints against subscriber organizations.

The Commission's Decision

93. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Consumer Protection - Sets (d) (re insurance/bonding) and (e) (re amount of insurance/bonding requirement)

94. Staff commented that "requiring subscriber organizations to post proof of insurance or a surety bond to cover disruptions to delivery, or bankruptcy/termination of projects could be beneficial to ensuring positive outcomes for all stakeholders." Staff commented that it was unsure of the appropriate requirements to recommend to the Commission. Instead, Staff provided a table of precedents set in the New Mexico Interconnection Rule 17.9.568.14 as well as requirements implemented for community solar developers in Maryland and Minnesota. The Interconnection Rule and the Maryland community solar pilot program rules structure their insurance provisions

as limits upon what the interconnecting utility may demand, with $1,000,000 in coverage being the upper limit in both instances. The Minnesota example is from Xcel Energy's requirements for interconnecting facilities. Xcel Energy requires that subscriber organizations carry a minimum of $300,000, $1,000,000, or $2,000,000 in coverage, depending on the size of the facilities.

95. CCSA commented that no insurance or bonding should be required of subscriber organizations beyond what is required in applicable interconnection requirements. CCSA further commented that, under outmoded subscription models, such insurance/bonding may have been necessary as "the community solar project essentially sold a block of capacity to subscribers in exchange for an upfront payment." Subscribers would then reap the benefits of the project over time, bearing the risk of the project's failure to perform as desired. Under the currently prevalent subscription model, "pay for performance," the developer bears the risk of project failure. CCSA further commented that the subscriber organization "is fully incentivized to keep the system operational, as revenue is reduced when the system is down and the owner will lose money until it is operational again."

96. PNM commented that subscriber organizations should meet the financial security and insurance requirements of the Federal Energy Regulatory Commission's ("FERC") small generator interconnection process ("SGIP") at Section 6.3 and 8.1.

97. SPS commented that there should be insurance/bonding requirements and the Commission should also require subscriber organizations to pay into an escrow account for decommissioning of their facility. SPS added that utilities should not be left to deal with legacy community solar facilities on their systems. SPS recommended requiring coverage providing for $2 million per occurrence for a facility is greater than 250 kW, $1 million per occurrence if between 40-250 kW, and $300,000 per occurrence if rating is less than 40 kW.

98. EPE commented that each subscriber organization should be required to carry insurance sufficient to repay all subscribers all or part of payments if project taken out of service.

99. KCEC, in its redlined recommended revisions to the Proposed Rule, including a bonding requirement, though the amount was unspecified.

100. CLC commented that the "requirement should extend beyond the situations specified in Question 2(A)(d), however … the required insurance or bonding must be sufficient to cover the costs of decommissioning of a community solar facility."

101. NEE commented that Commission should require insurance or a surety bond based on project size and a designed schedule of fees.

102. SVS commented that this issue should be covered by maturity requirements for projects to be selected.

103. YBS commented that no insurance or bonding beyond the standard $1,000,000 level should be required as this would improperly favor larger, out-of-state companies.

The Team's Recommendations

104. The Team recommends that the Commission require subscriber organizations to carry insurance. The required amounts of coverage should be included in a graduated schedule of required amounts depending upon the size of project, but no greater than $1 million in total coverage.

The Commission's Decision

105. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

/ / /

Subject No. 3 - Ratemaking

106. Regarding the ratemaking issues associated with the community solar program, the Act provides:

> **62-16B-6. Community solar program administration.**
>
> A. A qualifying utility shall:
>
> . . .
>
> (2) apply *community solar bill credits* to subscriber bills within one billing cycle following the cycle during which the energy was generated by the community solar facility;
>
> (3) provide *community solar bill credits* to a community solar facility's subscribers for not less than twenty-five years from the date the community solar facility is first interconnected;
>
> (4) carry over any amount of a *community solar bill credit* that exceeds the subscriber's monthly bill and apply it to the subscriber's next monthly bill unless and until the subscriber cancels service with the qualifying utility; and
>
> (5) on a monthly basis and in a standardized electronic format, provide to the subscriber organization a report indicating the total value of community solar bill credits generated by the community solar facility in the prior month as well as the amount of the community solar bill credits applied to each subscriber.
>
> B. A subscriber organization shall, on a monthly basis and in a standardized electronic format, provide to the qualifying utility a list indicating the kilowatt-hours of generation attributable to each subscriber. Subscriber lists may be updated monthly to reflect canceling subscribers and to add new subscribers.
>
> C. If a community solar facility is not fully subscribed in a given month, the unsubscribed energy may be rolled forward on the community solar facility account for up to one year from its month of generation and allocated by the subscriber organization to subscribers at any time during that period. At the end of that period, any undistributed bill credit shall be removed, and the unsubscribed energy shall be purchased by the qualifying utility at its applicable avoided cost of energy rate as approved by the commission.

NMSA 1978, § 62-16B-6(A)(2), (3), & (4), (B) & (C) (italics added). The community solar bill credit, specially defined as stated above, will be a subscriber benefit that will affect the amounts

paid to the qualified utility by subscribers. The credit will thus be a component of the rates that subscribers pay and will impact the overall rate structure of the qualified utility.

107. Among the rulemaking requirements in Section 62-16B-7 are that "[t]he rules shall" accomplish the following:

. . .

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

NMSA 1978, § 62-16B-7(B)(8).

108. The subsection above employs a specially defined term, "total aggregate retail rate," which is defined as:

> the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills.

NMSA 1978, § 62-16B-2(O).

109. The Proposed Rule included the following language relevant to this subject matter:

> **17.9.573.20 SOLAR BILLING CREDITS:**
> A. A utility's solar bill credit formula must not deduct utility transmission costs.

B. A utility's formula may incorporate the net present value of renewable energy certificates (RECs) as part of the valuation of renewable energy attributes over the period for reaching the mandated 80% renewable portfolio standard by 2030, including full environmental and distribution benefits.

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

[Proposed Rule, 17.9.573.20 and .21.]

110. The Additional Issues included the following issues relevant to this subject matter:

Ratemaking

a. In establishing the Solar Bill Credit to be applied to Subscriber's monthly bills, should the Commission in the Rule specify the credit calculation for every class of ratepayer eligible to subscribe to a Community Solar project?
b. Alternatively, should the Rule simply establish the methodology for calculating the Solar Bill Credit and direct the Utilities to subsequently file tariffs for each eligible class of ratepayers for Commission approval?
c. Should the Solar Bill Credit be based on an average for all periods of the day, or refined to a methodology that incorporated Time of Use rates?
d. The language of the Community Solar Act may be interpreted as including transmission cost component of the Total Average Retail Rate (TARR) in the calculation of the Solar Bill Credit. The utilities have stated their position that transmission costs should be excluded from the Credit, as they are part of the cost of delivering electricity during periods when Community Solar projects are not generating electricity.
e. What should be the Commission's policy on including or excluding all or a portion of transmission costs in the Solar Bill Credit?
f. The Community Solar Act includes a provision for the Commission to establish an application fee to be collected from Subscriber Organizations to help defray the costs of administering the program, but did not include a mechanism for the Commission to access those funds.
1. Should the Commission establish a fee that attempts to recover the majority of program costs at a level of $2500 per MW of capacity?
2. 2. Or should the application fee be set at a level that only covers processing costs, approximately $500 per project?

g. Should the Commission allow Cost Allocation alternatives for distribution upgrades necessary to accommodate Community Solar projects determined to be in public interest with showing of system benefits under the criteria described in the Grid Modernization Act of 2019?
h. Should it be the Commission's policy that such allowed costs are not considered a subsidy of Community Solar projects subject to the 3 percent limitation on cross subsidization?
i. Are there other categories of costs incurred by Subscriber Organizations that may be recovered in rates that should not be subject to the 3 percent limitation on cross-subsidization?

[Additional Issues, first page.]

Comments Relevant to Ratemaking Issues – Sets (a) (Commission provides specific credit calculations) and (b) (Commission provides only methodology)

111. Staff commented that the Commission should provide only the methodology for calculating credits, not specific credit calculations. Staff further commented that the Commission should require utilities to file tariffs for the credits.

112. CCSA commented that the Commission should establish "clear and simple calculations." Further, the Commission should calculate the total aggregate retail rate ("TARR") but leave the calculations of the credits to the utilities, which should be filed for Commission review.

113. PNM commented that the utilities should determine their own methodologies for calculating the credits, with the calculations performed after specific project bids have been selected.

114. SPS and EPE agreed that the Commission should not calculate credit amounts but, as EPE commented, "should provide guidance that is 'prescriptive enough' for IOUs to streamline tariff development." REIA favored this approach as well.

115. KCEC agreed with the other commenters recommending that the Commission adopt the methodology of calculation that the utilities would then use to calculate the credits. CLC added that impractical to set the credit amounts in the Rule.

116. YBS commented in favor of the Commission calculating the credit amounts according to a complex, four-part methodology YBS recommends. YBS further recommends that the Commission initially calculate the credits itself, and later require utilities to file tariffs. CCR concurred in this approach.

117. CLC also recommended that the Commission provide the methodology for the calculations but allow the utilities to calculate the payments and require the utilities to file tariffs.

The Team's Recommendations

118. The Team recommends that the Commission establish the credit methodology and the schedule according to which the utilities should update their credit calculations. The Team further recommends that the Commission order the utilities to file tariffs for the credits.

119. The Team recommends that the credit methodology be specified in subpart 17.9.573.20 of the Rule, following the formula specified in the Act. In addition, the language of this subpart should clarify that customer charges and transmission costs should not be subtracted from the TARR.

120. Subpart 17.9.573.9 of the Proposed Rule required the utilities file all tariffs and other filings needed for implementation of the program within 60 days of the effective date of the Rule.

121. The Team further recommends that the credit tariffs need to identify all classes of customers eligible to subscribe to the Community Solar program as specified in the Act. NMSA 1978, § 62-16B-2(L).

122. The Team further recommends that the Commission adopt Staff's related recommendations for the process of review and approval of these SBC tariffs, giving the Commission the option of adjusting the SBC if it finds the credit is "not adequate to reasonably allow for the creation, financing and accessibility of community solar facilities."

The Commission's Decision

123. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Ratemaking Issues – Set (c) (credit based on daily average or accounting for time-of-day rate peak and off-peak periods)

124. Staff recommended that the Commission require that the credit be based upon an average for all periods of the day. Staff commented that this approach "is likely to be the simplest means of providing a rate that is both easy to understand for consumers and easy to implement for utilities and Subscriber Organizations." Staff further commented that adopting "a straightforward and simple method in calculating the Solar Bill Credit will make it easier to implement and evaluate the Community Solar program in a timely fashion and to make better recommendations for the program's continuance beyond 2024."

125. CCSA commented the Commission should avoid "intricate rate design," but if the Commission chooses an alternative to average cost, that alternative should capture the value of on-peak solar production.

126. PNM commented that there would be significant development costs to integrate a time-of-day ("TOD") rate structure into the credit. SPS also opposed the integration of time-of-day rates into the credit, commented that major components of the credit calculation are not time dependent. EPE concurred, recommended that the methodology use only one per-kwH rate.

127. KCEC commented in favor of incorporating TOD rates, recommending that the Commission use the TOD rates already adopted by the Commission in previous rate cases.

128. CLC opposed the incorporation of TOD rates at this time, commenting that "perhaps someday" there will be sufficient information and experience collected to allow for a "more refined methodology."

129. REIA commented that the Act requires that the credit account for the "value of renewable energy attributes," and so the credit should recognize on-peak value of the solar energy.

130. YBS recommended that the decision be left to the utilities, but they should be required to provide justification for the decision and should be required to develop TOD rates down the road.

The Team's Recommendations

131. The Team recommends that the Commission adopt a methodology for the credit calculation that is based upon average daily rates, not TOD rates, as the latter would be difficult to administer.

The Commission's Decision

132. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Ratemaking Issues – Set (d) (inclusion of transmission costs in credit) and (e) (policy concerning inclusion of transmission costs)

133. Staff commented in favor of the inclusion of transmission costs in the solar bill credit. Staff further commented that the Act was well considered in the Legislature, and transmission costs are not expressly excluded from the credit, indicating an intent that they be included.

134. CCSA concurred in Staff's assessment of the meaning of the Legislature's silence regarding transmission costs. CCSA distinguished transmission costs from distribution costs, which are expressly excluded from the credit. CCSA commented that the Act excludes "distribution cost components" from the credit because community solar facilities are required to interconnect to the distribution grid (not the transmission grid) and therefore rely on distribution infrastructure to transport energy. CCSA further commented that, by excluding only distribution costs, the Legislature made unambiguously clear that other costs, e.g., transmission costs, are not reasonably attributable to community solar customers. CCSA concluded that the Legislature excluded only "distribution cost components" from the credit and that the plain meaning of that term does not include transmission costs. CLC, YBS, CCR, and REIA concurred in this construction of the Act.

135. The three qualifying utilities were united in the opinion that transmission costs should be excluded from the credit. PNM commented that they should be excluded because community solar subscribers will use transmission infrastructure. PNM went on to comment that, if transmission costs are not deducted from the credit, then such amounts should be considered a subsidy of community solar subscribers by non-subscriber ratepayers. SPS commented that transmission is a part of the cost of delivering energy when community solar projects are not producing. EPE commented that the Commission should exclude transmission costs from the credit because community solar projects do not defray transmission costs.

136. KCEC, like the utilities, opposed including transmission costs in the credit. KCEC further commented that the credit should exclude debt costs and tribal right-of-way costs.

/ / /

The Team's Recommendations

137. The Team recommends that the Commission not subtract transmission costs from the TARR or the solar bill credit (the "SBC"). This issue is perhaps the point of greatest contention between utilities, on the one hand, and subscriber organizations and other commenters, on the other hand. The Team concurs in REIA's interpretation of the Act, particularly with the point that the express exclusion of distribution costs from the credit renders the Legislature's silence on transmission costs a clearly intentional omission, and thus, indicates an intent not to exclude transmission costs.

138. The Team recommends that the Commission also reject any attempt by the utilities to levy a charge on subscribers to cover energy used during times of day when the facility is not generating. The imposition of such a charge would violate the intent of the Act to allow customers to secure the equivalent of all of their energy consumption via their subscription.

139. The Proposed Rule included a provision allowing for evaluation of the environmental attributes of renewable energy certificates ("RECs") projected into the future as part of the SBC formula in subpart 17.9.573.20(B). No one commented on this aspect of the methodology. Utilities' preliminary SBC methodology indicates a uniform use of the estimated cost of meeting RPS current commitments (~0.08 cents/kWh) although this is not fully reflective of environmental attributes of RECs as construed by other jurisdictions. This approach also fails to account for potential changes in REC value with increased RPS requirements.

140. The Team recommends that this Order and the Rule specify the SBC methodology in precise terms, making sure that the TARR includes a fuel factor and excludes monthly customer charges and transmission costs in the distribution deduction. Periodic updates to the TARR and the SBC should help refine the accuracy of the rates. These updates to the SBC should attempt a

more precise calculation of the value of the environmental attributes of RECs, particularly as the utilities' RPS commitments increase to meet statutory requirements. At this time, however, the Commission should accept the utilities' estimated value for RECs of $0.008/kWh.

141. The Team recommends that the Rule, at 17.9.573.20(E), include a provision requiring that the utility initially value the environmental attributes of renewable energy certificates (RECs) at the utility's average cost of meeting its renewable portfolio standard requirement (which is currently the $0.008/kWh figure). The Team recommends that the Rule specify that each utility will be allowed to use this provision for an initial period ending at the conclusion of the utility's next base rate case, during which the Commission will have considered whether to adopt a replacement methodology to determine the utility's net present value of the environmental attributes of RECs necessary to reach the mandated 80% renewable portfolio standard by 2040.

The Commission's Decision

142. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Ratemaking Issues – Set (f) (application fee of $2500 or processing fee of $500)

143. Staff recommended that the Commission charge an application fee of "at least" $2500 for the first MW and $5,000 for each additional MW. Staff commented that higher fees for larger projects are unlikely to deter well-financed companies.

144. CCSA recommended that the utilities pay for any third-party administrative costs of the program. CCSA provided a detailed schedule of options for quite substantial fees for application, project fees, and program costs.

145. PNM commented that $2,500 may be too low of an application fee. PNM recommended that the Commission should determine the cost of administering the program and base the fee upon that determination. SPS concurs with PNM and with the Proposed Rule that subscriber organizations should pay the administrative costs of the program.

146. REIA recommended that the application fee should be paid directly to the third-party administrator to avoid the Act's requirement that the Commission turn the funds over to the Legislature. As an alternative, REIA recommended $25/kW for refundable security deposit, up to $125,000 per 5 MW, paid directly to the utility, due 30 days from bid selection, refunded if voluntarily cancelled/full execution of interconnection agreement.

147. YBS recommended that the application fee be prorated down for small projects e.g., $125 = kW.

148. CCR recommended a security deposit in the amount of $50/kW.

The Team's Recommendations

149. The Team recommends that the Commission adopt a $1000 non-refundable bid application fee, due and payable to the Commission upon submission of a response to the community solar program RFP solicitation. Payment of the bid application fee would be a prerequisite for consideration of a project for selection.

150. The Team further recommends that the Commission adopt an application fee in the amount of $2500/MW, due and payable to the Commission within 30 days of a project's selection. The $2500/MW application fee is separate and distinct from any fee that the subscriber organization will be required to pay the utility for interconnection studies or necessary grid upgrades.

151. The Team notes that, when the initial comments were filed, it was uncertain if and how the Commission would be able to access funding to administer the program. Accordingly, some commenters proposed an alternative "program fee" structure. For instance, CCSA suggested that subscriber organizations pay the fee directly to the utilities, which would then pay for the program administrator. However, the budget adopted in the most recent legislative session will allow the Commission to retain up to $500,000 derived from application fees, so the administrative funding issue is likely resolved. Whether $500,000 will be sufficient, however, is still unknown, and the Commission may have to return to the Legislature in the future to request additional funding for this purpose.

152. Staff recommended a graduated fee ($1000 for first MW and $5000 for each additional MW of capacity), which could potentially raise the expected fee revenues to $800,000. There is little reason to charge an application fee that results in excess revenues which would be unavailable for administrative purposes at this time. The fee should be due and payable to the program administrator within 30 days of a project's selection in the competitive RFP solicitation.

The Commission's Decision

153. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Ratemaking Issues – Sets (g) (cost allocation for grid modernization projects) and (h) (costs of grid modernization as subsidization)

154. Staff recommended that the Commission allow cost allocation alternatives for distribution upgrades to accommodate community solar projects determined to be in public interest upon findings of system benefits under the criteria described in the Grid Modernization Act of 2019. Staff commented that, insofar as any upgrades are found to be in the public interest and

would be qualifying projects under the Grid Modernization Act, they should be considered for appropriate cost allocation alternatives on a case-by-case basis.

155. CCSA commented that it was very supportive of the Commission's "creative solution," and recommended that the Commission establish clear processes in the Rule for subscriber organizations to take advantage of cost sharing for projects benefiting the grid.

156. CCSA recommended that, for any distribution upgrades that benefit the grid pursuant to the criteria of the Grid Modernization Act, the general approach to cost recovery should be through the utilities' rate bases. CCSA commented that assigning costs to specific rate classes would be "unnecessarily complicated and inconsistent with the subscription model under the Community Solar Act, which does not distinguish between rate classes and allows for the transfer of subscriptions between customers of different rate classes."

157. CCSA further recommended the Rule should also allow multiple subscriber organizations using the same distribution facilities to share distribution costs, "either independent[ly] from or as an alternative to any grid modernization proposals." CCSA further commented that "[a]s the costs will not be borne by ratepayers and developer cost sharing will likely 'allow for the creation, financing and accessibility of community solar facilities,' the Commission should not require prior approval of any such agreement between or among subscriber organizations. CCSA recommended that the Commission should also direct the utilities to identify distribution upgrade cost sharing opportunities for subscriber organizations. CCSA further recommended that the Rule require the utilities to maintain a transparent online queue for developers that identifies both distribution cost sharing and grid modernization opportunities.

158. PNM commented in support of the Commission considering cost-sharing alternatives but would consider any such measures to be subject to the three-percent limit on cross-subsidization.

159. SPS commented that "[a] plain reading of the [Act] makes it clear that the intent was to minimize cross-subsidization of costs to non-subscribers" SPS further commented that "[t]he cost recovery allocation and rate design treatment applied through the Grid Modernization statute may not be applicable to the [Act] because under Community Solar, cost causation is a much more narrow group of customers."

160. KCEC commented that "to the extent the [Commission] determines that it is in the public interest for non-subscribers to subsidize Subscribers, the non-subscribers shall not be charged more than three percent of the non-subscribers retail rate on an annual basis." KCEC further commented that "the application of the proposed cost sharing mechanism in proposed Rule 17.9.573.13 should not result in Qualifying Utilities being disproportionately adversely impacted due to the limited number of residential and small commercial customers participating as Subscribers in the Community Solar Facility." KCEC recommended striking subpart 573.13(C) from the proposed rule.

161. CLC commented that the Commission "[s]hould tread very cautiously" in this area. CLC recommended that the Commission revise subpart 17.9.573.13 of the Proposed Rule, Interconnection Cost Sharing. CLC noted that this subpart does not accurately reflect the analysis that would be conducted pursuant to the Grid Modernization Act. Whereas the Grid Modernization Act requires that all seven criteria enumerated in Section 62-8-13(B) are "consider[ed]" by the Commission, subpart 17.9.573.13(B) of the Proposed Rule requires only that one of the five listed criteria is satisfied.

162. CLC further commented that the Proposed Rule would thus authorize the Commission to approve cost-sharing "upon a mere finding that, regardless of cost, a proposed system upgrade to connect a community solar facility was 'reasonably expected to increase access to and use of clean and renewable energy.'" CLC commented that such an outcome would not be consistent with the Grid Modernization Act. CLC concluded that, even if one assumes that "the Grid Modernization Act can lawfully be applied to requests by subscriber organizations—not by public utilities—for cost recovery of certain distribution system upgrade projects, the Commission certainly must apply at least as high a standard [as the 'net public benefit' standard]." See NMSA 1978, § 62-8-13(A).

163. REIA commented that, if the Commission determines that a particular upgrade is in the ratepayer's best interest, "then there would seem to be consensus to do so." REIA further commented that the benefits of distribution upgrades accrue to all customers on the system, not just subscribers. REIA added that such costs should not be thought of as instances of non-subscribers subsidizing subscribers, subject to the three-percent limit on cross-subsidization.

164. With regard to the potential application of the three-percent limit on cross-subsidization to this cost-sharing issue, Staff commented that this potential issue should not be addressed at this time. Rather, Staff recommended that this issue should be considered in 2024 after information from the program's initial period is available. However, if the Commission finds that it must address this issue at this time, then, in that instance, Staff would recommend that such allowed cost not be considered a subsidy subject to the three-percent limitation.

165. Staff further commented that, insofar as the allowed costs are determined to be in the public interest and provide system benefits under the criteria described in the Grid Modernization Act of 2019 that make them appropriate for alternative cost allocations, such costs

should not be counted toward the three-percent limit on cross-subsidization. Staff commented that the limitation on cross-subsidization is intended to prevent non-subscribers from subsidizing benefits that only flow to subscribers.

166. Staff further commented that the sharing of such costs should be restricted to those ratepayers likely to benefit from the intended system upgrades. For that reason, Staff recommended that there should be a limitation on the type of customers subject to such cost-sharing measures, such as the following limitation upon cost sharing imposed by the Grid Modernization Act: "Costs for a grid modernization project that only benefits customers of an electric distribution system shall not be recovered from customers served at a level of one hundred ten thousand volts or higher from an electric transmission system in New Mexico." NMSA 1978, § 62-8-13(D).

167. CCSA commented that such costs should not be considered a subsidy if they are generally beneficial to the utility's ratepayers. CCSA further commented that the calculation of the costs shifted to non-participating ratepayers should include an offsetting calculation of benefits as well. CCSA commented that the only the difference between total costs and total benefits should be counted as subsidy.

168. SPS commented that cost-sharing measures that include nonsubscribing ratepayers should be considered cross-subsidization subject to the three-percent limit as any upgrade costs that would be needed for interconnection of a community solar facility would thus be caused by the interconnection of that facility. SPS would apply a "but for" causation test and would conclude that the costs would not have arisen but for the interconnection of the facility.

169. EPE commented that any deviation from TARR, except for fuel and purchased power cost adjustments, should be considered a cross-subsidization of subscribers by nonsubscribing ratepayers, subject to the three-percent limit.

170. CLC commented that Legislature "did not explicitly provide for utilities and ratepayers to bear the cost of interconnection." CLC interpreted the Act as applying the three-percent limit to any cross-subsidization of upgrade costs needed for interconnection, whether or not there would be a benefit to nonsubscribing ratepayers.

171. CCR commented that such cost sharing should not be considered cross-subsidization because system upgrades benefit all ratepayers.

The Team's Recommendations

172. The Team recommends that the Commission adopt the relevant language of the Proposed Rule with this revision: subpart 17.9.573.13(A) should begin, "The commission *may* . . .," instead of "The commission *will* . . .."

173. The Team believes that leaving open the possibility of cost sharing is important for the facilitation of a successful program. It is likely that some, perhaps many, projects will be met with prohibitive interconnection costs involving upgrades to the system that would benefit other projects and nonsubscribing ratepayers. Cost sharing could well be the critical factor determining the feasibility of many projects. This recommendation is consistent with the Act's admonition to the Commission's Rule "reasonably allow for the creation, financing and accessibility of community solar facilities." NMSA 1978, § 62-16B-7(B)(9).

174. Concerning subpart 17.9.573.13(A)(1) of the Proposed Rule, cost sharing among multiple "developers" of community solar facilities, such cost sharing would clearly not be subject

to the three-percent limit on cross-subsidization.[2] The Act's cost-sharing limitations apply only to sharing of costs between subscribing ratepayers and nonsubscribing ratepayers.

175. Cost sharing under subparts (A)(2) and (3), however, would involve cost sharing between subscribing and nonsubscribing ratepayers, raising the possibility of cross-subsidization subject to the three-percent limit. The Team does not agree with those commenters who contend that any grid upgrade or modernization costs that are needed for interconnection of a community solar project must be considered cross-subsidization subject to the three-percent limit. The Rule should allow for subscriber organizations to present to the Commission their circumstances and the particular arguments in favor of cost sharing on a case-by-case basis, demonstrating the anticipated benefits to nonsubscribing ratepayers. The utilities would, of course, have the opportunity to contest such requests.

176. At the outset of the program, it is too soon to adopt specific criteria to apply to the consideration of such requests. The first few years of the program should provide a record concerning the extent of the need for cost sharing, the typical categories and amounts of costs sought to be shared, and other information relevant to the potential formulation of such specific criteria. For example, the experience of the first years of the program may indicate that it would be beneficial to adopt a "net benefit" test, as recommended by certain commenters, as a standardized method for determining whether a grid upgrade should be considered a cost resulting solely from a particular community solar interconnection request and solely benefiting the subscribers to the particular proposed facility or a grid modernization project benefiting the utility and ratepayers as a whole. Such experience might also lead the Commission to adopt a narrower

[2] The Team recommends changing this reference from "developers" to "subscriber organizations" in the Rule to be consistent with the language of the Act.

set of criteria for allowing cost sharing if, for example, the Commission finds that cost sharing is not of critical importance to the viability of the program.

177. The Team disagrees with those commenters who argue that the Grid Modernization Act is inapplicable to these considerations. The Grid Modernization Act provides the Commission with the ability to request that utilities apply for approval of grid modernization projects that they would not otherwise pursue. NMSA 1978, § 62-8-13(A). It further provides that the costs of approved projects may be recovered from ratepayers though base rates, a rate rider, or both. NMSA 1978, § 62-8-13(C). The comments provide no compelling reason why the Commission may not be prompted by a utility's upgrade-cost determination in response to a community solar interconnection request to consider whether such upgrade costs, or a portion thereof, should be considered grid modernization costs.

The Commission's Decision

178. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Ratemaking Issues – Set (i) (other costs as cross-subsidization)

179. PNM did not comment directly on this issue but, with regard to transmission costs in the context of the solar bill credit, PNM commented that transmission costs should not be credited to subscribing ratepayers as this would constitute cross-subsidization by nonsubscribers.

180. SPS commented that all costs that enable a community solar facility to provide energy should be subject to the three-percent limit to the extent that nonsubscribing ratepayers pay any portion of them. Similarly, EPE commented any costs of a community solar facility borne by any nonsubscribing ratepayer must be considered cross-subsidization.

181. YBS, however, commented that, to the extent that a community solar facility reduces the utility's peak load, there would be a benefit to all ratepayers that may offset costs and avoid cross-subsidization.

The Team's Recommendations

182. The Team recommends applying the case-by-case approach described above to the sharing of costs other than interconnection costs. For example, the Team recommends that, in appropriate cases, the Commission consider allowing cost sharing among subscriber organizations with regard to the costs of conducting the required detailed engineering studies required for interconnection. An appropriate case may include one in which multiple proposed projects would be relying upon the same feeders or distribution facilities, and, in such a case, it would likely be appropriate to allow the organizations to share the burden of any necessary upgrade costs.

183. While the Team is unable at this time to recommend specific terms or evaluation criteria to include in the Rule for determining net benefits that might be associated with specific projects, the Team recommends that the Commission consider addressing this matter in a future Grid Modernization rulemaking process.

The Commission's Decision

184. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them. The Commission also anticipates that, as per the Team's recommendation, the Commission will address this matter in a future Grid Modernization rulemaking proceeding.

Subject No. 4 – Market Oversight

185. Regarding the market oversight issues associated with the community solar program, the Act provides:

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

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

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

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

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

NMSA 1978, § 62-16B-7(B)(1) – (4).

186. The Proposed Rule included the following language relevant to this subject matter:

17.9.573.10 COMMUNITY SOLAR FACILITY REQUIREMENTS:

A. A community solar facility, excepting any native community solar project, shall:

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

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

(3) have at least ten subscribers;

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

(5) not allow a single subscriber to be allocated more than 40 percent of the generating capacity of the facility; and

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

B. At least thirty (30) percent of electricity produced from each community solar facility shall be reserved for low-income customers and low-income service organizations. The commission shall issue guidelines to ensure the

carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers.

17.9.573.11 STATEWIDE CAPACITY PROGRAM CAPS:

A. The initial statewide capacity program cap of two hundred (200) megawatts alternating current is allocated according to "addressable market" estimations, subject to further refinement, as follows:

(1) PNM 125 MW;

(2) SPS 45 MW; and

(3) EPE 30 MW.

B. If, within one year of the receipt by a utility of the results of an initial request for proposals for community solar facilities, the initial capacity cap allocation for that utility has not been fully committed by contract, the commission may, at its discretion, apply the unused capacity to another utility on a showing of the latter utility's sufficient subscriber demand.

C. On or before April 1, 2024, the commission will review the results of the initial allocation and subscriber demand for the community solar program and establish a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.

17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:

A. The commission shall engage a third-party administrator to manage an unbiased and nondiscriminatory process for selection of community solar facilities.

B. Community solar projects shall be selected through a competitive solicitation process, with bids meeting minimum requirements for eligibility. Eligible bids must be scored upon a set of non-price criteria. The criteria must include the following:

(1) the bidder's legally binding site control;

(2) the bidder's commitment to meeting or exceeding all statutory subscriber requirements, including a minimum 30% low-income subscription requirement; and

(3) that any required, non-ministerial permits have been issued to the bidder at the time the bid is submitted.

C. The competitive solicitation process must include the following preferences based upon benefits to the local community and the state of New Mexico:

(1) preferences for businesses residing in the state and for resident veteran businesses, pursuant to Section 13-1-21 NMSA 1978;

(2) preferences for projects supporting local businesses employing local labor, or having partners resident in the state;

(3) preferences for bids including workforce training or educational opportunities for disenfranchised groups;

(4) preferences for businesses owned or operated by minorities or women;

(5) preferences for bids including local job training or committing to long- term jobs in New Mexico; and

(6) preferences for bids including partnership with local communities or community-based project ownership.

D. Bids must be scored and evaluated upon the following non-price factors:

(1) Project viability, including consideration of the following factors:

(a) project economics, system output, system size and guaranteed subscriber savings;

(b) financial viability, financing plan and evidence of funding;

(c) developer experience with community solar and subscriber acquisition and management, experience building and operating solar projects of similar size;

(d) state of project development and schedule;

(e) interconnection viability;

(f) permitting due diligence and compliance with environmental laws; and

(g) familiarity with local community and prior experience working with low-income communities.

(2) Subscriber experience, benefits and savings, including consideration of the following:

(a) user friendly in-person or online educational resources to help customers make informed choices about community solar participation;

(b) input from low-income consumers and low-income customer engagement; and

(c) guaranteed subscriber savings, favorable contract terms, long-term savings opportunities.

(3) Project siting characteristics, including consideration of the following:

(a) strategic feeder lines, co-location with battery storage or other assets that can provide community resiliency;

(b) project located on landfills, brownfield, municipal/county, or stand land; and

(c) favorable environmental impact analysis or favorable impact analysis concerning artifacts of cultural and historical significance.

E. Projects selected in the initial review must immediately commence to detailed interconnection impact studies pursuant to the commission's rule for interconnection of generating facilities with a rated capacity up to and including 10 MW, 17.9.568 NMAC.

F. The final ranking of bids must be based upon capacity availability, commitment to pay necessary system upgrade costs, or a determination that upgrade costs may be approved for cost sharing, rate base recovery by the utility, or some other cost-allocation method approved by the commission as specified in 17.9.573.13 of this rule.

G. For any accepted bid, the utility must execute a purchased power agreement with the subscriber organization for a term of not less than twenty-five (25) years.

H. Once a bid is approved by the utility, subscribers may sign up directly with the subscribing organization.

I. Prior to commencing operations, the subscriber organization or facility operator must obtain a permission to operate from the utility. A minimum of ten subscribers must be subscribed to the project before the utility may issue a permission to operate.

J. The subscriber organization must provide verification of safety certification from a nationally recognized testing laboratory.

[Proposed Rule, 17.9.573.10, .11 & .12.]

187. The Additional Issues included the following issues relevant to this subject matter:

Market Oversight

a. Should the Commission adopt and approve the recommendation a non-price bid process featuring minimum criteria for Community Solar projects and a defined set of criteria for scoring, as described in Section 17.9.573.XX
b. How should the Commission establish policies to limit potential discrimination in favor of utility affiliated Subscriber Organizations?
c. Should there be special consideration or added weighting in the evaluation of projects being developed by or in partnership with local government agencies or service organizations that specifically represent low-income ratepayers?
d. What data and operational reporting requirements should be in place for Subscriber Organizations and Utilities? Should the Commission require a production meter for Community Solar projects? Should there be differing requirements for different sized projects?
e. The Commission or its approved program administrator(s) will be responsible for ensuring that Subscriber Organizations meet the specific subscription allocations established in the Community Solar Act. What should be the penalty or recourse to pursue if a Subscriber Organization fails to meet the required subscriber allocations?
f. Aside from the specified terms of the Community Solar Act, are there any additional provisions necessary to apply to the policies on accounting for and cost recovery of unsubscribed energy from Community Solar projects?
g. Should the Commission defer a decision on determination of ongoing program caps until April 1, 2024?

[Additional Issues, second page.]

Comments Relevant to Market Oversight Issues – Set (a) (non-price bid process)

188. PNM did not comment directly upon this issue, but its markups of the Proposed Rule left in place non-price bid criteria.

189. SPS commented that the Commission should include both price and non-price criteria in the Rule, as did EPE.

190. KCEC commented that non-price criteria must be subordinate to considerations of interconnection stability. Further, the consideration of such criteria must not result in the selection of projects that impede the qualifying utility's ability to provide safe and reliable electric service at just and reasonable rates.

191. CLC commented that "the most important and heavily weighted criterion should be an assurance that subscribers will experience significant and on-going net cost savings as a result of their participation in the Community Solar project." CLC supported the Proposed Rule's listing of "project economics, system output, system size, and guaranteed subscriber savings" as the first factor in the "project viability" group of criteria and again as the third factor in the "subscriber experience" group as consistent with CLC's recommendation.

192. Arcadia commented that the criterion concerning supplemental, low-income qualification mechanisms should be expanded to include a geographic qualification option reflective of best practices and low-income parameters set forth in the Act.

193. REIA commented that required minimum bid criteria and scoring criteria should favor project maturity to ensure that the most viable projects are selected and to prevent non-viable projects from occupying limited program capacity. REIA further commented that minimum criteria should include interconnection viability.

194. Staff commented that the utilities may have unique characteristics that merit consideration, but, on the other hand Staff observed that multiple RFPs could result in additional costs or timing issues that cause such an approach to be untenable.

195. Staff further commented that, insofar as additional considerations are included in assigning bid preferences, such considerations should be given the appropriate weight relative to their ability to be tracked, the applicant's inclusion of verification mechanisms in their proposal, or the likely benefit to be provided from the applicant relative to the likelihood the proposed outcome would be achieved.

196. Syncarpha recommended that the Commission include in the rule a definition of "local business." Syncarpha approved of the Proposed Rule's inclusion of a requirement that non-ministerial permits be secured before a project will be considered. However, while asking the Commission to be "mindful of the time and resources of state agencies and local governments that will be inundated with more applications and requests than will ever become real projects." Syncarpha also recommended that the selection criteria include interconnection viability.

The Team's Recommendations

197. The Team recommends that the Commission adopt a set of minimum qualifications, non-price factors, scoring criteria, and respective weighting of such criteria. This set of qualifications and criteria is a comprehensive and carefully considered approach to the selection of project bids provided by the ad-hoc stakeholder group in its response comments, as modified by this Order. [See **Exhibit A** for the rule language]

198. The Team does not recommend that the Rule include any price-based criteria as the Commission does not have sufficient information at this initial stage of the program.

199. The Team recommends that the Rule specify that the program administrator shall select projects, applying the minimum qualifications and selection criteria, within each utility's territory until the allocated capacity cap for each utility has been reached. In addition to this, the program administrator should identify sets of proposed projects to comprise utility-specific wait lists of proposed projects that would be eligible and able to participate in the program should a project or multiple projects be withdrawn after being selected to go forward. The wait lists should be comprised of projects that received total scores immediately below the scores of the projects that were selected. The program administrator should maintain a wait list for each qualifying utility, including projects with combined capacities totaling 20% of each utility's allocated capacity cap.

The Commission's Decision

200. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Market Oversight Issues – Set (b) (utility affiliated subscriber organizations)

201. CCSA, PNM, REIA, and KCEC commented that use of an independent third-party administrator should prevent discrimination in favor of projects proposed by utility-owned subscriber organizations.

202. SPS noted that, if all project proposals are subject to the same qualifications and criteria for selection, there should be no such discrimination. SPS commented that use of an independent evaluator as an additional measure could be costly.

203. EPE commented that all project proposals should be treated equally, whether or not proposed by utility affiliated organizations.

204. Staff recommended that the Rule include a limitation on participation in the program by utility-affiliated subscriber organizations, to be formulated as a limitation upon each utility to no more than 20 percent of the statewide cap capacity allocated to the utility's territory.

205. REIA, similarly, commented that ensuring a truly fair marketplace will require additional measures to counter inherent utility advantages such as access to customer and other data.

The Team's Recommendations

206. The Team recommends that the Commission use a third-party contractor to administer the bidding and selection processes, as already provided in the Proposed Rule. The Team also recommends that the same qualifications and selection criteria apply to all subscriber organizations, which is also already the Proposed Rule's approach.

207. To these provisions, the Team recommends adding Staff's recommended limitation upon utility-affiliated subscriber organizations for just the initial project selection process. The Team further recommends including in the Rule an express prohibition against misappropriation of information provided in the interconnection application process or to which the utility has superior access to gain any unfair advantage for utility-affiliated subscriber organizations in the project selection process.

The Commission's Decision

208. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Market Oversight Issues – Set (c) (special consideration or weighting for projects with community partnership and low-income participation)

209. CCSA commented in favor of offering limited weighting during the selection process for "projects being developed by or in partnership with local government agencies or service organizations that specifically represent low-income ratepayers." CCSA further commented that the Commission should require that such entities demonstrate that their projects will benefit low-income customers. CCSA also recommended that the Commission require the project developer to specify the role and obligations of the partnership.

210. SPS commented that the 30% low-income requirement for each project is an adequate incentive to reach many low-income customers while allowing the economics of the project attractive for the subscriber organization. SPS further commented that additional weighting parameters may complicate the project selection process.

211. KCEC and CLC commented that added weight should be given to projects with greater low-income subscriber participation. KCEC further commented that a third party should handle the verification of low-income subscribers to ensure that projects truly meet the 30% minimum. KCEC recommends using qualification for the federal LIHEAP program as a proxy for low-income qualification.

212. REIA commented in favor of such weighting and recommended that the Commission convene an ad hoc working group to propose a fair and specific set of scoring criteria for a non-priced based RFP process to the Commission.

The Team's Recommendations

213. The Team's recommendation, above, that the Commission adopt the ad hoc committee's recommended set of qualifications and selection criteria includes detailed and thoughtful selection criteria and weighting of such criteria regarding low-income participation commitments and community partnership and outreach commitments.

The Commission's Decision

214. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Market Oversight Issues – Set (d) (subscriber organization reporting requirements and production meters)

215. CCSA commented that the Proposed Rule should be revised "to reflect the fact that Community Solar facilities are unlikely to have any material onsite load." CCSA further commented that, considering this circumstance, the rule should permit a community solar facility to use either a production meter or a net meter. CCSA commented that any further metering requirements would be an unnecessary burden on projects. CCSA further commented that, to the extent that a utility demands "real-time electronic access to production and system operation data," it should bear the costs of any equipment necessary to gather such data and should make the data publicly available.

216. PNM commented that both subscriber organizations and native community solar projects should be required to provide project data to the utility on at least a quarterly basis.

217. SPS recommended that subscriber organizations be required to report the following information on annual basis: location (county, city, feeder) of each community solar facility, MWh of production YTD, MWh of production since active date number of subscribers in each of the relevant categories, percent of subscribers in each of the relevant categories, allocation and percent of bill credits paid, incentives paid per MWh YTD and cumulative since active date, and an explanation of the status of each community solar facility performance over that reporting timeframe.

218. EPE commented that metering should be standardized as much as possible independent of the size of any project. EPE further commented, however, that standardization may be at a utility level instead of an overall program level in light of differences among the utilities' communication and metering systems.

219. KCEC commented that the size and configuration of each community solar facility should be accounted for when considering the type of equipment necessary to provide periodic or real-time data for purposes of utility distribution network operations.

220. CLC commented in favor of the application of existing standard metering and monitoring requirements, as did REIA.

The Team's Recommendations

221. The Team recommends that the Commission require that production meters be used on all community solar facilities. The Team further recommends that the Commission require that subscriber organizations provide to the Commission and to utilities general project descriptions as part of the agreement and registration process.

The Commission's Decision

222. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Market Oversight Issues – Set (e) (consequences for failing to meet subscriber allocation requirements)

223. PNM recommended that subscriber organizations that fail to meet the 30% low-income subscriber minimum should not be allowed to pursue new projects until the minimum is achieved.

224. EPE made a specific recommendation that the Commission adopt a detailed provision in the Rule providing for alternative methods for the Commission to address non-compliance by subscriber organizations.

225. KCEC recommended that the Rule include penalties for non-compliance by subscriber organizations. KCEC commented that the Rule should provide for the Commission to disqualify a subscriber organization from managing a facility where it fails to comply with the Rule. KCEC recommended a detailed compliance and penalty procedure, including periods during which the offending subscriber organization would have the opportunity to cure the violation and avoid penalties. KCEC proposed penalties for continuing violations including requiring the offending organization to pay the equivalent of the solar bill credit to subscribers and revoking the organization's authority to operate the facility.

226. Staff recommended a similarly detailed compliance and penalty procedure, including cure periods and the ultimate penalty of revocation of the organization's authority to operate the facility.

227. REIA recommended restrictions upon solar bill credits as incentives for subscriber organizations to meet low-income subscriber requirements or commitments. For example, if a subscriber organization were to submit an RFP including a commitment to a 40% low-income subscription level, then, to the extent that that level is not achieved, the deficit in meeting the commitment would be matched by a deficit in credits issued to the organization's subscribers. In the alternative, REIA recommends that, any deficit in meeting the 40% commitment would be considered unsubscribed energy and to be purchased by the qualifying utility at its applicable avoided cost of energy rate, subject to Commission approval.

The Team's Recommendations

228. The Team recommends that the Commission's program administrator monitor the progress of all selected projects in meeting the 30% low-income subscriber minimum. Each subscriber organization's ongoing authorization to operate community solar facilities should be linked to the organization's compliance with the statutory 30% low-income subscription minimum for each facility operated by the subscriber organization. The rule should, however, provide the Commission with discretion as to whether or not to take the ultimate step of revoking or suspending an organization's authority.

229. It is unclear at this time if subscriber organizations will encounter any difficulties in fulfilling this requirement. Subscriber organizations will not be on their own, though, as the Commission has contracted with a service provider to reach out to community organizations and attract low-income subscribers to the program.

230. The Team recommends that each subscriber organization be required to report to the program administrator on a monthly basis upon the organization's progress toward meeting the requirement. Subscriber organizations that have reached the required level should see a reduction in their reporting requirement, reporting on a quarterly basis to verify that the 30% minimum continues to be satisfied. Subscriber organizations that fail to reach the required level within one year of project selection should be subject, at the Commission's discretion, to penalties up to and including suspension or revocation of the organization's authorization to operate.

The Commission's Decision

231. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Market Oversight Issues – Set (f) (cost recovery for unsubscribed energy)

232. CCSA recommended that the Rule allow subscriber organizations, at their own discretion, to require that unsubscribed energy rolled forward for one year be purchased by the utility at its avoided cost.

233. PNM commented that any unsubscribed energy purchased by the utility at avoided cost should be recoverable in rates.

234. SPS commented that the Commission should address this issue on a utility-by-utility basis, but further commented that utilities should be guaranteed full cost recovery in all such situations.

235. KCEC commented that only unsubscribed energy that is stored by the subscriber organization at the site of the facility should be rolled forward to subscribers in that month, and further commented that any unsubscribed, non-stored energy should be purchased by the utility at the avoided cost rate.

236. CLC commented that the Rule should reward projects that actually provide the greatest benefits to subscribers and to the utility system as a whole, not to reward those whose initial bids make the most extravagant promises.

The Team's Recommendations

237. The Team recommends that the Commission adopt the relevant language of the Proposed Rule without modification, except as described below. The Team finds that none of the additional provisions recommended by the commenters appear workable. For instance, KCEC's references to "on-site stored energy" presume that there would be storage facilities co-located with the solar generation facility.

238. The Team does not have sufficient information at this time to adopt a detailed approach to this issue. The initial period of the program will provide critical data for the Commission to consider in its approach.

239. Accordingly, the Team recommends that a requirement be included in the Rule that the utilities document their "avoided cost" determinations in the event that they make payments for unsubscribed energy. The Team recommends that the utility be allowed to include a request for recovery of these costs in the utility's subsequent base rate case.

The Commission's Decision

240. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Comments Relevant to Market Oversight Issues – Set (g) (deferral of decision on caps)

241. SPS commented that the Commission should defer determination regarding the ultimate levels of the allocated statewide capacity cap until April 2024, as the experience of the first two years of the program will be needed to evaluate the cap levels.

242. EPE concurred with SPS and added that the Commission should also avoid reallocating any of a qualifying utility's portion of the 200-megawatt cap to another utility during the initial period.

243. CLC recommended that there be no program cap at all or, in the alternative, the decision on the ultimate levels of the allocated caps should be deferred as long as possible, suggesting November 2024, the Act's deadline for the Commission's report to the Legislature.

244. NEE recommended that, if, within one year, any utility's allocated cap is not fully subscribed, the unsubscribed capacity be "banked" or allocated to another utility.

245. REIA commented that the legislative intent was to base the allocation of the program cap on each utility's respective percentage of retail sales. REIA further commented that it is not necessary for the Commission to wait until April 2024 to make that determination. REIA provided its own recommendation for allocation based upon a retail-sales basis.

The Team's Recommendations

246. The Team recommends that the Commission defer the decision on the ultimate allocation of the statewide capacity cap until April 2024, when the Commission will have two years' worth of information concerning the demand for solar facility capacity in each utility's territory. The Legislature clearly intended that the Commission make use of such information from the first two years of the program to make this determination. As per the Act, the new allocation must go into effect on November 1, 2024, which is also the date that the Commission's report to the Legislature is due.

The Commission's Decision

247. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 5 – Community Outreach and Involvement

248. Regarding the community outreach and involvement issues associated with the community solar program, the Act provides:

> **62-16B-7. Public regulation commission; enforcement and rulemaking.**
>
> . . .
>
> B. The commission shall adopt rules to establish a community solar program by no later than April 1, 2022. The rules shall:

. . .

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

NMSA 1978, § 62-16-7(B)(3).

249. The Proposed Rule included the following language relevant to this subject matter:

17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:

. . .

C. The competitive solicitation process must include the following preferences based upon benefits to the local community and the state of New Mexico:

(1) preferences for businesses residing in the state and for resident veteran businesses, pursuant to Section 13-1-21 NMSA 1978;

(2) preferences for projects supporting local businesses employing local labor, or having partners resident in the state;

(3) preferences for bids including workforce training or educational opportunities for disenfranchised groups;

(4) preferences for businesses owned or operated by minorities or women;

(5) preferences for bids including local job training or committing to long- term jobs in New Mexico; and

(6) preferences for bids including partnership with local communities or community-based project ownership.

D. Bids must be scored and evaluated upon the following non-price factors:

(1) Project viability, including consideration of the following factors:

. . .

(g) familiarity with local community and prior experience working with low-income communities.

(2) Subscriber experience, benefits and savings, including consideration of the following:

. . .

(b) input from low-income consumers and low-income customer engagement;

. . .

[Proposed Rule, 17.9.573.12(C) & (D).]

250. The Additional Issues included the following issues relevant to this subject matter:

Community Outreach & Involvement
Besides identifying potential Service Organizations that can pre-qualify subscribers, how should the Commission provide training materials, compensate the organizations and monitor the effectiveness of their activities?

[Additional Issues, third page.]

Comments Relevant to Community Outreach and Involvement

251. CCSA recommended that the Commission make its website a neutral resource for information relevant to community outreach, as the Maryland commission has done with regard to its website.

252. PNM recommended that the Rule require subscriber organizations to provide materials and report on their oversight of outreach organizations to the Commission.

253. Staff and SPS commented that the Commission should hire a community solar program trainer to provide training materials, that the Commission should compensate the trainer for its time and the materials it produces, and that the Commission should set outreach goals to monitor effectiveness.

254. CLC recommended that the Commission use its website for training and should require subscriber organizations to make their own arrangements with community outreach organizations.

255. REIA recommended that the Commission avoid working directly with outreach organizations and avoid providing any compensation to such organizations.

256. PW identified three major barriers to low-income participation: lack of trust in businesses and institutions, misinformation, and cost. PW described a successful energy efficiency program in which PW trained and compensated community organizations to identify and qualify low-income participants.

The Team's Recommendations

257. The Team recommends that the Commission proceed under its contract with an appropriate service provider to identify and train community organizations to create a pool of eligible low-income subscribers. The community organizations should be compensated by the subscriber organizations.

The Commission's Decision

258. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 6 – Creation, Financing, and Availability of Community Solar Facilities

259. The Act requires:

> B. . . . The rules shall:
> . . .
> (9) reasonably allow for the creation, financing and accessibility of community solar facilities.

NMSA 1978, §62-16B-7(B)(9),

260. The Additional Issues included the following issues relevant to this subject matter:

Issues ascribed to PRC by the Act but uncertain as to authority:

a. How should the Commission address the Community Solar Act's directive to reasonably allow for the creation, financing and accessibility of community solar facilities?

[Additional Issues, third page.]

Comments Relevant to Creation, Financing, and Availability of Community Solar Facilities

261. In furtherance of this direction to the Commission in the Act, Staff recommended that the Commission clearly articulate the program's rules and streamline processes to the extent practicable.

262. CLC recommended that the Commission establish clear, fair, and non-discriminatory rules for the program and demonstrate a readiness to enforce those rules consistently and aggressively.

263. REIA recommended that the Commission follow the requirements of the Act, enact reasonable solar bill credit rates that recognize the 30% low-income subscriber requirements, create certainty around the interconnection process, and adopt precise criteria and scoring for the non-price-based RFP process in a timely manner.

The Team's Recommendations

264. The Team does not recommend that the Commission modify the Proposed Rule regarding this issue. The Team understands this provision of the Act to provide guiding considerations for the Commission to account for when interpreting and applying the more specific requirements of the Act. As shown in this Order, the Team's recommendations have been guided by these considerations where appropriate.

The Commission's Decision

265. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 7 – Rural Electric Distribution Cooperatives

266. Regarding the participation of rural electric distribution cooperatives in the community solar program, the Act provides:

> **62-16B-8. Rural electric distribution cooperatives.**
>
> A rural electric distribution cooperative may opt in to the community solar program and provide interconnection and retail electric services to community solar developments on a per-project or system-wide basis within its service territory. The decision of a rural electric distribution cooperative to opt in to the community solar program shall be in the sole discretion of the cooperative's governing board.

NMSA 1978, § 62-16B-8.

267. The Proposed Rule included the following language relevant to this subject matter:

> **17.9.573.2 SCOPE:** This rule applies to investor-owned electric utilities subject to the commission's jurisdiction *and to rural electric distribution cooperatives that opt into the community solar program*. This rule also applies to subscriber organizations and subscribers as defined in the Community Solar Act, Section 62-16B-2(M) and (N), NMSA 1978.

[Proposed Rule, 17.9.573.2 (italics added).]

268. The Additional Issues included the following issues relevant to this subject matter:

> **Issues ascribed to PRC by the Act but uncertain as to authority:**
> b. How much of the Community Solar rule be asserted over Rural Co-ops that opt-in to the program?

[Additional Issues, third page.]

Comments Relevant to Rural Electric Distribution Cooperatives

269. Staff recommended that rural electric co-ops opting into the program be required to abide by the same requirements as the qualifying utilities to the greatest extent possible, and KCEC concurred in that recommendation.

270. REIA recommended that the Commission require co-ops to provide solar bill credit rates.

The Team's Recommendations

271. The Team recommends that the Commission require co-ops opting into the program to comply with the Rule as if they were qualifying utilities, at least insofar as that is possible and practicable. Co-ops opting into the program should be able to fulfill the duties that are assigned to qualifying utilities in the Act, such as the duties associated with solar bill credits and unsubscribed energy. The Team does not believe that any particular provisions need to be added to the Proposed Rule at this time in an attempt to foresee and address all potential, co-op-specific issues. This is an area in which the Commission should wait and see what the initial years of the program present as issues in need of resolution.

272. If a co-op decides to opt into the program prior to the initial RFP solicitation, the co-op should inform the Commission as to how much project capacity it will seek to host and use the same RFP materials as the qualifying utilities use. However, as per the Act, this amount of capacity will not count toward the statutory program cap.

273. If the co-op later decides to opt into the program, after the initial RFP solicitation, it should file a petition with the Commission for inclusion, specifying the amount of project capacity it will seek to host and proposing a solicitation and contracting process, for Commission approval.

The Commission's Decision

274. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 8 – Native Community Solar Projects

275. The Act defines "native community solar project" as:

> a community solar facility that is sited in New Mexico on the land of an Indian nation, tribe or pueblo and that is owned or operated by a subscriber organization that is an Indian nation, tribe or pueblo or a tribal entity or in partnership with a third-party entity.

NMSA 1978, § 62-16B-2(J).

276. The above definition itself contains two specially defined terms, "Indian nation, tribe or pueblo," and "tribal entity." The Act defines "Indian nation, tribe or pueblo" as:

> a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico.

NMSA 1978, § 62-16B-2(F). The Act defines "tribal entity" as:

> an enterprise, a nonprofit entity or organization or a political subdivision formed under the inherent sovereignty of an Indian nation, tribe or pueblo.

NMSA 1978, § 62-16B-2(P).

277. The Act exempts native community solar projects from the requirements applicable to community solar facilities under Section 62-16B-3, except the requirement that the facility or project:

> . . . be located in the service territory of a qualifying utility and be interconnected to the electric distribution system of that qualifying utility.

NMSA 1978, § 62-16B-3(B).

278. The Act exempts subscriptions to native community solar projects from the subscription requirements of Section 62-16B-5, except for the requirement that:

> . . . be transferable and portable within the qualifying utility service territory.

NMSA 1978, § 62-16B-5(B).

279. The Act treats community solar facilities differently from native community solar projects regarding the ownership of "environmental attributes, including renewable energy certificates." Whereas ownership of such attributes is assigned to the qualifying utility when they are associated with the former, ownership is assigned to "the owner of the native community solar project" when they are associated with the latter. NMSA 1978, § 62-16B-6(D).

280. The Act also provides the following exemption:

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

NMSA 1978, § 62-16B-6(E).

281. The Proposed Rule similarly included exemption language regarding native community solar projects. Such projects were exempted from the Proposed Rule's requirements for community solar facilities as well as the proposed real-time production reporting requirement. [Proposed Rule, 17.9.573.10(A) & 17.9.573.19(B).]

282. The Additional Issues included the following issues relevant to this subject matter:

> **Issues ascribed to PRC by the Act but uncertain as to authority:**
> c. Although Native American nations, tribes and pueblos are generally exempt from Commission jurisdiction, are there policy considerations for the Commission to enact in cases where a Native Community Solar project is to be developed in a jurisdictional utility's territory?

[Additional Issues, third page.]

Comments Relevant to Native Community Solar Projects

283. Staff commented that the Commission should emphasize that its authority over solar bill credits extends to native community solar projects within qualifying utility territory.

284. REIA commented that the Commission should consider how native community solar projects will operate outside of the statewide capacity cap yet within qualifying utilities' RFP processes.

The Team's Recommendations

285. The Team does not recommend the adoption of any additional language in the Rule concerning this issue. However, to provide clarity as per Staff's recommendation, the Commission affirms here that, with regard to native community solar projects within the territory of a qualifying utility, the utility will have the responsibility to comply with the Act's requirements regarding solar bill credits, and the Commission will have the authority to regulate and to enforce the subscribing ratepayer's rights concerning such credits.

The Commission's Decision

286. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 9 – Report to Legislature

287. The Act requires the Commission to report to the Legislature, as follows:

> By no later than November 1, 2024, the commission shall provide to the appropriate interim legislative committee a report on the status of the community solar program, including the development of community solar facilities, the participation of investor-owned utilities and rural electric distribution cooperatives, low-income participation, the adequacy of facility size, proposals for alternative rate structures and bill credit mechanisms, cross-subsidization issues, local developer project selection and expansion of the local solar industry, community solar facilities' effect on utility compliance with the renewable portfolio standard and an evaluation of the effectiveness of the commission's rules to implement the Community Solar Act and any recommended changes.

NMSA 1978, § 62-16B-7(E).

288. The Additional Issues included the following issues relevant to this subject matter:

> **Information Collection for Report to Legislature Due November 2024 on Status of Program:**
> d. What should be the frequency of reports from Utilities and Community Solar Subscriber Organizations for collecting the date necessary to provide the required report to the Legislature in November 2024?

[Additional Issues, third page.]

Comments Relevant to Report to Legislature

289. PNM, SPS, and EPE concurred in recommending that such reporting be required on an annual basis. EPE further recommended that such reporting be due in August 2023 and August 2024.

290. KCEC, REIA, and YBS concurred in recommending annual reporting, with KCEC further recommending that the first reports be due on April 30, 2023.

291. CLC, however, recommended reporting on a monthly basis, or, at the very least, semi-annually.

The Team's Recommendations

292. The Team recommends that the Commission add to the Proposed Rule a requirement for collection, on an annual basis, of information relevant to the report to the Legislature. The reporting deadlines should be in August, so that the deadline occurring in 2024 is sufficiently close to the November 1, 2024 deadline for the report to ensure that the reported information is timely.

The Commission's Decision

293. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 10 – Consolidated Billing

294. This subject matter was raised in the comments and was not addressed in the Proposed Rule or the Additional Issues.

Comments Relevant to Consolidated Billing

295. Some commenters recommended billing for subscribers that would consolidate charges and credits from subscriber organizations into the monthly bill issued by the qualifying utility. They further commented that consolidated utility billing is simpler for subscribers and leads to lower default rates.

296. Utilities, however, commented that they do not want the responsibility of billing subscriber fees. They would prefer to limit their involvement to processing the solar bill credit.

The Team's Recommendations

297. The Team recommends that the Commission not include any requirement for consolidated billing in the Rule. Consolidated billing is likely to cause confusion among subscribing ratepayers as to the respective roles of utilities and subscriber organizations. Utilities and subscriber organizations have different roles and responsibilities under the Act and are subject to dramatically different levels of Commission regulation overall. Billing should affirm the separateness of utilities and subscriber organizations in the minds of subscribing ratepayers, not blur the distinctions between them.

The Commission's Decision

298. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

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Subject No. 11 – Low-Income Eligibility Verification

299. This subject matter was raised in the comments and was not addressed in the Proposed Rule or the Additional Issues.

Comments Relevant to Low-Income Eligibility Verification

300. Some commenters advocating on behalf of subscriber organizations commented that subscribers should be able to "self-certify" that they are low-income subscribers for the purpose of the 30% low-income subscriber minimum. They further commented that imposing a verification process would be cumbersome and intrusive.

The Team's Recommendations

301. The Team recommends that the Commission not adopt a self-certification process for low-income subscriber qualification. The Commission has engaged a third-party service provider to help craft the Commission's low-income outreach strategy.

The Commission's Decision

302. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 12 – Voluntary Withdrawal of Projects

303. This subject matter was raised in the comments and was not addressed in the Proposed Rule or the Additional Issues.

Comments Relevant to Voluntary Withdrawal of Projects

304. Some commenters raised the issue of subscriber organizations with projects that have been selected to go forward dropping out of the program prior to construction due to high

interconnection costs or a failure to attract subscribers. This issue was raised by several commenters in the context of considering a requirement for a refundable security deposit.

The Team's Recommendations

305. The Team notes that the Proposed Rule contemplated a situation in which there might not be sufficient capacity allocated to a particular utility territory, providing the Commission the option of reallocating that capacity to another utility area or holding a subsequent RFP process.

306. Due to the cost and uncertainty associated with holding multiple solicitations, the Team recommends a different approach, suggested by REIA's proposed revisions to the Proposed Rule. As part of the RFP process, the program administrator should identify a set of proposed projects as "wait listed" alternative projects that would be eligible to step into the program should a project or multiple projects drop out after being selected to go forward. The Team recommends that the subscriber organizations proposing such wait-listed projects be required to pay the application fee and security deposit within 30 days of moving into the queue.

307. Each utility should dedicate no less than 20 percent of its allocated share of the program capacity cap to its wait list.

The Commission's Decision

308. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

Subject No. 13 – Co-Location of Community Solar Facilities

309. The Act provides that "[a] community solar facility shall have the option to be co-located with other energy resources, but shall not be co-located with other community solar facilities." NMSA 1978, § 62-16B-3(A)(4).

310. This subject matter was not included among the Additional Issues, but subpart 17.9.573.18 of the Proposed Rule addressed it as follows:

> **17.9.573.18 CO-LOCATION OF FACILITIES WITH OTHER GENERATION:** The co-location of community solar projects totaling up to 5 MW in capacity on the same parcel should not prevent approval of any such projects, so long as they are interconnected to different substations.

[Proposed Rule, 17.9.573.18.]

Comments Relevant to Co-Location of Community Solar Facilities

311. PNM recommended that the Commission clarify the meaning of co-location and specify how the co-location prohibition would be enforced. PNM further recommended that a third-party administrator should determine co-location issues and that such determinations should incorporate interconnection feasibility criteria.

312. SPS commented that the concept of co-location should incorporate a number of considerations, including whether two facilities share the characteristics of a single development, such as common ownership structure, an umbrella sale arrangement, shared interconnection, revenue-sharing arrangements, and common debt or equity financing.

313. EPE recommended modifying this subpart of the Proposed Rule to include clarity on eligible distribution feeders.

314. KCEC recommended modifying this section of the Proposed Rule to require that community solar facilities be co-located with energy storage resources.

315. Staff expressed non-opposition to all of the above recommendations except for that of KCEC, which Staff found overly burdensome and beyond the scope of the co-location provision in the Act.

//

The Team's Recommendations

316. The Team recommends that the Commission replace the language of the Proposed Rule with the following safe harbor provision: "As long as a community solar facility is not served by the same substation as another community solar facility, it shall not be considered co-located with another community solar facility. The Commission will consider, on a case-by-case basis, allowing more than one community solar facility to be served by the same substation."

317. The Act forbids co-location of community solar facilities but does not define co-location. It is appropriate for the Commission to provide a reasonable criterion for identifying "co-location." The Team finds the co-location requirement somewhat ambiguous in meaning as well as in purpose, but the Team infers that two related purposes of the requirement are to avoid overburdening the grid at any particular point in the grid and to limit the extent of any upgrades needed at any particular point in the grid. A substation-level criterion for determining co-location would accomplish this, and, in combination with the 5 MW upper limit on the capacity of any community solar facility, lead to a 5 MW per substation upper limit, which is consistent with these purposes. The Proposed Rule, on the other hand, referred to parcels, which can be of greatly varying sizes, and, as a criterion for determining what "co-location" is, would not directly address the concern of overburdening the grid at a particular point.

318. The Team recommends a safe harbor provision here because such a provision would tend to steer a subscriber organization toward a clear way to comply with an ambiguous statutory provision without ruling out other potential ways to comply with the provision. This is an appropriate way to address the statutory provision due to the ambiguity of the provision's meaning coupled with the lack of any need to delve deeply into this area. Though commenters including the utilities recommended detailed requirements to be met to avoid "co-location," these

requirements consisted largely of existing requirements, criteria, and concerns regarding interconnection. There is no reason to duplicate such provisions under the co-location rubric, particularly as it is not clear that the Legislature intended to include them there.

The Commission's Decision

319. The Commission finds the Team's reasoning and recommendations persuasive and hereby adopts them.

320. This concludes the Commission's summaries of the comments and the various issues raised in this proceeding and the statements of the Commission's decisions with regard to such issues. The language of the Rule, **Exhibit A** hereto, reflects the Commission's decisions.

321. The Commission understands that some unforeseen issues may arise as the program progresses, and so the Commission has opened an implementation and administration docket, Docket No. 22-00020-UT, to address such issues. Such issues may benefit from consideration in a workshop or comment filings, which the Commission will order as they come to the Commission's attention.

322. The Commission has jurisdiction over this matter.

323. The Commission has the authority to promulgate the Rule under the N.M. Const. art. XI, § 2, and under NMSA 1978, §§ 8-8-4(B)(10) and 62-16B-7.

324. The Commission finds that the Rule, attached as **Exhibit A** hereto, should be adopted and promulgated by the Commission.

IT IS THEREFORE ORDERED:

A. The Rule, attached as **Exhibit A** hereto, is hereby adopted and promulgated by the Commission, for inclusion in the New Mexico Administrative Code, at Title 17 (Public Utilities

and Utility Services), Chapter 9 (Electric Services), at reserved Part 573. Part 573 shall be titled "Community Solar."

B. The Rule shall be published in the New Mexico Register, as required by the State Rules Act, NMSA 1978, Sections 14-4-1 to -11. The publication shall be at the earliest opportunity available after sufficient time has passed for the filing of any motions for rehearing or reconsideration of this matter and for the Commission's consideration of any such motions.

C. The Commission's Office of General Counsel is hereby authorized to make non-substantive formatting and proofreading changes to **Exhibit A**, as necessary, prior to publication.

D. This Order and the Rule shall be provided to the public in accordance with the State Rules Act.

E. Copies of this Order shall be emailed to all persons on the attached Certificate of Service if their email addresses are known, and if not known, mailed to such persons via regular mail

F. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 30th day of March, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed
CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed
JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Joseph M. Maestas, electronically signed
JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed
THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed
STEPHEN FISCHMANN, COMMISSIONER DISTRICT

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES

CHAPTER 9 ELECTRIC SERVICES

PART 573 COMMUNITY SOLAR

17.9.573.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.9.573.1 NMAC, XX/XX/XXXX]

17.9.573.2 SCOPE: This rule applies to investor-owned electric utilities subject to the commission's jurisdiction and to rural electric distribution cooperatives that opt into the community solar program. This rule also applies to subscriber organizations and subscribers as defined in the Community Solar Act, Section 62-16B-2(M) and (N), NMSA 1978.
[17.9.573.2 NMAC, XX/XX/XXXX]

17.9.573.3 STATUTORY AUTHORITY: Sections 8-8-4(B)(10)~~, 62-16-7, 62-8-13~~ and 62-16B-7 NMSA 1978.
[17.9.573.3 NMAC, XX/XX/XXXX]

17.9.573.4 DURATION: Permanent, unless otherwise indicated.
[17.9.573.4 NMAC, XX/XX/XXXX]

17.9.573.5 EFFECTIVE DATE: April 1, 2022, unless a later date is cited at the end of a section.
[17.9.573.5 NMAC, XX/XX/XXXX]

17.9.573.6 OBJECTIVES: The objectives of this rule are to implement the Community Solar Act, Section 62-16B-1 *et seq*. NMSA 1978, and to reasonably allow for the creation, financing and accessibility of community solar facilities.
[17.9.573.6 NMAC, XX/XX/XXXX]

17.9.573.7 DEFINITIONS:
[RESERVED]
[17.9.573.7 NMAC, XX/XX/XXXX]

17.9.573.8 LIBERAL CONSTRUCTION: If any part or application of this rule is held invalid, the remainder of its parts and any other applications of the rule shall not be affected.
[17.9.573.8 NMAC, XX/XX/XXXX]

17.9.573.9 UTILITY FILINGS FOR IMPLEMENTATION OF PROGRAM: Utilities shall file all tariffs, agreements and forms necessary for implementation of the community solar program with the commission within 60 days of the effective date of this rule.
[17.9.573.9 NMAC, XX/XX/XXXX]

17.9.573.10 COMMUNITY SOLAR FACILITY REQUIREMENTS:

A. A community solar facility, excepting any native community solar project, shall:
(1) have a nameplate capacity rating of five megawatts alternating current or less;

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

(3) have at least ten subscribers;

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

(5) not allow a single subscriber to be allocated more than 40 percent of the generating capacity of the facility; and

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

B. At least thirty (30) percent of electricity produced from each community solar facility shall be reserved for low-income customers and low-income service organizations. The commission will~~shall~~ issue guidelines to ensure the carve-out is achieved each year and develop a list of low-income service organizations and programs that may pre-qualify low-income customers.

[17.9.573.10 NMAC, XX/XX/XXXX]

17.9.573.11 STATEWIDE CAPACITY PROGRAM CAPS:

A. The initial statewide capacity program cap of two hundred (200) megawatts alternating current is allocated among the three qualifying utilities according to "addressable market" estimations, subject to further refinement, as follows:

(1) Public Service Company of New Mexico (PNM), 125 MW;

(2) Southwestern Public Service Company (SPS), 45 MW; and

(3) El Paso Electric Company (EPE), 30 MW.

B. If, within one year of the receipt by a utility of the results of an initial request for proposals for community solar facilities, the initial capacity cap allocation for that utility has not been fully committed by contract, the commission may, at its discretion, apply the unused capacity to another utility on a showing of the latter utility's sufficient subscriber demand.

C. On or before April 1, 2024, the commission will commence a review of the results of the initial allocation and subscriber demand for the community solar program and a proceeding to establish~~establish~~ a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.

[17.9.573.11 NMAC, XX/XX/XXXX]

17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:

A. The commission ~~shall~~ will engage a third-party administrator to manage an unbiased and nondiscriminatory process for selection of proposed projects for building and operating community solar facilities. The commission will have no involvement in the process except to the extent that the administrator or any participant in the process may raise before the commission an issue that is not fully addressed in this rule and that the commission finds, in its discretion, that it should address.

B. Community solar facility projects shall be selected through a competitive solicitation process, with each bid~~s~~ meeting the following minimum requirements for eligibility:

(1) the bidder's legally binding site control;

(2) the bidder's commitment to meeting statutory subscriber minimums and not exceeding statutory maximums;

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(3) the bidder's completion of a utility pre-application report or completion of a system impact study pursuant to the commission's interconnection rules;

(4) the bidder's proof of access to collateral for the applicable project deposit; and

(5) the bidder's payment of a $1000 non-refundable bid application fee to the commission.

C. Bids made by utilities or utility-affiliated bidders shall be considered by the program administrator according to the same minimum qualifications and scoring criteria as any other bid. However, the program administrator shall limit consideration of bids by utilities and utility-affiliated bidders to a maximum total for all such bids of twenty percent of the statewide capacity cap allocated to the utility.

D. No utility shall use any information provided in the interconnection application process or any information to which the utility has superior access to gain an unfair advantage for itself or any utility-affiliated bidder in the project selection process.

E. Eligible bids shall be scored using a set of non-price factors, with each factor weighted by the number of points awarded to the factor, as follows:

(1) each bid shall be awarded to one of the following categories pertaining to permitting status, each with its own point weighting:

(a) a bid for which all necessary non-ministerial permits and approvals have been secured, based upon a permitting plan signed by a licensed engineering firm, shall be categorized as fully permitted and shall be awarded 15 points:

(b) a bid for which applications are pending for all necessary non-ministerial permits, or for which one or more permits have been granted and applications are pending for the remainder, based upon permitting plan signed by a licensed engineering firm, shall be categorized as permits known and pending and shall be awarded 10 points;

(c) a bid for which the necessary non-ministerial permits have been identified based upon a permitting plan signed by a licensed engineering firm, but not all such permits have been applied for, shall be categorized as permits known and shall be awarded 5 points; or

(d) a bid for which the necessary non-ministerial permits have not been identified, based upon a permitting plan signed by a licensed engineering firm, shall be categorized as no permitting activity and shall be awarded no points.

(2) each bid shall be awarded points for having any, some, or all of the following attributes concerning the bidder's experience in developing and managing community solar projects, with the attributes being additive, not exclusive, for a range of 0 to 10 potential points per bid:

(a) a bid made by a bidder composed of partners or principals having experience with subscriber recruiting and subscription management shall be awarded 3 points;

(b) a bid made by a bidder composed of partners or principals having experience building and operating facilities shall be awarded 3 points; and

(c) a bid made by a bidder composed of partners or principals having experience working directly with low-income communities shall be awarded 4 points.

(3) each bid shall be awarded to one of the following categories pertaining to financing status, each with its own point weighting:

(a) a bid for which financing has been secured, whether in the form of an executed commitment letter from the project financier(s) or in the form of written

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confirmation of executive-level approval for internal financing, shall be categorized as financing secured and shall be awarded 10 points;

(b) a bid for which financing has not been secured but for which a detailed and feasible financing plan has been prepared shall be categorized as financing planned and shall be awarded 4 points; or

(c) a bid for which financing has not been secured and for which no detailed and feasible financing plan has been prepared shall be categorized as financing unplanned and shall be awarded no points.

(4) each bid shall be awarded points for having one or both of the following attributes concerning the proposed project site's viability for interconnection, with the attributes being additive, not exclusive, for a range of 0 to 5 potential points per bid:

(a) a bid for which the proposed project site's distance to the utility's nearest 3-phase line is less than one mile, as demonstrated by the utility's pre-application report or convincing alternative evidence presented by the bidder, shall be awarded 2 points; and

(b) a bid for which the proposed project would interconnect to a line of voltage 12 kV or higher, as demonstrated by the utility's pre-application report, shall be awarded 3 points.

(5) each bid shall be awarded points for including any, some, or all the following commitments beyond what is required by the statute, with the commitments being additive, not exclusive, for a range of 0 to 25 potential points per bid:

(a) a bid including a commitment to exceed the statutory 30-percent minimum level of subscription of low-income subscribers shall be awarded 2 points for each additional 5-percent commitment above the 30-percent minimum, up to a maximum of 8 points for a commitment to a 50-percent low-income subscription level for the proposed project;

(b) a bid including a commitment to serve a specific percentage of direct-billed low-income customers shall be awarded 4 points for a 10-percent commitment and 2 additional points for each additional 10-percent commitment, up to a maximum of 8 points for a commitment to a 40-percent subscription level of direct-billed, low-income subscribers for the proposed project;

(c) a bid including a commitment to refrain from imposing upon any potential low-income subscriber any up-front costs of subscribing, a commitment to refrain from imposing upon any potential low-income subscriber any early termination fee, and a commitment to refrain from requiring or ordering any credit check or credit report for any low-income subscriber, shall be awarded 2 points; and

(d) a bid including a commitment to supplement the community solar bill credit for any low-income subscriber, for a minimum period of five years, by including, in addition to the credit as calculated and provided by the utility, a credit from the subscriber organization to the subscriber in the amount of an additional 20 to 30 percent of the utility solar bill credit, shall be awarded 4 points for a commitment of 20 percent up to and including 22 percent, 5 points for a commitment above 22 percent up to and including 25 percent, 6 points for a commitment above 25 percent up to and including 27 percent, or 7 points for a commitment above 27 percent up to and including 30 percent.

(6) each bid shall be awarded points for having any, some, or all of the following attributes concerning benefits to local communities, to disproportionately impacted communities, or to disadvantaged groups, with the attributes being additive, not exclusive, for a range of 0 to 20 potential points per bid:

(a) a bid including a commitment to offer workforce training or educational opportunities to disproportionately impacted communities shall be awarded 6 points;

(b) a bid including a commitment to contract for materials, supplies, or services only with businesses owned or operated locally or owned or operated by members of racial minorities, women, veterans, or Native Americans, shall be awarded 6 points;

(c) a bid including a commitment to ownership of the proposed facility by members of the local community shall be awarded 2 points; and

(d) a bid including evidence of and a description of an existing and continuing partnership with a tribe, pueblo, local community, or non-profit community organization shall be awarded 6 points.

(7) each bid shall be awarded points for having any, some, or all of the following attributes concerning the proposed project site, with the attributes being additive, not exclusive, for a range of 0 to 5 potential points per bid:

(a) a bid for a project to be sited on a brownfield, built environment, or rooftop shall be awarded 2 points;

(b) a bid for a project to be sited on municipal, county, or state land shall be awarded 1 point; and

(c) a bid for a project that has received a favorable analysis from the department of cultural affairs shall be awarded 2 points.

(8) each bid shall be categorized according to the provisions of Section 13-1-21 NMSA 1978, and shall be awarded points accordingly.

(9) The program administrator may award an additional 5 points to any bid that, as determined by the administrator in its discretion, includes an innovative commitment or provision beneficial to the local community, to potential subscribers, or to the program overall.

F. The program administrator shall select projects based upon these qualifications and selection criteria within each qualifying utility's territory until the allocated capacity cap for each utility has been reached.

G. For each bid selected to proceed further by the program administrator, the bidder shall pay to the commission an application fee in the amount of $2500 for each megawatt of nameplate capacity the proposed facility is expected to have.

H. The program administrator shall identify sets of proposed projects to comprise utility-specific wait lists of proposed projects that would be eligible and able to participate in the program should a project or multiple projects be withdrawn after being selected to go forward. The wait lists shall be comprised of projects that received total scores immediately below the scores of the projects that were selected. The program administrator shall maintain a wait list for each qualifying utility, including projects with combined capacities totaling 20 percent of each utility's allocated capacity cap. Each bidder proposing a wait-listed project shall pay the $2500/MW application fee within 30 days of moving from the wait list into the queue of selected projects.

~~. Eligible bids must be scored upon a set of non-price criteria. The criteria must include the following:~~

~~(1) the bidder's legally binding site control;~~

~~(2) the bidder's commitment to meeting or exceeding all statutory subscriber requirements, including a minimum 30% low-income subscription requirement; and~~

~~(3) that any required, non-ministerial permits have been issued to the bidder at the time the bid is submitted.~~

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~~C. The competitive solicitation process must include the following preferences based upon benefits to the local community and the state of New Mexico:~~

~~(1) preferences for businesses residing in the state and for resident veteran businesses, pursuant to Section 13-1-21 NMSA 1978;~~

~~(2) preferences for projects supporting local businesses employing local labor, or having partners resident in the state;~~

~~(3) preferences for bids including workforce training or educational opportunities for disenfranchised groups;~~

~~(4) preferences for businesses owned or operated by minorities or women;~~

~~(5) preferences for bids including local job training or committing to long-term jobs in New Mexico; and~~

~~(6) preferences for bids including partnership with local communities or community-based project ownership.~~

~~D. Bids must be scored and evaluated upon the following non-price factors:~~

~~(1) Project viability, including consideration of the following factors:~~

~~(a) project economics, system output, system size and guaranteed subscriber savings;~~

~~(b) financial viability, financing plan and evidence of funding;~~

~~(c) developer experience with community solar and subscriber acquisition and management, experience building and operating solar projects of similar size;~~

~~(d) state of project development and schedule;~~

~~(e) interconnection viability;~~

~~(f) permitting due diligence and compliance with environmental laws; and~~

~~(g) familiarity with local community and prior experience working with low-income communities.~~

~~(2) Subscriber experience, benefits and savings, including consideration of the following:~~

~~(a) user friendly in-person or online educational resources to help customers make informed choices about community solar participation;~~

~~(b) input from low-income consumers and low-income customer engagement; and~~

~~(c) guaranteed subscriber savings, favorable contract terms, long-term savings opportunities.~~

~~(3) Project siting characteristics, including consideration of the following:~~

~~(a) strategic feeder lines, co-location with battery storage or other assets that can provide community resiliency;~~

~~(b) project located on landfills, brownfield, municipal/county, or stand land; and~~

~~(c) favorable environmental impact analysis or favorable impact analysis concerning artifacts of cultural and historical significance.~~

~~E. Projects selected in the initial review must immediately commence to detailed interconnection impact studies pursuant to the commission's rule for interconnection of generating facilities with a rated capacity up to and including 10 MW, 17.9.568 NMAC.~~

~~F. The final ranking of bids must be based upon capacity availability, commitment to pay necessary system upgrade costs, or a determination that upgrade costs may be approved for cost sharing, rate base recovery by the utility, or some other cost allocation method approved by the commission as specified in 17.9.573.13 of this rule.~~

~~G. For any accepted bid, the utility must execute a purchased power agreement with the subscriber organization for a term of not less than twenty-five (25) years.~~

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~~H. Once a bid is approved by the utility, subscribers may sign up directly with the subscribing organization.~~

~~I. Prior to commencing operations, the subscriber organization or facility operator must obtain a permission to operate from the utility. A minimum of ten subscribers must be subscribed to the project before the utility may issue a permission to operate.~~

~~J. The subscriber organization must provide verification of safety certification from a nationally recognized testing laboratory.~~

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[17.9.573.12 NMAC, XX/XX/XXXX]

17.9.573.13 INTERCONNECTION COST SHARING:

A. The commission may~~will~~ determine on a case-by-case basis whether the cost of distribution system upgrades necessary to interconnect one or more community solar facilities may be eligible for some form of cost-sharing:

(1) among subscriber organizations~~several developers~~ using the same distribution facilities;

(2) among all ratepayers of the qualifying utility via rate base adjustments; or

(3) among ratepayers of the same rate class as subscribers to the community solar facility via a rate rider for that class.

B. In making a determination that there are public benefits to such a cost-sharing mechanism, the commission will employ the analysis that the commission employs when considering cost sharing or rate basing grid modernization projects as defined by 71-3 NMSA 1978, the Grid Modernization Act, to make a finding that the approved expenditures are:

(1) reasonably expected to improve the utility's electrical system efficiency, reliability, resilience and security;

(2) reasonably expected to maintain reasonable operations, maintenance and ratepayer costs;

(3) reasonably expected to meet energy demands through a flexible, diversified and distributed energy portfolio;

(4) reasonably expected to increase access to and use of clean and renewable energy, with consideration given to increasing access to low-income subscribers and subscribers in underserved communities; or

(5) designed to contribute to the reduction of air pollution, including greenhouse gases.

C. Expenditures approved for such cost sharing of necessary interconnection upgrades ~~will~~ may not be considered cross-subsidization subject to the three~~ (3)~~ percent limit in appropriate cases.

[17.9.573.13 NMAC, XX/XX/XXXX]

17.9.573.14 REGISTRATION OF SUBSCRIBER ORGANIZATIONS:

~~A.~~ The commission will issue a registration form that each subscriber organization shall file with the commission, that includes ownership and contact information, non-profit registration, or proof of certification to operate in New Mexico, and a general description of the project(s) proposed by the subscriber organization.

B. ~~Each subscriber organization shall pay an application fee of $2,500 per MW to cover a portion of the costs incurred by the commission in administering the community solar program.~~ Each subscriber organization's ongoing authorization to operate community solar

facilities shall be dependent upon the organization's compliance with the statutory 30% low-income subscription minimum for each facility operated by the subscriber organization. Each subscriber organization shall report to the program administrator on a monthly basis upon the organization's progress toward meeting the requirement. Subscriber organizations that have reached the required level shall report on a quarterly basis to verify that the requirement continues to be met. Subscriber organizations that fail to reach the required level within one year of project selection may be subject, at the commission's discretion, to penalties up to and including suspension or revocation of the subscriber organization's authorization to operate.
[17.9.573.14 NMAC, XX/XX/XXXX]

17.9.573.15 SPECIAL SUBSCRIBER PROVISIONS:

A. Low-income subscribers who are eligible to meet the 30-percent carve out of Section 62-16B-7(B)(3) NMSA 1978 may be pre-qualified based on participation in any of the following programs:

(1) Medicaid;
(2) Supplemental Nutrition Assistance Program (SNAP);
(3) Low-Income Home Energy Assistance Program (LIHEAP);
(4) first-time homeowner programs and housing rehabilitation programs;
(5) living in a low-income/affordable housing facility; or
(6) state and federal income tax credit programs.

B. An entire multi-family affordable housing project may prequalify its entire load as a low-income subscriber, with consent of all tenants of record.

C. ~~Small commercial customers under utility small power service or small general service tariffs with less than 50 kW of average monthly demand may also subscribe to community solar facilities.~~For the initial period of the program, the commission shall contract with an experienced service provider to partner with community organizations and to manage an outreach program to attract low-income subscribers to the program.
[17.9.573.15 NMAC, XX/XX/XXXX]

17.9.573.16 SUBSCRIBER PROTECTIONS:

A. The commission ~~will issue~~has adopted a uniform disclosure form~~, or set of forms~~, identifying the information to be provided by subscriber organizations to potential subscribers, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures. The key contract terms to be disclosed on the form are Subscription Size (kW DC), Estimated Contract Effective Date, Contract Term (months or years), Option to Renew Y/N?, Enrollment Costs/Subscription Fees, Payment Terms, Rate Discount, Estimated Total One Year Payments, Early Termination Fees or Cancellation Terms, and Subscription Portability or Transferability. The subscriber organization shall provide the form to a potential subscriber and allow them a reasonable time to review the form's disclosures and sign the form before entering into a subscription agreement. The subscriber organization shall maintain in its files a signed form for each subscriber for the duration of the subscriber's subscription, plus one year, and shall make the form available to the commission upon the commission's request.

B. The subscriber organization must maintain a minimum level of general liability insurance coverage for each facility that it operates, with the minimum level dependent upon the

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nameplate capacity of the facility, according to the following schedule: $1 million per occurrence for a facility with a capacity greater than 250 kW, $500,000 per occurrence for a facility with a capacity in the range of 40 kW - 250kW, and $300,000 per occurrence for a facility with a capacity below 40 kW.
[17.9.573.16 NMAC, XX/XX/XXXX]

17.9.573.17 SUBSCRIPTION~~BER~~ AGREEMENTS: Each subscriber organization shall develop and implement a written subscriber agreement containing the organization's terms and conditions for subscribing to its project.

A. The subscriber agreement must include the following terms, at a minimum:
(1) general project information;
(2) the effective date and term of the agreement;
(3) identification of all charges and fees;
(4) payment details;
(5) information about the bill credit mechanism;
(6) a comparison of the subscriber's net bill with and without the subscription;
(7) the terms and conditions of service;
(8) the process for customer notification if the community solar facility is out of service;
(9) the customer protections provided;
(10) contact information for questions and complaints; and
(11) the subscriber organization's commitment to notify the subscriber of changes that could impact the subscriber.

B. The commission may consider additional required terms in a future proceeding.

C. Complaints by subscribers against subscriber organizations may be submitted to the commission's consumer relations division for informal resolution. The commission may, in its discretion, refer serious issues to the attorney general to pursue enforcement proceedings.
[17.9.573.17 NMAC, XX/XX/XXXX]

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17.9.573.18 CO-LOCATION OF COMMUNITY SOLAR FACILITIES ~~WITH OTHER GENERATION~~: As long as a community solar facility is not served by the same substation as another community solar facility, it shall not be considered co-located with another community solar facility~~The co-location of community solar projects totaling up to 5 MW in capacity on the same parcel should not prevent approval of any such projects, so long as they are interconnected to different substations~~. The commission will consider, on a case-by-case basis, allowing more than one community solar facility to be served by the same substation.
[17.9.573.18 NMAC, XX/XX/XXXX]

17.9.573.19 PRODUCTION DATA:

A. The subscriber organization shall pay for a production meter to be used to measure the amount of electricity and renewable energy certificates generated by each community solar facility, whether installed by the utility or the subscriber organization. A net meter may serve as the production meter if the utility determines that there is no material onsite load at the facility.

B. The subscriber organization shall ~~Community solar facilities, excepting native community solar projects, are required to~~ provide real-time reporting of production as specified by the utility. For a community solar facility~~ies~~ with production capacity~~ies~~ greater than 250 kW AC, the subscriber organization ~~or operator~~ shall provide real-time electronic access to production and system operation data to the utility.

C. Production from the facility shall be reported to the subscribers by the subscriber organization on at least a monthly basis. Subscriber organizations are encouraged to provide website access to subscribers showing real-time output from the facility, if practicable, as well as historic production data.

[17.9.573.19 NMAC, XX/XX/XXXX]

17.9.573.20 COMMUNITY SOLAR BILL~~ING~~ CREDIT~~S~~ RATE:

A. In calculating the solar bill credit rate, the utility shall calculate the total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

B. The total aggregate retail rate is the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills. The utility's tariff for the bill credit shall include a table specifying the components of the total aggregate retail rate, the value of the renewable energy attributes and the distribution costs to be subtracted.

C. The utility shall base its distribution cost calculation upon its most recently commission-approved cost-of-service study indexed to current value.

D. The utility shall not subtract any costs of transmission from the solar bill credit rate calculation.

E. The utility shall initially value the environmental attributes of renewable energy certificates (RECs) at the utility's average cost of meeting its renewable portfolio standard requirement. ~~A~~During the utility's next base rate case, the Commission will consider whether to adopt a replacement methodology to determine the ~~utility's formula may incorporate the~~ net present value of the environmental attributes of RECs~~renewable energy certificates (RECs)~~ necessary to reach ~~as part of the valuation of renewable energy attributes over the period for reaching~~ the mandated 80% renewable portfolio standard by 2043~~0~~, including full environmental and distribution benefits.

[17.9.573.20 NMAC, XX/XX/XXXX]

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17.9.573.21 UNSUBSCRIBED ENERGY:

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

B. The utility shall document any payments made for unsubscribed energy, including documentation of the utility's calculation of avoided cost and make such documentation available to the commission upon request. The utility may request recovery of such payments in its next base rate case.

[17.9.573.21 NMAC, XX/XX/XXXX]

17.9.573.22 REPORT TO LEGISLATURE: On April 1, 2023 and April 1, 2024, qualifying utilities and subscriber organizations shall provide information to the commission relevant to the report to the legislature due on November 1, 2024. The commission will issue specific information requests no later than 45 days before each April deadline.

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New Mexico Community Solar Program: Subscriber Information Disclosure Form

The purpose of this form is to provide Community Solar project subscribers with a straight-forward, uniform and transparent resource to evaluate potential transactions under the New Mexico Community Solar program.

Community Solar subscribers do not directly purchase solar/renewable energy. Participants receive a portion of energy from Community Solar projects, and a Solar Bill Credit based on the value of utility electric generation being displaced by the subscription, which includes a value for the solar renewable attributes. The renewable energy certificates that embody that renewable value are awarded to the qualifying utility, as per the terms of the Community Solar Act of 2021 (NMSA 1978 62-16B-7(A)).

[see Note on Page 2]

Subscriber Information	**Subscriber Organization Information**
Customer Name:	Company Name:
Name on Electric Bill (if different)	Street Address:
Street Address:	City, State, Zip:
City, State, Zip:	Consumer Contact Name:
Phone:	Direct Phone:
E-mail	E-mail

Community Solar Project Information
Community Solar Project Name:
Project Location (Utility Territory):
Project Nameplate Capacity (in kW DC)
Estimated Commercial Operation Date:

Terms and Conditions (refer to Subscriber Agreement)	**Page of Agreement**	**Affirmed Subscriber Initial**
Subscription Size (kW DC)		
Estimated Contract Effective Date:		
Contract Term (months or years)		
Option to Renew Y/N?		
Enrollment Costs/Subscription Fees:		
Payment Terms:		
Rate Discount:		
Estimated Total One Year Payments:		
Early Termination Fees or Cancellation Terms:		
Subscription Portability or Transferability:		

Describe the process for customer notification if the project is out of service:		
Describe the process to notify subscriber of any changes that would affect the subscriber or terms of service:		

Note: A Renewable Energy Certificate (REC) represents the environmental attributes associated with one (1) megawatt-hour of renewable energy. RECs generated by a Community Solar facility are transferred to the qualified utility and are not the property of the subscriber or the subscriber organization. In compensation, the Solar Bill Credit provided to the subscriber by the utility includes a value associated with the REC. Therefore, while the subscriber is not able to claim the purchase of renewable energy, participation in the Community Solar program does support additional development of renewable energy in New Mexico.

The value of the Solar Bill Credit is established by a formula approved by the NMPRC, based on utility cost-of-service studies and published in utility tariffs. Solar Bill Credits will be updated with each utility general rate case cycle, or based on any interim changes to relevant costs-of-service, as approved by the NMPRC and amended tariffs.

In case of Subscriber complaints: The NMPRC urges subscribers to contact their Subscriber Organization's customer representative (named above) with any concerns or complaints about billing or terms of their agreements. If the complaint cannot be resolved, the subscriber should contact the NMPRC's Consumer Relations Division at 1-888-427-5772. https://nm-prc.org

After investigation of the complaint, the NMPRC may refer unresolved issues to the New Mexico Office of the Attorney General for further action.

I, _____, hereby affirm that I have received and understood the above information. I further confirm that I have had the chance to ask questions of the Subscriber Organization and have received sufficient answers, if applicable.

Date:_____

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE COMMISSION'S ADOPTION OF RULES PURSUANT TO THE COMMUNITY SOLAR ACT	)))	**Docket No. 21-00112-UT**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Adopting Rule** was sent via email to the following parties on the date indicated below:

A.J. Gross	ajgross@hollandhart.com;
Abbas Akhil	abbas@revtx.com;
Abbas Akhil	abbas.akhil@nmlegis.gov;
Abbas Akhil	aakhil@comcast.net;
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Adam Alvarez	adam.alvarez@pnm.com;
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NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed
Isaac Sullivan-Leshin, Law Clerk
Isaac.sullivan-leshin@state.nm.us