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SENATE BILL 84

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

INTRODUCED BY

Elizabeth "Liz" Stefanics and Linda M. Lopez

AN ACT

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

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Community Solar Act."

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Community Solar Act:

A. "commission" means the public regulation  
commission;

B. "community solar bill credit" means the credit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 SECTION 3. [NEW MATERIAL] COMMUNITY SOLAR FACILITY

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1 REQUIREMENTS.--

2 A. A community solar facility shall:

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

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

8 (3) have at least ten subscribers;

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

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

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

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

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

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

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

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

5           A. A subscription shall be:

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

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

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

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

18           A. A qualifying utility shall:

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

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

25                   (3) provide community solar bill credits to a

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) require a target thirty percent annual

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

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

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

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

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

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

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

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

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

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

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

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

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

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