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From: Sullivan-Leshin, Isaac, PRC
Sent: Wednesday, October 27, 2021 4:39 PM
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Subject: 21-00112-UT; Filing Submission
Attachments: 21-00112-UT, Order Issuing Notice of Proposed Rulemaking.pdf

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 ISSUING NOTICE OF PROPOSED RULEMAKING into the above captioned case.

Thank you.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

ORDER ISSUING NOTICE OF PROPOSED RULEMAKING

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon the Commission’s own motion and upon the recommendation of the Community Solar Action 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. The Act requires that, in the rulemaking process, “[t]he commission shall solicit input from relevant state agencies, public utilities, low-income stakeholders, disproportionately impacted communities, potential owners or operators of community solar facilities, Indian nations, tribes and pueblos and other interested parties in its rulemaking process.” NMSA 1978, § 62-16B-7(D).

6. On May 12, 2021, the Commission issued its Initial Order, opening this docket for a rulemaking proceeding pursuant to the Act. The Initial Order introduced the Commission’s contractor, Strategen Consulting, LLC (“Strategen”) and the Community Solar Action Team (the “Team”), made up of two members of the Commission, several employees of the Commission, and a Commission contractor.

7. The informal proceedings in this matter included three workshops recommended by the Team and ordered by the Commission, which were held on June 24, 2021, August 27, 2021, and October 19, 2021, respectively. The workshops were followed by meetings of the working groups, which were groups of interested persons dedicated to addressing particular issues in the rulemaking. Strategen managed the working group process, focusing on ten key topics grouped into two categories – Market Oversight and Consumer Protection/Ratemaking. The working group process culminated in the issuance of Strategen’s “Stakeholder Participation Pre-Rulemaking Status Report,” which was filed in this docket on October 15, 2021.

8. Following these informal proceedings, the Team drafted a proposed rule, which the Team has recommended to the Commission for issuance with this Order. The Team has stated to the Commission that the Team’s recommended proposed rule does not address every rulemaking

requirement in Section 62-16B-7 of the Act. Despite the best efforts of the Team, Strategen, and the stakeholders participating in the workshops and working groups, there were insufficient time and insufficient resources available to formulate a comprehensive proposed rule in the informal proceedings. Accordingly, the Team has recommended to the Commission that certain questions and issues that are not addressed in the recommended proposed rule be raised in this Order and that the public be notified that the Commission is calling for comments upon additional issues not addressed in the Team's recommended proposed rule.

9. The Commission has jurisdiction over this matter.

10. The Commission finds that the informal proceedings held so far in this matter have satisfied the stakeholder outreach requirements of Section 62-16B-7(D) of the Act and that the formal proceedings commenced by this Order will continue to promote the stakeholder outreach goals of the Act.

11. The Commission finds that this Order should issue to commence the formal rulemaking process, culminating in the Commission's adoption of a Community Solar Rule on or before April 1, 2022, pursuant to the Act.

12. The Commission finds that the proposed rule recommended by the Team, attached hereto as **Exhibit A**, should be adopted by the Commission and noticed to the public as the Commission's "Proposed Rule," pursuant to Section 14-4-5.2 of the State Rules Act, Sections 14-4-1 *et seq.*

13. The Commission finds that, as recommended by the Team, the "Additional Issues to be Addressed in Formal Comment Process," attached as **Exhibit B** hereto, should be adopted by the Commission and noticed to the public as a supplement to the Proposed Rule.

14. The Commission finds that the Notice of Proposed Rulemaking (the “NOPR”) attached hereto as **Exhibit C** should be issued by the Commission for publication in the New Mexico Register on the earliest available publication date, pursuant to Section 14-4-5.2 of the State Rules Act, and for publication in two newspapers of general circulation in the state, pursuant to Section 8-8-15 of the Public Regulation Commission Act, Sections 8-8-1 *et seq.*

15. The Commission has the authority to promulgate the Proposed Rule under the N.M. Const. art. XI, § 2, and under NMSA 1978, Sections 8-8-4(B)(10), 62-16-7, 62-8-13, and 62-16B-7, NMSA 1978.

IT IS THEREFORE ORDERED:

A. A formal rulemaking proceeding is hereby instituted in this docket to add a new rule within Title 17, Public Utilities and Utility Services, Chapter 9, Electric Services, at the currently reserved Part 573. Upon adoption of a final rule in this proceeding, Part 573 shall be titled “Community Solar.” The Commission hereby issues its Proposed Rule attached hereto as **Exhibit A.**¹ The rule which may eventually be adopted as the final rule in this proceeding may include all, part, or none of the language in **Exhibit A.** The Commission may also consider alternative proposals for the final rule.

B. The Notice of Proposed Rulemaking attached hereto as **Exhibit B** shall be provided to the public pursuant to the State Rules Act, the Public Regulation Commission Act, and any other applicable legal authorities.

¹ The Commission notes that the Proposed Rule must be read in conjunction with the Act, in accordance with standard rulemaking principles. The Commission has generally avoided repeating the language of the Act in the Proposed Rule. In addition, terms that are specially defined in the Act have the same definitions in the Proposed Rule.

C. Any person wishing to comment on the Proposed Rule, **Exhibit A** hereto, and/or the Additional Issues to be Addressed in Formal Comment Process, **Exhibit B** hereto, may do so by submitting written Initial Comments no later than **December 9, 2021**. Any person wishing to respond to Initial Comments may do so by submitting written Response Comments no later than **December 29, 2021**.

D. A public hearing on the Proposed Rule and the Additional Issues to be Addressed in Formal Comment Process, to be presided over by the Commission or its designee, shall be held beginning at **10:00 a.m. on January 6, 2022**. Any member of the public who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or isaac.sullivan-leshin@state.nm.us by no later than 12:00 noon on January 5, 2022 to sign up as a hearing participant. The Commission's Office of General Counsel will email a Zoom invitation to all hearing participants the day before the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer.

E. The hearing will be held in order to receive oral comments. In the interest of administrative efficiency, only commenters who have not submitted written comments will be allowed to speak. In addition, any commenter may be limited to five minutes to speak, subject to the discretion of the Commission or its designee. The Commission or its designee may also determine that a spokesperson should be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding. A court reporter will prepare a transcript of the hearing for filing in this docket.

F. Any person wishing to reply to Response Comments or comments made at the hearing may do so by submitting written Reply Comments no later than **January 21, 2022**.

G. It will be most helpful if written comments suggesting changes or alternatives to the proposed rule discuss the particular reasons for the suggested changes or alternatives and include all suggested rule language necessary to effectuate the changes or alternatives being suggested. It will also be helpful if suggested changes to the proposed rule are provided in a format showing deletions and additions as redlined changes.

H. Staff of the Commission's Utility Division is hereby directed to file Initial, Response and Reply Comments.

I. All written comments shall bear the above caption and docket number and shall be filed with the Commission's Records Division by emailing the comments in PDF format to prc.records@state.nm.us or filed otherwise in accordance with the Commission's Rules of Procedure, 1.2.2 NMAC.

J. Commission Rule 1.2.3.7(B) NMAC (Ex Parte Communications), with regard to rulemaking proceedings, draws a distinction between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." The record closure date shall be **January 26, 2022**.

K. While the record is open, interested persons are expected to file comments according to the schedule in this Order. Any other filings will generally be considered improper by the Commission unless extraordinary circumstances call for consideration of such filings.

L. Any person with a disability requiring special assistance in order to participate in the hearing should contact Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

M. Public notice of this rulemaking shall also be provided, and a rulemaking record maintained, in conformity with the State Rules Act, Sections 14-4-1 *et seq.*

N. Copies of this Order, including exhibits, shall be e-mailed to all persons listed on the attached Certificate of Service if their e-mail addresses are known, and if not known, mailed to such persons via regular mail.

O. Copies of any forthcoming final order adopting a rule shall be provided, along with copies of the rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this docket, to all commenters in this case, and to all individuals requesting such copies. Public notice of such final order shall also be provided in conformity with the State Rules Act, Sections 14-4-1 *et seq.* (amended 2017).

P. This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 27th day of
October, 2021.

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 5



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 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 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.

[17.9.573.11 NMAC, XX/XX/XXXX]

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 percent 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;

EXHIBIT A to Order Issuing Notice of Proposed Rulemaking – PROPOSED RULE

(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 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.
[17.9.573.12 NMAC, XX/XX/XXXX]

17.9.573.13 INTERCONNECTION COST SHARING:

A. The commission 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 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 not be considered cross-subsidization subject to the three percent limit.
[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.

EXHIBIT A to Order Issuing Notice of Proposed Rulemaking – PROPOSED RULE

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.
[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.
[17.9.573.15 NMAC, XX/XX/XXXX]

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.
[17.9.573.16 NMAC, XX/XX/XXXX]

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.
[17.9.573.17 NMAC, XX/XX/XXXX]

17.9.573.18 CO-LOCATION OF FACILITIES WITH OTHER GENERATION: The co-location of community solar projects totaling up to five MW in capacity on the same parcel should not prevent approval of any such projects, so long as they are interconnected to different substations.
[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. Community solar facilities, excepting native community solar projects, are required to provide real-time reporting of production as specified by the utility. For facilities with production capacities greater than

EXHIBIT A to Order Issuing Notice of Proposed Rulemaking – PROPOSED RULE

250 kW AC, the subscriber organization or operator shall provide real-time electronic access to production and system operation data.

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 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 percent renewable portfolio standard by 2040, including full environmental and distribution benefits.

[17.9.573.20 NMAC, XX/XX/XXXX]

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.

[17.9.573.21 NMAC, XX/XX/XXXX]

ADDITIONAL ISSUES TO BE ADDRESSED IN FORMAL COMMENT PROCESS

1. Program administration:

The language of the Community Solar Act makes it clear that the New Mexico Public Regulation Commission (hereinafter, the “Commission” or the “PRC”) 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?

2. Issues Clearly within PRC authority:

A. 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?

B. 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.

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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. 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?

C. 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?

EXHIBIT B to Order Issuing Notice of Proposed Rulemaking

- 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?

D. Community Outreach & Involvement

- a. 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?

3. 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?
- b. How much of the Community Solar rule be asserted over Rural Co-ops that opt-in to the program?
- 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?

4. 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 data necessary to provide the required report to the Legislature in November 2024?

###

**NOTICE OF PROPOSED RULEMAKING
DOCKET NO. 21-00112-UT**

The New Mexico Public Regulation Commission (the “commission”) hereby gives notice of its initiation of a proposed rulemaking to adopt a new rule, **17.9.573 NMAC, “Community Solar.”**

Summary of the full text of the proposed rule and short explanation of its purpose: The commission intends to adopt a new rule concerning community solar projects. The Community Solar Act (the “act”), Sections 62-16B-1 *et seq.* NMSA 1978, enacted in 2021, 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 Section 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 three percent; (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. Subsection B of Section 62-16B-7 NMSA 1978. 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 commission in carrying out the community solar program.” Subsection C of Section 62-16B-7 NMSA 1978. The commission intends to adopt a community solar rule that meets the requirements set out in the act. The commission will also consider adopting rule provisions not required by the act but related to the community solar program.

Legal authority authorizing the proposed rule and the adoption of the rule: The commission has the authority to promulgate and adopt the proposed rule under the New Mexico Constitution, Article XI, Sec. 2, under Paragraph 10 of Subsection B of 8-8-4 NMSA 1978, Sections 62-16-7, 62-8-13, and 62-16B-7, NMSA 1978.

How a copy of the full text of the proposed rule can be obtained: A copy of the full text of the proposed rule and instructions for accessing the complete rulemaking record can be obtained from the rulemaking page on the commission’s website at <https://www.nm-prc.org/rulemaking-proceedings/> or by calling Isaac Sullivan-Leshin of the commission’s office of general counsel at (505) 670-4830. From the same sources, any person can obtain the commission’s *Additional Issues to be Addressed in Formal Comment Process*, which should be reviewed and considered in conjunction with the proposed rule.

How a person can comment on the proposed rule, where comments will be received and when comments are due: Any person wishing to comment on the proposed rule or the *Additional Issues to be Addressed in Formal Comment Process* may do so by submitting written initial comments no later than **December 9, 2021**. Any person wishing to respond to initial comments may do so by submitting written response comments no later than **December 29, 2021**. Any person wishing to reply to response comments or comments made at the hearing may do so by submitting written reply comments no later than **January 21, 2022**. Comments can be electronically filed by sending them in PDF format to prc.records@state.nm.us. Comments must refer to Docket No. 21-00112-UT. All written comments will be posted on the commission’s website within three days of their receipt by the records bureau.

EXHIBIT C to Order Issuing Notice of Proposed Rulemaking

The record closure date for this proceeding is **January 26, 2022**. From that date through the completion of this proceeding, rulemaking participants will be forbidden from communicating with the commission or its representatives concerning substantive issues in this proceeding.

When and where a public rule hearing will be held and how a person can participate in the hearing: A public hearing on the proposed rule and the *Additional Issues to be Addressed in Formal Comment Process*, to be presided over by the commission or its designee, will be held beginning at **10:00 a.m. on January 6, 2022**, via the Zoom online platform. Any person who wishes to make a comment at the hearing must contact Isaac Sullivan-Leshin at (505) 670-4830 or isaac.sullivan-leshin@state.nm.us by no later than **12:00 noon on January 5, 2022** to sign up as a hearing participant. The commission's office of general counsel will email a Zoom invitation to all hearing participants the day before the hearing. The Zoom invitation will include a call-in number for those participants who are unable to access the Zoom platform via computer. The hearing will be held in order to receive oral comments. In the interest of administrative efficiency, only commenters who have not submitted written comments will be allowed to speak. In addition, any commenter may be limited to five minutes to speak, subject to the discretion of the commission or its designee. The commission or its designee may also determine that a spokesperson should be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding. A court reporter will prepare a transcript of the hearing for filing the rulemaking docket, Docket No. 21-00112-UT. Any person with a disability requiring special assistance in order to participate in the hearing should contact Renada Peery-Galon at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

Technical information that served as a basis for the proposed rule and how the information can be obtained: When adopting the proposed rule, the commission considered the report titled "*New Mexico Community Solar - Stakeholder Participation Pre-Rulemaking Status Report*," prepared by Strategen Consulting, LLC, the commission's contracted consultant in this matter, which was filed in Docket No. 21-00112-UT on October 15, 2021. The Commission also considered the report titled "*New Mexico Interconnection Rules: Report and Recommendations to the New Mexico Public Regulation Commission*," prepared by the interconnection rulemaking working group, which was filed in Docket No. 20-00171-UT on October 15, 2021. The commission also considered the presentation materials from the second workshop held in this proceeding, which materials were filed in Docket No. 21-00112-UT on August 30, 2021. Copies of this technical information can be obtained from the rulemaking page on the commission's website at <https://www.nm-prc.org/rulemaking-proceedings/> or by calling Isaac Sullivan-Leshin of the commission's office of general counsel at (505) 670-4830.

Instructions on how to access the complete rulemaking record, reports and other items filed in the commission's e-docket system can be found at <https://www.nm-prc.org/rulemaking-proceedings/>. Additional information about the community solar rulemaking can be found at <https://www.nm-prc.org/utilities/community-solar/> or by calling Isaac Sullivan-Leshin at (505) 670-4830.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CERTIFICATE OF SERVICE

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

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DATED this 27th day of October, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

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