

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 - N, 07/12/2022]

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, Subsections M and N of Section 62-16B-2 NMSA 1978.
[17.9.573.2 NMAC - N, 07/12/2022]

17.9.573.3 STATUTORY AUTHORITY: Paragraph (10) of Subsection B of Section 8-8-4 and Section 62-16B-7 NMSA 1978.
[17.9.573.3 NMAC - N, 07/12/2022]

17.9.573.4 DURATION: Permanent, unless otherwise indicated.
[17.9.573.4 NMAC - N, 07/12/2022]

17.9.573.5 EFFECTIVE DATE: July 12, 2022, unless a later date is cited at the end of a section.
[17.9.573.5 NMAC - N, 07/12/2022]

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 - N, 07/12/2022]

17.9.573.7 DEFINITIONS: [RESERVED]
[17.9.573.7 NMAC - N, 07/12/2022]

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 - N, 07/12/2022]

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 - N, 07/12/2022]

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 forty 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 25 kilowatts or less.
- B.** At least thirty percent of electricity produced from each community solar facility shall be reserved for low-income subscribers and low-income service organizations. The commission will 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 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 a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.

[17.9.573.11 NMAC - N, 07/12/2022]

17.9.573.12 PROCESS FOR SELECTION OF COMMUNITY SOLAR FACILITIES:

A. The commission 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 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;
- (3) the bidder's completion of a utility pre-application report or an equivalent report by the utility;
- (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. The program administrator shall limit consideration of bids by any one bidder to a maximum total for such bids of twenty percent of the statewide capacity cap allocated to the applicable 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 five 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 zero 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 three points;
 - (b) a bid made by a bidder composed of partners or principals having experience building and operating facilities shall be awarded three 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 four points.
- (3) each bid shall be assigned 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 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 four 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 zero to five potential points per bid:
- (a) a bid for which the proposed project site's distance to the utility's nearest three-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 two 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 three 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 zero to 25 potential points per bid:
- (a) a bid including a commitment to exceed the statutory thirty-percent minimum level of subscription of low-income subscribers shall be awarded two points for each additional five-percent commitment above the thirty-percent minimum, up to a maximum of eight points for a commitment to a fifty-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 two points for a ten-percent commitment and two additional points for each additional ten-percent commitment, up to a maximum of eight points for a commitment to a forty-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 two 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 twenty to thirty percent of the utility solar bill credit, shall be awarded four points for a commitment of twenty percent up to and including twenty-two percent, five points for a commitment above twenty-two percent up to and including twenty-five percent, six points for a commitment above twenty-five percent up to and including twenty-seven percent, or seven points for a commitment above twenty-seven percent up to and including thirty 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 zero 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 six 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 six points;
 - (c) a bid including a commitment to ownership of the proposed facility by members of the local community shall be awarded two 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 six 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 zero to five potential points per bid:

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

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

(c) a bid for a project that has received a favorable analysis from the department of cultural affairs or a qualified independent expert shall be awarded two 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 five 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 for each utility equal to the 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.

I. A utility must consider interconnection applications for community solar projects that have been selected by the administrator and any projects from the wait list that replace any selected projects and need not consider interconnection applications for community solar projects that have not been selected or have not replaced selected projects. Among the group of interconnection applications for community solar projects that have been selected by the administrator or have replaced selected projects, a utility must prioritize consideration of applications in the order of ranking by points awarded to each project in the selection process. A utility shall not apply any preference for interconnection applications for community solar projects as opposed to other types of interconnection applications, and vice-versa, regarding prioritization in the interconnection queue.

[17.9.573.12 NMAC - N, 07/12/2022]

17.9.573.13 INTERCONNECTION AND ADMINISTRATIVE COSTS:

A. The commission may 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 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. The commission will consider approving sharing of interconnection costs with nonsubscribing ratepayers only to the extent that the costs borne by such ratepayers are matched or exceeded by demonstrable benefits to such ratepayers, so that there will be no subsidization of interconnection costs by nonsubscribing ratepayers in appropriate cases.

D. A utility may recover administrative costs of carrying out its responsibilities concerning the community solar program through a rate rider from which nonsubscribing ratepayers are exempt. A utility may apply to the commission to establish such a rider.

[17.9.573.13 NMAC - N, 07/12/2022]

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's ongoing authorization to operate community solar facilities shall be dependent upon the organization's compliance with the statutory thirty-percent 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 - N, 07/12/2022]

17.9.573.15 SPECIAL SUBSCRIBER PROVISIONS:

A. Low-income customers who are eligible to meet the thirty percent carve out of Paragraph (3) of Subsection B of Section 62-16B-7 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.

C. A customer who does not qualify under subpart A may provisionally qualify as a low-income subscriber by signing a self-attestation that the customer's income and household size qualify the customer as a low-income subscriber, until the customer provides sufficient confirming documentation within ninety days of providing the self-attestation.

D. Low-income service organizations need only fit the special definition of this term provided in the community solar act, Subsection H of Section 62-16-2 NMSA 1978.

E. 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 - N, 07/12/2022]

17.9.573.16 SUBSCRIBER PROTECTIONS:

A. The commission has adopted a uniform disclosure form, 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 nameplate capacity of the facility, according to the following schedule: one million dollars per occurrence for a facility with a capacity greater than 250 kW, five hundred thousand dollars per occurrence for a facility with a capacity in the range of 40 kW - 250kW, and three hundred thousand dollars per occurrence for a facility with a capacity below 40 kW.
[17.9.573.16 NMAC - N, 07/12/2022]

17.9.573.17 SUBSCRIPTION 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 - N, 07/12/2022]

17.9.573.18 CO-LOCATION OF COMMUNITY SOLAR FACILITIES: As long as a community solar facility is not located on the same parcel as another community solar facility, it shall not be considered co-located with another community solar facility. For any parcel that has been subdivided in the two years prior to a community solar project bid, all subdivided parcels shall be considered a single parcel for the purposes of this rule. The commission will consider, on a case-by-case basis, allowing more than one community solar facility to be located on the same parcel.
[17.9.573.18 NMAC - N, 07/12/2022]

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 provide real-time reporting of production as specified by the utility. For a community solar facility with production capacity greater than 250 kW AC, the subscriber organization 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 - N, 07/12/2022]

17.9.573.20 COMMUNITY SOLAR BILL CREDIT 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. During the utility's next base rate case, the Commission will consider whether to adopt a replacement methodology to determine the net present value of the environmental attributes of RECs necessary to reach the mandated eighty-percent renewable portfolio standard by 2040, including full environmental and distribution benefits.

[17.9.573.20 NMAC - N, 07/12/2022]

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 - N, 07/12/2022]

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.

[17.9.573.22 NMAC - N, 07/12/2022]

HISTORY OF 17.9.570 NMAC: [RESERVED]