

NEW MEXICO PUBLIC REGULATION COMMISSION

Native American Participation in Community Solar

The Community Solar Act (the “Act”), NMSA 1978, §§ 62-16B-1 *et seq.*, includes several provisions concerning “native community solar projects,” mostly exempting such projects from requirements that apply generally to “community solar facilities.” In addition, the Act requires that the Commission’s rule concerning community solar projects provide preferences for Native American resident businesses and Native American resident veteran businesses. The Commission’s Community Solar Rule, 17.9.573 NMAC (the “Rule”), addresses these issues in accordance with the Act.

Under the Act, “native community solar projects” form a special subgroup within the larger group of “community solar facilities.” The Act defines a “community solar facility” as “a facility that generates electricity by means of a solar photovoltaic device, and subscribers to the facility receive a bill credit for the electricity generated in proportion to the subscriber's share of the facility's kilowatt-hour output.” The Act defines “native community solar project” as “a community solar facility that is sited in New Mexico on the land of an Indian nation, tribe or pueblo and that is owned or operated by a subscriber organization that is an Indian nation, tribe or pueblo or a tribal entity or in partnership with a third-party entity.” The Act defines “Indian nation, tribe or pueblo” as “a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico.” “Partnership” requires that the Indian nation, tribe or pueblo have a significant ownership stake in the facility.

General Requirements from Which Native Community Solar Projects Are Exempt

The Act specifically exempts native community solar projects from many of the requirements to which community solar facilities, generally, are subject. The Act exempts native community solar projects from the following requirements that apply to community solar facilities generally: (1) the requirement to have a nameplate capacity rating of five megawatts alternating current or less; (2) the requirement to have at least ten subscribers; (3) the requirement not to be co-located with other community solar facilities; (4) the requirement not to allow a single subscriber to be allocated more than forty percent of the generating capacity of the facility; (5) the requirement to make at least forty percent of the total generating capacity of a community solar facility available in subscriptions of twenty-five kilowatts or less; and (6) the requirement that any subscription to a community solar facility be sized to supply no more than one hundred percent of the subscriber's average annual electricity consumption. There are three “qualifying utilities” in the State of New Mexico: Public Service Company of New Mexico (PNM), Southwestern Public Service Company (SPS) and El Paso Electric Company (EPE).

Native community solar projects are also exempted from the total capacity cap placed upon the statewide community solar program, which the Commission has set, initially, at 200 megawatts (MW).

The Act requires that environmental attributes associated with a native community solar project shall be owned by the owner of the native community solar project.

Native community solar projects are not subject to the Commission’s selection process for proposed community solar facilities. Thus, each native community solar project may apply to the appropriate qualifying utility for interconnection to the utility’s grid without first having been selected by the

Commission to move forward to the interconnection process. Native community solar projects may also have unique interconnection needs for example typical site control and permitting may not be relevant for native community solar projects.

Requirements Applicable to Native Community Solar Projects

Native community solar projects, like community solar facilities generally, must be located in the service territory of the qualifying utility and be interconnected to the electric distribution system of that qualifying utility

Native community solar projects also still require thirty percent of electricity produced from each community solar facility to be reserved for low-income customers and low-income service organizations.

All community solar projects are required to provide consumer protections for subscribers, including a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber, in both English and Spanish, and when appropriate, native or indigenous languages, to ensure fair disclosure of future costs and benefits of subscriptions, key contract terms, security interests and other relevant but reasonable information pertaining to the subscription, as well as grievance and enforcement procedures.

Subscriptions to native community solar projects, like subscriptions to community solar facilities generally, must be transferable and portable within the service territory of the qualifying utility in which the project is located. A "subscription" is a contract for a community solar subscription entered into between a subscriber and a subscriber organization for a share of the nameplate capacity from a community solar facility. However, native community solar projects are not required to use the subscription model. They may use other "financial mechanisms," including but not limited to "virtual and aggregated net metering."

Native community solar projects are also required to comply with the Act's mandate that a minimum of thirty percent of electricity produced from each community solar facility be reserved for low-income customers and low-income service organizations.

Selection Preferences for Community Solar Project Proposals with Native American Involvement

For projects that qualify as community solar projects but not as native community solar projects, the Act requires that preferences for Native American resident businesses and Native American resident veteran businesses be incorporated into the request-for-proposals process for the selection of community solar projects. The Rule incorporates these preferences into the selection process by awarding points to project bids with these characteristics:

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.

[and]

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.

17.9.573.12(E)(6)(b) & (d) NMAC.