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HOUSE BILL 338

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

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AN ACT

RELATING TO UTILITIES; ENACTING THE COMMUNITY SOLAR GARDENS  
ACT; AMENDING SECTION 62-8-6 NMSA 1978 (BEING LAWS 1941,  
CHAPTER 84, SECTION 42, AS AMENDED) RELATED TO PUBLIC  
UTILITIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 8 of this act may be cited as the "Community Solar  
Gardens Act".

SECTION 2. [NEW MATERIAL] LEGISLATIVE FINDINGS.--The  
legislature finds that:

A. it is in the public interest that broader  
participation in solar electric generation by New Mexico  
residents and commercial entities be encouraged by the  
development and deployment of distributed solar electric

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1 generation facilities known as community solar gardens;

2 B. community solar gardens can provide New Mexico  
3 residents and commercial entities with an opportunity to  
4 participate in solar generation, in addition to the  
5 opportunities otherwise available through customer-sited  
6 distributed solar generation on homes and businesses, by  
7 allowing renters, low-income utility customers and persons  
8 without suitable locations for solar generation on their  
9 premises to participate in local solar generation facilities;

10 C. the development of solar generation will be  
11 facilitated by allowing interests in community solar generation  
12 facilities to be portable and transferable;

13 D. community solar gardens can leverage New  
14 Mexico's solar generating capacity through economies of scale  
15 relative to customer-sited distributed solar generation;

16 E. programs to enable community solar gardens  
17 should ensure that low-income residential customers have  
18 opportunities to participate; and

19 F. the development and deployment of community  
20 solar can create local jobs and otherwise contribute to  
21 economic development, can result in a more diverse energy  
22 portfolio and can contribute to the conservation of New  
23 Mexico's water resources.

24 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
25 Community Solar Gardens Act:

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1           A. "community solar garden" means a solar electric  
2 generation facility that has subscribers who are allocated a  
3 share of the electricity generated in proportion to the size of  
4 their subscription;

5           B. "commission" means the public regulation  
6 commission;

7           C. "low-income residential customer" means a  
8 customer with an annual household income at or below the median  
9 household income for New Mexico, as published by the United  
10 States census bureau;

11           D. "public utility" means an entity certified by  
12 the commission to provide retail electric service in New Mexico  
13 pursuant to the Public Utility Act but does not include a rural  
14 electric cooperative;

15           E. "subscriber" means a retail customer of a public  
16 utility who owns one or more subscriptions to a community solar  
17 garden and who has identified one or more physical service  
18 locations to which each subscription is attributed;

19           F. "subscriber organization" means an entity that  
20 owns or operates one or more community solar gardens; and

21           G. "subscription" means a proportional interest in  
22 solar electric generation facilities installed at a community  
23 solar garden, together with the renewable energy credits  
24 associated with or attributable to such facilities.

25           SECTION 4.   [NEW MATERIAL] COMMUNITY SOLAR GARDEN

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1 REQUIREMENTS.--

2 A. A community solar garden shall have a nameplate  
3 rating of ten megawatts or less and shall not be co-located  
4 with another community solar garden where that limit is  
5 exceeded in the aggregate.

6 B. A community solar garden shall be located in the  
7 service territory of a public utility.

8 C. A community solar garden shall have at least ten  
9 subscribers.

10 D. No single subscriber shall hold more than a  
11 forty percent interest in a community solar garden.

12 E. No more than forty percent of the capacity of a  
13 community solar garden may be allocated to subscriptions larger  
14 than twenty-five kilowatts.

15 F. A subscriber may change the premises to which a  
16 subscription is attributed if the premises are within the  
17 service territory of the public utility.

18 G. Each subscription shall be sized to:

19 (1) represent at least one kilowatt of the  
20 community solar garden's generating capacity; and

21 (2) supply no more than one hundred percent of  
22 the average annual consumption of electricity by the subscriber  
23 at the premises to which the subscription is attributed, with a  
24 deduction for the amount of any existing solar facilities at  
25 the premises.

1 H. Subscriptions to a community solar garden may be  
2 transferred or assigned to a subscriber organization or to any  
3 person who qualifies to be a subscriber pursuant to the  
4 Community Solar Gardens Act.

5 SECTION 5. [NEW MATERIAL] OWNERSHIP OF COMMUNITY SOLAR  
6 GARDENS.--

7 A. A community solar garden shall be owned by a  
8 public utility, an affiliate of a public utility or a  
9 subscriber organization.

10 B. A community solar garden may be built, owned and  
11 operated by a third party under contract with a subscriber  
12 organization.

13 C. The owners of and the subscribers to a community  
14 solar garden shall not be considered public utilities subject  
15 to regulation by the commission solely as a result of their  
16 interest in the community solar garden.

17 D. Prices paid for subscriptions to community solar  
18 gardens shall not be subject to regulation by the commission.

19 E. Neither the costs nor the revenues attributable  
20 to a community solar garden owned by a public utility or public  
21 utility affiliate shall be considered in determining a public  
22 utility's cost of service.

23 F. The commission shall assure that competition  
24 among developers and owners of community solar gardens is not  
25 compromised by the actions of any public utility.

1           SECTION 6.   [NEW MATERIAL] PURCHASES FROM COMMUNITY SOLAR  
2 GARDENS.--

3           A. The output from a community solar garden shall  
4 be sold only to the public utility serving the geographic area  
5 where the community solar garden is located. The public  
6 utility shall purchase all of the electricity and renewable  
7 energy credits generated by a community solar garden at a rate  
8 equal to the rate established by commission rules implementing  
9 18 C.F.R. 292.304. At the request of a subscriber  
10 organization, the public utility shall purchase the receivables  
11 associated with subscriptions from a community solar garden at  
12 a discount rate approved by the commission.

13           B. The amount of electricity and renewable energy  
14 credits generated by a community solar garden shall be  
15 determined by a production meter installed by a public utility  
16 or third-party system owner; the cost of the production meter  
17 and its installation shall be paid for by the owner of the  
18 community solar garden.

19           C. A public utility shall sell the electricity  
20 acquired pursuant to Subsection A of this section to each  
21 community solar garden subscriber, in an amount equal to the  
22 subscriber's proportional share of the energy produced by the  
23 community solar garden. The public utility shall sell the  
24 electricity at the same rate as for the public utility's  
25 purchases pursuant to Subsection A of this section, with

1 adjustments as determined by the commission to cover the public  
2 utility's cost of delivering electricity to the subscriber's  
3 premises, integrating the community solar garden with the  
4 public utility's system and administering contracts for  
5 community solar gardens and subscribers. A public utility  
6 shall file its rate for charges in excess of the cost of  
7 acquisition, which rate may vary by size or distance, but shall  
8 not otherwise be specific to an individual community solar  
9 garden or its subscribers. A rate filed pursuant to this  
10 subsection shall be subject to the same provision review and  
11 approval as for other rates. The commission shall ensure that  
12 charges authorized by this subsection do not reflect costs that  
13 are already recovered by the public utility from the subscriber  
14 through other charges.

15 D. To the extent the electricity available to a  
16 subscriber from the subscriber's interest in a community solar  
17 garden exceeds the subscriber's consumption for electricity  
18 from the public utility during a billing period, the subscriber  
19 shall not be required to purchase the excess electricity during  
20 that billing period. The subscriber shall be permitted to make  
21 an equivalent purchase of electricity in a subsequent billing  
22 period that is no more than twelve months later during which  
23 the subscriber's electricity demand from the public utility  
24 exceeds the subscriber's share of the production of the  
25 community solar garden.

1           E. The owner of a community solar garden with a  
2 nameplate capacity above two megawatts shall provide real-time  
3 production data to the public utility to facilitate  
4 incorporation of the community solar garden's generation of  
5 electricity into the public utility's operation of its electric  
6 system.

7           F. The subscriber organization for a community  
8 solar garden shall, on a monthly basis, provide to a public  
9 utility the kilowatt hours of electrical generation  
10 attributable to each subscriber participating in the community  
11 solar garden, in accordance with the subscriber's share of the  
12 output of the community solar garden. The subscriber  
13 organization shall electronically transmit such documentation  
14 to the public utility monthly, in a format approved by the  
15 commission, so that the public utility can reflect the proper  
16 allocation on the subscriber's utility bill.

17           SECTION 7.   ~~[NEW MATERIAL]~~ LOW-INCOME RESIDENTIAL  
18 CUSTOMERS.--

19           A. To the extent practical and achievable, the  
20 commission shall ensure that ten percent of the total  
21 generating capacity of a community solar garden operated  
22 pursuant to the Community Solar Gardens Act is made available  
23 to low-income residential customers or entities serving such  
24 customers.

25           B. To the extent not otherwise prohibited by law,



1 funds available for low-income energy-assistance programs may  
2 be used to enable the participation of low-income residential  
3 customers in programs authorized by the Community Solar Gardens  
4 Act.

5 SECTION 8. [NEW MATERIAL] COMMISSION RULES.--

6 A. On or before October 1, 2017, the commission  
7 shall commence a rulemaking proceeding to adopt rules as  
8 necessary to implement the Community Solar Gardens Act and  
9 shall adopt appropriate rules on or before May 1, 2018.

10 B. Rules adopted by the commission pursuant to  
11 Subsection A of this section shall facilitate the financing of  
12 subscriber-owned community solar gardens. Such rules shall  
13 include:

14 (1) minimum capitalization;

15 (2) the share of a community solar garden's  
16 eligible solar electric generation facilities that a subscriber  
17 organization may at any time own in its own name; and

18 (3) authorization for subscriber organizations  
19 to enter into leases, sale-and-leaseback transactions,  
20 operating agreements and other ownership arrangements with  
21 third parties.

22 C. Rules adopted by the commission pursuant to  
23 Subsection A of this section shall address procedures by which  
24 a subscriber who ceases to be a customer at the premises on  
25 which the subscription is based but, within a reasonable period

1 as determined by the commission, becomes a customer at another  
2 premises in the service territory of the public utility, may  
3 transfer the subscription.

4 D. The commission shall:

5 (1) develop rules to facilitate the  
6 participation of low-income residential customers in programs  
7 authorized by the Community Solar Gardens Act and entities  
8 serving low-income residential customers;

9 (2) develop rules ensuring that all rate  
10 classes may participate in community solar gardens;

11 (3) establish uniform standards, fees and  
12 processes for the interconnection of community solar garden  
13 facilities that will allow a public utility to recover a  
14 reasonable interconnection cost for each community solar  
15 garden;

16 (4) identify the information that shall be  
17 provided to potential subscribers to ensure fair disclosure of  
18 the estimated future cost and benefits of subscriptions; and

19 (5) prevent public utilities and their  
20 affiliates from unfairly competing with non-utility subscriber  
21 organizations, including prohibiting public utilities and their  
22 affiliates from making improper use of customer information  
23 that is not publicly available.

24 SECTION 9. Section 62-8-6 NMSA 1978 (being Laws 1941,  
25 Chapter 84, Section 42, as amended) is amended to read:

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1           "62-8-6. DISCRIMINATION.--No public utility shall, as to  
2 rates or services, make or grant any unreasonable preference or  
3 advantage to any corporation or person within any  
4 classification or subject any corporation or person within any  
5 classification to any unreasonable prejudice or disadvantage.  
6 No public utility shall establish and maintain any unreasonable  
7 differences as to rates of service either as between localities  
8 or as between classes of service. Nothing shall prohibit,  
9 however, the commission from approving economic development  
10 rates and rates designed to retain load or from approving  
11 energy efficiency programs designed to reduce the burden of  
12 energy costs on low-income customers pursuant to the Efficient  
13 Use of Energy Act or to enable the participation of customers  
14 in programs authorized under the Community Solar Gardens Act."

15           SECTION 10. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2017.