

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF LIGHTSTAR RENEWABLES, )  
LLC’S, AS THE AFFILIATED SUBSCRIBER ) Docket No. 23-00167-UT  
ORGANIZATION FOR NM SOLAR 4000, FORMAL )  
COMPLAINT AGAINST INCLIME, INC. )**

**NOTICE TO LIGHTSTAR RENEWABLES, LLC, AND NM SOLAR 4000, LLC, AND  
ALL OTHER APPLICANTS THAT THE COMMISSION HAS INSTRUCTED  
INCLIME, INC. TO RESCORE RELEVANT APPLICATIONS IN RESPONSE TO  
EMERGENCY VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND  
DETERMINATION REGARDING THE APPLICATION OF THE COMMUNITY  
SOLAR RULE NMAC 17.9.573**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (the “Commission”) upon the Emergency Verified Complaint for Injunctive Relief and Determination Regarding the Application of the Community Solar Rule NMAC 17.9.573 (the “Complaint”), filed by Lightstar Renewables, LLC, and NM Solar 4000, LLC (collectively, “Lightstar”).

Whereupon, being duly informed, the Commission finds that the Complaint has merit. The Commission has instructed InClima, Inc. (“InClima”), to re-score the applications submitted by Lightstar as well as any other applications that need to be re-scored based upon the issue identified in the Complaint, described below. As the Commission has a contractual relationship with InClima, the Commission need not issue an injunction against InClima to provide the relief sought by Lightstar, as the instruction serves the same function.

**THE COMMISSION FINDS AND CONCLUDES:**

1. On May 8, 2023, Lightstar filed the Complaint. In the Complaint, Lightstar complains that the “Scoring Factors” listed in Section 4 of the request for proposals (the “RFP”) issued by InClima includes a factor that conflicts with subpart 17.9.573.12(E) NMAC of the Commission’s Community Solar Rule (the “Rule”).

2. Lightstar states that the first Scoring Criteria listed in Section 4 of the RFP (the “Contested Criteria”) is weighted by up to 15 points and is stated as follows: “A bid for which all necessary non-ministerial permits and approvals have been secured, based upon a permitting plan *stamped by a licensed engineer*, shall be categorized as fully permitted.” [RFP, Section 4, Scoring Criteria (italics added).]

3. Lightstar argues that the above language of the RFP conflicts with subpart 17.9.573.12(E)(1)(a) NMAC of the Rule, which provides: “[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.” 17.9.573.12(E)(1)(a) NMAC (italics added).

4. Lightstar further states that it submitted four applications, which, “[i]n compliance with the requirements of 17.9.573.12.E.(1)(a), each . . . included a permitting plan signed by a licensed engineering firm showing that all nonministerial permits that were required to be obtained had been obtained.” Lightstar further states, “More than a month later on April 13, 2023, [InClime] requested that Lightstar ‘provide a permitting plan stamped by a licensed engineer before the bid window close date (2/1/23)’ for each of the applications. Lightstar further states that, “[d]espite the Community Solar Rule not requiring a permitting plan stamped by a licensed engineer, Lightstar obliged Respondent and provided permitting plans stamped by a licensed engineer for each of the [applications].” Lightstar further states that InClime “refused to accept the permitting plans stamped by a licensed engineer for each of the [applications] submitted by Lightstar on the basis that the stamped plan was dated after bid closure.”

5. Lightstar further states, “Despite Lightstar’s submission of a permitting plan signed by a licensed engineering firm showing that all non-ministerial permits that were required to be obtained had been obtained in strict compliance with NMAC 17.9.573.12.E.(1)(a) (07/12/2022), the Bid Scores for each of Lightstar’s [applications] received a score of zero (0) out of 15 for the Contested Criteria.”

6. Lightstar requests that the Commission enter an order determining that Respondent’s imposition of the Contested Criteria is an erroneous and impermissible modification of the Commission’s Community Solar Rule, and that the Commission’s Community Solar Rule, specifically, NMAC 17.9.573.12.E.(1)(a) controls over the Contested Criteria. Lightstar further requests that the Commission enter an order finding that Lightstar, having satisfied the requirements of NMAC 17.9.573.12.E.(1)(a), should be awarded the full 15 points available for the Contested Criteria. Lightstar further requests that the Commission enter an order enjoining Respondent from issuing any awards under the RFP until Respondent recalculates the weighted point total for each of Lightstar’s applications and determines whether Lightstar should receive any awards under the RFP based upon the corrected scores for Lightstar’s applications.

7. The Commission has jurisdiction over this matter pursuant to Section 62-16B-7(A) of the Community Solar Act. NMSA 1978, § 62-16B-7(A).

8. The Commission finds that the Complaint is meritorious. The Commission agrees with Lightstar that InClima improperly imposed upon Lightstar a requirement that exceeded the applicable requirement in the Rule. The Commission has instructed InClima to rescore Lightstar’s applications in accordance with the requirement in the Rule, to rescore any similarly-situated applications in accordance with the requirement in the Rule and to rank all applications accordingly

for the selection process. InClime has accepted this instruction and will communicate with Lightstar and similarly situated applicants accordingly. InClime will soon notify all applicants of a new, postponed date for the announcement of the selection of proposed projects.

9. InClime’s scheduled presentation during the Commission’s specially scheduled open meeting on Tuesday, May 9, 2023, will go forward as scheduled as the presentation is a high-level discussion of the selection process which can still provide helpful information to the Commission despite the fact that the selection process will not be completed by May 9, 2023.

**IT IS THEREFORE ORDERED:**

A. This Order and Notice is issued by the Chair of the Commission or by any single Commissioner in accordance with 1.2.2.30(B) NMAC.

B. This Order is effective immediately.

C. A copy of this Order and Notice shall be served upon all persons listed on the attached Certificate of Service via e-mail if their e-mail addresses are known; otherwise, via regular mail.

D. InClime is instructed to provide a copy of this Order and Notice to all applicants using InClime’s application distribution list.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 9<sup>th</sup> day of May, 2023.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**



*/s/ James F. Ellison, Jr., electronically signed*  
**JAMES F. ELLISON, JR., COMMISSIONER**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Notice to Lightstar Renewables, LLC, and NM Solar 4000, LLC and All Other Applicants that the Commission has Instructed InClime, Inc. to Rescore Relevant Applications in Response to Emergency Verified Complaint for Injunctive Relief and Determination Regarding the Application of the Community Solar Rule NMAC 17.9.573* was sent via email to the following parties on the date indicated below:

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*Notice to Lightstar and Other Applicants of Instruction to  
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**NEW MEXICO PUBLIC REGULATION COMMISSION**

**/s/ LaurieAnn Santillanes, electronically signed**

**LaurieAnn Santillanes, Law Clerk**