

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE PETITION OF THE )  
COALITION FOR COMMUNITY SOLAR )  
ACCESS AND PROSPERITY WORKS FOR ) Docket No. 23-00369-UT  
VARIANCE FROM COMMISSION RULES )  
17.9.573.14.B AND 17.573.15.C )**

**ORDER GRANTING PETITION IN PART AND DENYING PETITION IN PART**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (“Commission”) upon the joint Petition of the Coalition for Community Solar Access (“CCSA”), Prosperity Works (“PW”), the Renewable Energy Industries Association (“REIA”), New Energy Economy (“NEE”), and Vote Solar (collectively, “Petitioners”) for a variance from Commission Rules 17.9.573.14(B) and 17.9.573.15(C) (“Petition”). The Petitioners request that the Commission issue variances to 1) allow community solar projects to achieve the thirty percent level of low-income subscription within 12 months of signing a valid interconnection agreement with the utility or the commercial operation date of the project, whichever is earlier, and 2) allow for the use of self-attestation, rather than requiring customers to provide supporting documentation within ninety days.

The Commission grants the Petition in part and denies the Petition in part for the reasons discussed below.

**JURISDICTION AND PROCEDURAL HISTORY**

1. The Commission has jurisdiction over this matter pursuant to Section 62-16B-7 of the Community Solar Act (“Act”), and Section 62-19-9 of the Public Regulation Commission Act. NMSA 1978, § 62-16B-7 (2022) and NMSA 1978, § 62-19-9 (2020).

2. The Act required the Commission to adopt rules to establish a community solar program by April 1, 2022. NMSA 1978 § 62-16B-7(B) (2022).

3. On March 30, 2022, the Commission adopted and promulgated the Community Solar Rule (“Rule”).<sup>1</sup> The Rule, 17.9.573 NMAC, was published in the New Mexico Register on July 12, 2022.<sup>2</sup>

4. On June 14, 2023, the Commission issued its Order Extending Time for Compliance with Thirty-Percent Low-Income Subscriber Enrollment Requirement; Postponing Time for Monthly Reporting Concerning Progress Toward Requirement; and Granting Variance from 17.9.573.14(B) NMAC (“Order Extending Time”).

5. On November 9, 2023, Petitioners filed their Petition requesting a variance from Commission Rules 17.9.573.14(B) NMAC and 17.9.573.15(C) NMAC.

### **DISCUSSION**

6. Rule 1.2.2.40(A) NMAC states that a petitioner may request a variance from a requirement of any Commission rule or order.

7. Rule 1.2.2.40(E) NMAC provides that a petition for variance shall:

- (1) identify the section of the rule or order from which the variance is requested;
- (2) describe the situation that necessitates the variance;
- (3) describe the effect of complying with the rule or order on the applicant if the variance is not granted;
- (4) describe the result the variance will have if granted; and
- (5) describe how the proposed alternative will achieve the purpose of the rule, and why it is in the public interest.

8. In addition, Rule 1.2.2.40(B) NMAC requires that an affidavit shall support a petition for a variance.

9. A review of the Petition shows that it meets the requirements of Rules

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<sup>1</sup> Docket No. 21-00112-UT, Order Adopting Rule, March 30, 2022.

<sup>2</sup> See Docket No. 21-00112-UT, Notice of Filing of Community Solar Rule as Published in the New Mexico Register, August 10, 2022.

1.2.2.40(E) NMAC and 1.2.2.40(B) NMAC.

10. The Commission considers the two requested variances independently, as follows herein.

**A. Petitioners' request for a variance regarding when the thirty-percent low-income subscriber enrollment requirement must be met.**

11. NMSA § 62-16B-7(B)(3) provides that the Rule shall “require thirty percent of electricity produced from each community solar facility to be reserved for low-income customers and low-income service organizations.” NMSA 1978, § 62-16B-7(B)(3) (2022).

12. Rule 17.9.573.14(B) NMAC establishes the requirements for subscriber organizations to implement the statutory requirement that thirty percent of electricity produced from each community solar facility be reserved for low-income customers and low-income service organizations, stating:

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(B) NMAC.

13. The Commission's Order Extending Time provided a variance to Rule 17.9.573.14(B) NMAC and extended the deadline for compliance with the thirty-percent low-

income subscriber enrollment requirement from March 22, 2024, to August 1, 2024.<sup>3</sup>

14. Petitioners assert that the existing August 1, 2024, deadline for compliance with the thirty-percent low-income subscriber enrollment requirement is “not well aligned with the current trajectory of the project development timeline” for projects that have been selected to go forward in the Community Solar Program.<sup>4</sup> As a result, Petitioners request a variance to allow community solar projects to achieve the thirty percent level of low-income subscription within 12 months of signing a valid interconnection agreement with the utility or the commercial operation date of the project, whichever is earlier.

15. Petitioners explain that “it is unclear when projects will be energized in New Mexico due to the delays in the interconnection process, as illustrated by *Public Service Company of New Mexico’s Response to August 14, 2023 Bench Request Regarding Interconnection*.<sup>5</sup> These delays mean that many projects selected for the program will not sign Interconnection Agreements until the first quarter of 2024 or later. As a result, few, if any, of the selected projects will be energized by August 1, 2024.”<sup>6</sup>

16. Petitioners further assert that due to the timeline for the signing of interconnection agreements most selected projects will not break ground until fall 2024 or later, “[t]he time to complete utility upgrades is variable and can extend projects significantly,” and “the earliest many projects will reach commercial operation is Q1 2025, and some may be well beyond that.”<sup>7</sup>

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<sup>3</sup> Docket No. 22-00020-UT, Order Extending Time at 3.

<sup>4</sup> Petition at 5.

<sup>5</sup> Filed in this Docket No. 22-00020, on September 8, 2023.

<sup>6</sup> Petition at 6, citing Docket No. 22-00270-UT, Direct Testimony of Kevin Cray, Exhibit KC-07 (June 23, 2023).

<sup>7</sup> *Id.* at 6-7, citing Docket No. 22-00270-UT, Direct Testimony of Kevin Cray, Exhibit KC-07 (June 23, 2023).

17. Petitioners assert that “[c]omplying with the current rule and enforcing a low-income subscriber deadline that is well before projects are expected to be energized means that the majority of low-income subscribers will be waiting at least six months – and in most cases, significantly longer – before the projects begin generating energy and delivering savings via their utility bills,” and that this may result in a poor customer experience for the subscribers, reduced allocations and savings due to reductions in project size as a result of the interconnection process, or even the need for subscribers to go through the enrollment process again if they initially subscribe to a project that is ultimately withdrawn from the Community Solar Program.<sup>8</sup>

18. Petitioners assert that if a variance to Rule 17.9.573.14(B) NMAC is not granted, then subscriber organizations will begin enrolling low-income customers once Docket No. 23-00071-UT is concluded, as that docket will establish bill credit rates and the application of bill credits to subscribers’ bills.<sup>9</sup> Petitioners further note that if Docket No. 23-00071-UT concluded on April 1, 2024, that would allow only four months until August 1, 2024, for subscriber organizations to meet the statutory thirty percent low-income enrollment requirement, and that is “significantly faster than CCSA has seen in existing, mature community solar markets.”<sup>10</sup>

19. A final order has not yet been issued in Docket No. 23-00071-UT, as of April 4, 2024, so less than four months remain until August 1, 2024.

20. Petitioners assert that “only low-income households are likely to be subscribed during this initial period of time for the sole purpose of satisfying the August 1, 2024, [low-income enrollment] requirement,” and that “[a]s a result, customers who are not income-eligible

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<sup>8</sup> *Id.* at 7-8.

<sup>9</sup> *Id.* at 8-9.

<sup>10</sup> *Id.* at 9.

will disproportionately benefit from a more straightforward and transparent enrollment process” because “subscriber organizations will likely wait to enroll non-income-eligible customers at an optimal time – once all or most of the uncertainties have been resolved – and closer to the commercial operation date when projects actually start generating subscriber bill credits.”<sup>11</sup>

21. Petitioners assert that granting a variance and authorizing a further extension to the low-income enrollment deadline would not impact project timelines or delay providing benefits to low-income subscribers, nor would it negatively impact utility processes and timelines.<sup>12</sup>

22. Petitioners assert that “an extension would provide subscriber organizations and community-based organizations with sufficient time to thoughtfully, equitably, and efficiently educate and enroll ... low-income households in community solar projects ....”<sup>13</sup>

23. Petitioners assert that “the Community Solar Act and Rules prioritize the equitable distribution of the benefits of community solar by requiring that a percentage of community solar facilities be reserved for low-income subscribers by certain dates,” that the requested variance for the low-income enrollment deadline “will ensure that these benefits reach low-income subscribers without unnecessary confusion, frustration, and distrust that may lead subscribers to unenroll from the program – bypassing the substantial program benefits,” that equity is “a forefront consideration of the underlying statute and Rules,” and that “mitigation of a disproportionately poor customer experience for low-income subscribers serves the public

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<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

interest by carrying out the goals of the State and the intent of the Commission.”<sup>14</sup>

24. Petitioners also note that “[p]ursuant to 17.9.573.14.B NMAC, subscriber organizations that do not comply with the thirty-percent low-income enrollment deadline may be subject to penalties up to and including suspension or revocation of the subscriber organization’s authorization to operate,” and assert that “[a]ny uncertainty surrounding the potential for serious penalties ... at this early stage could have a chilling effect on the development of community solar in the state.”<sup>15</sup>

25. Petitioners therefore request that the Commission grant a variance from Rule 17.9.573.14(B) NMAC and issue an order requiring that that subscriber organizations reach the required thirty-percent level of low-income subscription within 12 months of signing a valid interconnection agreement with the utility or the commercial operation date of the project, whichever is earlier.<sup>16</sup>

**B. Petitioners’ Request for a Variance to Permit Self-Attestation for Income Verification Without a Requirement to Provide Supporting Documentation**

26. With respect to the verification of a community solar customer as a low-income subscriber, Rule 17.9.573.15(C) NMAC establishes that customers that do not prequalify under 17.9.573.15(A) NMAC may provisionally qualify by signing a self-attestation that the customer’s income and household size qualify the customer as a low-income subscriber. The customer must then provide sufficient confirming documentation within ninety days of submitting the self-attestation. 17.9.573.15(C) NMAC.

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<sup>14</sup> *Id.* 10-11.

<sup>15</sup> *Id.* at 11.

<sup>16</sup> *Id.*

27. Petitioners assert that a variance, from the requirement to provide sufficient confirming documentation within ninety days, “is necessary to mitigate undue burden to low-income subscribers, as well as to ensure the uniformity and competitiveness of the New Mexico community solar program with similar programs around the country.”<sup>17</sup>

28. Petitioners assert that the “subscriber’s signature on an approved self-attestation form should suffice as confirmation that the customer meets the income requirements.”<sup>18</sup>

29. Petitioners assert that “[s]elf-attestation is a best practice that is utilized across the country to remove barriers for income-eligible households to receive assistance without going through additional, intrusive steps of providing sensitive documentation,” and that allowing certification by self-attestation “will ensure that potential subscribers are not deterred from participation due to burdensome reporting requirements.”<sup>19</sup>

30. Petitioners assert that income reporting requirements disproportionately impact low-income subscribers and “may prevent potential subscribers from participation” in the Community Solar Program.<sup>20</sup>

31. Petitioners assert that verification through self-attestation would ensure that New Mexico’s Community Solar Program would remain attractive for the development of equity-oriented community solar projects.<sup>21</sup>

32. Petitioners identify that federal agencies have confirmed that “under the low-income communities bonus credit program, established by the Inflation Reduction Act,” self-

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<sup>17</sup> *Id.* at 12.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 12-13.

<sup>20</sup> *Id.* at 13.

<sup>21</sup> *Id.* at 14.

attestation to income qualification that is approved at the state level “will also be accepted as an approved method of income verification for community solar projects seeking the bonus tax credit for qualified low-income economic benefit projects.”<sup>22</sup>

33. Petitioners also assert that granting a variance to allow self-attestation to be verified by a signature, as opposed to providing supporting documentation within ninety days, furthers the intent of the Rule, serves the public interest, and is consistent with the Act because “[t]he Community Solar Act and the Rules prioritize the participation of low-income subscribers ...,” and that “[b]y removing barriers that may deter low-income subscribers from enrolling in the program, the Commission can ensure that these benefits reach their intended recipients.”<sup>23</sup>

34. Petitioners therefore assert that “[t]he Commission should grant a variance to the Rules requiring subscribers to provide documentation of their income status after signing a self-attestation form,” and that “the subscriber’s signature on the self-attestation form should suffice as confirmation that the customer meets the income requirements.”<sup>24</sup>

## FINDINGS AND CONCLUSIONS

### **A. Petitioners’ request for a variance regarding when the thirty-percent low-income subscriber enrollment requirement must be met.**

35. It is unclear when Community Solar Program projects will be energized in New Mexico due to the delays in the interconnection process, as well as other potential future issues that cannot be fully anticipated at this time. This is demonstrated by the responses to the Commission’s January 19, 2024, Bench Request issued in Docket No. 22-00020-UT.

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<sup>22</sup> *Id.* at 13-14.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Southwestern Public Service Company's response shows that no Community Solar project in its territory had progressed beyond a facilities study as of February 16, 2024.<sup>25</sup> Public Service Company of New Mexico's response shows that no Community Solar project in its service territory had progressed beyond a facilities study as of February 19, 2024.<sup>26</sup> El Paso Electric Company's response shows that no Community Solar project in its service territory had progressed beyond a facilities study as of February 19, 2024.<sup>27</sup>

36. If subscriber organizations are required to meet the existing August 1, 2024, deadline for compliance with the thirty-percent low-income subscriber enrollment requirement, that may result in a subscription process that is not optimally thoughtful, equitable, and efficient, and may result in a poor customer experience for the subscribers.

37. Granting a variance from 17.9.573.14(B) NMAC, and authorizing a further extension to the low-income enrollment deadline will not impact project timelines or delay providing benefits to low-income subscribers, nor will it negatively impact utility processes and timelines.

38. Granting a variance establishing that subscriber organizations must reach the required thirty-percent level of low-income subscription within 12 months of signing a valid interconnection agreement with the utility or by the commercial operation date of the project, whichever is earlier, would allow for the subscription process to better align with project

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<sup>25</sup> See Southwestern Public Service Company's Response to January 19, 2024 Bench Request Order, pages 6-9; filed February 16, 2024, in this Docket No. 22-00020-UT.

<sup>26</sup> See Bench Request No. B (2) - Exhibit B(CONF) in Public Service Company of New Mexico's Response to January 19, 2024 Bench Request; filed February 19, 2024, in this Docket No. 22-00020-UT

<sup>27</sup> See Exhibit B of EPE's Response to the Bench Request Order Regarding Interconnection Issued January 19, 2024; filed February 19, 2024, in this Docket No. 22-00020-UT.

development timelines and allow for a more optimal subscription process for subscription organizations and subscribers.

39. Granting a variance that requires subscriber organizations to reach the required thirty-percent level of low-income subscription within 12 months of signing a valid interconnection agreement with the utility precipitates the necessity of the subscriber organization informing the Community Solar Program Administrator when a valid interconnection agreement has been signed.<sup>28</sup>

40. If a still more optimal solution for the timing of required compliance with the thirty percent low-income subscriber enrollment requirement exists, parties have the opportunity to present suggestions to the Commission in Docket No. 24-00094-UT, the Commission's pending proceeding to consider potential amendments to the Rule.

**B. Petitioners' Request for a Variance to Permit Self-Attestation for Income Verification Without a Requirement to Provide Supporting Documentation**

41. The Commission previously considered the low-income verification process in Docket No. 21-00112-UT, and found that the Commission should not adopt a self-certification process for low-income subscriber qualification.<sup>29</sup>

42. The Commission finds that it is premature, at this time, to grant a variance from the established low-income verification process.

43. Docket No. 24-00094-UT provides an opportunity for the Petitioners to present

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<sup>28</sup> Informing the Program Administrator can currently be accomplished by e-mail to [admin@csnewmexico.com](mailto:admin@csnewmexico.com), but alternative means may be developed by the Program Administrator in the future. If an alternative means is developed, that means will be communicated to the subscriber organizations at that time.

<sup>29</sup> See Docket No. 21-00112-UT, Order Adopting Rule, at 78.

the Commission with suggestions for changes to the low-income verification process.

**IT IS THEREFORE ORDERED:**

A. The Petitioners' request for a variance from 17.9.573.14(B) NMAC is APPROVED.

B. Subscriber organizations must reach the required thirty-percent level of low-income subscription within 12 months of signing a valid interconnection agreement with the utility, or by the commercial operation date of the project, whichever is earlier.

C. Within 14 Days of the signing of a valid interconnection agreement with the utility, the subscriber organization shall provide the valid interconnection agreement to the Community Solar Program Administrator.

D. The Petitioners' request for a variance from 17.9.573.15(C) NMAC is DENIED.

E. This Order is effective when signed.

F. This docket is closed.

G. A copy of this Order 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. In computing time in accordance with Statute, Regulation, or Commission Order, the computation shall begin on the date that the Order is filed with the Chief Clerk or Chief Clerk designee.

**SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 4th day of  
April, 2024.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

***/s/ Gabriel Aguilera, electronically signed***  
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**GABRIEL AGUILERA, COMMISSIONER**

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

***/s/ Patrick J. O'Connell, electronically signed***  
\_\_\_\_\_  
**PATRICK J. O'CONNELL, COMMISSIONER**



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**Docket No. 23-00369-UT**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing *Order Granting Petition in Part and Denying Petition in Part* was emailed on this date to the parties listed below:

<b>CITY OF LAS CRUCES</b>	
Anastasia Stevens	<a href="mailto:astevens.law@gmail.com">astevens.law@gmail.com;</a>
Adrienne Widmer	<a href="mailto:awidmer@lascrucenes.gov">awidmer@lascrucenes.gov;</a>
Jocelyn Garrison	<a href="mailto:jgarrison@lascrucenes.gov">jgarrison@lascrucenes.gov;</a>
Lisa LaRocque	<a href="mailto:llarocque@lascrucenes.gov">llarocque@lascrucenes.gov;</a>
<b>COALITION FOR COMMUNITY SOLAR ACCESS</b>	
Joseph Yar	<a href="mailto:joseph@yarlawoffice.com">joseph@yarlawoffice.com;</a>
Alissa Greenwald	<a href="mailto:agreenwald@keyesfox.com">agreenwald@keyesfox.com;</a>
Kevin Cray	<a href="mailto:kevin@communitysolaraccess.org">kevin@communitysolaraccess.org;</a>
Jacob Schlesinger	<a href="mailto:jschlesinger@keyesfox.com">jschlesinger@keyesfox.com;</a>
<b>EPE</b>	
Teresa Pacheco	<a href="mailto:tpacheco@montand.com">tpacheco@montand.com;</a>
Kari Olson	<a href="mailto:kolson@montand.com">kolson@montand.com;</a>
Jess Wechsler	<a href="mailto:jwechsler@montand.com">jwechsler@montand.com;</a>
EPE Reg Mgmt	<a href="mailto:EPE_Reg_Mgmt@epelectric.com">EPE_Reg_Mgmt@epelectric.com;</a>
Abe Gonzalez	<a href="mailto:abe.gonzalez@epelectric.com">abe.gonzalez@epelectric.com;</a>
<b>NM PEOPLE'S ENERGY COOPERATIVE</b>	
Jane Yee	<a href="mailto:jane.cambio@gmail.com">jane.cambio@gmail.com;</a>
Andrew Stone	<a href="mailto:andrew@stone.com">andrew@stone.com;</a>
Brian Naughton	<a href="mailto:btnaughton@gmail.com">btnaughton@gmail.com;</a>
<b>NEE</b>	
Mariel Nanasi	<a href="mailto:mariel@seedsbeneaththesnow.com">mariel@seedsbeneaththesnow.com;</a>
<b>PNM</b>	
Mark Fenton	<a href="mailto:Mark.Fenton@pnm.com">Mark.Fenton@pnm.com;</a>
Carey Salaz	<a href="mailto:Carey.Salaz@pnm.com">Carey.Salaz@pnm.com;</a>

Adam Alvarez	<a href="mailto:Adam.Alvarez@pnm.com">Adam.Alvarez@pnm.com;</a>
Stacey Goodwin	<a href="mailto:Stacey.Goodwin@pnmresources.com">Stacey.Goodwin@pnmresources.com;</a>
John Verheul	<a href="mailto:John.Verheul@pnmresources.com">John.Verheul@pnmresources.com;</a>
Debrea Terwilliger	<a href="mailto:dterwilliger@wbklaw.com">dterwilliger@wbklaw.com;</a>
Heather Allen	<a href="mailto:Heather.Allen@pnmresources.com">Heather.Allen@pnmresources.com;</a>
<b>VOTE SOLAR</b>	
Jason Marks	<a href="mailto:lawoffice@jasonmarks.com">lawoffice@jasonmarks.com;</a>
<b>REIA</b>	
Stephanie Dzur	<a href="mailto:Stephanie@Dzur-Law.com">Stephanie@Dzur-Law.com;</a>
Jim DesJardins	<a href="mailto:jimdesjardins1@gmail.com">jimdesjardins1@gmail.com;</a>
Dylan Connelly	<a href="mailto:dylan.connelly@affordable-solar.com">dylan.connelly@affordable-solar.com;</a>
Chelsea N. VanDeventer	<a href="mailto:chelseavandeventer@gmail.com">chelseavandeventer@gmail.com;</a>
<b>SPS</b>	
Dana Hardy	<a href="mailto:dhardy@hinklelawfirm.com">dhardy@hinklelawfirm.com;</a>
Tim Rode	<a href="mailto:trode@hinklelawfirm.com">trode@hinklelawfirm.com;</a>
Stephanie Houle	<a href="mailto:stephanie.g.houle@xcelenergy.com">stephanie.g.houle@xcelenergy.com;</a>
Zoe Lees	<a href="mailto:Zoe.E.Lees@xcelenergy.com">Zoe.E.Lees@xcelenergy.com;</a>
Erika Kane	<a href="mailto:erika.m.kane@xcelenergy.com">erika.m.kane@xcelenergy.com;</a>
Ruth Sakya	<a href="mailto:ruth.sakya@xcelenergy.com">ruth.sakya@xcelenergy.com;</a>
Brooke Trammell	<a href="mailto:brooke.a.trammell@xcelenergy.com">brooke.a.trammell@xcelenergy.com;</a>
Luis Saenz	<a href="mailto:Luis.F.Saenz@xcelenergy.com">Luis.F.Saenz@xcelenergy.com;</a>
<b>PRC Staff</b>	
Bradford Borman	<a href="mailto:bradford.borman@prc.nm.gov">bradford.borman@prc.nm.gov;</a>
David Black	<a href="mailto:david.black@prc.nm.gov">david.black@prc.nm.gov;</a>
John Bogatko	<a href="mailto:john.bogatko@prc.nm.gov">john.bogatko@prc.nm.gov;</a>
Gloria Regensberg	<a href="mailto:gloria.regensberg@prc.nm.gov">gloria.regensberg@prc.nm.gov;</a>
Christopher E. Dunn	<a href="mailto:christopher.dunn@prc.nm.gov">christopher.dunn@prc.nm.gov;</a>
Ed Rilkoff	<a href="mailto:ed.rilkoff@prc.nm.gov">ed.rilkoff@prc.nm.gov;</a>
Naomi Velasquez	<a href="mailto:naomi.velasquez1@prc.nm.gov">naomi.velasquez1@prc.nm.gov;</a>
MaryJane Parks	<a href="mailto:maryjane.parks@prc.nm.gov">maryjane.parks@prc.nm.gov;</a>
Elizabeth Ramirez	<a href="mailto:elizabeth.ramirez@prc.nm.gov">elizabeth.ramirez@prc.nm.gov;</a>
Peggy Martinez-Rael	<a href="mailto:peggy.martinez-rael@prc.nm.gov">peggy.martinez-rael@prc.nm.gov;</a>
Arthur O'Donnell	<a href="mailto:Arthur.odonnell@prc.nm.gov">Arthur.odonnell@prc.nm.gov;</a>
Russell Fisk	<a href="mailto:russell.fisk@prc.nm.gov">russell.fisk@prc.nm.gov;</a>
Elisha Leyba-Tercero	<a href="mailto:elisha.leyba-tercero@prc.nm.gov">elisha.leyba-tercero@prc.nm.gov;</a>
Jack Sidler	<a href="mailto:Jack.sidler@prc.nm.gov">Jack.sidler@prc.nm.gov;</a>
Keven Gedko	<a href="mailto:Keven.gedko@prc.nm.gov">Keven.gedko@prc.nm.gov;</a>
LaurieAnn Santillanes	<a href="mailto:Laurieann.santillanes@prc.nm.gov">Laurieann.santillanes@prc.nm.gov;</a>

**DATED** this 5<sup>th</sup> day of April, 2024.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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