

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE PETITION OF PPC NEW )  
ENERGY, CHABERTON ENERGY, AND PROSPERITY ) Docket No. 24-00078-UT  
WORKS FOR DECLARATORY ORDER ON )  
COMMISSION RULE 17.9.573.12(C) )**

**ORDER PARTIALLY GRANTING PETITION FOR DECLARATORY ORDER**

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon the Corrected Petition of PPC New Energy, Chaberton Energy, and Prosperity Works (the “Petitioners”) for Declaratory Order on Commission Rule 17.9.573.12(C) (the “Petition”).

The Commission finds that the Petition should be partially granted.

**JURISDICTION AND PROCEDURAL HISTORY**

1. The Commission has jurisdiction over this matter, pursuant to Section 62-16B-7 of the Community Solar Act. NMSA 1978, § 62-16B-7.
2. On March 15, 2024, the Petitioners filed their Petition.
3. On April 12, 2024, the Coalition for Community Solar Access (“CCSA”) filed comments in the docket seeking clarification on a separate issue from the one addressed in the Petition.

**DISCUSSION**

4. Petitioners seek a declaratory order providing an interpretation of subsection 12(C) of the Commission’s Community Solar Rule (the “Rule”). 17.9.573.12(C) NMAC. The subsection provides, “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.” Section 12 of the Rule is titled “Process for Selection of Community Solar Facilities.”

5. The Petitioners request a declaration that the 20% cap of subsection 12(C) continues in effect after the Program Administrator's selection of proposed projects has been completed. The Petitioners further request a declaration that a community solar project on the waitlist shall not be moved up to the list of selected projects if doing so would cause the subscriber organization at issue to exceed the 20% cap.

6. The Petitioners state that they engaged the Program Administrator through emails and direct conversations to clarify how the Program Administrator plans to implement 17.9.573.12(C) NMAC, noting that some subscriber organizations have enough projects on the list of selected projects and the waitlist combined to potentially exceed the 20% cap if they were to be selected off the waitlist. The Petitioners state that the Program Administrator responded that it interprets the rule such that: 1) the developer cap of 20% of a utility's capacity allocation only applies to the initial project selection phase; 2) after that phase, there are no limitations on how much capacity can be ultimately awarded to a single developer; and 3) waitlisted projects are not taken into consideration when applying the 20% cap.

7. The Petitioners disagree with the Program Administrator's interpretation of the rule and argue that its interpretation represents an arbitrary and capricious construction of 17.9.573.12(C) NMAC.

8. The Petitioners argue that subsection 12(C) does not mention the word "award" at all but does use the word "bid" twice. They further argue that a reasonable interpretation of this rule is that the Program Administrator should have only accepted "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," as the rule clearly states. The Petitioners further argue that subsection 12(C) does not distinguish between initial awards and subsequent awards from potential waitlisted

projects. The Petitioners conclude that a reasonable interpretation of the rule is that waitlisted projects are part of the “consideration” that the rule contemplates.

9. The Petitioners recommend that the Commission adopt a proposed approach that they attribute to the CCSA, as follows:

When a project is withdrawn from the Selected Bids list, the next project on the waitlist should automatically be moved to the Selected Bids List, except if the developer cap will be exceeded. Therefore, when a project is withdrawn from the Selected Bids list, a Subscriber Organization’s (“SO”) next project on the Waitlist may only move from the Waitlist to the Selected Bids List if the total capacity of (1) that SO’s projects from the Selected Bids list which have not been withdrawn , plus (2) the capacity of the waitlisted project in question, does not exceed that utility’s 20% developer cap. If moving the waitlisted project in question to the Selected Bids list would cause the Subscriber Organization to exceed the utility’s developer cap, the project will remain on the waitlist but may not move to the Selected Bids List. The next project on the waitlist will be given the opportunity to move to the Selected Bids List. The Program Administrator will implement this process each time a project from the Selected Bids list is withdrawn from the program or capacity of a project is reduced and shall update the Selected Bids List accordingly within five Business Days of notification of a project’s withdrawal or downsizing. This process will maintain the spirit and intent of the regulations, ensuring that the benefits of the program are not concentrated among just a few Subscriber Organizations.

[Petition, ¶ 28.]

### **FINDINGS AND CONCLUSIONS**

10. The Commission finds that the Petition should be partially granted. The Commission agrees with the Petitioners that a reasonable interpretation of the rule is that the selection of bids by any one bidder should be limited to a maximum total for such collective bids of 20% of the statewide capacity cap allocated to the applicable utility. However, it appears that the Program Administrator applied this provision only to the selection of projects for the list of selected projects and not to the selection of waitlisted projects. Thus, there is currently the possibility that a waitlisted project, if selected off the waitlist, could cause a bidder to exceed the applicable 20% cap.

11. Given the circumstance outlined above, the Commission finds that the solution attributed to CCSA should be adopted by the Commission for the language of this declaratory order.<sup>1</sup> Moreover, the Petitioners' proposed solution for this issue is well tailored to address it – to leave the waitlist as is but to prevent any waitlisted project from moving to the list of selected projects if doing so would violate the cap. In determining whether there would be such a violation, the Program Administrator would rely upon the information provided in the bid application for the waitlisted project.

12. As proposed by the Petitioners, if the project were ineligible to move up due to the developer cap, the project would remain on the waitlist and be considered for moving up to the selected list in the future. For example, if another selected project withdrew and circumstances had changed such that moving up the waitlisted project would not cause the 20% cap to be exceeded, the waitlisted project would no longer be ineligible to move up. This might be the case, for example, if the developer of the waitlisted project withdrew one or more of its selected projects.

13. As for the issues raised by CCSA in its comments, it would be premature for the Commission to address them in this Order. The open meeting comments by the Commission's counsel to which CCSA refers in its comments, as well as the proposed revision to CCSA's proposed declaratory order language to which counsel referred, do not implicate any particular course of action by the Commission should any potential situation involving the downsizing of a selected project or the downsizing of a waitlisted project to take up the unused capacity available after a selected project downsizes. Counsel's comments, as well as the revisions to CCSA's language in this Order, merely clarify that the Rule does not address any of these issues and that the Rule refers only to the proper procedure upon the withdrawal of a selected project.

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<sup>1</sup> The Commission has made some revisions to the proposed language for the purposes of clarification and consistency, as well as for the reasons described in Paragraph 13 of this Order.

17.9.573.12(H) NMAC. The revisions should not be understood as indicating a decision by the Commission upon issues that are not before the Commission upon the Petition.

**IT IS THEREFORE ORDERED:**

- A. The Petition is PARTIALLY GRANTED.
- B. The Commission hereby issues the following declaration:

When a project is withdrawn from the Selected Bids list, the next project on the waitlist should automatically be moved to the Selected Bids List, except if the developer cap will be exceeded. Therefore, when a project is withdrawn from the Selected Bids list, a developer's next project on the Waitlist may only move from the Waitlist to the Selected Bids List if: (1) the total capacity of that developer's projects from the Selected Bids list which have not been withdrawn, plus (2) the capacity of the waitlisted project in question, does not exceed the relevant qualifying utility's 20% developer cap. If moving the waitlisted project in question to the Selected Bids list would cause the developer to exceed the utility's developer cap, the project will remain on the waitlist but may not move to the Selected Bids List. The next project on the waitlist will be given the opportunity to move to the Selected Bids List, subject to the same restriction. The Program Administrator will implement this process each time a project from the Selected Bids list is withdrawn from the program and shall update the Selected Bids List accordingly within five Business Days of notification of a selected project's withdrawal.

- C. This Order is effective when signed.
- D. 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.

- E. This docket is now closed.

**SIGNED under the Seal of the Commission at Santa Fe, New Mexico, this 18<sup>th</sup> day  
of April, 2024.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**/s/ Gabriel Aguilera, electronically signed**  
**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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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this date I sent a true and correct copy of the foregoing *Order Partially Granting Petition for Declaratory Order* to the following parties on the date indicated below:

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**DATED** this 19<sup>th</sup> day of April, 2024.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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