

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF POTENTIAL AMENDMENTS TO) Docket No. 24-00094-UT
THE COMMUNITY SOLAR RULE, 17.9.573 NMAC)**

**ORDER ADOPTING AMENDMENTS TO RULE AND GRANTING MOTION FOR
LEAVE TO FILE COMMENTS OUT OF TIME**

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”), upon its own motion, upon the Motion of the New Mexico Energy, Minerals, and Natural Resources Department (“EMNRD”) for Leave to File Comments Out of Time (“Motion”), and upon the comments in the record of this matter.

The Commission finds that 17.9.573 NMAC, “Community Solar,” (“Rule”) should be amended as shown in **Exhibit A** hereto and that EMNRD’s Motion should be granted.

JURISDICTION AND PROCEDURAL HISTORY

1. The Commission has jurisdiction over this matter, pursuant to Section 62-16B-7 of the Community Solar Act (“Act”).¹

2. The Act requires that the Commission adopt rules that accomplish the following:

1) provide an initial statewide capacity program cap of two hundred megawatts alternating current proportionally allocated to investor-owned utilities until November 1, 2024. The statewide capacity program cap shall exclude native community solar projects and rural electric distribution cooperatives; [and]

2) establish an annual statewide capacity program cap to be in effect after November 1, 2024 . . .²

3. Pursuant to subsection (1) of Paragraph B of Section 62-16B-7, the Commission included the following provisions in the Rule:

The initial statewide capacity program cap of 200 megawatts alternating current is allocated among the three qualifying utilities according to addressable market estimations, subject to further refinement, as follows:

¹ NMSA 1978, § 62-16B-7.

² NMSA 1978, §§ 62-16B-7(B)(1) and (2).

- (1) public service company of New Mexico (PNM), 125 MW;
- (2) southwestern public service company (SPS), 45 MW; and
- (3) El Paso electric company (EPE), 30 MW.³

4. Pursuant to subsection 2 of Paragraph B of Section 62-16B-7, the Commission included the following provisions in the Rule:

On or before April 1, 2024, the commission will commence a review of the results of the initial allocation and subscriber demand for the community solar program and a proceeding to establish a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.⁴

5. As per the Rule provision above, the Commission commenced this proceeding by issuing its Initial Order Opening Docket and Requesting Information and Recommendations. In the Initial Order, the Commission cited, as the primary purpose of the proceeding, “[t]he consideration of the current 200-MW statewide capacity cap, any revision to the cap, and any reallocation of the cap among the territories of the state’s three qualifying utilities”⁵ The Commission further stated that it would consider “various amendments to the Rule to improve the Community Solar Program”⁶

6. The Commission also posed a number of questions concerning the Rule, inviting participants in the Community Solar Program (the “Program”) to provide responsive information and recommendations.

7. On April 10-15, 2024, responses to the Initial Order were filed by Staff of the Utility Division of the Commission (“Staff”), the Coalition of Sustainable Communities New Mexico (“CSCNM”), Southwestern Public Service Company (“SPS”), El Paso Electric Company (“EPE”), Public Service Company of New Mexico (“PNM”), United States Solar Corporation (“US Solar”),

³ 17.9.573.11(A) NMAC.

⁴ 17.9.573.11(C) NMAC.

⁵ Initial Order at 1.

⁶ *Id.*

the New Mexico Energy, Minerals, and Natural Resources Department (“EMNRD”), Lightstar Renewables, LLC (“Lightstar”), the Coalition for Community Solar Access (“CCSA”), Renewable Energy Industries of New Mexico (“REIA”), and the New Mexico Building Trades Council (“NMBTC”).

8. On July 15, 2024, the Commission issued its Order Issuing Notice of Proposed Rulemaking (“NOPR Order”). In the NOPR Order, the Commission found that it should commence a limited formal rulemaking proceeding, which would address issues concerning the statewide capacity cap (“Cap”). The Commission stated that it would also consider amendments to the low-income subscriber qualification provisions of the Rule.

9. In the NOPR Order, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) and proposed amendments to Section 17.9.573.11 of the Rule, “Statewide Program Capacity Caps,” providing two proposed options while inviting commenters to propose alternatives to the proposed options as well. The Commission also proposed amendments to Section 17.9.573.15 NMAC, “Special Subscriber Provisions.”

10. On July 22, 2024, written initial comments were filed by Staff, REIA, PNM, EPE, SPS, US Solar, and CCSA.

11. On September 12, 2024, La Vida Llena Residents Association (“LVLRA”) filed its written comments.

12. From September 12, 2024, through September 19, 2024, written response comments were filed by Staff, REIA, PNM, EPE, SPS, US Solar, and CCSA.

13. On September 18, 2024, the Commission held a public comment hearing in this matter. Only one comment relevant to this rulemaking proceeding was provided. The comment was provided by Brent Chapman, Assistant City Attorney with the City of Albuquerque.

14. On September 25, 2024, the New Mexico Energy, Minerals, and Natural Resources Department (“EMNRD”) filed its Motion in the form of an affirmation by Christopher Hall, Associate General Counsel of EMNRD. Mr. Hall stated that “coordination between the EMNRD General Counsel’s Office and EMNRD’s expert(s) in obtaining final approval of proposed response comments in [this] matter took more time than anticipated.”⁷ The Commission grants the Motion in this Order, as described in the Findings and Conclusions, below.

15. On September 30, 2024, the record in this matter was closed.

DISCUSSION

16. The NOPR sought comments on two options. Option A provided that the initial statewide program capacity Cap of 200 MW will remain effective until the Commission has completed a review of the results of the initial phase of the Program and has issued a final order setting a new Cap.⁸ Option A further provided that the Commission will complete the review and establish the new Cap on or before April 1, 2026, and will review the Cap on an annual basis thereafter. Conversely, Option B provided that the Cap would increase by an additional 300 MW.

17. Staff recommended adopting Option A, commenting that the Commission should “evaluate data from the initial 200 MW capacity cap prior to expanding the program capacity cap beyond 200 MW.”⁹ Staff further recommended that the annual review should be limited in scope to consideration of the expansion of the Cap. Staff proposed that the annual review eventually become a triennial review. Finally, Staff recommended adopting the Commission’s proposed change to the self-attestation provision.

⁷ EMNRD’s Comments, attached to Motion (Sept. 25, 2024).

⁸ NOPR Option A explained that, in evaluating whether to raise the cap, the Commission will review, among other factors, demand for subscriptions, levels of low-income subscriber participation, and the overall level of generation capacity within the program that is actually built and operational.

⁹ Staff’s Initial Comments at 1.

18. PNM also recommended adopting Option A, commenting that it would be premature to raise the cap now. PNM noted that it has only four executed interconnection agreements with the 29 developers selected to move forward with projects in PNM’s service territory. PNM also cited the pending proceeding concerning tariffs proposed by the utilities.¹⁰ PNM further commented that it would need additional staffing resources to manage a larger Program and that it would be difficult to staff up sufficiently by the end of 2024. PNM concluded, “Option A provides a reasonable approach that will allow all parties to reflect on best practices and lessons learned and apply them to a future program cap determined after Commission review of several factors”¹¹

19. REIA, in its responsive comments, argued that the utilities’ support for Option A, based upon the lack of projects under construction, is misguided as this is actually an argument for adding capacity as soon as possible to maintain the momentum of investment in new projects. REIA further argued, in response to the utilities’ reliance upon the pending tariff matter in Docket No. 23-00071-UT as a reason for delay, that “[p]rogress is being made on this Case and it will be completed well before a second RFP for the additional capacity is even released.”¹² REIA also noted its agreement with Staff that information providing market signals suggesting a new level of Cap is likely to be available well before two years from today.

20. EPE recommended that the Commission adopt Option A, commenting that the Program is in its initial stage. EPE further noted that the second phase of the Program implementation docket remains pending. EPE recommended a revision to the phrase “and has issued a final order setting a new cap,” to read, “and has issued a final order *amending the rule* to

¹⁰ Docket No. 23-00071-UT.

¹¹ PNM’s Initial Comments at 3.

¹² REIA Reply Comments at 3.

set a new cap,” arguing that the Act requires that the cap be set by rule.¹³ EPE also recommended that the proposed amendments to subsection B, in both options, should include a requirement for a formal proceeding prior to any reallocation of the Cap among the utilities’ territories.

21. SPS recommended the adoption of Option A as well. SPS cited, as reasons to postpone any increase in the size of the Cap, the lack of information concerning the public’s demand for subscriptions and the pendency of the Commission’s tariff proceeding in Docket No. 23-00071-UT.

22. US Solar recommended adopting Option B, citing the high level of participation in the initial project selection process. US Solar commented that adopting Option A would result in an 18-month moratorium on new project proposals and, given an anticipated average two-to-three-year construction and interconnection period, no new facilities becoming operational until 2028. US Solar further recommended spreading the allocation period for the 300 MW capacity over two to three program years to avoid fluctuations in developer demand for capacity from year to year. US Solar proposed reviewing the Cap every three years instead of annually, to avoid uncertainty and instability. If the Commission adopts Option A instead of B, then US Solar would advise that the Commission change the April 1, 2026 initial evaluation date to April 1, 2025, so that any additional projects may become operative earlier than 2028. Finally, US Solar supports the proposed amendment to the self-attestation provision, noting that it will obviate any need for subscriber organizations to request sensitive information such as tax returns.

23. CCSA also recommended that the Commission adopt Option B, commenting that there is no reason to postpone establishing capacity limits for the next phase of the Program. CCSA further argued that raising the Cap will make community solar more broadly available and will

¹³ EPE’s Initial Comments ¶ 9.

facilitate the optimization of federal funding opportunities. CCSA cited New Mexico's award of \$156 million from the U.S. Environmental Protection Agency's Solar for All program to enable low-income communities to benefit from distributed generation as well as the Clean Energy Connector program offered by the U.S. Department of Energy to make community solar subscriptions more accessible to those already enrolled in federal low-income programs, such as the Low Income Home Energy Program ("LIHEAP"). CCSA commented that initial interest in the Program has been strong, with project proposals totaling over 1,700 MW of capacity applied for by developers. CCSA noted that the initial capacity cap, combined with the Option B proposal of 300 additional MW, totals fewer than thirty percent of the applied-for capacity. CCSA further argued that there is little risk to customers of overdevelopment as that risk is borne by the developers themselves. CCSA also commented that raising the Cap now will create continuity and settled expectations that will allow for planning by developers, investors, and potential subscribers.

24. Finally, CCSA supported the proposed amendment to the self-attestation provisions of the Rule. CCSA commented that requiring sensitive information from potential subscribers, can stigmatize and alienate them, citing a 2021 report from the New York Energy and Research Development Authority. CCSA added that several states, including New Jersey, Colorado, Delaware, Virginia, and Maryland, allow low-income subscribers to self-attest.

25. In its response comments, Staff noted the concerns raised by CCSA and others regarding any delay that could be caused by waiting to raise the cap. In response, Staff reiterated its belief that Option A is preferable because Option B would expand the capacity cap before parties have an opportunity to review data related to projects selected in response to the initial request for proposals for 200 MW of community solar.

26. LVLRA recommended that the Commission adopt Option B, commenting that raising the Cap would be a step forward in mitigating climate change. LVLRA further commented that it had evaluated adding solar panels to its buildings and had found that their roofs cannot support them. LVLRA concluded that the Program provides the only way for LVLRA's residents to reap the advantages of solar power.

27. CSCNM strongly recommended adopting Option B, commenting that it is the only option that will provide meaningful benefits to New Mexico's substantial low-income population. CSCNM stated that 43% of New Mexico's approximately 327,982 households (as of 2018) had incomes less than 80% of Area Median Income, as determined by the U.S. Department of Housing and Urban Development. CSCNM estimated that fewer than 10% of the state's low-income households will be able to participate in the Program with the 200 MW Cap. CSCNM noted that no projects within the Program have yet begun enrolling customers. CSCNM commented that adopting Option A would result in a multi-year gap in new enrollments.

28. CSCNM also strongly supported the proposed amendment to the self-attestation provision, noting that self-attestation is a best practice nationwide for community solar programs. CSCNM further noted that past studies have shown that self-attestation significantly increases program participation while resulting in only minor increases in erroneous or fraudulent low-income participation. CSCNM also stated that self-attestation is an acceptable form of verification for the low-income-economic-benefit adder to the Investment Tax Credit in states that allow self-attestation for their community solar programs. CSCNM also recommended that the low-income verification provisions of the Rule be amended to add additional federal programs to the list of federal programs participation in which is sufficient to qualify low-income subscribers.

29. Prosperity Works strongly supported Option B, commenting that adopting Option B “avoids significant pause for consumers in a program that requires significant education and outreach to provide basic knowledge of what community solar is and what the benefits are.”¹⁴ Prosperity Works also supported the proposed amendment to the self-attestation provision of the Rule, citing the benefits of avoiding requests for sensitive financial information from low-income subscribers. Prosperity Works further noted that allowing for self-attestation is a national best practice for community solar programs. Like CSCNM, Prosperity Works recommended adding federal programs to the list of qualifying federal programs in the Rule.

30. Glenn Wikle, a resident of Santa Fe commenting on his own behalf, recommended adopting Option B. Mr. Wikle stated that New Mexico is behind schedule in meeting its carbon reduction goals and that raising the Cap will provide greater assistance to low-income New Mexicans. Mr. Wikle further recommended adopting the proposed amendment to the self-attestation provisions of the Rule, noting that allowing self-attestation to be sufficient for low-income verification is a best practice nationwide.

31. EMNRD strongly supported adopting Option B. EMNRD commented that the Commission should leverage the high demand for solar energy by increasing the Cap by 300 MW. EMNRD suggested that the Commission “consider the state’s energy and sustainability goals set forth in the Renewable Energy Act, the state’s renewable portfolio standard (RPS) goals, and the Governor’s Climate Executive Order,” when considering raising the Cap.¹⁵ In addition, EMNRD cited the award of \$156 million from the EPA’s Solar for All program. EMNRD stated that it will likely encounter issues concerning maximizing the impact of the award if the Cap is not raised.

¹⁴ Prosperity Works’ Comments at 1.

¹⁵ EMNRD Comments at 2.

Finally, EMNRD recommended that the Commission adopt the proposed amendment to the self-attestation provision of the Rule, arguing that it is consistent with the Act's goal of expanding access to solar energy to New Mexico's low-income residents and is a nationally accepted practice.

32. Brent Chapman, of the City of Albuquerque ("City"), commented that the City is in favor of Option B. Mr. Chapman stated that a Cap of 300 MW is consistent with the policy recommendations of the City's Climate Action Plan Task Force. He further commented that an increased cap will foster equity in access to renewable energy.

FINDINGS AND CONCLUSIONS

33. The Commission finds that it should adopt Option B, raising the Cap by 300 MW, effective November 1, 2024. The Commission agrees with the commenters who argue that there is no reason to delay this decision and that there are many reasons to act promptly. The additional 300 MW capacity will be available for a second project solicitation and selection process. As events and circumstances develop, the Commission and Program participants will gather knowledge as to when a second round should proceed. Raising the Cap now does not commit the Commission to conducting the second round at any particular time but will ensure that, if the Commission finds that the second round should go forward in the near future, the increased Cap will be in place.

34. Many commenters argued that raising the Cap now will send a clear signal to potential investors that the Commission is committed to near-term and long-term Program growth. The Commission is committed to pursuing such growth, and the Commission agrees that raising the Cap will emphasize this commitment. Public and private entities commenting in this matter have argued convincingly that delaying a decision regarding the Cap could be counterproductive to accomplishing the Program's goals. The Commission finds that there is an urgent need for

additional renewable energy and that there is an urgent need to mitigate the continuing inequities in access to renewable energy. Raising the Cap now will help meet these needs in a timely manner.

35. In addition, raising the cap now will allow the \$156 million Solar for All Grant awarded to New Mexico (and administered by EMNRD) to begin helping low-income New Mexicans sooner. In support of expanding the cap, EMNRD explained that the Solar for All funds can be used for larger scale solar projects, but the funds must be expended within five years of the award. EMNRD noted that without a Cap increase, EMNRD will likely encounter issues with spending the full award amount.

36. The Commission also adopts the proposed amendment to the self-attestation provision of the Rule. This proposal received many comments in its favor and none in opposition. The Commission adopts the amendment in consideration of the reasons provided in such comments, including the adoption of self-attestation in other community solar programs across the nation.

37. Finally, the Commission grants EMNRD's Motion. The Commission finds that EMNRD's comments are helpful and that EMNRD submitted them before the closure of the record in this matter.

IT IS THEREFORE ORDERED:

A. The Commission's Community Solar Rule, 17.9.573 NMAC, "Community Solar," is hereby AMENDED as shown in **Exhibit A** to this Order.

B. The amendments shall be published in the New Mexico Register, as required by the State Rules Act, NMSA 1978, §§ 14-4-1 *et seq.* The Commission's Office of General Counsel shall publish the amendments at the earliest practicable opportunity, after the expiration of the 30-

day period for filing motions for rehearing, as provided in NMSA 1978, § 62-10-16 of the Public Utility Act.

C. This Order shall be provided to the public in accordance with the State Rules Act.

D. EMNRD's Motion is GRANTED.

E. This Order is effective when signed.

F. 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 3rd day of October, 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



TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 573 COMMUNITY SOLAR

* * *

17.9.573.3 STATUTORY AUTHORITY: Paragraph (10) of Subsection B of Section ~~62-19-9[8-8-4]~~ and Section 62-16B-7 NMSA 1978.
[17.9.573.3 NMAC - A, [07/12/2022]10/22/2024]

* * *

17.9.573.11 STATEWIDE CAPACITY PROGRAM CAPS:

A. The ~~[initial]~~ statewide capacity program cap, effective November 1, 2024, is~~[of 200]~~ 300 megawatts alternating current. This cap does not apply to applications and projects that have been processed in the commission's initial application selection process as such applications and projects remain subject to the initial cap of 200 megawatts. The 300-megawatt cap will apply to the first selection process to be conducted after November 1, 2024, and will be in addition to the 200-megawatt cap applied to the initial selection process, resulting in a total cap of 500 megawatts. The 300-megawatt cap is allocated among the service territories of the three qualifying utilities according to addressable market estimations, subject to further refinement, as follows:

- (1) public service company of New Mexico (PNM), ~~[125]~~185 MW;
- (2) southwestern public service company (SPS), ~~[45]~~70 MW; and
- (3) El Paso electric company (EPE), ~~[30]~~45 MW.

B. ~~[If, within one year of the receipt by a utility of the results of an initial request for proposals for community solar facilities, the initial capacity cap allocation for that utility has not been fully committed by contract,] T~~[t]he commission may, at its discretion, ~~[apply the]~~reallocate the capacity cap among the territories of the utilities to avoid a significant shortfall of the capacity actually used vis-à-vis the capacity cap. ~~[unused capacity to another utility on a showing of the latter utility's sufficient subscriber demand.]~~

C. ~~[On or before April 1, 2024, the commission will commence a review of the results of the initial allocation and subscriber demand for the community solar program and a proceeding to establish a revised annual statewide capacity program cap and allocation to be in effect after November 1, 2024.]~~ The commission will review the cap on an annual basis.
[17.9.573.11 NMAC - A, [07/12/2022]10/22/2024]

* * *

17.9.573.15 SPECIAL SUBSCRIBER PROVISIONS:

A. Low-income customers who are eligible to meet the thirty percent carve out of Paragraph (3) of Subsection B of Section 62-16B-7 NMSA 1978 may be pre-qualified based on participation in any of the following programs:

- (1) Medicaid;
- (2) Supplemental Nutrition Assistance Program (SNAP);
- (3) Low-Income Home Energy Assistance Program (LIHEAP);
- (4) first-time homeowner programs and housing rehabilitation programs;
- (5) living in a low-income/affordable housing facility; or
- (6) state and federal income tax credit programs.

B. An entire multi-family affordable housing project may prequalify its entire load as a low-income subscriber.

C. A customer who does not qualify under subpart A may ~~[provisionally]~~ qualify as a low-income subscriber by signing a self-attestation that the customer's income and household size qualify the customer as a low-income subscriber. ~~[until the customer provides sufficient confirming documentation within ninety days of providing the self-attestation.]~~

D. Low-income service organizations need only fit the special definition of this term provided in the community solar act, Subsection H of Section 62-16-2 NMSA 1978.

E. For the initial period of the program, the commission shall contract with an experienced service provider to partner with community organizations and to manage an outreach program to attract low-income subscribers to the program.
[17.9.573.3 NMAC - A, [07/12/2022]10/22/2024]

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF POTENTIAL AMENDMENTS TO) Docket No. 24-00094-UT
THE COMMUNITY SOLAR RULE, 17.9.573 NMAC)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order Adopting Amendments to Rule and Granting Motion for Leave to File Comments Out of Time* was sent via email to the following parties on the date indicated below:

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NEW MEXICO PUBLIC REGULATION COMMISSION

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