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**23-00071-UT; Phase II Final Order**

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23-00071-UT - 2024-11-26 - Final Order.pdf;

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE TARIFFS, AGREEMENTS, )  
AND FORMS PROPOSED BY QUALIFYING UTILITIES ) Docket No. 23-00071-UT  
FOR THE COMMUNITY SOLAR PROGRAM )**

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**PHASE II FINAL ORDER**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (the “Commission” or “PRC”) upon the issuance of the August 30, 2024, Phase II Recommended Decision (“RD”), necessitating the finalization of issues remaining in this matter to administer the Community Solar Program (“Program”). The issues addressed in this Final Order are the issues designated by the Commission for consideration in Phase II of this matter.

Phase II is primarily concerned with the consideration of Program-specific tariffs and forms proposed by the state’s three qualifying utilities: Public Service Company of New Mexico (“PNM”), Southwestern Public Service Company (“SPS”), and El Paso Electric Company (“EPE”). The proposed tariffs and forms include the following: (1) SPS’s Community Solar Program Subscriber Bill Credit Tariff, Rate No. 87; (2) SPS’s Community Solar Program -- Additional Terms and Conditions Rule Tariff; (3) SPS’s Bill Credit Recovery Rider; (4) SPS’s Community Solar Administrative Cost Rider; (5) PNM’s Community Solar Rider – Rider No. 56; (6) PNM’s Community Solar Program Tariff – Original Rate Schedule No. 37; (7) PNM’s Community Solar Administrative Cost Rider – Original Rider No. 57; (8) PNM’s Community Solar Program Subscriber Consent Form – Data Consent Form; (9) EPE’s First Revised Rate No. 47 – Community Solar Program Rate; (10) EPE’s Original Rate No. 47.1 -- Community Solar Program Administrative Cost Rider Rate; (11) EPE’s Monthly Subscriber Information Form; and (12) The Proposed Uniform Disclosure and Consent Form.

In this Order, the Commission rejects the community solar bill credit (“Credit”) tariffs that have been proposed by the utilities while providing a methodology for the calculation of the Credit for the utilities to apply to Credit tariffs ordered herein to be filed. The Commission also orders the utilities to refile all tariffs, as listed above, in accordance with the findings and conclusions of the RD.<sup>1</sup> In addition, the Commission approves the Proposed Uniform Disclosure and Consent Form, adopts the recommendations of the RD concerning the proposed administrative cost riders, and provides accounting orders concerning avoided costs and concerning recovery of the costs of obtaining energy from the Program.

### **JURISDICTION AND PROCEDURAL HISTORY**

1. The Commission has jurisdiction over this matter pursuant to the Community Solar Act (“Act”), NMSA 1978, §§ 62-16B-1 to -8.<sup>2</sup>

2. On March 1, 2023, the Commission initiated this docket by issuance of the Commission’s *Order Opening Docket for Two-Phase Proceeding; Order Consolidating Docket Nos. 22-00240-UT and 22-00243-UT into New Docket; Order Delegating Authority to the Chief Hearing Examiner Regarding Proceeding in New Docket; Order Taking Administrative Notice of Relevant Commission Records and Order Setting Deadline for Filing of any Proposed Interconnection Forms and Agreements Specific to Community Solar Facilities* (“March 1<sup>st</sup> Order”).

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<sup>1</sup> The RD does not address whether PNM’s Community Solar Program Subscriber Consent Form – Data Consent Form should be rejected. The Commission clarifies that it should be rejected, and PNM shall use the Proposed Uniform Disclosure and Consent Form. Additionally, the RD does not explicitly address EPE’s Original Rate No. 47.1 -- Community Solar Program Administrative Cost Rider Rate. The Commission clarifies that it should be rejected, as the RD includes a finding that all utilities should handle administrative costs in accord with the findings of the RD.

<sup>2</sup> NMSA 1978, §62-16B-7(A) (2021).

3. In the March 1<sup>st</sup> Order, the Commission bifurcated this matter into two phases. Phase 1 was to address all issues concerning certain agreements and forms proposed by the qualifying utilities: (1) agreements between the subscriber organizations (“SOs”) and the qualifying utilities, and (2) forms for subscribers to authorize sharing of confidential and sensitive customer information between the SOs and the qualifying utilities. Phase II would address all remaining issues concerning the tariffs and forms proposed by the utilities.

4. On August 10, 2023, the majority of the parties to Phase I filed an uncontested stipulation (“Stipulation”) proposing resolutions of all of the Phase I issues. Attached to the Stipulation were agreements and a form proposed by the stipulating parties: (1) a Uniform Community Solar Subscriber Organization Agreement, as well as slightly modified versions of the uniform agreement customized for each of the qualifying utilities; and (2) a Community Solar Program Subscriber Consent Form.

5. On September 21, 2023, the Commission issued its Order Approving Uncontested Phase I Stipulation, concluding Phase I of this matter.

6. On January 8, 2024, Hearing Examiner Hans Muller issued his First Prehearing Order, scheduling a hearing for Phase II of this matter to begin on January 17, 2024.<sup>3</sup>

7. A hearing on Phase II was held on January 17-19, 2024, presided over by Hans Muller and Tatiana Perez-Valero, of the Commission’s Office of Hearing Examiners. Hearing Examiner Tatiana Perez-Valero (“Hearing Examiner”) issued the RD on August 30, 2024.

8. The Hearing Examiner provided the following executive summary on the interconnecting issues present in Phase II as follows:

Many issues overlap between the three qualifying utilities, but certainly not all. Where possible, the Hearing Examiner has done analysis by considering shared

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<sup>3</sup> The RD provides a detailed procedural history of both phases of this matter. RD (Aug. 30, 2024) at 4-18.

proposals at the same time. Hence, an issue that is common to EPE and PNM, for example, may be analyzed within a section of the Recommended Decision that addresses issues that apply to PNM. In that case, both utilities are referred to, and the Hearing Examiner has been intentional in stating that the recommendation applies to all utilities to which the issue applies . . . . The Hearing Examiner attempted to identify every contested issue in the case, and where possible provide a recommended decision. Still, there are certain issues for which the Hearing Examiner has recommended the Commission initiate a rulemaking. Those issues that are referred to a rulemaking should not hinder the advancement of the Community Solar Program, as they are issues that will have a significance in the utilities' general rate cases that will generally fall after the conclusion of the recommended rulemaking.<sup>4</sup>

9. Recognizing the numerous issues presented for the Commission's consideration, the Hearing Examiner thoroughly analyzed these issues throughout the 217-page RD.

10. On September 6, 2024, EPE filed a motion for an extension of time to file exceptions to the RD, which the Commission granted, setting the new deadline for exceptions to September 16, 2024, and setting September 24, 2024, as the deadline for responses to exceptions.

11. On September 16, 2024, Intervenors Coalition for Community Solar Access ("CCSA"), New Energy Economy ("NEE"), and Renewable Energy Industries Association of New Mexico ("REIA") filed joint exceptions ("Joint Exceptions"); and exceptions were filed by the City of Las Cruces ("CLC"), EPE, New Mexico People's Energy Cooperative ("NMPEC"), PNM, SPS, and PRC Utility Staff.<sup>5</sup>

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<sup>4</sup> RD at 1-2.

<sup>5</sup> CSol Power, LLC ("CSol") filed provisional exceptions and a response to exceptions, stating that its motion to intervene was pending. *See* CSol's Verified Motion to Intervene out of Time and Variance from the Order Amending Procedural Schedules for Phase 1 and Phase 2 Evidentiary Proceedings (Aug. 2, 2024) ("Motion to Intervene"); However, the Motion to Intervene was filed on August 2, 2024, long after the October 30, 2023, deadline for filing motions to intervene in Phase II. *See* Order Amending Procedural Schedules for Phase 1 and Phase 2 Evidentiary Proceedings (Aug. 3, 2023) at 6. The Commission denies, in this Order, CSol's Motion to Intervene as the motion was very late, and the Commission is not persuaded to grant a variance to allow CSol to intervene at such a late stage of this matter. Accordingly, the Commission also denies CSol's Motion for Leave to File Reply to Public Service Company of New Mexico's Response to CSol Power LLC's Motion for Late Intervention ("Motion to File Reply"). *See* Motion to File Reply (Aug. 28, 2024).

12. On September 24, 2024, Responses to Exceptions were filed by EPE, PNM, and SPS.

## **DISCUSSION**

13. The Act provides, “The Commission shall administer and enforce the rules and provisions of the Community Solar Act, including regulation of subscriber organizations in accordance with the Community Solar Act and oversight and review of the consumer protections established for the community solar program.”<sup>6</sup>

### **The Solar Bill Credit**

14. The Act defines the Credit as “the credit value of the electricity generated by a community solar facility and allocated to a subscriber to offset the subscriber's electricity bill on the qualifying utility's monthly billing cycle as required by the Community Solar Act.”<sup>7</sup> The Act requires that the Credit be “derived from” the utility’s total aggregate retail rate (“TARR”), “less the commission-approved distribution cost components.”<sup>8</sup> In addition, the Act defines “community solar bill credit rate” (“Credit Rate”) as “the dollar-per-kilowatt-hour rate determined by the commission that is used to calculate a subscriber’s community solar bill credit.”<sup>9</sup>

15. The Act provides the following requirements for calculation of the Credit Rate:

[The Commission’s rules shall] . . . provide a community solar bill credit rate mechanism for subscribers derived from the qualifying utility’s total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and charges; provided that non-subscribers shall not subsidize costs attributable to subscribers; and provided further that if the commission determines that it is in the public interest for non-subscribers to subsidize subscribers, non-subscribers shall not be charged more than three percent of the non-subscribers’ aggregate retail rate on an annual basis to subsidize subscribers.

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<sup>6</sup> NMSA 1978, § 62-16B-7(A).

<sup>7</sup> NMSA 1978, § 62-16B-2(B).

<sup>8</sup> NMSA 1978, § 62-16B-7(B)(8).

<sup>9</sup> NMSA 1978, § 62-16B-2(C).

16. The Commission, included in the Rule, the following provisions concerning the calculation of the Credit:

**17.9.573.20 COMMUNITY SOLAR BILL CREDIT RATE:**

A. In calculating the solar bill credit rate, the utility shall calculate the total aggregate retail rate on a per-customer-class basis, less the commission-approved distribution cost components, and identify all proposed rules, fees and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills;

B. The total aggregate retail rate is the total amount of a qualifying utility's demand, energy and other charges converted to a kilowatt-hour rate, including fuel and power cost adjustments, the value of renewable energy attributes and other charges of a qualifying utility's effective rate schedule applicable to a given customer rate class, but does not include charges described on a qualifying utility's rate schedule as minimum monthly charges, including customer or service availability charges, energy efficiency program riders or other charges not related to a qualifying utility's power production, transmission or distribution functions, as approved by the commission, franchise fees and tax charges on utility bills. The utility's tariff for the bill credit shall include a table specifying the components of the total aggregate retail rate, the value of the renewable energy attributes and the distribution costs to be subtracted.

C. The utility shall base its distribution cost calculation upon its most recently commission-approved cost-of-service study indexed to current value.

D. The utility shall not subtract any costs of transmission from the solar bill credit rate calculation.

E. The utility shall initially value the environmental attributes of renewable energy certificates (RECs) at the utility's average cost of meeting its renewable portfolio standard requirement. During the utility's next base rate case, the Commission will consider whether to adopt a replacement methodology to determine the net present value of the environmental attributes of RECs necessary to reach the mandated eighty-percent renewable portfolio standard by 2040, including full environmental and distribution benefits.<sup>10</sup>

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<sup>10</sup> 17.9.573.20 NMAC.

17. In order to “reasonably allow for the creation, financing and accessibility of community solar facilities,” as required by the Act,<sup>11</sup> the Credit should be calculated using the methodology shown on Exhibit A hereto. Exhibit A provides the Commission’s calculation methodology adopted in this Order. Exhibit A uses the residential class as the sample class for purposes of demonstrating the calculation methodology with rough estimates of the applicable figures for instructional purposes. The utilities are directed to apply this methodology to all of their relevant rate classes, based upon their most recent rate cases. The utilities are directed to provide their calculations for each rate class in Credit tariffs that they are directed to file in this Order.

18. The method of calculation shown on Exhibit A results in a Credit that is *derived from* the utilities’ TARR, as required by the Act.<sup>12</sup> The Commission’s calculation of the Credit is similar to the calculations proposed by the utilities. However, the Commission’s approach to the deduction of monthly minimum charges from TARR differs from that of the utilities. In particular, the Commission finds that the customer cost component of the rates should be subtracted from TARR, regardless of whether those costs are being recovered through a fixed monthly or a volumetric charge. The fraction of customer costs recovered through a fixed monthly charge versus a volumetric charge has changed, and will likely continue to change, with each rate case. Since a community solar subscriber requires the same customer-related services that non-subscribers require, it is reasonable that the solar bill credit should exclude the customer cost portion of the rates, regardless of how the charge is being recovered. Thus, as shown on Exhibit A, the Commission deducts from TARR the customer cost component of the rates.

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<sup>11</sup> NMSA 1978, § 62-16B-7(B)(9).

<sup>12</sup> NMSA 1978, § 62-16B-7(B)(8).

19. The Commission finds that all proposals to allow a potential future clawback mechanism,<sup>13</sup> which could reduce the Credit retroactively, are contrary to the public interest. The Commission rejects creating a mechanism to change the Credit retroactively because the existence of such a mechanism reduces certainty and transparency and is therefore harmful to subscribers' ability to make informed choices when committing to a community solar project.

20. In this Order, the Commission does not determine whether or not it is "in the public interest for non-subscribers to subsidize subscribers," as allowed by the Act.<sup>14</sup> Such a finding would require a determination as to whether a subsidy is necessary to "reasonably allow for the creation, financing and accessibility of community solar facilities," as required by the Act.<sup>15</sup> Such a determination would require, among other things, a record that includes information concerning the financial viability of projects within the Program, information that is not in the record of this matter. The Commission's pending rulemaking proceeding, in Docket No. 24-00285-UT, concerning potential amendments to the Rule, will likely provide an opportunity to build such a record and to make a decision regarding a potential subsidy.

21. The Commission also refrains, at this time, from determining the avoided costs, other than those included in the Commission's ordered calculation of the Credit, that should be included in the Credit. CCSA and REIA, among other commenters, argued that there are probably additional costs avoided by the utility through obtaining energy from the Program. Such alleged avoided costs include, but are not limited to, avoided generation capacity costs, avoided transmission capacity costs, avoided line-loss costs, and avoided costs of complying with

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<sup>13</sup> A "clawback mechanism" would collect amounts directly and exclusively from subscribers and would recover amounts that had been paid to subscribers through the Credit.

<sup>14</sup> NMSA 1978, § 62-16B-7(B)(8).

<sup>15</sup> NMSA 1978, § 62-16B-7(B)(9).

renewable energy and other environmental regulations and requirements. The record in this matter does not include sufficient information to make a determination as to whether any such costs are avoided and, if so, in what amounts. Thus, these issues, like those concerning any potential subsidy, may be more appropriately addressed in the pending rulemaking proceeding. The Commission does, however, adopt the RD's recommendation to authorize an accounting order for the purpose of tracking the categories of avoided costs identified in the RD.<sup>16</sup>

22. The Commission notes that any changes to the calculation of the Credit that may be adopted in the rulemaking proceeding will not apply to the first two hundred megawatts of projects selected from the existing waitlist and shortlist.

23. Paragraph 22 of the RD's Findings and Conclusions is accepted, but the Commission will monitor the percentage of subscriptions that are held by subscribers with behind-the-meter solar and may reevaluate the determination in paragraph 22 of the RD in the future.

24. This Order does not adopt paragraphs 19, 33 and 37 of the RD's Findings and Conclusions Paragraphs, and does not adopt paragraphs S, GG and II of the RD's Ordering Paragraphs.<sup>17</sup>

## **FINDINGS AND CONCLUSIONS**

25. In addition to the findings and conclusions provided above, the Commission adopts and incorporates herein by reference all findings and conclusions of the RD to the extent that they are consistent with this Order. Exhibit B provides an analysis of the Findings and Conclusions

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<sup>16</sup> RD at 214.

<sup>17</sup> These rejections of these stated paragraphs of the RD are also reflected in Exhibit B of this Order.

Paragraphs and the Ordering Paragraphs from the RD to show the Commission's understanding of how the RD is modified by this Order.<sup>18</sup>

26. Further, the Commission adopts the findings, conclusions, and recommendations in the RD concerning the proposed administrative cost riders and the proposed forms.<sup>19</sup>

27. Finally, the Commission notes that it does not make any determinations in this Order concerning recovery by the utilities from customers of the costs of obtaining energy from the Program as such determinations regarding recovery of potential costs of service are more appropriately addressed in base rate cases and fuel clause cases. The Commission does, however, approve the utilities' proposals to book regulatory assets to track these costs for potential future recovery.

**IT IS THEREFORE ORDERED:**

A. All of the tariffs, forms, and agreements listed on the first page of this Order that have been filed with advice notices are CANCELLED, and all tariffs, forms, and agreements proposed in this matter are REJECTED, with the exception of the Proposed Uniform Disclosure and Consent Form, which is APPROVED

B. On or before December 11, 2024, PNM, EPE, and SPS shall file proposed tariffs for their respective Credits, consistent with this Order. The proposed tariffs shall not include or be accompanied by any clawback provisions or any similar provisions that would reduce the Credit. On or before January 8, 2025, Staff shall, and any other parties may, file responses, analyses, and recommendations regarding the proposed tariffs.

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<sup>18</sup> Exhibit B contains B.1, B.1.1., B.2, and B.2.2. In B1.1 and B2.1, the text that is struck through is the text that is not adopted in this Order, and the text that is underlined is text that the Commission has adopted and inserted for clarity. B1.2 and B2.2 provide a clean version, and therefore are comprised of the text that the Commission does adopt in this Order.

<sup>19</sup> RD at 177-188 and 194-198.

C. The accounting orders referenced in Paragraphs 21, 24, and 25, above, are GRANTED.

D. CSol's Motion to Intervene and Motion to File Reply are DENIED.

E. All issues not expressly ruled upon in this Order are reserved for potential future proceedings.

F. This Order is effective when signed.

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 26<sup>th</sup> day of November, 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**



<b>Community Solar: Residential Class Example</b>		<b>EPE</b>	<b>PNM</b>	<b>SPS</b>
L1	<i>Billing Determinants (kWh)</i>	<i>711,560,000</i>	<i>3,251,900,000</i>	<i>680,450,000</i>

<b>Demand-Energy-Customer Cost Components (Rate Case)</b>		<i>20-00104</i>	<i>22-00270</i>	<i>22-00286</i>
L2, sum(L3:L5)	Demand Cost Component	41,300,000	283,330,000	56,560,000
L3	D-Production	19,730,000	137,000,000	20,450,000
L4	D-Transmission	5,230,000	46,180,000	17,200,000
L5	D-Distribution	16,340,000	100,150,000	18,910,000
L6, sum(L7:L8)	Energy Cost Component	5,440,000	(32,290,000)	8,500,000
L7	E-Fuel	-	-	-
L8	E-Non-Fuel	5,440,000	-32,290,000	8,500,000
L9, sum(L10:L15)	Customer Cost Component	11,070,000	110,930,000	12,370,000
L10	C-Services	1,120,000	11,810,000	1,390,000
L11	C-Meters	3,840,000	19,870,000	2,200,000
L12	C-Meter Reading	1,990,000	19,280,000	2,420,000
L13	C-Billing & Collection	3,680,000	34,340,000	6,410,000
L14	C-Service Information	-	-	-
L15	C-Other	440,000	25,630,000	-50,000
L16, L2+L6+L9	Total Base Rate Components	\$ 57,810,000	\$ 361,970,000	\$ 77,430,000

<b>Relevant Rates (\$/kWh)</b>		<b>EPE</b>	<b>PNM</b>	<b>SPS</b>
L17, L16/L1	Base Rate	\$ 0.08124	\$ 0.11131	\$ 0.11379
L18	Fuel Rider (FPPCAC)	\$ 0.02703	\$ 0.02554	\$ 0.01538
L19	RPS Rider	\$ 0.00729	\$ 0.00734	\$ 0.00090
L20, sum(L17:L19)	Base Rate + Riders (TARR)	\$ 0.11556	\$ 0.14419	\$ 0.13007

<b>LESS "commission-approved distribution cost components" (NMAC 17.9.573.20.A)</b>		<b>EPE</b>	<b>PNM</b>	<b>SPS</b>
L21, L5/L1	Distribution Demand Cost Component	\$ 0.02296	\$ 0.03080	\$ 0.02779
L22, L9/L1	Customer Cost Component	\$ 0.01556	\$ 0.03411	\$ 0.01818
L23, sum(L31:L34)	"distribution cost components" as Rates (\$/kWh)	\$ 0.03852	\$ 0.06491	\$ 0.04597
L24, L20-L35	<b>SBC</b>	<b>\$ 0.07704</b>	<b>\$ 0.07928</b>	<b>\$ 0.08410</b>
L25, ((L3+L4+L6)/L1) +L18+L19	<i>SBC = ((Demand-related production costs + Demand-related transmission costs + Energy-related (non-fuel energy) costs)/Billing dets) + Fuel Rider + RPS Rider</i>	<i>\$ 0.07704</i>	<i>\$ 0.07928</i>	<i>\$ 0.08410</i>

## Exhibit B

### **B.1:**

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** as follows:

- ~~1. The discussion and all findings and conclusions contained in this Recommended Decision are hereby incorporated by reference as findings of fact and conclusions of law of the Commission.~~
2. The Commission has jurisdiction over the parties to and subject matter of this case.
3. Reasonable, proper, and adequate notice of this case was provided as required by law.
4. SPS's proposed Tariff Rate 87 – Community Solar Program Credit Rider, should be rejected for improperly removing transmission costs from the Solar Bill Credit rate in violation of 17.9.573.20(D) NMAC.
5. SPS's proposed Tariff Rate 87 - Community Solar Program Credit Rider should be rejected ~~for improperly removing all customer related costs from its Solar Bill Credit calculation, rather than charges described on a qualifying utility's rate schedule as minimum monthly charges.~~
6. SPS should file an updated Tariff Rate 87 ~~which conforms to all applicable terms and conditions stated in this Recommended Decision.~~
- ~~7. SPS should correct its calculation of the TARR to be based on the sum of annual revenue for customer or minimum charges.~~
8. Subscribers' average annual electricity consumption should be based on the subscribers' average annual net metered consumption.
9. SPS's Community Solar Program-Additional Terms and Conditions Rule Tariff should be denied, as it does not account for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year. SPS should update and refile this tariff ~~within 10 days of a final order in this case,~~ and that filing should address the situations identified here by the Commission.

10. EPE, and PNM should each make a filing with the Commission, ~~within 10 days of the issuance of the final order in this matter,~~ that details how the company will calculate a customer's average annual electricity usage for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year.
11. SPS should be ordered to file a tariff with the Commission that details the requirements for the billing data that the Subscriber Organizations will need to submit to SPS on a monthly basis. This filing should be analogous to EPE's Monthly Subscriber Information Form, and to Attachments A and B in PNM's Original Rate Schedule No. 37.
12. SPS's Bill Credit Cost Recovery Rider should be denied.
13. The qualifying utilities, in implementing the Solar Bill Credit, should apply excess kWh credits to reduce monthly minimum charges.
14. The Commission should reject PNM's Community Solar Rider-Rider No. 56, and require PNM to refile its Community Solar Rider with a comprehensive table, and most current \$/kWh, for all components of the TARR. PNM should be ordered to file its workpapers, along with its updated Rider No. 56, so that Staff can access the information it needs to perform a review and verification of the updated Rider No. 56 to ensure that all calculations have been accurately performed. Staff should be ordered to perform that verification.
- ~~15. PNM should file an updated Rider No. 56 which conforms to all applicable terms and conditions stated in this Recommended Decision.~~
- ~~16. PNM should be permitted to exclude the minimum monthly demand charge from the Solar Bill Credit rate for Rates 3B and 4B, per the plain language of NMSA 1978, § 62-16B-2(O). If EPE and SPS have charges that are literally described as "minimum monthly" or "monthly minimum" charges, they may file updated calculations of the Solar Bill Credit that reflect the removal of these minimum monthly charges.~~
- ~~17. Power Factor Adjustment Charges should be included in the Qualifying Utilities' calculation of the Solar Bill Credit rates.~~
18. It was proper for PNM to develop its Solar Bill Credit rate with a distribution cost component that reflected the banding mechanism that was ~~most~~ adopted in PNM's most recent general rate case ~~in which there was a Commission approved cost-of-service study,~~ and EPE and SPS should follow the same procedure in developing their Solar Bill Credit rates.

19. ~~In the re-filing of their Solar Bill Credit rates, subsequent to the issuance of a final order in this matter, the qualifying utilities should state the methodology they have used to determine the value of the environmental attributes of RECs, and whether a replacement methodology was considered in their most recent rate case.~~
20. The Qualifying Utilities' proposed restriction on application of a credit to customers in arrears are not in compliance with the Community Solar Act, and credits should be applied within one billing cycle following the cycle during which the energy was generated.
21. PNM's Community Solar Program Tariff - Rate Schedule No. 37 should be rejected in full, and PNM should be informed that this tariff filing is duplicative to the Uniform Subscriber Organization Agreement that was approved in Phase 1, and therefore the Commission anticipates that it will likely reject any updated filing of this form that provides for anything more than the data sharing protocols between PNM and Subscriber Organizations. PNM may include appropriate terms and conditions, that confirm with the Commission's final order in this matter, in its updated filing of Rider No. 56 that will occur subsequent to the final order in this case.
22. The Commission should allow customers with behind-the-meter solar to participate in the community solar program, up to their average annual net energy usage amount. PNM and EPE should incorporate any additional billing system modifications necessary to achieve this, and the costs associated with these billing system modifications should be presented in a future general rate case for recovery from the general body of customers. The following proposed restrictions, regarding customer participation in the CS Program, should be rejected for being non-compliant with NMSA 1978, § 62-16B-2(L):
  - a. a subscriber cannot participate in the Program if the subscriber currently receives service pursuant to Rider No. 50, Voluntary Solar Renewable Energy Program – PNM Solar Direct for Governmental and Large Commercial Customers;
  - b. a subscriber cannot participate in the Program if the subscriber currently has behind-the-meter generating facilities, or a customer does not qualify for the Community Solar Program if the Customer has behind-the-meter solar facilities at the premise of the intended subscription;
  - c. a subscriber may only have one single community solar subscription during a given billing period, or only one Community Solar Program subscription is allowed per premise.

- d. a customer may not qualify for the Community Solar Program as provided in the Community Solar Act.
23. The record in this matter is insufficient to address the issue of transmission wheeling fees charged by third parties.
24. The Community Solar Act and Rule 573 do not currently authorize the withholding of bill credits that PNM has proposed in its Program Tariff, in relation to its proposal to identify potential over-subscription by looking at the total bills for subscribers where the Bill Credit is so large that there is a “Carry Over Amount” in more than 6 months during a 12-month period. The Commission should not allow PNM to implement such a withholding of credits.
- ~~25. EPE, in calculating its proposed Solar Bill Credit rate in its 1<sup>st</sup> Revised Rate No. 47, has included the proper elements that are required by the Community Solar Act and Rule 573.~~
- ~~26. EPE’s 1st Revised Rate No. 47 should be rejected, as EPE’s calculations for specific elements that enter into the calculation of its 1<sup>st</sup> Revised Rate No. 47 should be rejected.~~
- ~~27. EPE should file an updated Rate No. 47 which conforms to all applicable terms and conditions stated in this Recommended Decision.~~
28. EPE’s Monthly Subscriber Information Form should be approved.
29. EPE’s requested variance from the minimum data requirements of Rule 17.9.530 NMAC to the extent required to review and approve EPE’s first revised Community Solar Bill Credit Rate, should be approved.
30. EPE’s Requested Variance from the Notice Requirements of Rule 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable should be granted in part and denied in part. This variance request should be granted for all notice requirements immediately implicated in Case No. 23-00071-UT. This variance request should be denied for any and all future notice requirements established under 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable.
31. EPE’s Proposed Accounting Order Authorizing a Regulatory Asset for EPE to track Subscriber Credit Amounts in Excess of EPE’s Avoided Cost of Generation, for the Purpose of Recovering Tracked Costs, Plus Carrying Charges, in a General Rate Case, should be denied.

32. What is in the public interest is, minimally, the values identified in NMSA 1978, § 62-3-1.
33. ~~“Subsidy,” in the context of the Community Solar Act, means “the payments made by non-subscribers of costs that are attributable to subscribers which exceed the avoided costs that are generated by the subscriber organizations.” “To subsidize costs attributable to subscribers,” in the context of the Community Solar Act, means “to make payments of costs that are attributable to subscribers which exceed the avoided costs that are generated by the subscriber organizations.”~~
34. ~~Proper notice has been given, and it is proper for the Commission to consider the question of whether it is in the public interest for non-subscribers to subsidize costs attributable to subscribers.~~
35. ~~The record in this case supports a finding that it is in the public interest for non-subscribers to subsidize costs attributable to subscribers.~~
36. Within the Community Solar Act the definition of “Aggregate Retail Rate” is identical to “Total Aggregate Retail Rate” as defined in NMSA 1978, § 62-16B-2(O).
37. ~~The subsidization cap, defined in NMSA 1978, § 62-16B-7(B)(8) should be based on system-wide revenues that encompass the revenue from all non-subscribers on the utility’s system, not just classes that contain subscribers. Additionally, only the revenues of non-subscribers should be used to calculate the three percent subsidization cap.~~
38. ~~The Commission should authorize an accounting order authorizing the utilities to track all solar bill credit costs in a regulatory asset, along with all payments made for unsubscribed energy. The Commission should imminently initiate a rulemaking proceeding to establish the process through which Solar Bill Credit amounts might be recovered by the IOUs, and how the amount that is recovered should be differentiated for the time periods in which CS facilities come into operation prior to the next rate case, and the time periods after the next rate case after a CS facility begins operation. This rulemaking should encompass an analysis of what amounts are properly understood as subsidies, as discussed in Section 4.3.3 of this Recommended Decision.~~
39. ~~The Commission should imminently initiate a rulemaking to determine details regarding the calculation of the avoided cost benefits provided by subscriber organizations, and that the adopted methodology be implemented in the qualifying utilities’ general rate cases in order to perform the cost-benefit analysis that is necessary to determine subsidization amounts, if any. Further, iIn accord with the recommendations of the Joint Parties, PNM, and Staff, the Commission should issue~~

an accounting order that orders the qualifying utilities to immediately begin tracking the categories of avoided costs identified by Mr. Barnes. Those categories are: 1. Avoided Energy Production and Purchases, 2. Avoided or Deferred Generation Capacity, 3. Avoided or Deferred Transmission Capacity or Wheeling Costs, 4. Line Losses (Adder to Energy), 5. Avoided Renewable Portfolio Standard (“RPS”) Compliance Costs, 6. Avoided Environmental Compliance Costs (if not included in other components). The methodologies proposed by CCSA witness Justin Barnes, on pages 28-36 of his direct testimony, should be used for this initial tracking of avoided costs.

- ~~40. The proper method for cost recovery of allowed and unallowed subsidization amounts that have been provided by the Solar Bill Credit should be determined in an imminent rulemaking.~~
41. The structure of the administrative cost rider should be uniform for all qualifying utilities, and it should be billed as a \$/kWh rate to subscribers. Qualifying utilities should perform an annual reconciliation of actual administrative costs against the administrative costs collected through the rider in the previous year. Qualifying utilities should provide notice of this reconciliation, and any adjustment to the administration cost rider, in accord with NMSA 1978, § 62-8-7. Any over or under collection should be collected with a carrying charge that is set yearly in accordance with the New Mexico Customer Deposit Interest Rate. The qualifying utilities should be permitted to record, in a regulatory asset, administrative costs that are incurred prior to when the administrative cost rider can go into effect. Any over or under collection, determined in the annual reconciliation, should be collected over a period of three years through the administrative cost rate rider. Carrying charges should be calculated in a manner that reflects the twelve months during which administrative costs are collected, so that over or under collection in the first month of the year should receive twelve months of carrying charges, whereas over or under collection in the last month of the year should not receive carrying charges. Subsidy amounts should not be collected through the administrative cost rider. The administrative cost rate rider should go into effect immediately upon the operation of a community solar facility.
42. SPS and EPE should file, concurrently with the filing of tariffs that align with the Commission’s final order in this case, a detailed estimate of the administrative costs that they expect to incur with a fully operational Community Solar Program on its system, akin to the estimates that have been provided by PNM. SPS and EPE should include in the administrative cost rider only the cost categories that have been deemed acceptable in the Hearing Examiner’s analysis in this Recommended Decision.<sup>1</sup> SPS and EPE shall also calculate a \$/kWh rate by dividing those

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<sup>1</sup> See Recommended Decision at 181-183.

estimated costs by the total annual estimated community solar production based on SPS's and EPE's respective fully allocated community solar capacity.

43. PNM should file an updated administrative cost rider that does not include language that allows for collection of one-time community solar program costs.
44. The applicable avoided cost of energy rate, under Rule 573, has not yet been established, ~~and it will be established in a future rulemaking.~~
45. The Joint Parties' proposed changes to SPS's proposed Subscriber Disclosure and Consent Form should be denied, as they do not comply with Commission Rule 17.9.573.16(A) NMAC.
46. The uniform Subscriber Disclosure and Consent Form, proposed by SPS and attached to the Direct Testimony of Ruth M. Sakya, should be approved with the small typographical corrections that have been identified by the Hearing Examiner,<sup>2</sup> and with the following changes:

1. Paragraph 11 on Page 3 should be replaced with:

**In case of Subscriber complaints:** The Public Regulation Commission urges subscribers to contact their Subscriber Organization's customer representative (named above) with any concerns or complaints about billing or terms of their agreements. If the complaint cannot be resolved, the subscriber should contact the Community Solar Program Administrator at 1-877-794-0109.

If the Program Administrator cannot resolve the complaint, the Program Administrator may escalate the complaint to the Public Regulation Commission's Consumer Relations Division for informal resolution, at 1-888-427-5772. <https://nm-prc.org>. After investigation of the complaint, the Public Regulation Commission may refer unresolved issues to the New Mexico Office of the Attorney General for further action.

2. The first two sentences of text, on the proposed form, should be replaced with:  
"You are receiving this form as a Subscriber to the New Mexico Community Solar

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<sup>2</sup> These typographical corrections are detailed on page 196 of the Recommended Decision. Hearing Examiner states: "In addition to her consideration of the Joint Parties' proposals, the Hearing Examiner notes 2 typographical corrections for the form: (1) Paragraphs 2 and 3 do not share the same indentation and spacing structure as the rest of the paragraphs; and (2) In paragraph 2, "by" is incorrectly deleted in the first red-lined deletion."

Program, and the services provided by your Subscriber Organization. This form provides important information about participating in this program.”

47. The record in this matter does not support a finding regarding monitoring of the Qualifying Utilities to be in compliance with the Community Solar Act, and the topic is more appropriate for a rulemaking.
48. All motions in this case not specifically acted upon shall be deemed disposed of consistent with the final order of the Commission in this proceeding

**B.1.1:**

The Hearing Examiner recommends that the Commission **FIND** and **CONCLUDE** as follows:

- 1.
2. The Commission has jurisdiction over the parties to and subject matter of this case.
3. Reasonable, proper, and adequate notice of this case was provided as required by law.
4. SPS's proposed Tariff Rate 87 – Community Solar Program Credit Rider, should be rejected for improperly removing transmission costs from the Solar Bill Credit rate in violation of 17.9.573.20(D) NMAC.
5. SPS's proposed Tariff Rate 87 - Community Solar Program Credit Rider should be rejected.
6. SPS should file an updated Tariff Rate 87.
- 7.
8. Subscribers' average annual electricity consumption should be based on the subscribers' average annual net metered consumption.
9. SPS's Community Solar Program-Additional Terms and Conditions Rule Tariff should be denied, as it does not account for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year. SPS should update and refile this tariff, and that filing should address the situations identified here by the Commission.
10. EPE, and PNM should each make a filing with the Commission that details how the company will calculate a customer's average annual electricity usage for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year.
11. SPS should be ordered to file a tariff with the Commission that details the requirements for the billing data that the Subscriber Organizations will need to submit to SPS on a monthly basis. This filing should be analogous to EPE's Monthly Subscriber Information Form, and to Attachments A and B in PNM's Original Rate Schedule No. 37.

12. SPS's Bill Credit Cost Recovery Rider should be denied.
13. The qualifying utilities, in implementing the Solar Bill Credit, should apply excess kWh credits to reduce monthly minimum charges.
14. The Commission should reject PNM's Community Solar Rider-Rider No. 56, and require PNM to refile its Community Solar Rider with a comprehensive table, and most current \$/kWh, for all components of the TARR. PNM should be ordered to file its workpapers, along with its updated Rider No. 56, so that Staff can access the information it needs to perform a review and verification of the updated Rider No. 56 to ensure that all calculations have been accurately performed. Staff should be ordered to perform that verification.
- 15.
- 16.
- 17.
18. It was proper for PNM to develop its Solar Bill Credit rate with a distribution cost component that reflected the banding mechanism that was adopted in PNM's most recent general rate case, and EPE and SPS should follow the same procedure in developing their Solar Bill Credit rates.
- 19.
20. The Qualifying Utilities' proposed restriction on application of a credit to customers in arrears are not in compliance with the Community Solar Act, and credits should be applied within one billing cycle following the cycle during which the energy was generated.
21. PNM's Community Solar Program Tariff - Rate Schedule No. 37 should be rejected in full, and PNM should be informed that this tariff filing is duplicative to the Uniform Subscriber Organization Agreement that was approved in Phase 1, and therefore the Commission anticipates that it will likely reject any updated filing of this form that provides for anything more than the data sharing protocols between PNM and Subscriber Organizations. PNM may include appropriate terms and conditions, that confirm with the Commission's final order in this matter, in its updated filing of Rider No. 56 that will occur subsequent to the final order in this case.
22. The Commission should allow customers with behind-the-meter solar to participate in the community solar program, up to their average annual net energy usage

amount. PNM and EPE should incorporate any additional billing system modifications necessary to achieve this, and the costs associated with these billing system modifications should be presented in a future general rate case for recovery from the general body of customers. The following proposed restrictions, regarding customer participation in the CS Program, should be rejected for being non-compliant with NMSA 1978, § 62-16B-2(L):

- a. a subscriber cannot participate in the Program if the subscriber currently receives service pursuant to Rider No. 50, Voluntary Solar Renewable Energy Program – PNM Solar Direct for Governmental and Large Commercial Customers;
  - b. a subscriber cannot participate in the Program if the subscriber currently has behind-the-meter generating facilities, or a customer does not qualify for the Community Solar Program if the Customer has behind-the-meter solar facilities at the premise of the intended subscription;
  - c. a subscriber may only have one single community solar subscription during a given billing period, or only one Community Solar Program subscription is allowed per premise.
  - d. a customer may not qualify for the Community Solar Program as provided in the Community Solar Act.
23. The record in this matter is insufficient to address the issue of transmission wheeling fees charged by third parties.
24. The Community Solar Act and Rule 573 do not currently authorize the withholding of bill credits that PNM has proposed in its Program Tariff, in relation to its proposal to identify potential over-subscription by looking at the total bills for subscribers where the Bill Credit is so large that there is a “Carry Over Amount” in more than 6 months during a 12-month period. The Commission should not allow PNM to implement such a withholding of credits.
- 25.
26. EPE’s 1st Revised Rate No. 47 should be rejected.
- 27.
28. EPE’s Monthly Subscriber Information Form should be approved.

29. EPE's requested variance from the minimum data requirements of Rule 17.9.530 NMAC to the extent required to review and approve EPE's first revised Community Solar Bill Credit Rate, should be approved.
30. EPE's Requested Variance from the Notice Requirements of Rule 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable should be granted in part and denied in part. This variance request should be granted for all notice requirements immediately implicated in Case No. 23-00071-UT. This variance request should be denied for any and all future notice requirements established under 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable.
31. EPE's Proposed Accounting Order Authorizing a Regulatory Asset for EPE to track Subscriber Credit Amounts in Excess of EPE's Avoided Cost of Generation, for the Purpose of Recovering Tracked Costs, Plus Carrying Charges, in a General Rate Case, should be denied.
32. What is in the public interest is, minimally, the values identified in NMSA 1978, § 62-3-1.
- 33.
- 34.
- 35.
36. Within the Community Solar Act the definition of "Aggregate Retail Rate" is identical to "Total Aggregate Retail Rate" as defined in NMSA 1978, § 62-16B-2(O).
- 37.
38. The Commission should authorize an accounting order authorizing the utilities to track all solar bill credit costs in a regulatory asset, along with all payments made for unsubscribed energy.
39. In accord with the recommendations of the Joint Parties, PNM, and Staff, the Commission should issue an accounting order that orders the qualifying utilities to immediately begin tracking the categories of avoided costs identified by Mr. Barnes. Those categories are: 1. Avoided Energy Production and Purchases, 2. Avoided or Deferred Generation Capacity, 3. Avoided or Deferred Transmission Capacity or Wheeling Costs, 4. Line Losses (Adder to Energy), 5. Avoided Renewable Portfolio Standard ("RPS") Compliance Costs, 6. Avoided Environmental Compliance Costs (if not included in other components). The methodologies proposed by CCSA

witness Justin Barnes, on pages 28-36 of his direct testimony, should be used for this initial tracking of avoided costs.

40.

41. The structure of the administrative cost rider should be uniform for all qualifying utilities, and it should be billed as a \$/kWh rate to subscribers. Qualifying utilities should perform an annual reconciliation of actual administrative costs against the administrative costs collected through the rider in the previous year. Qualifying utilities should provide notice of this reconciliation, and any adjustment to the administrative cost rider, in accord with NMSA 1978, § 62-8-7. Any over or under collection should be collected with a carrying charge that is set yearly in accordance with the New Mexico Customer Deposit Interest Rate. The qualifying utilities should be permitted to record, in a regulatory asset, administrative costs that are incurred prior to when the administrative cost rider can go into effect. Any over or under collection, determined in the annual reconciliation, should be collected over a period of three years through the administrative cost rate rider. Carrying charges should be calculated in a manner that reflects the twelve months during which administrative costs are collected, so that over or under collection in the first month of the year should receive twelve months of carrying charges, whereas over or under collection in the last month of the year should not receive carrying charges. Subsidy amounts should not be collected through the administrative cost rider. The administrative cost rate rider should go into effect immediately upon the operation of a community solar facility.
42. SPS and EPE should file, concurrently with the filing of tariffs that align with the Commission's final order in this case, a detailed estimate of the administrative costs that they expect to incur with a fully operational Community Solar Program on its system, akin to the estimates that have been provided by PNM. SPS and EPE should include in the administrative cost rider only the cost categories that have been deemed acceptable in the Hearing Examiner's analysis in this Recommended Decision.<sup>3</sup> SPS and EPE shall also calculate a \$/kWh rate by dividing those estimated costs by the total annual estimated community solar production based on SPS's and EPE's respective fully allocated community solar capacity.
43. PNM should file an updated administrative cost rider that does not include language that allows for collection of one-time community solar program costs.
44. The applicable avoided cost of energy rate, under Rule 573, has not yet been established.

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<sup>3</sup> See Recommended Decision at 181-183.

45. The Joint Parties' proposed changes to SPS's proposed Subscriber Disclosure and Consent Form should be denied, as they do not comply with Commission Rule 17.9.573.16(A) NMAC.
46. The uniform Subscriber Disclosure and Consent Form, proposed by SPS and attached to the Direct Testimony of Ruth M. Sakya, should be approved with the small typographical corrections that have been identified by the Hearing Examiner,<sup>4</sup> and with the following changes:

1. Paragraph 11 on Page 3 should be replaced with:

**In case of Subscriber complaints:** The Public Regulation Commission urges subscribers to contact their Subscriber Organization's customer representative (named above) with any concerns or complaints about billing or terms of their agreements. If the complaint cannot be resolved, the subscriber should contact the Community Solar Program Administrator at 1-877-794-0109.

If the Program Administrator cannot resolve the complaint, the Program Administrator may escalate the complaint to the Public Regulation Commission's Consumer Relations Division for informal resolution, at 1-888-427-5772. <https://nm-prc.org>. After investigation of the complaint, the Public Regulation Commission may refer unresolved issues to the New Mexico Office of the Attorney General for further action.

2. The first two sentences of text, on the proposed form, should be replaced with: "You are receiving this form as a Subscriber to the New Mexico Community Solar Program, and the services provided by your Subscriber Organization. This form provides important information about participating in this program."

47. The record in this matter does not support a finding regarding monitoring of the Qualifying Utilities to be in compliance with the Community Solar Act, and the topic is more appropriate for a rulemaking.
48. All motions in this case not specifically acted upon shall be deemed disposed of consistent with the final order of the Commission in this proceeding.

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<sup>4</sup> These typographical corrections are detailed on page 196 of the Recommended Decision. Hearing Examiner states: "In addition to her consideration of the Joint Parties' proposals, the Hearing Examiner notes 2 typographical corrections for the form: (1) Paragraphs 2 and 3 do not share the same indentation and spacing structure as the rest of the paragraphs; and (2) In paragraph 2, "by" is incorrectly deleted in the first red-lined deletion."

**B.2:**

The Hearing Examiner recommends that the Commission **ORDER** as follows:

~~A. The findings, conclusions, decisions, rulings, and determinations in this Recommended Decision are adopted, approved, and ordered by the Commission.~~

B. SPS's proposed Tariff Rate 87 – Community Solar Program Credit Rider, is denied.

C. SPS shall refile its Tariff Rate 87 – Community Solar Program Credit Rider, and eliminate the unnecessary complexity that results from the inclusion of the Transmission Cost Component Credit. ~~SPS shall update its calculation of the TARR to remove charges described on its rate schedule as minimum monthly charges, as opposed to removing customer-related costs identified in its cost of service study.~~ SPS shall concurrently file updated workpapers that support its calculation of the Community Solar Program Credit Rate. ~~This filing shall be made within 10 days of the signing of this Order.~~

D. Staff shall, and any party may, review the updated filing of SPS's Tariff Rate 87 and inform the Commission of the results of its review ~~within 10 days of SPS's filing of its updated Tariff Rate 87.~~

E. The qualifying utilities, in implementing the Solar Bill Credit, shall apply excess kWh credits to reduce monthly minimum charges.

F. The qualifying utilities' calculation of subscribers' average annual electricity consumption shall be based on the subscribers' average annual net metered usage.

G. SPS's Community Solar Program-Additional Terms and Conditions Rule Tariff is denied. SPS shall update and refile this tariff ~~within 10 days of a final order in this case,~~ and that filing shall address how the company will calculate a customer's average annual

electricity usage for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year.

H. EPE, and PNM shall each make a filing with the Commission, ~~within 10 days of the issuance of the final order in this matter~~, that details how the company will calculate a customer's average annual electricity usage for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year.

I. Staff shall, and any other party may, review the filings made by the qualifying utilities in accordance with decretal paragraphs G and H, and ~~shall~~ file a report with the Commission ~~within 10 days of the qualifying utilities filings~~ that provides Staff's their position on whether the quality utilities' proposals should be approved by the Commission.

J. SPS's Bill Credit Cost Recovery Rider is denied.

K. SPS shall file a tariff with the Commission that details the requirements for the billing data that the Subscriber Organizations will need to submit to SPS on a monthly basis. This filing shall be analogous to EPE's Monthly Subscriber Information Form, and to Attachments A and B in PNM's Original Rate Schedule No. 37.

L. SPS shall file a tariff with the Commission that details the requirements for the billing data that the Subscriber Organizations will need to submit to SPS on a monthly basis. This filing shall be analogous to EPE's Monthly Subscriber Information Form, and to Attachments A and B in PNM's Original Rate Schedule No. 37.

M. PNM's Community Solar Rider-Rider No. 56 is denied.

N. PNM shall refile its Community Solar Rider-Rider No. 56 with a comprehensive table, and most current \$/kWh, for all components of the TARR. ~~This filing~~

~~shall be made within ten days of the Commission's final order in this case.~~ PNM shall file its workpapers, along with its updated Rider No. 56.

O. ~~Within 10 days of~~ After PNM's filing of its update Rider No. 56, Staff shall, and any other party may, file with the Commission the results of its review and verification of the calculations performed by PNM to produce Rider No. 56.

P. ~~PNM is permitted to exclude the minimum monthly demand charge from the Solar Bill Credit rate for Rates 3B and 4B. If EPE and SPS have charges that are literally described as "minimum monthly" or "monthly minimum" charges, they may file updated calculations of the Solar Bill Credit that reflect the removal of these minimum monthly charges.~~

Q. ~~Power Factor Adjustment Charges shall be included in the Qualifying Utilities' calculation of the Solar Bill Credit rates.~~

R. PNM shall develop its Solar Bill Credit rate with a distribution cost component that reflects the banding mechanism that was ~~most~~ adopted in PNM's most recent general rate case ~~in which there was a Commission approved cost of service study~~, and EPE and SPS shall follow the same procedure in developing their Solar Bill Credit rates.

S. ~~In the refiling of their Solar Bill Credit rates, subsequent to the issuance of a final order in this matter, the qualifying utilities shall state the methodology they have used to determine the value of the environmental attributes of RECs, and whether a replacement methodology was considered in their most recent rate case.~~

T. The Qualifying Utilities' shall not restrict application of a credit to customers ~~in arrears are not in compliance with the Community Solar Act~~, and credits shall be applied

within one billing cycle following the cycle during which the energy was generated. The qualifying utilities shall file updated tariffs that comply with this Order.

U. PNM's Community Solar Program Tariff - Rate Schedule No. 37 is rejected in full. PNM is informed that this tariff filing is duplicative to the Uniform Subscriber Organization Agreement that was approved in Phase 1, and therefore the Commission anticipates that it will likely reject any updated filing of this form that provides for anything more than the data sharing protocols between PNM and Subscriber Organizations. PNM may include appropriate terms and conditions, that conform with the Commission's final order in this matter, in its updated filing of Rider No. 56 that will occur subsequent to the final order in this case.

V. The qualifying utilities shall allow customers with behind-the-meter solar to participate in the community solar program, up to their average annual net energy usage amount. PNM and EPE shall incorporate any additional billing system modifications necessary to achieve this, and the costs associated with these billing system modifications shall be presented in a future general rate case for recovery from the general body of customers. The following proposed restrictions, regarding customer participation in the CS Program, are rejected for being non-compliant with NMSA 1978, § 62-16B-2(L):

- a. a subscriber cannot participate in the Program if the subscriber currently receives service pursuant to Rider No. 50, Voluntary Solar Renewable Energy Program – PNM Solar Direct for Governmental and Large Commercial Customers;
- b. a subscriber cannot participate in the Program if the subscriber currently has behind-the-meter generating facilities, or a customer does not qualify for the Community Solar Program if the Customer has behind-the-meter solar facilities at the premise of the intended subscription;

- c. a subscriber may only have one single community solar subscription during a given billing period, or only one Community Solar Program subscription is allowed per premise.
- d. a customer may not qualify for the Community Solar Program as provided in the Community Solar Act.

W. The Community Solar Act and Rule 573 do not currently authorize the withholding of bill credits that PNM has proposed in its Program Tariff, in relation to its proposal to identify potential over-subscription by looking at the total bills for subscribers where the Bill Credit is so large that there is a “Carry Over Amount” in more than 6 months during a 12-month period. PNM shall not implement such a withholding of credits.

X. EPE’s 1st Revised Rate No. 47 is not approved.

Y. EPE shall file an updated Rate No. 47 ~~which conforms to all applicable terms and conditions stated in this Recommended Decision, within ten days of the issuance of a final order in this matter.~~ EPE shall file its workpapers along with its updated Rate No. 47.

Z. ~~Within 10 days of~~ After EPE’s filing of its update Rate No. 47, Staff shall, and any other party may, file with the Commission the results of its review and verification of the calculations performed by EPE to produce its updated Rate No. 47.

AA. EPE’s Monthly Subscriber Information Form is approved

BB. EPE’s Requested Variance from the Minimum Data Requirements of 17.9.530 NMAC to the Extent Required to Review and Approve EPE’s First Revised Community Solar Bill Credit Rate is approved.

CC. EPE’s Requested Variance from the Notice Requirements of Rule 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable is granted in part and denied in part. This variance request is granted for

all notice requirements immediately implicated in Case No. 23-00071-UT. This variance request is denied for any and all future notice requirements established under 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable.

DD. PNM and EPE shall also file with the Commission an explanation for how they intend to calculate appropriate subscription size, in alignment with NMSA 1978, § 62-16B-5, for subscribers that have been a customer of the qualifying utility for less than a year, or that have been a net metered customer for less than a year.

EE. EPE's Proposed Accounting Order Authorizing a Regulatory Asset for EPE to track Subscriber Credit Amounts in Excess of EPE's Avoided Cost of Generation, for the Purpose of Recovering Track Costs, Plus Carrying Charges, in a General Rate Case, is denied.

FF. The values identified in NMSA 1978, § 62-3-1 are in the public interest.

~~GG. "Subsidy," in the context of the Community Solar Act, means "the payments made by non-subscribers of costs that are attributable to subscribers which exceed the avoided costs that are generated by the subscriber organizations." And "to subsidize costs attributable to subscribers," in the context of the Community Solar Act, means "to make payments of costs that are attributable to subscribers which exceed the avoided costs that are generated by the subscriber organizations."~~

~~HH. It is in the public interest for non-subscribers to subsidize costs attributable to subscribers.~~

II. In calculating the subsidization cap, the qualifying utilities shall calculate the “aggregate retail rate” as identical to the “Total Aggregate Retail Rate” defined in NMSA 1978, § 62-16B-2(O).

~~JJ. The calculation of the subsidization cap, by the qualifying utilities, shall be based on system wide revenues that encompass the revenue from all non-subscribers on the utility’s system, not just classes that contain subscribers. Additionally, only the revenues of non-subscribers shall be used to calculate the subsidization cap.~~

KK. The Commission authorizes an accounting order that permits the utilities to track all Solar Bill Credit costs in a regulatory asset, along with all payments made for unsubscribed energy.

LL. The Commission authorizes an accounting order for the purpose of the qualifying utilities recording the categories of avoided costs identified by Mr. Barnes. Those categories are: 1. Avoided Energy Production and Purchases, 2. Avoided or Deferred Generation Capacity, 3. Avoided or Deferred Transmission Capacity or Wheeling Costs, 4. Line Losses (Adder to Energy), 5. Avoided Renewable Portfolio Standard (“RPS”) Compliance Costs, 6. Avoided Environmental Compliance Costs (if not included in other components). The methodologies proposed by CCSA witness Justin Barnes, on pages 28-36 of his direct testimony, shall be used for this initial tracking of avoided costs. The utilities shall ~~being~~begin to track these costs immediately upon issuance of the final order in this case.

~~MM. The Commission shall imminently initiate a rulemaking that will determine, at a minimum, the avoided cost benefits that should be included as benefits provided by Community Solar Facilities, a refinement of the method for calculating the value of each of~~

~~those avoided costs, and the proper method for recovery of any subsidization amounts that might be recovered at any point in time.~~

NN. The structure of the administrative cost rider shall be uniform for all qualifying utilities, and it shall be billed as a \$/kWh rate to subscribers. Qualifying utilities shall perform an annual reconciliation of actual administrative costs against the administrative costs collected through the rider in the previous year. Qualifying utilities shall provide notice of this reconciliation, and any adjustment to the administration cost rider, in accord with NMSA 1978, § 62-8-7. Any over or under collection shall be collected with a carrying charge that is set yearly in accordance with the New Mexico Customer Deposit Interest Rate. The qualifying utilities shall be permitted to record, in a regulatory asset, administrative costs that are incurred prior to when the administrative cost rider can go into effect. Any over or under collection, determined in the annual reconciliation, shall be collected over a period of three years through the administrative cost rate rider. Carrying charge shall be calculated in a manner that reflects the twelve months during which administrative costs are collected, so that over or under collection in the first month of the year shall receive twelve months of carrying charges, whereas over or under collection in the last month of the year shall not receive carrying charges. Subsidy amounts shall not be collected through the administrative cost rider. The administrative cost rate rider shall go into effect immediately upon the operation of a community solar facility.

OO. SPS and EPE shall file, concurrently with the filing of tariffs that align with the Commission's final order in this case, ~~which is 10 days after the issuance of the Commission's final order~~, a detailed estimate of the administrative costs that they expect to incur with a fully operational Community Solar Program on their system, akin to the

estimates that have been provided by PNM. SPS and EPE shall include in the administrative cost rider only the cost categories that have been deemed acceptable in the Hearing Examiner's analysis in this Recommended Decision.<sup>5</sup> SPS and EPE shall also calculate a \$/kWh rate by dividing those estimated costs by the total annual estimated community solar production based on SPS's and EPE's respective fully allocated community solar capacity.

PP. PNM shall file an updated administrative cost rider that does not include language that allows for collection of one-time community solar program costs.

QQ. Staff shall and other parties may review the filings by EPE, SPS, and PNM of their updated administrative cost riders, and shall file the results of Staff's their review ~~within 10 days of the filings made by the qualifying utilities.~~

RR. The applicable avoided cost of energy rate, under Rule 573, has not yet been established, ~~and it will be established in a future rulemaking.~~

SS. The Joint Parties' proposed changes to SPS's proposed Subscriber Disclosure and Consent Form are denied.

TT. The uniform Subscriber Disclosure and Consent Form, proposed by SPS and attached to the Direct Testimony of Ruth M. Sakya, is approved with the small typographical corrections that have been identified by the Hearing Examiner,<sup>6</sup> and the following changes.

a. Paragraph 11 on Page 3 shall be replaced with:

**In case of Subscriber complaints:** The Public Regulation Commission urges subscribers to contact their Subscriber Organization's customer representative (named above) with any concerns or complaints about billing or terms of their

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<sup>5</sup> See Recommended Decision at 181-183.

<sup>6</sup> These typographical corrections are detailed on page 196 of the Recommended Decision. Hearing Examiner states: "In addition to her consideration of the Joint Parties' proposals, the Hearing Examiner notes 2 typographical corrections for the form: (1) Paragraphs 2 and 3 do not share the same indentation and spacing structure as the rest of the paragraphs; and (2) In paragraph 2, "by" is incorrectly deleted in the first red-lined deletion."

agreements. If the complaint cannot be resolved, the subscriber should contact the Community Solar Program Administrator at 1-877-794-0109.

If the Program Administrator cannot resolve the complaint, the Program Administrator may escalate the complaint to the Public Regulation Commission's Consumer Relations Division for informal resolution, at 1-888-427-5772. <https://nm-prc.org>. After investigation of the complaint, the Public Regulation Commission may refer unresolved issues to the New Mexico Office of the Attorney General for further action.

- b. The first two sentences of text, on the proposed form, should be replaced with: "You are receiving this form as a Subscriber to the New Mexico Community Solar Program, and the services provided by your Subscriber Organization. This form provides important information about participating in this program."

**B.2.1:**

The Hearing Examiner recommends that the Commission **ORDER** as follows:

A.

B. SPS's proposed Tariff Rate 87 – Community Solar Program Credit Rider, is denied.

C. SPS shall refile its Tariff Rate 87 – Community Solar Program Credit Rider, and eliminate the unnecessary complexity that results from the inclusion of the Transmission Cost Component Credit. SPS shall concurrently file updated workpapers that support its calculation of the Community Solar Program Credit Rate.

D. Staff shall, and any party may, review the updated filing of SPS's Tariff Rate 87 and inform the Commission of the results of its review.

E. The qualifying utilities, in implementing the Solar Bill Credit, shall apply excess kWh credits to reduce monthly minimum charges.

F. The qualifying utilities' calculation of subscribers' average annual electricity consumption shall be based on the subscribers' average annual net metered usage.

G. SPS's Community Solar Program-Additional Terms and Conditions Rule Tariff is denied. SPS shall update and refile this tariff, and that filing shall address how the company will calculate a customer's average annual electricity usage for situations in which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year.

H. EPE, and PNM shall each make a filing with the Commission, that details how the company will calculate a customer's average annual electricity usage for situations in

which a subscriber has been a customer of the qualifying utility for less than a year, or has been a net metered customer for less than a year.

I. Staff shall, and any other party may, review the filings made by the qualifying utilities in accordance with decretal paragraphs G and H, and file a report with the Commission that provides their position on whether the quality utilities' proposals should be approved by the Commission.

J. SPS's Bill Credit Cost Recovery Rider is denied.

K. SPS shall file a tariff with the Commission that details the requirements for the billing data that the Subscriber Organizations will need to submit to SPS on a monthly basis. This filing shall be analogous to EPE's Monthly Subscriber Information Form, and to Attachments A and B in PNM's Original Rate Schedule No. 37.

L. SPS shall file a tariff with the Commission that details the requirements for the billing data that the Subscriber Organizations will need to submit to SPS on a monthly basis. This filing shall be analogous to EPE's Monthly Subscriber Information Form, and to Attachments A and B in PNM's Original Rate Schedule No. 37.

M. PNM's Community Solar Rider-Rider No. 56 is denied.

N. PNM shall refile its Community Solar Rider-Rider No. 56 with a comprehensive table, and most current \$/kWh, for all components of the TARR. PNM shall file its workpapers, along with its updated Rider No. 56.

O. After PNM's filing of its update Rider No. 56, Staff shall, and any other party may, file with the Commission the results of its review and verification of the calculations performed by PNM to produce Rider No. 56.

P.

Q.

R. PNM shall develop its Solar Bill Credit rate with a distribution cost component that reflects the banding mechanism that was adopted in PNM's most recent general rate case, and EPE and SPS shall follow the same procedure in developing their Solar Bill Credit rates.

S.

T. The Qualifying Utilities' shall not restrict application of a credit to customers in arrears, and credits shall be applied within one billing cycle following the cycle during which the energy was generated. The qualifying utilities shall file updated tariffs that comply with this Order.

U. PNM's Community Solar Program Tariff - Rate Schedule No. 37 is rejected in full. PNM is informed that this tariff filing is duplicative to the Uniform Subscriber Organization Agreement that was approved in Phase 1, and therefore the Commission anticipates that it will likely reject any updated filing of this form that provides for anything more than the data sharing protocols between PNM and Subscriber Organizations. PNM may include appropriate terms and conditions, that conform with the Commission's final order in this matter, in its updated filing of Rider No. 56 that will occur subsequent to the final order in this case.

V. The qualifying utilities shall allow customers with behind-the-meter solar to participate in the community solar program, up to their average annual net energy usage amount. PNM and EPE shall incorporate any additional billing system modifications necessary to achieve this, and the costs associated with these billing system modifications shall be presented in a future general rate case for recovery from the general body of

customers. The following proposed restrictions, regarding customer participation in the CS Program, are to be rejected for being non-compliant with NMSA 1978, § 62-16B-2(L):

- a. a subscriber cannot participate in the Program if the subscriber currently receives service pursuant to Rider No. 50, Voluntary Solar Renewable Energy Program – PNM Solar Direct for Governmental and Large Commercial Customers;
- b. a subscriber cannot participate in the Program if the subscriber currently has behind-the-meter generating facilities, or a customer does not qualify for the Community Solar Program if the Customer has behind-the-meter solar facilities at the premise of the intended subscription;
- c. a subscriber may only have one single community solar subscription during a given billing period, or only one Community Solar Program subscription is allowed per premise.
- d. a customer may not qualify for the Community Solar Program as provided in the Community Solar Act.

W. The Community Solar Act and Rule 573 do not currently authorize the withholding of bill credits that PNM has proposed in its Program Tariff, in relation to its proposal to identify potential over-subscription by looking at the total bills for subscribers where the Bill Credit is so large that there is a “Carry Over Amount” in more than 6 months during a 12-month period. PNM shall not implement such a withholding of credits.

X. EPE’s 1st Revised Rate No. 47 is not approved.

Y. EPE shall file an updated Rate No. 47. EPE shall file its workpapers along with its updated Rate No. 47.

Z. After EPE’s filing of its update Rate No. 47, Staff shall, and any other party may, file with the Commission the results of its review and verification of the calculations performed by EPE to produce its updated Rate No. 47.

AA. EPE's Monthly Subscriber Information Form is approved

BB. EPE's Requested Variance from the Minimum Data Requirements of 17.9.530 NMAC to the Extent Required to Review and Approve EPE's First Revised Community Solar Bill Credit Rate is approved.

CC. EPE's Requested Variance from the Notice Requirements of Rule 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable is granted in part and denied in part. This variance request is granted for all notice requirements immediately implicated in Case No. 23-00071-UT. This variance request is denied for any and all future notice requirements established under 17.1.2.10 NMAC and any Other Provisions of the Public Utility Act or Commission Rules to the Extent Applicable.

DD. PNM and EPE shall also file with the Commission an explanation for how they intend to calculate appropriate subscription size, in alignment with NMSA 1978, § 62-16B-5, for subscribers that have been a customer of the qualifying utility for less than a year, or that have been a net metered customer for less than a year.

EE. EPE's Proposed Accounting Order Authorizing a Regulatory Asset for EPE to track Subscriber Credit Amounts in Excess of EPE's Avoided Cost of Generation, for the Purpose of Recovering Track Costs, Plus Carrying Charges, in a General Rate Case, is denied.

FF. The values identified in NMSA 1978, § 62-3-1 are in the public interest.

GG.

HH.

II. In calculating the subsidization cap, the qualifying utilities shall calculate the “aggregate retail rate” as identical to the “Total Aggregate Retail Rate” defined in NMSA 1978, § 62-16B-2(O).

JJ.

KK. The Commission authorizes an accounting order that permits the utilities to track all Solar Bill Credit costs in a regulatory asset, along with all payments made for unsubscribed energy.

LL. The Commission authorizes an accounting order for the purpose of the qualifying utilities recording the categories of avoided costs identified by Mr. Barnes. Those categories are: 1. Avoided Energy Production and Purchases, 2. Avoided or Deferred Generation Capacity, 3. Avoided or Deferred Transmission Capacity or Wheeling Costs, 4. Line Losses (Adder to Energy), 5. Avoided Renewable Portfolio Standard (“RPS”) Compliance Costs, 6. Avoided Environmental Compliance Costs (if not included in other components). The methodologies proposed by CCSA witness Justin Barnes, on pages 28-36 of his direct testimony, shall be used for this initial tracking of avoided costs. The utilities shall begin to track these costs immediately upon issuance of the final order in this case.

MM.

NN. The structure of the administrative cost rider shall be uniform for all qualifying utilities, and it shall be billed as a \$/kWh rate to subscribers. Qualifying utilities shall perform an annual reconciliation of actual administrative costs against the administrative costs collected through the rider in the previous year. Qualifying utilities shall provide notice of this reconciliation, and any adjustment to the administration cost rider, in accord with NMSA 1978, § 62-8-7. Any over or under collection shall be collected with a

carrying charge that is set yearly in accordance with the New Mexico Customer Deposit Interest Rate. The qualifying utilities shall be permitted to record, in a regulatory asset, administrative costs that are incurred prior to when the administrative cost rider can go into effect. Any over or under collection, determined in the annual reconciliation, shall be collected over a period of three years through the administrative cost rate rider. Carrying charge shall be calculated in a manner that reflects the twelve months during which administrative costs are collected, so that over or under collection in the first month of the year shall receive twelve months of carrying charges, whereas over or under collection in the last month of the year shall not receive carrying charges. Subsidy amounts shall not be collected through the administrative cost rider. The administrative cost rate rider shall go into effect immediately upon the operation of a community solar facility.

OO. SPS and EPE shall file, concurrently with the filing of tariffs that align with the Commission's final order in this case, a detailed estimate of the administrative costs that they expect to incur with a fully operational Community Solar Program on their system, akin to the estimates that have been provided by PNM. SPS and EPE shall include in the administrative cost rider only the cost categories that have been deemed acceptable in the Hearing Examiner's analysis in this Recommended Decision.<sup>7</sup> SPS and EPE shall also calculate a \$/kWh rate by dividing those estimated costs by the total annual estimated community solar production based on SPS's and EPE's respective fully allocated community solar capacity.

PP. PNM shall file an updated administrative cost rider that does not include language that allows for collection of one-time community solar program costs.

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<sup>7</sup> See Recommended Decision at 181-183.

QQ. Staff shall and other parties may review the filings by EPE, SPS, and PNM of their updated administrative cost riders, and shall file the results of their review-

RR. The applicable avoided cost of energy rate, under Rule 573, has not yet been established.

SS. The Joint Parties' proposed changes to SPS's proposed Subscriber Disclosure and Consent Form are denied.

TT. The uniform Subscriber Disclosure and Consent Form, proposed by SPS and attached to the Direct Testimony of Ruth M. Sakya, is approved with the small typographical corrections that have been identified by the Hearing Examiner,<sup>8</sup> and the following changes.

a. Paragraph 11 on Page 3 shall be replaced with:

**In case of Subscriber complaints:** The Public Regulation Commission urges subscribers to contact their Subscriber Organization's customer representative (named above) with any concerns or complaints about billing or terms of their agreements. If the complaint cannot be resolved, the subscriber should contact the Community Solar Program Administrator at 1-877-794-0109.

If the Program Administrator cannot resolve the complaint, the Program Administrator may escalate the complaint to the Public Regulation Commission's Consumer Relations Division for informal resolution, at 1-888-427-5772. <https://nm-prc.org>. After investigation of the complaint, the Public Regulation Commission may refer unresolved issues to the New Mexico Office of the Attorney General for further action.

b. The first two sentences of text, on the proposed form, should be replaced with: "You are receiving this form as a Subscriber to the New Mexico Community Solar Program, and the services provided by your Subscriber Organization. This form provides important information about participating in this program."

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<sup>8</sup> These typographical corrections are detailed on page 196 of the Recommended Decision. Hearing Examiner states: "In addition to her consideration of the Joint Parties' proposals, the Hearing Examiner notes 2 typographical corrections for the form: (1) Paragraphs 2 and 3 do not share the same indentation and spacing structure as the rest of the paragraphs; and (2) In paragraph 2, "by" is incorrectly deleted in the first red-lined deletion."

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE TARIFFS, AGREEMENTS, )  
AND FORMS PROPOSED BY QUALIFYING ) Docket No. 23-00071-UT  
UTILITIES FOR THE COMMUNITY SOLAR )  
PROGRAM**

---

**CERTIFICATE OF SERVICE**

I CERTIFY that on this date I e-mailed a true and correct copy of the foregoing *Phase II Final Order* to the parties listed below.

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**DATED** this 27<sup>th</sup> day of November, 2024.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

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