



Community Solar Act – Final Bill Assessment

After a long and bruising fight through the legislature and a three-hour filibuster by Republican Representatives, a weakened Community Solar Act has finally passed the House floor and Senate concurrence and is headed to the Governor's desk. New Energy Economy worked alongside many other activists, legislators and New Mexico residents to realize the dream of community solar gardens blooming across the state, a vision of energy democracy that allows ALL people, regardless of income, to escape the bondage of monopoly utility control and gain access to affordable and stable renewable energy. PNM and EPE extracted some painful compromises to slow the progress of community solar and diminish the market incentives that would entice developers, but we are grateful to sponsors who kept fighting and we are hopeful that after the three-year initial phase of rollout, the benefits of distributed clean energy will clear the way for widespread implementation.

The purpose of community solar:

- 1) To create access: every person in the state who wants to ensure they have low-cost, stable electricity rates and who cares deeply about using sustainable energy can simply sign up as a subscriber to a local solar garden.
- 2) To encourage low-cost renewable energy in many forms – schools serving as an anchor tenant and families signing up as subscribers; municipalities serving as an anchor tenant and offering low-income subscriptions; not-for-profits, religious organizations, businesses, homeowner associations – many opportunities and configurations – of all kinds to sprout up in rural and urban areas.
- 3) To create competition in the land with the sun Zia on its flag: Investor-Owned Utilities, (IOUs), PNM and EPE, have no competition in the market and community solar has the potential to carve out protection for customers to invest in low-cost solar as a hedge against rising utility rates.

Unfortunately, the “Community Solar” bill that passed the legislature was rife with economic hurdles for project developers, stripping away many community benefits, at the behest of legislators who were either ignorant or swayed by the utilities (or both).

Is the bill still worth supporting?

We've thought long and hard about it and concluded that YES, we need community solar now! Ironically, some of the provisions that were meant to provide assurances to the utilities in the year-long stakeholder working group process that yielded the original language (the review period, the temporary cap, required reporting on impact & limitations) - will now be important avenues for advocates, activists, and communities to challenge the structure and demand improvements. We will continue working to

support solar developers to navigate the challenges and realize the vision of solar gardens proliferating across the state.

The bill awaits the Governor's signature and despite our critique below we hope that she signs it; however, you should know that many solar providers are disgusted and asked us not to support the bill as finalized.

New Mexicans overwhelmingly want climate action and more renewables (84%) and legislators (if they actually represented us, instead of corporate donors) should be wholeheartedly embracing EVERY tool that fosters the transition to 100% RENEWABLES + STORAGE, local economic development from green energy, and energy price stabilization. **However, they are unduly influenced by the investor-owned utilities and industry and this corrosive impact is deeply problematic.** We cannot address the problems we face: climate disruption, systemic racism and oppression, health care inequities and more while our democracy is polluted.

We strayed...

In order for a community solar project to be viable - it needs to be competitive. Solar developers of projects only have so much margin to make a project economically feasible. The bill requires PRC regulatory oversight, which will be costly, and hopefully this single MAJOR requirement will not make the development of community solar projects impossible. This is just one of the six most problematic aspects of the Community Solar Act.

#1: Requires community solar projects to be subject to PRC Regulation.

The legal rationale for PRC oversight for an Investor Owned Utility ("IOU") is that in exchange for NO competition and 100% geographic control, the electric monopoly must be regulated. The IOU must provide service to all those members (500,000+ customers) of the public within that geographic boundary. There is NO corresponding legal rationale for community solar oversight.

Unfortunately, community solar developers, even though they do not have the same privileges as IOUs, will be subjected to PRC regulation, as if they were an IOU: they will have to hire lawyers, regulatory experts, and provide minimum data requirements for *each* project; this will be a substantial burden for such a small scale of production. There is little "profit" built into these projects to afford this regulatory overlay and expense. Given that solar developers are fully funding this enterprise *in advance*, it will be economically challenging for them to bear this excessive and unnecessary burden.

We are unaware of any other community solar program in the country has this regulatory burden.

#2: Investor Owned Utilities can own a "community solar" project.

Despite many months invested analyzing best practices from 19 states with years of experience, the original community solar bill that actually put "communities" first was superseded and this final bill allows IOUs to own community solar projects. This undermines the purpose of

competition and allows the IOUs to cherry-pick the most economically advantageous customers because it has access to its own confidential customer data electricity usage information.

A true community solar program means that a subscriber owns shares in the system, gets the electric-generated offset, and gets the tax advantages. The community solar subscriber is an investor, an owner, and has a say in the process and gets the direct benefits as they occur. Whether a low-income resident or a business owner!

The term “community solar” has been around for more than a decade and refers to projects with shared ownership in which participants receive direct financial benefits, including reduced utility bills.

The National Renewable Energy Lab defines community or shared solar as models that “allocate the electricity of a jointly owned or leased system to offset individual consumers’ electricity bills, allowing multiple energy consumers to share the benefits of a single solar array.”

A utility-owned solar system doesn’t meet the definition of community solar because customers won’t own the panels or accrue enough of the benefits. The utility or its subsidiary will take advantage of their position to solidify and expand its domination of the market. This is contrary to the bill’s rationale.

#3: Further limits the overall megawatt (MW) total of allowable community solar projects.

In the first three years of the program the statewide capacity cap has been reduced to 200MW. The statewide annual capacity cap will be evaluated by the PRC during the program’s first three years and a recommendation will be made to the legislature about whether to continue this artificial limitation. This cap is less than 1% of PNM’s annual sales per year. It should be noted that in 2023 the Governor, heavily influenced by PNM, will be appointing the PRC regulators who make these legislative recommendations.

#4: Limits cross subsidization of subscribers by non-subscribers to no more than 3% of the non-subscriber’s aggregate retail rate annually.

Cross-subsidization refers to potential cost sharing between subscribers and utility customers. In reality with an interconnected system like the energy grid, cross-subsidization is found throughout utility rates. There are huge swathes of customers who pay less than their full cost of service, thus being subsidized by other customers who pay more to make up the difference. We don't demand proof of zero cross-subsidization for rooftop solar, and to make community solar providers give proof in advance that there will be less than 3% cross-subsidization will potentially cause solar providers (and their lawyers) to be caught in a dragnet of utility obfuscation for years on every project.

Solar providers will now have to prove *in advance* that there will be less than 3% cross-subsidization for on every project.

We hope that the PRC will come up with an easy formula to determine this calculation and that it will not be an unduly difficult time or cost burden. Yikes!

#5: The solar developer must carve out 30% for low-income subscriptions for each project and still make the facility pencil out.

While at first glance this looks and sounds good – 30% of each project *must* include low-income folks, this restriction essentially prohibits a mall from installing community solar, or certain housing associations, or other kinds of business possibilities. PNM (via legislators) said that this requirement was inserted to fulfill the purpose of community solar – but since when is PNM motivated by the interests of low-income customers? Never. (Pre-COVID PNM sent an average of 350,000 disconnect notices per year and actually disconnected about 20,000 customers per year – hardly a company who cares about economic violence!)

No, the real reason this requirement was added was to limit a wide variety of potential customers owning community solar projects.

To be clear, NEE supports low-income focused community solar projects, for obvious reasons, that are municipally-owned, or not-for-profit grant-subsidized, or are projects developed by Pueblos and religious organizations AND we want businesses (of all sizes) to solarize or other kinds of not-necessarily low-income configurations – but that is no longer possible.

The IOUs are afraid that up and down the economic spectrum people will flee the monopoly system and go their own distributed energy way: for economic and climate reasons! So, PNM had their legislators greenwash the amendments with a veil of concern for low-income neighbors. In reality, this is another hurdle, not a benefit.

#6: The solar developer must give away the Renewable Energy Credits (RECs) associated with the renewable energy for free to the utility.

The original bill had the RECs owned by the community solar project developer. This would have made the solar a tad cheaper for developers (and their subscribers) and it would have provided a mechanism for the utility (and its customers) to purchase RECs at the “avoided cost”, cheaper for the utility than actually building the renewable energy. The purchase of RECs would have allowed the utility to meet the escalating renewable energy portfolio standard. Since, the solar developer and subscribers are paying for the project, the utility should not get the benefit of the RECs for free. But now the utility receives a windfall while providing nothing to the solar developer or subscribers, despite their respective financial investments.

You might be wondering how a solar developer could possibly navigate all these hurdles. It will be difficult, though hopefully not impossible for some entities. Our hope is that Native American tribes and cities will be able to forge a path forward and it will be so beneficial that others will demand what should have already been ours: energy democracy!