

## 21-00112-UT; Filing Submission

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 1 attachments (833 KB)

21-00112-UT, Notice of Filing of Report from Strategen Consulting and Agenda for Third Workshop.pdf;

<b>IN THE MATTER OF THE COMMISSION'S ADOPTION OF RULES</b>	)	
<b>PURSUANT TO THE COMMUNITY SOLAR ACT</b>	)	<b>Docket No. 21-00112-UT</b>
	)	

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- Please file the attached NOTICE OF FILING OF REPORT FROM STRATEGEN CONSULTING AND AGENDA FOR THIRD WORKSHOP into the above captioned case.

Thank you,

Isaac Sullivan-Leshin

*Paralegal for Office of General Counsel*



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**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE COMMISSION'S ADOPTION )  
OF RULES PURSUANT TO THE COMMUNITY SOLAR ) Docket No. 21-00112-UT  
ACT )**

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**NOTICE OF FILING OF REPORT FROM STRATEGEN CONSULTING AND  
AGENDA FOR THIRD WORKSHOP**

NOTICE IS HEREBY GIVEN that the following attached **Report from Strategen Consulting and Agenda for Third Workshop** will be placed in the New Mexico Public Regulation Commission's official file in Case 21-00112-UT. The Notice will be sent to all those shown on the following attached Certificate of Service.

**DATED** this 15<sup>th</sup> day of October, 2021.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**/s/ Isaac Sullivan-Leshin, electronically signed**

**Isaac Sullivan-Leshin, Paralegal**

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## **NEW MEXICO PUBLIC REGULATION COMMISSION**

### **NOTICE OF COMMUNITY SOLAR IMPLEMENTATION WORKSHOP**

**Tuesday, October 19<sup>th</sup>, 2021**

**10:00 a.m.**

**MEETING TAKING PLACE THROUGH ZOOM ONLY**

#### **Agenda for Community Solar Implementation Workshop #3, October 19, 2021**

Any person who may wish to participate in the workshop must notify the Zoom host, Isaac Sullivan-Leshin, no later than **12:00 noon on Monday, October 18, 2021** by sending an email to [isaac.sullivan-leshin@state.nm.us](mailto:isaac.sullivan-leshin@state.nm.us) that lists the name, email and organization (if applicable) of each person who wishes to participate.

10:00 am – 10:15 am	Welcome and Proceeding Status Commissioner Joseph Maestas
10:15 am – 11:30 am	Review of Stakeholder Advisory Process and Report Matthew McDonnell, Strategen, LLC
11:30 am – 12:15 pm	Unresolved Issues and Discussion Arthur O'Donnell, PRC
12:15 – 12:30 pm	break
12:30 pm – 1 pm	NOPR process and schedule Russell Fisk, PRC Office of the General Counsel
	Q&A as needed after each segment

October 2021

# New Mexico Community Solar — Stakeholder Participation Pre-Rulemaking Status Report

*June-October 2021*



Prepared for the New Mexico Public  
Regulation Commission (NM PRC)

YOUR PARTNER IN THE ENERGY TRANSITION

# New Mexico Community Solar Rulemaking Working Group Report

## Prepared for:



New Mexico Public Regulation  
Commission  
PO Box 1269  
Santa Fe, New Mexico 87504

## Prepared by:



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## Disclaimers

### *Strategen Disclaimer*

Strategen Consulting LLC developed this report based on information received by CESA. The information and findings contained herein are provided as-is, without regard to the applicability of the information and findings for a particular purpose. References herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by Strategen Consulting LLC.

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## Executive Summary

On April 5, 2021, the New Mexico Legislature passed the Community Solar Act (SB 84), establishing community solar in the state. Considered to be a landmark program, SB84 aligns with New Mexico's greater plan to transition away from its historical use of fossil fuels, decrease emissions, and achieve its recently implemented renewable energy standard of 50% by 2030. The Community Solar Act (CSA) also holds a potentially material financial value proposition for New Mexico, with a projected substantial boost to the state economy of \$517 million in economic benefits, and \$147 million in labor income, according to a study by the University of New Mexico's Bureau of Business and Economic Research. Designed with energy justice principles in mind, the program is further intended to extend the benefits of renewable energy in an equitable manner, with a mandate requiring that 30 percent of each community solar facility serve low-income households, and special allowances and benefits for tribal communities integrated within the policy.

To implement the Community Solar Act SB84, the New Mexico Public Regulation Commission (NM PRC) is required to approve and establish policies for a 200 MW Community Solar Access program. In an effort to achieve the complex task of determining multiple crucial aspects of the program, the Commission sought to host an innovative stakeholder engagement process alongside their traditional rulemaking procedure, as a means of soliciting input on the rules and design of the program, and to seek alignment amongst a diverse set of key stakeholders – utilities, developers, project sponsors, low-income advocates, clean energy interest groups, among others.

In April 2021, the Commission engaged Strategen to manage and facilitate a critical portion of this working group process, from July to October 2021. This report is intended to summarize the outcomes of this working group process, identifying areas of alignment among stakeholder positions thus far in the process, and to provide option recommendations and general guidance to the Commission on key aspects of the SB84 program design.

## Process Design

### Rulemaking Schedule

The working group process was designed in accordance with the official rulemaking schedule set by the Commission. Following a stakeholder kick off meeting hosted by the Commission on June 24, 2021, Strategen was tasked with: (1) hosting and facilitating a series of virtual working group meetings; and (2) developing a working group report at the conclusion of the working group series to provide, as a way to summarize the working group activity and to help inform a Notice of Proposed Rulemaking (NOPR) to be issued by the Commission in November 2021.





### Topic Coverage, Subgroups & Meeting Design

To inform the dialogue of the working group process, the Commission provided Strategen with a list of eighteen (18) items ('Exhibit A') of programmatic topic areas outlined by the CSA - in the general categories of consumer protection, ratemaking, and market oversight - to be addressed in the working group process as a means of soliciting stakeholder input on the CSA program and policy design. In consideration of the time frame given to achieve these tasks, Strategen focused in on 10 key priority topics identified to be of highest importance to the outcome and success of the CSA to inform the working group discussions.

Strategen then grouped the 10 prioritized topics into two categories, and created subgroups associated with each:

- 1) Subgroup A: Market Oversight
- 2) Subgroup B: Consumer Protection & Ratemaking

With the creation of subgroups according to topic category, Strategen then scheduled three stakeholder meetings, each composed of two separate subgroup meetings, with below associated topic designations:

#### Meeting #1: July 22, 8:30am – 12:45pm MT

- **Subgroup A (8:30-10:30am):**
  - Approving a process for selection of CS project proposals
- **Subgroup B (10:45am-12:45pm):**
  - Determining and applying the value of solar credits per rate class

#### Meeting #2: August 5, 9am-12:15pm MT

- **Subgroup A (9-10:30am):**
  - Guidelines governing the siting and co-location of CS projects with other energy resources
  - Criteria for LI definition and LI Subscriber eligibility and verification; prequalification of LI Subscribers
- **Subgroup B (10:45am-12:15pm):**
  - Subscriber eligibility criteria & mechanisms for community outreach
  - Interpret how the 3 percent limitation on cross subsidization is calculated and applied
  - Develop and approve a uniform disclosure form that identifies the information that shall be provided by a subscriber organization to a potential subscriber

#### Meeting #3: Sept. 2, 9am-12:15pm MT

- **Subgroup A (9-10:30am):**
  - Allocation of the 200 MW annual program capacity cap among IOUs
  - Any potential limitations on use of RECs by utilities (i.e., can they be sold or transferred)
- **Subgroup B (10:45-11:30am):**
  - Check in on utility data request for Subgroup B: informing the CS bill credit rate development and distribution costs
  - Subscriber eligibility: need to define small commercial customers
  - Establishing criteria for registration of Subscriber Organizations (owners of projects)

Following the conclusion of the final subgroup meetings on September 2, 2021, Strategen also hosted a wrap-up meeting where both subgroups participated in a review of discussion topics in all working group meetings and evaluated possible outcome pathways identified to that point in the process.

### Working Group Participation

There was robust participation and engagement in the working group process across all three meetings. Below is a list of organizations who registered and participated in the working group process:

- |   |   |
|---|---|
| • Affordable Solar                                | • GRID Alternatives                                   |
| • Amp Energy                                      | • ICAST   |
| • Arcadia   | • Impact Power Solutions                              |
| • Bernalillo County Democratic Ward 17B           | • Nautilus Solar Energy LLC                           |
| • Calvert Energy LLC                              | • New Mexico Public Regulation Commission             |
| • CCSA  | • New Mexico Rural Electric Cooperative Association   |
| • Chaberton Energy                                | • Nexamp  |
| • City of Albuquerque                             | • Omni Navitas Holdings LLC                           |
| • City of Las Cruces                              | • Osceola Inc., DBA OE Solar                          |
| • Clear Energy Solar                              | • PACE Fund NM  |
| • Coalition of Sustainable Communities New Mexico | • Pivot Energy  |
| • Community Energy Solar                          | • Public Service of New Mexico                        |
| • Con Edison Clean Energy Businesses              | • Renewable Energy Industry Association of New Mexico |
| • Cypress Creek Renewables                        | • Renewable Properties                                |
| • Dimension Energy                                | • RIC Energy US                                       |
| • EDF   | • SGC Power   |
| • El Paso Electric                                | • Sierra Club   |
| • Forefront                                       | • SolarStone Development LLC                          |
| • Galehead Development                            |   |

- Somos Solar
- Sovereign Energy Initiatives
- SPS
- State Land Office – New Mexico
- SunVest Solar LLC
- SynerGen Solar, LLC
- US Solar
- Vote Solar
- Wilkinson Barker Knauer, LLP
- Yellow Bird Services, LLC

### Working Group Structure

Conscious of the large number of participants in the working group, and given a desire to create a format that permitted all voices to be heard, Strategen designed a participation platform where each organization was allowed to designate one “Point of Contact” (POC) for each subgroup, who would participate and serve as the primary voice on behalf of the entire organization. Strategen worked with participants when necessary to make reasonable exceptions to this rule, such as allowing subs when certain POCs were unable to attend a specific meeting.

All meetings were virtual and took place on Microsoft Teams. To support communications and execute on the meeting invites, Strategen also set up a dedicated, temporary email account to serve the working group process.

Throughout the working group process, stakeholders were also provided access to a shared working folder and resource library set up by the Strategen team. This shared working folder and resource library included relevant reading materials on other state community solar programs, information on meeting scheduling and agendas, notes and presentations from the three meetings, and other information documents relevant to the working group process.

### Working Group Facilitation

Strategen prepared a customized agenda for each of the working group meetings. To help approach each of the discussion topics with a common context and understanding, Strategen facilitators first provided an overview of the topic, and shared some foundational context-setting specific to the topic at hand, often integrating and referencing examples from other state community solar programs. Strategen also integrated key discussion questions and highlighted critical considerations as necessary, to guide the group’s attention and dialogue to the main issues at hand. Following the topic overview, Strategen then facilitated a group dialogue, where attendees had the floor to make their comments, raise questions, and respond to each other. To efficiently moderate the group, stakeholders were asked to use the ‘raise hand’ function within Microsoft Teams, and then were called on in order to make their comments to the group.

### Working Group Wrap-Up & Final Comments

Concluding the final working group meetings and wrap-up session on September 2, 2021, Strategen encouraged all stakeholders to submit final comments and position statements by September 16, 2021. In consideration of final comment submissions, Strategen further provided a document outlining specific guidance and requirements, highlighting key options/outcomes for each topic based on what emerged

in the discussions with participants in the three working group meetings, as well as stakeholder comments that had been submitted previously throughout the working group process. All stakeholders who participated in the working group process were invited and encouraged to submit final comments. Stakeholders were further encouraged to consolidate their submissions, and to submit joint submissions where possible.

Strategen communicated to all stakeholders that the highlighted options/outcomes were by no means intended to preclude or restrict participants from including or referencing other options in their final comments, but merely to serve as a guide to note areas where the majority of participants were observed to agree or disagree, and encourage participants to better align their final comments with options that currently appear to have the most support.

Final submitted written comments and position statements were reviewed by the Strategen team, and synthesized into this Working Group Report, which was then circulated to participants for review and comment.

## Scope of this Effort

Please note the completion of the Working Group Report is just one milestone in the Rulemaking Process and does not foreclose further opportunities for stakeholders to provide input during the rulemaking process. The Working Group Report does, however, mark the formal conclusion of Strategen's role in the rulemaking process as a client of the Commission. Although the working group process evoked substantial feedback, position statements and input from stakeholders, the overall working group process was necessarily condensed due to timing and scheduling constraints driven by rulemaking requirements and the need to have a community solar rule in place by April 2022.

## Discussion Topic Outcomes: Recommendations for Commission Consideration & Stakeholder Position Summaries

This next section reviews each of the 10 discussion topics addressed in the working group process. Each topic section will provide:

1. Recommendations and option pathways to the Commission for moving forward on a decision on the topic
2. A synthesis and summary of key stakeholder comments on position statements that informed the recommendations made to the Commission.

The topics are addressed in the following order:

- **Topic #1:** Process for Selection of Community Solar (CS) Project Proposals
- **Topic #2:** Allocation of 200 MW Program Cap among IOUs
- **Topic #3:** Determining and Applying the Value of Solar Credits Per Rate Class

- **Topic #4:** Calculation and Application of 3% Limitation on Cross-Subsidization
- **Topic #5:** Guidelines for the Siting and Co-Location of CS Projects with Other Energy Resources
- **Topic #6:** Criteria for Low-Income Customer Definition, Subscriber Eligibility & Verification, Pre-Qualification
- **Topic #7:** Subscriber Eligibility Criteria
- **Topic #8:** Uniform disclosure form identifying info from a subscriber organization to a potential subscriber
- **Topic #9:** Any potential limitations on use of RECs by utilities (i.e., can they be sold or transferred)
- **Topic #10:** Establishing criteria for registration of Subscriber Organizations (owners of projects)

## Topic #1: Process for Selection of Community Solar Project Approval

### Recommendations for Commission Consideration:

**In consideration of Topic #1, Process for Selection of Community Solar Project Proposals, the Commission should consider use of a Non-Price RFP selection process to assign program capacity to specific community solar projects.** This recommendation comes through a majority consensus in the working group process and is also expressed through final stakeholder comments, with written support for this approach from Coalition for Community Solar Access, Coalition of Sustainable Communities New Mexico, GRID Alternatives, Solar Energy Industries Association, and Vote Solar (collectively the “Joint Commenters”), as well as parties who formally endorsed the positions of the Joint Commenters - Chaberton Energy, Nautilus Solar, Omni Navitas Holdings LLC, SunShare, and Sunvest. Further support is observed in written comments from two of the three utilities (EPE and SPS), REIA NM, The City of Las Cruces, The Bernalillo County Democratic Ward 17B (“Ward 17B”), Cypress Creek Renewables (CCR), and Yellow Bird Services (YBS).

The Commission is further advised to develop guidance on key considerations for the Non-Price RFP administration and bidding process, and to identify a set of criteria to evaluate bid requirements, including a list of minimum thresholds to submit a bid for consideration. **Based on stakeholder input through the working group, we have highlighted more specific detailed recommendations in these categories for the Commission’s review in below sections.**

The Strategen team acknowledge that each of the three utilities did not fully embrace a Non-Price RFP process, with EPE and SPS favoring both price and non-price criteria, arguing that price criteria would minimize the ‘variable’ costs of project interconnection costs. EPE further advocated for a Commission-issued RFP to landowners for land availability and leasing prices, in an effort to avoid feeder saturation and level the cost of land. For PNM, they favored a hybrid first-come, first-serve Small Generator Interconnection Procedures (SGIP) process, with the intention of project preference going to those that have received a queue assignment in SGIP. In consideration of these utility positions, it is clear across the board that there are major concerns about how community solar projects will be managed through the interconnection processes. Considering that interconnection was not a specific focus for this stakeholder

working group series, and that there is a separate working group process specifically focused on interconnection issues, it is our recommendation that the Commission may be best positioned to handle final decisions on interconnection outside of the RFP process.

The Strategen team further flags for the Commission the need for more holistic determination on the design of the interconnection process, and how interconnection costs may be handled in the program. Regardless, it is clear there is a lot of value in ensuring each project has demonstrated a minimum threshold of viability before entering the interconnection queue, and we encourage the Commission to continue to collaborate with stakeholders on best practices to ensure such an outcome. Experience across other jurisdictions has shown that the interconnection process and queue management is critical path for the enablement of a successful community solar program. Finally, in response to EPE's proposal on the use of a landowner RFP, the Strategen team appreciates the spirit and purpose by which this approach was offered. That said, we share stakeholder concerns that EPE's suggestion may create unintended consequences, including the possibility of inflating land costs as a result of the landowner RFP.

#### **Administration of Non-Price RFP:**

The exact format for the administration and management of the bidding process for the Non-Price RFP requires further attention from the Commission and key stakeholders, as it was not a central discussion topic covered in the working group process. Stakeholders submitted recommendations on these aspects of their RFP in their comments. There did seem to be some foundational support in favor of a third-party administrator, including from the Joint Commenters, REIA NM, Sovereign Energy, and Dimension Energy. The Joint Commenters have also included more detailed recommendations on administration and management of the RFP process in their comments. There was also stakeholder support for a fee/deposit structure to support administrative costs of the RFP. This fee may be partially or fully refundable, depending on if a project enters the interconnection queue.

**In order to ensure an unbiased and non-discriminatory selection process, the Strategen team recommends the Commission consider process administration via the use of: (1) an independent observer; or (2) a third-party administrator.**

#### **Minimum Bid Requirements Considerations:**

After synthesizing stakeholder comments, the Strategen team recommends that the Commission consider criteria for minimum bid requirements in the categories of:

- Legally binding site control
- Commitment to meeting or exceeding all statutory subscriber requirements, including a minimum 30% low-income subscription requirement. Heavier weighting preference for projects that exceed the 30% low-income carve-out/serve higher percentage of LI residents
- Non-ministerial permits to be either in hand, line of sight, or evidence that permits are not required
- Benefits to the local and New Mexico community:
  - Resident business and resident veteran business pursuant to Section 13-1-21 NMSA 1978

- General preference to projects supporting local businesses or employing local labor and NM-based partners
- Workforce training and/or educational opportunities for disenfranchised groups; utilization of racial minority/women/veteran owned/operated businesses
- Provide local job training or commit to long term jobs in New Mexico
- Outreach and partnership with local communities, community-based project ownership

### **Scoring Criteria:**

- Project viability:
  - Project economics: system output, system size, guaranteed subscriber savings
  - Financial strength and viability, financing plan and evidence of funding
  - Developer experience with community solar and subscriber acquisition and management, experiencing building and operating solar projects of similar size
  - State of project development and schedule
  - Interconnection viability
  - Permitting due diligence and compliance with environmental laws
  - Familiarity with local community and/or prior experience working with low-income communities
- Customer/subscriber experience, benefits & savings
  - User friendly in-person or online educational resources to help customers make informed choices about CS participation
  - Utilization or input from LI consumers and others, LI customer engagement
  - Guaranteed subscriber savings, favorable contract terms, long-term saving opportunities
  - Project co-owned by or provides benefits beyond project subscription to local, municipal, county, or tribal government, school, or non-profit
- Project siting characteristics:
  - strategic feeder lines; co-location with battery storage or other assets that can provide community resiliency;
  - Project located on landfills, brownfield, municipal/county, or state land
  - favorable environmental impact analysis; impact on land and artifacts of cultural and historical significance

### **Summary of Stakeholder Comments:**

#### **Background**

In the working group meetings, stakeholders demonstrated a general consensus in favor of a Non-Price RFP selection process, composed of specific non-price criteria categories, as the methodology for Process for Selection of CS Project Proposals (Topic #1). Parties were further encouraged to comment on and recommend specific non-price categories that had strong support in the working group process, as well as to delineate and recommend whether certain non-price categories should be considered threshold eligibility criteria (e.g., site control) versus criteria that should receive relative weighting within the evaluation process.

**Below is a summary of final working group positions statements in consideration of Topic #1:**



Coalition for Community Solar Access, Coalition of Sustainable Communities New Mexico, GRID Alternatives, Solar Energy Industries Association, and Vote Solar (collectively the “Joint Commenters”) support a non-price RFP approach to project selection, administered by a third-party contractor. The Joint Commenters recommend a single round of bidding for all 200 MW of program capacity and that the Commission require the IOUs to provide hosting capacity data to inform the site acquisition and interconnection process. They also recommend that projects participating in a rural electric cooperative program be excluded from the RFP, and that Indian Nations, Tribes, and Pueblos be consulted prior to project approval or development. The Joint Commenters propose the minimum bid requirements and scoring criteria as follows:

- Minimum bid requirements:
  - Bid fee to support the third-party administrator
  - Legally binding site control
  - Commitment to meeting or exceeding all statutory subscriber requirements
  - Completed utility pre-screen or equivalent level of information
- Scoring criteria:
  - Project viability: project permitting; experience with subscriber acquisition and management; experience building and operating solar projects of similar size; financial strength and financing plan; state of project development and schedule
  - Low-income preference: exceeding low-income carve-out above 30% minimum; commitment to a higher percentage of low-income carve-out from low-income customers (as distinct to low-income service providers); plan for providing meaningful bill savings over project lifetime; partnership to deliver energy efficiency to subscribers; no up-front cost, early termination fee, or credit checks for subscribers
  - Local preference: resident business and resident veteran business pursuant to Section 13-1-21 NMSA 1978; community-based project ownership; utilization of NM-based partners
  - Project siting characteristics: strategic feeder lines; co-location with battery storage or other assets that can provide community resiliency; brownfield, municipal/county, or state lands; favorable environmental impact analysis; impact on land and artifacts of cultural and historical significance
  - Community benefits: workforce training and/or educational opportunities for disenfranchised groups; utilization of racial minority/women/veteran owned/operated businesses

While the Joint Commenters’ proposal removes standard interconnection viability from the RFP, it establishes an expedited process for ensuring interconnection viability through formal studies immediately after capacity awards.

PNM favors a hybrid first-come first-serve Small Generator Interconnection Procedures (SGIP) process, in which a community solar project developers who have perfected their application will receive an assignment in the same queue as all developers that submit applications for small generator projects. Any preferences or weighting for community solar projects should be applied to those that have received a queue assignment in SGIP.

EPE and SPS are in favor of an RFP process that includes both price and non-price criteria. EPE also proposes that the Commission issue an RFP to landowners to submit their land availability

and leasing prices, and the utility will identify any synergy among winning land sites to support project siting decisions. EPE argues that this process will help avoid feeder saturation and level the cost of land.

SPS recommends that non-price criteria should include, at a minimum: New Mexico developer preference, site control, certain discretionary permits in place, develop and project financial viability, and projects that exceed the 30% low-income carve-out.

REIA NM supports an RFP process administered by an experienced independent administrator. REIA NM also highlights the importance of beginning the process to select the administrator before the program rules are finalized to ensure timely program launch. REIA NM provides an initial proposal of possible RFP minimum bid requirements and scoring criteria:

- Minimum bid requirements:
  - Fully executed, legally binding site control
  - Commitment to meet all statutory requirements
  - Application fee
  - Upfront deposit, fully refundable prior to executed interconnection agreement
  - Narrative description of plan for subscriber enrollment
- Scoring criteria:
  - Economics: system output; system size; guaranteed subscriber savings
  - Preparedness: interconnection viability; permit derisking
  - Developer experience: experience with projects of similar size and scope, including in New Mexico; experience in acquiring and managing subscribers
  - Subscriber mix: percentage of low-income subscribers above 30% carve-out; percentage of residential subscribers
  - Community benefits: project located on landfills, brownfields, or state, county, or municipal land; project co-owned by or provides benefits beyond project subscription to local, municipal, county, or tribal government, school, or non-profit
  - Expansion of local solar industry: use of New Mexico entities for EPC, engineering, professional services, materials, procurement, labor
  - Local preference: resident business or resident veteran business pursuant to Section 13-1-21 NMSA 1978

REIA NM also recommends that the Commission organize a separate working group to further refine the proposed criteria, as well as impose fines for developers that fail to meet commitment made during the RFP process.

The City of Las Cruces supports a non-price RFP selection process, with at least two rounds of RFPs for each service territory. The City of Las Cruces also stresses the importance of criteria related to subscriber cost savings, project viability, plans for meeting statutory requirements, low-income subscriber participation, and preference for resident businesses and resident veteran businesses.

The Bernalillo County Democratic Ward 17B (“Ward 17B”) supports a non-price RFP. Ward 17B highlights project viability and environmental justice as the two most important criteria:

- Project viability:
  - Developer and SO experience and qualifications: technical/industry experience; familiarity with local community served by proposed project

- Suitable size and interconnection: sized to reasonably serve residential and small commercial needs; sited to promote the development of distribution system to serve all communities
- Financial strength and financing plan
- Project development schedule, including final connection date
- Environmental justice:
  - Long-term savings for customers
  - Utilization of input from LI consumers and others for outreach plans
  - User-friendly in-person and online educational resources to help customers make informed choice about community solar participation
  - Evidence of demonstrable efforts to partner with local nonprofits, businesses, and government entities
  - Compliance with federal and state environmental protection law.

Cypress Creek Renewables (“CCR”) supports the consensus for a non-price RFP selection process and recommends minimum requirements and scoring criteria as follows:

- Minimum requirements:
  - Legally binding site control
  - Interconnection application in hand or line of sight to interconnection application
  - Non-ministerial permits in hand or line of sight to permits
  - Plans to meet all statutory requirements, including 30% LI subscription requirement
- Scoring criteria:
  - Developer experience in community solar
  - Guaranteed subscriber savings
  - Results of pre-application review indicating project proximity to distribution line
  - Local economic development: partnership with New Mexico-based businesses; workforce training
  - Community benefits: educational opportunities; partnership with local communities; community outreach
  - LI subscription beyond 30% requirement

Yellow Bird Services agrees with the consensus for a non-price RFP and recommends prioritizing projects that can be brought online within 12 months and have commitment to create long term jobs in New Mexico. YBS recommends minimum requirements and scoring criteria as follows:

- Minimum requirements:
  - Commitment for at least 30% LI subscribers
  - Commitment that no more than 40% of capacity will be assigned to any one subscriber
- Scoring criteria:
  - Project viability:
    - Evidence of soft customer commitments for 60%+ of project
    - Evidence of funding
    - Evidence of site commitment
    - Has solar system or 3+ years of solar installation experience
    - Commitment to community outreach
    - Guaranteed commercial operation within 12 months

- New Mexico preference:
  - Evidence that 40%+ of project committed to LI subscribers
  - Commitment to 90%+ of New Mexico labor (by dollars)
  - Commitment to 10%+ of materials manufactured in New Mexico
  - Has New Mexico-based customer service
  - Has New Mexico-based headquarters
  - Commitment to permanent long-term jobs
  - Environmental compliance and permitting plan
  - Cultural resources impacts

Dimension Renewable Energy (“Dimension”) proposes a “continuous” selection process that does not rely on intermittent solicitations, similar to a first-come first-service approach but with well-defined minimum standards, including:

- Developer experience, site control, residential subscriber experience, LI community engagement strategy
- Project maturity: legally binding site control; signed interconnection agreement or results of system impact study; non-ministerial permits or evidence that permits are not required; development security
- Local preference: 25% of work done on project performed by New Mexican firms (measured in dollars or person-hours)
- Community engagement: support letter from local community or recognized community organization where project will be sited; master services agreement with an organization engaged in direct outreach to LI customers
- Deposits: security deposits based on project size, refundable upon commercial operation; 12-18 months commercial operation deadline from project acceptance

Dimension recommends the selection process be administered by the PRC or a third-party administrator, funded by program application fees, with PRC oversight.

Nexamp supports a first-come first-serve approach but recommends the following scoring criteria for an RFP:

- Project viability:
  - Interconnection screening
  - Permitting: third-party permitting plan
  - Developer experience: experience with community solar and subscriber management
- Subscriber benefits:
- Higher levels of LI, residential participation than requirement
- Favorable contract terms: guaranteed savings; flexible contract terms such as no cancellation or upfront fees, no credit check
- Prior experience or partnerships with LI communities

Nexamp also recommends that all applicants be required to submit an application fee of \$10,000-15,000 to cover administrative costs and ensure that only serious, complete applications are submitted, as well as a refundable deposit to ensure that awarded applicants are fully committed to reach commercial operation.

The International Center for Appropriate and Sustainable Technology (ICAST) supports an RFP process and recommends that the highest RFP rating be given to projects that will:

- Serve higher percentage of LI residents
- Provide local job training and jobs to New Mexico's LI residents
- Offer the greatest utility cost savings (lowest PPA rate or largest discount rate)

However, ICAST opposes a numeric weighting for developer experience and qualifications, since this criterion may benefit large national developers over local developers. Instead, ICAST recommends this criterion be an informative section or, at minimum, include the entire team of developer, EPC contractors, and investors. Additionally, ICAST recommends that the selection process focus on projects sited on the most cost-effective sites rather than those sited on brownfields, agricultural lands, or industrial parcels.

Sovereign Energy supports an RFP process administered by a third-party, with the following selection criteria:

- Workforce development and community benefits: potential to support local businesses; workforce training, development, and educational opportunities; Indian preference for hiring for projects located on Tribal land
- Projects sited on brownfields or intended to serve environmental justice communities
- Projects exceeding the 30% LI carve-out

Forefront Power recommends the following minimum requirements:

- Proof of binding site control
- Proof of completed non-ministerial permits
- Completed utility pre-application that yields substation capacity
- Signed affidavit stating the developer will put into place a form of non-refundable collateral within 5 days of an award notification equal to \$25/MW

## Topic #2: Allocation Of 200 MW Program Cap Among IOUs

### Recommendations for Commission Consideration:

**The Commission is advised that there is a clear preference among stakeholders for allocating program capacity based on the addressable market in each utility territory.**

That said, the exact methodology for this approach remains to be determined by the Commission. Given the lack of well-defined and readily available data for the "small commercial" customer class and other eligible nonprofit, Tribal, or government customers, using only kWh sales to residential customers as the basis to determine the addressable market would be the simplest approach. This methodology would largely match the proportions of the addressable market in each utility territory, as the residential customer class is a reasonable and fair proxy allocator.

On the other hand, including retail kWh sales to small commercial customers and other nonprofit, Tribal, and government customers in the calculation would result in a more accurate allocation between the utilities. However, these customer groups are not defined as a "rate class" and do not have readily available data like the residential class. Therefore, this approach

would be more time-consuming and require additional data collection and analysis from utilities.

**The Commission's decision whether to include customer classes beyond residential in the calculation of addressable market is ultimately a balance between simplicity and accuracy.** The Strategen team recommends the Commission consider embracing simplicity in this instance and allocate the 200 MW using residential kWh, which would yield the following: SPS – 45 MW; EPE – 30 MW; and PNM 125 MW.

#### Summary of Stakeholder Comments:

##### Background

Per discussions in the working group, Strategen had highlighted two key options re: Topic #2 to guide final comments:

1. Total kilowatt-hours (kWh) delivered electricity
2. Addressable market proportions (total kilowatt-hour delivered electricity for Subscriber-eligible customer segments)

Participants were encouraged to evaluate these two options in final comments as key option pathways.

The Joint Commenters recommend allocating program capacity proportionally by the retail kWh serving groups eligible to participate in community solar programs. Since residential retail customers represent the largest group and are clearly defined in available data, allocation of the 200 MW using residential kWh would be: 45 MW for SPS, 30 MW for EPE, and 120 MW for PNM.

PNM and EPE agree that the allocation of the cap should be based on the respective utility's retail kWh sales to the residential and small commercial customer classes. SPS suggests that the proportionality can be determined by either the kWh sales to those customer classes or the number of customers in those rate classes.

SPS also recommends that if the total program capacity falls short of the 200 MW, that information should be reported back to the Legislature, and the excess capacity should not be reallocated to other IOUs.

REIA NM supports allocating the 200 MW program cap by total kWh sales.

The City of Las Cruces recommends allocating the 200 MW on the basis of residential kWh, given the consistent and reliable data available for this customer class compared to small commercial and nonprofit customers.

Ward 17B supports program capacity allocation based on the addressable market proportions, according to the kWh delivered to residential, small commercial, and nonprofit, Native American, and government customers.

CCR recommends that program capacity be allocated based on the kWh sales of each utility's addressable market, particularly residential and small commercial customers. CCR also suggests that all 200 MW should be released at once rather than in tranches.

YBS support the addressable market approach, which would lead to an initial allocation of 100 MW to PNM, 70 MW to SPS, and 30 MW to EPE. YBS also recommends that a utility fails to get enough commitments, capacity allocations can be shifted to other utilities.

ICAST suggests that program capacity should be allocated based on available line capacity on the transmission grid to avoid the costs of upgrades to the transmission system. Alternatively, ICAST recommends allocating a minimum of ten projects or 50 MW to each utility before allocating the remaining capacity by population served or another mechanism.

### Topic #3: Determining and Applying the Value of Solar Credits Per Rate Class

#### Recommendations for Commission Consideration:

The determination of the community solar bill credit rate is a central feature of any community solar program and is critical to its success. A bill credit rate set too low will erode developer interest in pursuing community solar projects and undermine the value proposition for prospective customer-subscribers. The net effect is likely a community solar program in name only; with few, if any, community solar projects developed and customers enjoying little by way of bill savings. Conversely, a bill credit rate set too high can catalyze an "overheated" community solar market, driving difficult interconnection queue issues, consumer protection concerns, and potentially impacting utility revenue collection from the application of credits on Subscribers bills.

**Though the Working Group was not able to a consensus approach to developing a bill credit rate methodology, a few key recommendations are important to highlight as they inform key next steps for the Commission.**

As stakeholders highlight in their comments, the Community Solar Act (CSA) provides that the community solar bill credit is to be calculated by subtracting the "commission-approved distribution cost components" from the total aggregate retail rate (TARR).<sup>1</sup> The TARR, in turn, is defined as "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...." The Joint Utilities recommend a bill credit rate methodology that interprets the CSA's language concerning "commission-approved distribution cost components" to mean that all the costs associated with distributing energy should be removed from the bill credit rate. According to the Joint Utilities, this would include both distribution and transmission costs. While acknowledging that the language "commission-approved distribution cost components" is a phrase susceptible to multiple possible interpretations, stakeholders point out the Joint Utilities interpretation that it be construed to mean "energy delivery" inclusive of transmission costs would appear to stretch beyond the plain language of the CSA. Had the Legislature intended for transmission costs to be included in "commission-approved distribution cost components" it could and likely would have specified as



much. The CSA employed very specific and detailed language in describing the various components comprising the TARR and it is more than reasonable to assume that had it intended for transmission to be included it would have done so. Accordingly, a reasonable reading of the CSA leads to a community solar bill credit methodology derived by the TARR less commission-approved distribution costs – inclusive of transmission costs.

In order to the distribution costs deduction, the Joint Parties recommend an approach that runs the applicable overall cost of service model without distribution assets and expense – using the changes in rates per kWh to reflect the distribution cost component.

One challenge to the Joint Parties' proposed approach is the lack of a Commission-approved cost of service study for each of the utilities and the time necessary to develop one. The City of Las Cruces offers an interpretation and approach that might allow the Commission to establish a CSA-compliant community solar bill credit rate without the need for an up-to-date cost of service study for each utility. Rather, the City of Las Cruces offers that, under the CSA's definition of TARR, the Commission only needs to consider the most recent bill revenues excluding monthly customer service charges, energy efficiency riders, and other categories of riders and charges expressly excluded by the CSA for each class of service and divide those revenues by each class's total kWh for the corresponding period. The City of Las Cruces states its belief that the CSA offers the option of referring to past rate cases for system-wide or class-wide allocations of distribution-related costs that were expressly approved by the Commission, or gives the Commission the option of approving the "distribution cost components" as part of its approval of the credit riders. Because Section 62-16B-7(B)(8) does not require those "distribution cost components" be derived on a rate class basis, it is possible to derive the distribution cost component element of the credit rider calculation from each utility's FERC uniform system of accounts, using the Commission's most recently authorized weighted average cost of capital.

The Commission may wish to explore the City of Las Cruces' approach to administratively setting a community solar bill credit in a streamlined and straightforward manner. In the alternative, the Commission will likely need more data from the utilities in order to set an adequate, CSA-compliant bill credit rate – including, potentially, the development of an updated cost of service study for one or more of the Joint Utilities. The Commission should consider further exploration of how the community solar bill credit rate might be augmented to adequately reflect the value of renewable energy attributes consistent with the language set forth in the CSA.

## Summary of Stakeholder Comments:

### **Background**

As context and reference for Topic #3, per the SB84 bill:

*" 'total aggregate retail rate' means 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;*" (STBTC / SB 84, pg. 5).

During the working group process, to inform understanding and context on Topic #3, there were two related, but separate, requests made to the three IOU utilities operating in New Mexico (SPS, EPE, PNM):

1. To prepare indicative results for prospective bill credit rates across residential and small commercial (requested by Arthur O'Donnell, Commission Staff in NM PRC Aug. 27 workshop)
2. To submit a breakout of distribution cost components per customer class in the following customer class categories (requested by Strategen in WG Meeting #1, Subgroup B on July 22)

The Working Group file base has a folder titled "Utility Submission Requests," with a folder pertaining to each request, and materials obtained so far. Participants were encouraged to view these utility submissions as a reference for their final comments on Topic #3.

Re: other considerations for Topic #3, based on participant comments in the working group process and submitted comments, Strategen noted two key considerations to inform final comment positions:

1. **Need for a single average bill credit rate for each eligible customer class**
2. **Different ways of approaching netting out of distribution costs**
  - a. **What is the best methodological approach to inform a bill credit rate?**

Participants were encouraged to evaluate these two considerations in their final comments, and in particular are encouraged to propose methodology and a bill credit rate that the Commission can consider, using the utility submitted data spreadsheets as reference guides.

The Strategen team also noted a third question and consideration: **whether bill credit rates should reflect additional value commensurate with renewable energy attributes**. Per the language in SB84, *'total aggregate retail rate' means 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* (emphasis added).

The Joint Commenters suggest that since the TARR fluctuates as base rates and riders change, the Commission should require the IOUs to file an annual advice letter that sets forth the community solar bill credit for that year. The Joint Commenters stress that the Community Solar Act requires only distribution costs, but not transmission costs, are deducted from the TARR. Regarding the distribution costs deduction calculation, the Joint Commenters propose running the applicable overall cost of service model without distribution assets and expenses, and the change in the rates per kWh will represent the distribution cost component. The Joint Commenters did not take a position on the need for a single average bill credit rate for each eligible customer class, citing gaps and issues with utility-provided data and the broad range reflected in the various rates for each utility. The Joint Commenters support incorporating the

value of renewable energy attributes in the community solar bill credit, including RPs compliance costs, the Social Cost of Carbon, and others.

PNM, EPE, and SPS argue both transmission and distribution costs should be removed from the bill credit rate. EPE also argues that a reduction of the production credit should be applied to account for the standby generation that EPE must supply to the community solar facility, and that the credit should not exceed the TARR.

The City of Las Cruces states that the Community Solar Act defines the TARR in terms of “charges” or revenues, rather than costs. Therefore, the City claims that it is unnecessary to unravel the utilities’ costs from the last litigated rate case. Rather, the Commission on needs to consider the most recent billed revenues, excluding monthly customer service charges, energy efficiency riders, and other categories of riders and charges excluded by the CSA for each class, and divide those revenues by each class’s total kWh for the corresponding period. The City also interprets the CSA as allowing the distribution cost component to be approved by the Commission as part of its approval of the bill credit rate, rather than requiring the distribution cost component to have been developed in a fully litigated rate proceeding. Thus, the distribution cost component can be derived from each utility’s FERC uniform system of accounts.

Ward 17B states that community solar customers should pay fairly determined local feeder distribution costs and get credit for all “avoided costs” including transmission.

YBS states that there should not be a single average bill credit, but instead Time-of-Use (TOU) rates. YBS recommends a methodology that uses the revenue requirements per rate class from the most recent cost of service and Commission-determined Distribution Class Reductions for each rate class to calculate a Credit Price for each time slot, with fuel adjustment charges and without customer charges. YBS also recommends that the Commission determine a kWh credit value to be added for the value of RECs.

Sovereign Energy recommends the Commission create bill credit rates for all classifications of subscribers in the service territories of all qualifying utilities, given that “native community solar projects” are not limited to the definition of “subscribers” applicable to other community solar projects.

## Topic #4: Calculation and Application of 3% Limitation on Cross-Subsidization

### Recommendations for Commission Consideration:

In consideration of Topic #4, the Commission is advised that there was general consensus among stakeholders that it is premature to consider how to calculate and apply the limitation on cross-subsidization due to the lack of data, and that more information and data around the performance, costs, and benefits of Community Solar projects once they are deployed in New Mexico is needed until a comprehensive discussion can be had on the topic. However, the Commission may wish to review and consider general approaches as well as more specific considerations to the 3% calculation methodology submitted by key stakeholders (included below).

It is also recommended that the Commission give considerable attention to the important need to determine what constitutes a subsidy; and provide clear guidance on this to stakeholders once it is determined.

Considerations for the Commission from key stakeholder recommendations and comments re: the calculation & application of a 3% limitation on cross-subsidization:

- The Joint Commenters suggest that the 3% limitation can be derived by multiplying the utility's total non-subscriber retail revenue by 0.03. For this calculation, utilities must provide proof of any cross-subsidization, and utility revenue reductions related to subscribed energy should not count as cross-subsidization. The Joint Commenters also state that the balance between costs and benefits of community solar among subscribers and non-subscribers should be explored, but that there is not enough information at this point to determine whether or how much subsidies are occurring.
- Cypress Creek Renewables (CCR) states that any calculation of cross-subsidization should include both the costs and benefits of the community solar program.
- EPE recommends that the 3% subsidy methodology should be centered around a deviation from the utility's demand, energy, and other charges included in the TARR, exclusive of fuel and power cost adjustments, the value of renewable energy attributes, and other charges.
- PNM, although in agreement that there is currently a lack of data, also stresses that community solar will cause certain fixed costs to have to be borne by other customers and that the subsidy should be calculated per rate class.

**Once again, an important challenge for the Commission is to determine what constitutes a subsidy, and to provide clear guidance on this definition to stakeholders moving forward.**

### Summary of Stakeholder Comments:

#### Background

The general consensus surrounding Topic #4 during the working group process was that more information and data around the performance, costs, and benefits of Community Solar projects once they are deployed in New Mexico is needed until a comprehensive discussion can be had on the topic. There are a number of different cost/benefit tests that can be deployed to approach Topic #4, and determining which one would work best will depend on a full evaluation of the entire set of costs as well as the entire set of benefits.

The Joint Commenters suggest that the 3% limitation can be derived by multiplying the utility's total non-subscriber retail revenue by 0.03. However, they argue that utilities must provide proof of any cross-subsidization, and that utility revenue reductions related to subscribed energy should not count as cross-subsidization. The Joint Commenters also state that the balance between costs and benefits of community solar among subscribers and non-subscribers should be explored, but that there is not enough information at this point to determine whether or how much subsidies are occurring.

PNM and SPS do not propose a methodology for calculating the 3% limitation on cross-subsidization due to a lack of data on community solar. However, PNM stresses that community

solar will cause certain fixed costs to have to be borne by other customers and that the subsidy should be calculated per rate class.

EPE recommends that the 3% subsidy methodology should be centered around a deviation from the utility's demand, energy, and other charges included in the TARR, exclusive of fuel and power cost adjustments, the value of renewable energy attributes, and other charges.

The City of Las Cruces agrees that it is premature to consider how to calculate and apply the limitation on cross-subsidization due to the lack of data.

Ward 17B states that there is insufficient data to calculate the 3% limitation on cross-subsidization.

CCR states that any calculation of cross-subsidization should include both the costs and benefits of the community solar program.

YBS disagrees with the consensus that cross-subsidization cannot be calculated at this time. YBS suggests that the cross-subsidization limit can be calculated by multiplying the revenue requirement from the most recent rate case by 3%. The maximum per kWh subsidization can then be calculated by dividing 3% of the revenue requirement by the percentage of each utility's total kWh that is produced by community solar.

## Topic #5: Guidelines for the Siting and Co-Location of CS Projects with Other Energy Resources

### Recommendations for Commission Consideration:

**While no clear consensus emerged among stakeholders, the Commission is advised to consider the Joint Commenters' recommendation, which states that co-located community solar projects totaling up to 5 MW should be allowed on the same parcel if they are interconnected to different substations, as the option with the most support.**

Options presented by other stakeholders that the Commission may also wish to evaluate include:

- PNM recommends using existing qualifying facility rules.
- EPE recommends allowing only one project per land parcel and limiting co-location with non-solar DERs to a maximum overall facility nameplate capacity of 5 MW.
- SPS recommends allowing more than one project per land parcel as long as the total nameplate capacity of projects in the parcel is no more than 5 MW.
- The City of Las Cruces recommends that projects totaling more than 5 MW should be allowed on the same parcel if they are interconnected separately and are not proposed at the same time by the same developer.
- Ward 17B recommends allowing co-location as long as the co-located projects are able to interconnect without obstruction or interference with other grid users.
- CCR recommends allowing only one community solar project per parcel.
- YBS recommends limiting co-location of community solar to maximum 5 MW on the same connection.

### Summary of Stakeholder Comments:

The Joint Commenters recommend that, in general, the Commission should prohibit more than 5 MW of co-located community solar on the same parcel, except if the two projects are interconnected to different substations. This flexibility would account for the very large land parcels that are common in New Mexico. The Joint Commenters also suggest that the Commission should evaluate these rules as part of the 2024 lookback and report to the legislature in order to balance any pros and cons of co-location.

PNM suggests that the Commission should use existing qualifying facility rules for the co-location of community solar. PNM also recommends that the co-location determination be administered by a third-party to help ensure consistency across different utility systems.

EPE supports limiting co-location to one community solar project per land parcel but allowing co-location of non-solar DERs such as storage as long as the overall facility nameplate capacity is 5 MW or less.

SPS recommends allowing more than one project per land parcel as long as the total capacity adheres to the 5 MW limit per land parcel.

The City of Las Cruces recommends allowing community solar projects on the same parcel as long as they are interconnected separately and not proposed at the same time by the same developer, regardless whether the projects add up to more than 5 MW.

Ward 17B supports co-location as long as the co-located projects are able to interconnect without obstruction or interference with other grid users. Ward 17B also states that communities should be able to influence the siting of community solar projects, and that the Commission can achieve this objective by developing interconnection rules that mandate utility system-side evaluations of the distribution systems.

CCR supports allowing only one community solar project per parcel and highlights the importance of making hosting capacity information available to inform project siting.

YBS supports limiting co-location of community solar to maximum 5 MW on the same connection. Additionally, YBS argues that the Commission should allow “next-door neighbors” to supply power for community solar without requiring separate metering.

### Topic #6: Criteria for Low-Income Customer Definition, Subscriber Eligibility & Verification, Pre-Qualification

#### Recommendations for Commission Consideration:

The appropriate pathways for the qualification and verification of LI subscribers must ensure factual information as well as avoid unnecessary barriers for customers. **To this end, the Commission is advised to adopt two pathways with strong support among stakeholders: self-attestation and pre-qualifying LI programs.**



Allowing customers to provide self-attestation of their LI status avoids intrusive personal information requirements, and there is little evidence of customers falsely claiming to be LI in order to participate in community solar programs. Using customers' participation in other existing LI programs as evidence of their LI status is also a straightforward way to qualify LI customers for community solar participation, taking advantage of the LI status verification already performed by the relevant LI program administrator. Both of these options received significant support from stakeholders, with the only exception of PNM, who supports requiring LI status to be verified only by qualification for other LI programs. In final comments, stakeholders identified the following options that can service as pre-qualifying LI programs:

- Medicaid;
- Supplemental Nutrition Assistance Program (SNAP);
- Low-Income Home Energy Assistance Program (LIHEAP);
- First-time homeowner programs and housing rehabilitation programs;
- Living in a low-income/affordable housing facility;
- State and federal income tax credit programs.

**An additional option for the Commission to consider is the use of third-party LI service organizations to perform outreach to and enrollment of LI**

**customers.** However, if the Commission decides to enable this option, critical questions regarding the training and compensation for such organizations need to be resolved. A potential solution is presented by the Joint Commenters, who suggest that the Commission should create a training program for participating organizations and set a minimum compensation that Subscriber Organizations could offer participating organizations for educating and enrolling LI subscribers.

Furthermore, the Commission is advised to recognize a differentiation between LI households and LI service organizations. **Even though the CSA allows either type of subscribers to count towards the 30% LI carve-out, the Commission should also consider placing a limit on how much of the carve-out can be taken up by LI service organizations.** Such a limit would ensure that LI households have ample opportunity to participate in community solar and enjoy direct and meaningful financial benefits from community solar subscriptions.

### Summary of Stakeholder Comments:

#### Background

Strategen highlighted two key approaches regarding option pathways for Topic #6:

1. Identify and develop list of low income (LI) pre-qualifying programs that might serve to establish LI Subscriber eligibility
  - Need to identify state/federal programs that can serve as pre-qualifying certification
2. Self-certification/self-attestation of LI eligibility

Participants were encouraged to evaluate these options in consideration of their final comments regarding Topic #6. Acknowledging the above list may not be exhaustive, parties should feel open to suggest additional approaches. Regarding option #1, above, "*Identify and develop list of LI pre-qualifying programs to qualify LI*



*customers”, participants were also encouraged to identify specific programs that can serve as pre-qualifying certification in New Mexico to be considered by the Commission for the final Rulemaking.*

The Joint Commenters support the two pathways highlighted by Strategen and suggest the following LI programs that can provide pre-qualification: Medicaid, Supplemental Nutrition Assistance Program (SNAP), and Low Income Home Energy Assistance Program (LIHEAP). The Joint Commenters also provide additional options to qualify LI customers: low-income qualified housing facility or other Department of Housing and Urban Development (HUD) qualified housing arrangements, as well as voluntary utilization of third-party, LI service organizations. For the latter option, the Joint Commenters suggest the Commission create a training program for participation organizations and set a minimum compensation that Subscriber Organizations could offer the participating organizations to identify, education, and enroll LI subscribers. The Joint Commenters also recommends placing a limit on how much of the 30% LI carve-out can be filled with LI service organizations, in order to ensure that LI households receive tangible benefits.

PNM, EPE, and SPS support a third-party verification process. EPE and SPS recommend that the Commission or its designee be responsible for validating the 30% LI requirement and for the self-certification of LI subscribers. PNM recommends that the Commission require LI eligibility be demonstrated by qualification for LIHEAP or another third-party standard.

The City of Las Cruces also supports using self-verification and LI programs such as SNAP and LIHEAP as options to qualify LI subscribers. The City also encourages SOs to hire non-governmental organizations that work with LI communities to provide subscriber outreach and enrollment. For the EPE service territory, the City identifies the Community Action Agency of Southern New Mexico as a potential partner.

Arcadia supports using census block group data as an additional pathway to confirm LI status and suggests that all households in a census block group with a median household income below 80% of the area median income be considered low-income. Arcadia explains that since census block groups are smaller than census tracts, this approach would reduce the inadvertent verification of non-LI households. Arcadia recommends that self-attestation should not be a requirement if the Commission adopts the census block groups option. Ward 17B recommends the Commission define low-income customers as customers with incomes up to 200% of the New Mexico poverty level set by the Department of Health and Human Services. For proxy programs that can help qualify LI customers, Ward 17B identifies first-time homeowners’ programs, housing rehabilitation programs, and certain federal and state tax income credit programs.

YBS supports simple methods for LI qualification, including self-attestation.

Nexamp supports the use of proxy LI programs and self-attestation for the qualification of LI customers. Nexamp suggests that a small working group could help develop a list of programs and specific implementation issues.

ICAST suggests prequalifying an entire Multi-Family Affordable Housing property instead of subscribing individual tenants. Additionally, ICAST recommends that the 30% LI carve-out be assessed across the entire program, rather than on a per project basis.

## Topic #7: Subscriber Eligibility Criteria

### Recommendations for Commission Consideration:

To efficiently provide clear guidance on subscriber eligibility criteria in the final Community Solar Act (CSA), the Commission is advised to consider an agreed-upon definition for small commercial customers, ideally that would be consistent for each utility. Specifically, it is recommended that the Commission consider defining “small commercial customer” as customers under PNM’s Small Power Service, EPE’s Small General Service, and SPS’s Small General Service tariffs:

- PNM’s Small Power Service (**less than 50 kW**)
- EPE’s Small General Service (**less than 50 kW**)
- SPS’s Small General Service (**less than 25 kW**)

This recommendation comes from consensus among the three utilities, Joint Commenters/Supporters, REIA NM, and Cypress Creek Renewables to interpret and define “small commercial” customers as such.

Furthermore, within the definition of “small commercial customers” under the CSA, the Commission is further advised to provide guidance considering:

- The discrepancy of SPS’ 25 kW and the other two utilities 50 kW threshold: EPE asked for there to be clarification for whether customers in EPE’s Small General Service tariff and PNM’s Small Power Service tariff over 25 kW will be allowed to participate. For the sake of consistency, one potential solution the Commission might consider is having SPS include commercial customers with less than 50 kW demand, a recommendation by the Joint Commenters.
- If there are any specific instances of small commercial customers who should *not* be eligible for the community solar program. Specifically, PNM suggested that large non-profit organizations and customers with on-site net metered solar should not be eligible to participate in community solar.
- If there are any specific instances where the definition of small commercial customers should be expanded. Specifically, REIA NM proposed that customers not under the existing utility tariffs but fit the definition of “small business” under the US Small Business Administration should also qualify for participation in the community solar program. According to REIA, these customers would demonstrate their eligibility by submitting an SBA Certification or other documentation.
- Any specifications related to rate class/rate schedule needed in the definition. It is worth noting that SPS’ specific proposal was “to count any commercial customers under 25 kW as ‘small commercial,’ *regardless of rate schedule.*”

Although there is widespread consensus among the majority of key stakeholders in defining small commercial customers, the Commission should also note that the City of Las Cruces argued in their final submitted comments that the CSA requires small commercial retail

customers be defined “by rate class,” and therefore does not give the Commission, or utilities, direction to determine which customers should be considered eligible as small commercial customers. In response to this argument, the Strategen team observes the spirit and context of the CSA should be interpreted as granting the Commission much broader authority to establish programmatic rules and eligibility for community solar projects; noting that the establishment of programmatic criteria (such as defining small commercial customers) is inherently not the same thing as creating a new rate class.

### Summary of Stakeholder Comments:

The Joint Commenters identify the tariffs for the three IOUs that most closely align with the “small commercial” designation as PNM’s Small Power Service (less than 50 kW), EPE’s Small General Service (less than 50 kW), and SPS’s Small General Service (less than 25 kW). For the sake of consistency, the Joint Commenters recommend that SPS include commercial customers with less than 50 kW demand.

PNM interprets “small commercial” customers as those serviced by its Small Power Service tariff. PNM also suggests that large non-profit organizations and customers with on-site net metered solar should not be eligible to participate in community solar.

EPE proposes to consider customers under its Small General Service tariff to be “small commercial” customers but recommends that the Commission make clear whether customers in EPE’s Small General Service tariff and PNM’s Small Power Service tariff over 25 kW will be allowed to participate.

SPS proposes to count any commercial customers under 25 kW as “small commercial,” regardless of rate schedule.

REIA NM agrees that customers under PNM’s Small Power Service, EPE’s Small General Service, and SPS’s Small General Service should qualify as “small commercial” customers. However, REIA also proposes that customers not under these tariffs but fit the definition of “small business” under the US Small Business Administration also qualify for participation in the community solar program. According to REIA, these customers would demonstrate their eligibility by submitting an SBA Certification or other documentation.

The City of Las Cruces states that the CSA requires that small commercial retail customers must be “by rate class,” and therefore does not give the Commission discretion to determine which customers should be eligible. Since the utilities lack a small commercial rate class, the solution, the City argues, is for utilities to propose uniform small commercial rate class in the next general rate cases or seek amendments to the CSA.

CCR supports defining “small commercial” customers as customers under PNM’s Small Power Service, EPE’s Small General Service, and SPS’s Small General Service tariffs.

YBS suggests that commercial accounts with less than 800 kW of demand be allowed to participate as “small commercial” customers, based on EPE’s threshold for Rate #9 – Large Power Service Rate.

## Topic #8: Uniform disclosure form identifying info from a subscriber organization to a potential subscriber

### Recommendations for Commission Consideration:

The Commission is advised to recognize stakeholder comments requesting that the uniform disclosure form be kept short and simple, thus ensuring a higher likelihood of potential subscribers reading through the form. Also, although stakeholders noted that it was useful to include the "price to compare" of default electric service, guaranteed savings and estimated benefits; the Commission should strive to ensure that this information is actually accurate and informative and to avoid confusing or misleading language. The form should also make clear the role of subscriber organizations and of utilities, to avoid confusion and to avoid folks calling utilities with issues or questions that should be made to subscriber organizations.

### Summary of Stakeholder Comments:

#### Background

Based on working group discussions and submitted comments from participants, Strategen had summarized a list of key elements as consideration for the creation of a uniform disclosure form for New Mexico CS program:

- Contract length & renewal
- Cancellation policy
- Cost per-kWh of the subscription, other fees & charges, payment details
- The "price to compare" of default electric service, guaranteed savings, estimated benefits
- System size & generation, portion of system allocated to customer
- Portability of subscription within service territory
- Location of the CS project (or projects if the SO operates multiple)
- Data sharing, privacy policy & customer rights
- Info about grievances and PRC contacts to register complaints

Stakeholders were encouraged to review, evaluate and rate these proposed key elements, note any areas that may be problematic, and add in any additional elements that should be considered to be included in the disclosure form.

The Joint Commenters highlight the importance of simplicity and recommend the uniform disclosure form include the following information:

- General project information;
- Effective date and term of the agreement;
- Identification of all charges and fees;
- Payment details;
- Information about the bill credit mechanism;
- A comparison of the subscriber's net bill with and without their subscription;
- Terms and conditions of service;
- Process of customer notification if the community solar facility is out of service;
- Customer protections provided;

- Contact information for questions and complaints;
- Agreement for SOs to update and notify the subscriber of changes that could impact the subscriber.

The Joint Commenters also suggest the Commission review the example of uniform disclosure forms from New York, Maryland, and New Jersey.

PNM does not provide a position on the list of information proposed by Strategen, but express support for efforts to clarify subscriber protections and how to resolve complaints that do not involve the utility. PNM also suggest that the Commission consider minimal contract lengths, renewable policies, and cancellation policies.

SPS suggests adding the following elements to the list provided by Strategen:

- Explanation of roles of parties (utility, SO, Commission, other subscriber or customer support organizations), with contact information for each;
- Any changes over time in per kWh cost of subscription, with confirmation on whether the kWh is based on estimated or actual monthly production;
- Process to exercise the portability of subscription within the service territory.

Additionally, SPS argues that there should be discussion on the methodology of the estimated utility rate escalation used for the bill comparison.

The City of Las Cruces supports the elements of the uniform disclosure form listed by Strategen and highlights the importance of including a description of what a “subscription” means, the costs and benefits of participation, and the bill credit mechanism. The City also warns against potentially misleading bill comparisons that are based on an “average” customer.

Ward 17B supports the list of uniform disclosure form elements provided by Strategen. YBS recommends a 1-page summary document for customers and a more detailed document that will rule in cases where consumer issues arise.

## Topic #9: Any potential limitations on use of RECs by utilities (i.e., can they be sold or transferred)

### Recommendations for Commission Consideration:

**It is recommended that the Commission allow utilities to sell or transfer RECs at their discretion, per the Community Solar Act and as agreed upon by the majority of stakeholders, including the Joint Commenters and the IOUs.** However, the Commission may also consider the City of Las Cruces and YBS’s recommendation that utilities be required to retire the RECs generated by community solar projects. Some stakeholders presented additional recommendations:

- The Joint Commenters urge the Commission to encourage utilities to offer customers the opportunity to purchase the RECs.

- ICAST recommends that the Commission assign a dollar value to the RECs and provide developers an option to purchase the RECs for their projects from the utility.
- Ward 17B suggests that RECs should not be sold to larger utilities.

**As recommended by the Joint Commenters and YBS, the Commission is advised to consider the merits of including the value of RECs in the bill credit mechanism, which would improve the financial viability of projects.**

### Summary of Stakeholder Comments:

#### Background

The Strategen facilitated working groups were not able to adequately address Topic #9 in the meetings. Regardless, two key areas of consideration that came up per other discussions in the working group are included for stakeholder consideration and evaluation:

- Utility retirement of RECs for CS projects – should this be a requirement?
- Should the value of renewable energy attributes be reflected in the bill credit rate? Is this option important to enhance overall project economics and make the CS program in NM more successful?

The Joint Commenters state that according to the Community Solar Act, utilities have the right to sell or transfer RECs at their discretion. However, the Commission should ensure that the value of RECs is reflected in bill credits to subscribers. The Joint Commenters also urge the Commission to encourage utilities to offer interested customers the opportunity to purchase the RECs.

PNM and SPS maintain that there should not be any limitations on the use of RECs by utilities. EPE state that the utility will register RECs associated with community solar with WREGIS, and that RECs may be retired for purposes of meeting RPS requirements.

The City of Las Cruces recommends that the Commission should require utilities to use the RECs they receive from community solar projects to satisfy their RPS requirements, or, at minimum, require utilities to report in detail on how they use the RECs.

Ward 17B suggests that RECs should not be sold to larger utilities.

YBS recommends that utilities be required to retire RECs within a reasonable time and that the value of renewable energy attributes should be reflected in the bill credit rate.

ICAST recommends that the Commission assign a dollar value to the RECs and provide developers an option to purchase the RECs for their projects from the utility.

## Topic #10: Establishing criteria for registration of Subscriber Organizations (owners of projects)

### Recommendations for Commission Consideration:

**The Commission is advised to recognize the strong consensus for a streamlined registration process for Subscriber Organizations.** Particularly, the Joint Commenters recommend that the project submission process should require no more than basic contact information. For Subscriber Organizations with projects approved in project selection, the registration should also be as simple as possible and should not require any affirmation or approval by the Commission. Overall, stakeholders support requiring from Subscriber Organizations with winning bids, as well as any subscribing agents or contractors, the list of key information provided by Strategen, which includes:

- Organizational type (for-profit, non-profit, tribal entity, etc.) and by business type (sole proprietor, LLC, corporation, etc.);
- Parent company or other corporate affiliations, including utility-involvement;
- Brief description of its involvement in community solar, solar energy, power generation, real estate development or other related fields;
- Description of the projects the SO intends to develop and/or a list of specific projects or sites it has already developed;
- Attestation that entity will comply with program rules;
- Any legal actions against the company.

Only a small number of stakeholders – Las Cruces, Ward 17B, and CCR – provide recommendations on a standard form contract in final comments. While these stakeholders, support a standard form contract, there was no consensus regarding when a standard form contract should be developed and finalized.

### Summary of Stakeholder Comments:

#### Background

Per comments submitted from stakeholders in the working group process, Strategen noted that the NM PRC should consider the following information from Subscriber Organizations (SOs) as key criteria:

- Organizational type (for-profit, non-profit, tribal entity, etc.) and by business type (sole proprietor, LLC, corporation, etc.)
- Parent company or other corporate affiliations, including utility-involvement
- Brief description of its involvement in community solar, solar energy, power generation, real estate development or other related fields
- Description of the projects the SO intends to develop and/or a list of specific projects or sites it has already developed
- Attestation that entity will comply with program rules
- Any legal actions against the company

In their final comments, stakeholders were encouraged to review, evaluate and rate these proposed key elements, note any areas that may be problematic, and add any recommendations for other requirements to be considered as included criteria. There was also



a question around whether there is a need for a standard form contract, in consideration of Topic #10 – stakeholders were encouraged to comment whether they think this should be called out in the Rulemaking process or figured out later on.

The Joint Commenters advocate for the registration process for SOs that have been approved in project selection to be as streamlined as possible and not require any affirmation or approval by the Commission. For the project submission process, basic contact information should suffice. The Joint Commenters agree that the Commission should require from SOs the information identified by Strategen above. In addition, the Joint Commenters recommend similar registration for any subscribing agents or contractors.

PNM and SPS support efforts to ensure that SOs comply with national and state business laws and are accountable to utilities and subscribers. PNM also supports ensuring that SOs comply with interconnection agreements and financial responsibilities and have experience operating a solar facility, while SPS supports the list of criteria provided by Strategen. EPE recommends that the Commission appoint a third-party to verify and evaluate SOs.

REIA NM agrees with the Joint Commenter regarding a streamlined and expeditious digital registration process that only requires basic contact information during the project submission process.

The City of Las Cruces agrees that the registration process should be streamlined. Additionally, the City suggests that it is premature for the Commission to develop a standard form contract, but a standard form contract may be beneficial in the future.

Ward 17B supports a standard form contract.

CCR supports the items listed by Strategen and suggests that the standard form contract can be finalized following the rulemaking process.

YBS stresses that there should not be criteria that favor large SOs over smaller ones.

## Other Issues Raised by Stakeholders

### ***Consolidated Billing***

Several stakeholders, including the Joint Commenters, Arcadia, Ward 17B, and YBS, recommend that the Commission adopt consolidated billing. Consolidated billing incorporates the subscription fee into subscribers' monthly utility bills and thus eliminates the need for an additional bill, which can be a major barrier for low-income subscribers. However, as the IOUs pointed out during the working group meetings, consolidated billing may cause subscribers to incorrectly assume that the utility is responsible for their community solar subscription and contact the utility with complaints rather than the Subscriber Organization. Nevertheless, the uniform disclosure form can be an opportunity to clearly communicate different parties'

responsibilities under the community solar program. The Commission is therefore advised to recognize the benefits that consolidated billing can deliver.

### ***Native Community Solar Projects and Rural Electric Cooperative Participation***

The Commission is advised to consider Sovereign

Energy's recommendations regarding native community solar projects and rural electric cooperative participation in the community solar program, which are explicitly enabled by the Community Solar Act. Sovereign Energy's recommendations include:

- Create bill credit rates for all classifications of subscribers in the service territories of all qualifying utilities, since native community solar projects are not limited to the definition of "subscribers" applicable to other community solar projects
- Create a standard process for implementation and interconnection of native community solar projects
- Create a subgroup to engage low-income stakeholders and disproportionately impacted communities and create a formal process and timeline to conduct meaningful consultation with Indian nations, tribes, and pueblos
- Provide clarity in the opt-in process for rural electric cooperatives and request information from rural electric cooperatives about how they might consider participating in the program

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE COMMISSION'S ADOPTION )  
OF RULES PURSUANT TO THE COMMUNITY SOLAR ) Docket No. 21-00112-UT  
ACT )**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Notice of Filing of Report from Strategen Consulting and Agenda for Third Workshop** was sent via email to the following parties on the date indicated below:

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**DATED** this 15<sup>th</sup> day of October, 2021.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

***/s/ Isaac Sullivan-Leshin, electronically signed***

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