

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE IMPLEMENTATION)	
AND ADMINISTRATION OF THE COMMUNITY)	Docket No. 22-00020-UT
SOLAR PROGRAM)	
IN THE MATTER OF THE COMPLIANCE)	
FILING OF SOUTHWESTERN PUBLIC SERVICE)	Docket No. 22-00240-UT
COMPANY PURSUANT TO 17.9.573.9 NMAC)	
IN THE MATTER OF THE APPLICATION OF EL)	
PASO ELECTRIC COMPANY FOR APPROVAL)	
OF TARIFFS NECESSARY FOR)	Docket No. 22-00243-UT
IMPLEMENTATION OF THE NEW MEXICO)	
COMMUNITY SOLAR PROGRAM AND)	
ACCOUNTING ORDER)	

**ORDER CONCERNING SOUTHWESTERN PUBLIC SERVICE COMPANY’S ADVICE
NOTICE NO. 309, PUBLIC SERVICE COMPANY OF NEW MEXICO’S ADVICE
NOTICE NO. 591 AND EL PASO ELECTRIC COMPANY’S ADVICE NOTICE NO. 279**

THIS MATTER comes before the New Mexico Public Regulation Commission (the “Commission”) upon the filing of Southwestern Public Service Company’s (“SPS”) Advice Notice No. 309, the filing of Public Service Company of New Mexico’s (“PNM”) Advice Notice No. 591 the filing of El Paso Electric Company’s (“EPE”) Advice Notice No. 279, the filing of recommendations concerning these advice notices by Staff of the Utility Division of the Commission (“Staff”), SPS’s Compliance Filing Pursuant to 17.9.573.9 NMAC in Docket No. 22-00240-UT, the filing of EPE’s Application for Approval of Tariffs Necessary for Implementation of the New Mexico Community Solar Program and Accounting Order in Docket No. 22-00243-UT, the filing of the Joint Protests and Complaints of Coalition for Community Solar Access (“CCSA”) and Renewable Energy Industries Association of New Mexico (“REIA”) and Requests for Expedited Treatment in Dockets No. 22-00020-UT, 22-00240-UT and 22-00243-UT, the filing of Cypress Creek Renewables’ (“CCR”) Comments Regarding Advice Notices in Docket No. 22-00020-UT, the filing of New Energy Economy’s (“NEE”) Joinder in the Protest and Complaint of

CCSA and REIA and Request for Expedited Treatment in Docket No. 22-00240-UT and CCR's Support of CCSA's and REIA's Joint Protest and Complaint in Docket 22-00240-UT.

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. The Commission's Community Solar Rule, 17.9.573 NMAC (the "Rule"), requires qualifying utilities to "file all tariffs, agreements and forms necessary for implementation of the community solar program within 60 days of the effective date of [the Rule]." 17.9.573.9 NMAC.

2. The Rule became effective on July 12, 2022, and thus, the 60-day deadline fell on September 12, 2022.

3. On August 15, 2022, PNM and EPE filed their Joint Motion for Extension Not to Exceed 45 Days in Docket No. 22-00020-UT, requesting a 45-day extension of the September 12, 2022 deadline to October 27, 2022.

4. On September 12, 2022, SPS filed its Advice Notice No. 309, including a Community Solar Program Credit Rider and a Community Solar Subscriber Organization Agreement. SPS simultaneously filed a "Compliance Filing," opening a new docket, Docket No. 22-00240-UT. The Compliance Filing included the Direct Testimony of Ruth M. Sakya, SPS's Manager, Regulatory Administration, and the Direct Testimony of Luis F. Saenz, a Principal Rate Analyst for SPS.

5. On September 14, 2022, EPE filed its Application for Approval of Tariffs Necessary for Implementation of the New Mexico Community Solar Program and Accounting Order ("EPE's Application"), opening a new docket, Docket No. 22-00243-UT. In EPE's Application, EPE seeks approval of the following: (1) EPE's proposed Standard Contract for

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Community Solar; (2) EPE's proposed Monthly Subscriber Information Form; (3) EPE's proposed Subscriber Consent Form; (4) EPE's proposed Accounting Order authorizing EPE to track subscriber credit amounts in excess of EPE's avoided cost of generation, for purposes of future cost recovery in a general rate case; and (5) Any other approvals, authorization, and actions that may be required under Community Solar Act, the Public Utility Act or the Commission's Rules to grant EPE's requested approvals.

6. EPE's Application is supported by the Direct Testimony of James A. Schichtl, EPE's Vice President of Regulatory and Governmental Affairs, and the Direct Testimony of Manuel Carrasco, EPE's Manager of Rate Research.

7. EPE did not file an advice notice with its application.

8. On September 14, 2022, PNM filed its Advice Notice No. 591, including a Community Solar Rider, a Community Solar Administrative Cost Rider and a Community Solar Program Tariff.

9. On September 21, 2022, the Commission issued its Order Partially Granting Joint Motion for Extension Not to Exceed 45 Days, in which the Commission extended the deadline for filing forms and agreements concerning interconnection of community solar facilities to on or before five business days after the Commission issues an order in the interconnection rulemaking proceeding in Docket No. 21-00266-UT adopting an amended interconnection rule or any other final, dispositive order in that matter. The Commission denied extension of the filing deadline for any other tariffs, forms and agreements. The Commission also ordered EPE to file an advice notice on or before September 26, 2022, including all tariffs, forms and agreements required by 17.9.573.9 NMAC except for forms and agreements concerning interconnection.

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10. On September 26, 2022, EPE filed its Advice Notice No. 279, including a Community Solar Program Rate incorporating a Community Solar Bill Credit, a Standard Contract for Community Solar and a Subscriber Consent Form.

11. On October 3, 2022, CCSA and REIA filed their Joint Protest and Complaint and Request for Expedited Treatment concerning SPS's Advice Notice No. 309 in Docket No. 22-00240-UT. CCSA and REIA argue that SPS's proposed Community Solar Bill Credit and Subscriber Organization Agreement are unlawful because (1) the bill credit excludes transmission costs in violation of Section 62-16B-7(B)(8) of the Community Solar Act and 17.9.573.20(D) NMAC and (2) the Subscriber Organization Agreement "includes a variety of provisions that are inconsistent with Commissions orders in the community solar rulemaking and would needlessly undermine the program and are therefore unjust, unreasonable, and in violation of 17.9.573.6 NMAC." CCSA and REIA recommend that the Commission "peremptorily reject SPS's proposed [Community Solar] Bill Credit as unlawful on its face, and suspend the remainder of the Advice Notice, including the [Subscriber Organization] Agreement, and set the matter for public hearing."

12. On October 3, 2022, NEE filed its Joinder in the Protest and Complaint of CCSA and REIA and Request for Expedited Treatment in Docket No. 22-00240-UT. NEE adopts the arguments made by CCSA and REIA as well as the recommendations that the Commission should reject SPS's proposed Community Solar Bill Credit as unlawful on its face, should suspend the remainder of the Advice Notice, including the Subscriber Organization Agreement, should set the matter for public hearing and should consider penalties against SPS for failing to comply with the Commission's orders.

13. On October 6, 2022, CCSA and REIA filed their Joint Protest and Complaint and Request for Expedited Treatment concerning PNM’s Advice Notice No. 591 in Docket No. 22-00020-UT. CCSA and REIA argue that PNM’s proposed Community Solar Bill Credit is unlawful “because it includes a minimum charge specific to community solar subscribers that is not authorized by the Community Solar Act.” They further argue that “the minimum charge would significantly reduce the value of the subscription.” They further argue that the Community Solar Tariff and Community Solar Purchased Power Agreement “are unnecessarily complex, particularly in comparison to the bill credit calculation and subscriber organization agreements proposed by EPE and SPS and those adopted in other jurisdictions.” They go on to argue that, “[d]espite its complexity which necessitates further review, CCSA and REIA have already identified several provisions of the [Community Solar Purchased Power Agreement] that appear to be unjust, unreasonable, or inconsistent with applicable law.” They recommend that the Commission suspend all parts of PNM’s Advice Notice No. 591 and set the matter for public hearing.

14. On October 6, 2022, CCSA and REIA filed their Joint Protest and Complaint and Request for Expedited Treatment concerning EPE’s Advice Notice No. 279 in Docket No. 22-00243-UT. CCSA and REIA argue that, “[a]lthough EPE’s initial [Community Solar] Bill Credit appears generally consistent with the Community Solar Act and Community Solar Rules, EPE’s proposed Accounting Order is a backdoor mechanism to charge transmission costs (and other costs not authorized in the rules) to Community Solar subscribers in a separate ‘recovery charge’ that EPE seeks to impose in the future.” They contend that EPE “also proposes to assess a variety of administrative charges to community solar subscribers that are not supported by any analysis of

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actual costs caused by those customers and, therefore, are arbitrary, unjust, and unreasonable.” They further argue that, “although EPE’s standard contract is more similar in form to what is typical in a community solar program compared [to those proposed by] the other utilities, it still contains provisions that require modification, particularly the provision providing EPE unfettered authority to disconnect the facility for any breach, no matter how minor.” They add that “[t]hese issues should be considered preliminary, as CCSA and REIA continue to review the community solar implementation advice notices of all three utilities.” They recommend that the Commission “suspend all parts of EPE’s Advice Notice No. 279 and set the Advice Notice and the Application for public hearing.”

15. On October 6, 2022, Staff filed its memoranda regarding the three advice notices, making the following recommendations to the Commission:

(a) SPS’s Advice Notice No. 309: Staff recommends suspension of SPS’s Advice Notice No. 309. Staff states that SPS’s “proposed exclusion of transmission costs from the [Community Solar Program] Credit is in direct violation of subsection 17.9.573.20(D) of the Commission’s rules, which require that ‘the utility shall not subtract any costs of transmission from the solar bill credit rate calculation’.” Staff adds that it “believes that there may be other issues or concerns related to SPS’ filing that should be enumerated and reviewed in greater detail before allowing SPS’ rates to go into effect as proposed.” Staff further notes that the fact that it “did not address other issues or concerns from this memo should not be construed as Staff’s approval of the remainder of SPS’ filing that has not been specifically identified within the context of this memo.”

(b) PNM's Advice Notice No. 591: Staff recommends that the Commission suspend Advice Notice No. 591. Staff notes that the content of the proposed purchased power agreement and the numerous forms included in PNM's proposed Rate No. 37 "are extensive and Staff believes that the various terms and agreements included in the proposed PPA and other exhibits in Rate No. 37 warrant further review before being approved by the Commission prior to the 30-day deadline." Regarding proposed Rider No. 56, Staff recommends that "PNM [] provide additional details related to the determinations the Company has made as to how it will carry over bill credit amounts that exceed a subscriber's monthly bill with PNM, and provide further justification as to why its treatment, so determined, is appropriate." Staff is concerned that "PNM's proposed treatment of carry-over amounts may preclude customers from receiving the appropriate full, value of the subscribed generation attributed to the customer." Staff recommends that PNM "provide additional justification as to why the exclusions that the Company proposes that will prohibit customers receiving service under Rider No. 50 or Rider No. 24 from participating as a subscriber to community solar entitled to receiving bill credits for attributed generation under Rider No. 56 are appropriate." Regarding Rider No. 57, the proposed Community Solar Administrative Cost Rider, Staff states that "there is not a significant amount of detail provided by the Company as to how Rider 57 will be calculated and applied to customers." Staff further notes that PNM seeks to establish a regulatory asset to record administrative costs for the Community Solar Program that are to be recovered through Rider 57. However, Staff states that the details provided by PNM related to its recording of costs in the proposed regulatory asset are insufficient for Staff to recommend approval of the Company's proposal without further review. Staff adds that there may

be other issues or concerns related to PNM's filing that should be enumerated and reviewed in greater detail before allowing PNM's rates to go into effect as proposed.

(c) EPE's Advice Notice No. 271: Staff recommends that the Commission suspend EPE's Advice Notice No. 279. Staff notes that EPE's Form No. 43 "details numerous agreements that are to be entered into by the relevant subscriber organization and EPE." Among these agreements, Staff identifies "one term detail[ing] an administrative cost charge to be assessed to the subscriber organization." However, Staff notes, "the Commission's rules make no mention of recovering administrative costs for the Community Solar Program from subscriber organizations." Staff does not believe that the administrative cost recovery method that EPE has proposed in Advice Notice No. 279 is compliant with the Commission's rules. Staff also questions EPE's proposed regulatory asset to "track subscriber bill credit amounts in excess of EPE's avoided cost" with the intent of recovering these amounts from community solar subscribers in a future rate case. Staff states that "[t]he Company provides very little additional information about the proposed regulatory asset" and that "[t]he Company also provides little to no detail as to how it will ensure that recovery of the amounts in the regulatory asset would not disproportionately burden different subscribers subject to the asset's future recovery."

16. On October 7, 2022, CCR filed its Comments Regarding Advice Notices in Docket No. 22-00020-UT. CCR argues that "several of the utility proposals [are] inconsistent with the Commission's community solar rules and/or inconsistent with common practices in successful community solar programs around the country." CCR further argues that "several of the utility proposals would result in no third-party development of community solar facilities or make the

financing of community solar facilities very difficult, undermining the intent of the Community Solar Act and the regulatory proceedings that the Commission has led.”

17. CCR makes the following recommendations to the Commission:

(a) CCR encourages the Commission to move forward with the community solar request for proposals in December 2022 as previously announced.

(b) CCR recommends that the Commission reject SPS’s Community Solar Bill Credit rate for its unlawful deduction of transmission costs. CCR cites 7.9.573.20(D) NMAC, which provides that “[t]he utility shall not subtract any costs of transmission from the solar bill credit rate calculation.” CCR reads the Community Solar Act as providing a “clear mandate . . . to exclude only distribution cost components from the Total Aggregate Retail Rate in the calculation of the bill credit . . .” CCR argues that “SPS’s proposal is in complete disregard for the Commission’s orders and the Community Solar Act and must be rejected.”

(c) CCR encourages the Commission “to adopt uniform terms and conditions of the community solar tariffs, agreements, and forms to the greatest extent practicable.” CCR argues that the proposals in the advice notices filed by the utilities “vary to a great extent.” CCR notes that, “[w]hile some differences between utilities in the specific bill credit calculations and other service rules may be justified, there is little justification for material differences in the design of the bill credits and subscriber organization agreements among the utilities, as is currently the case with the proposed filings.”

(d) CCR recommends that the Commission require PNM to remove its economic curtailment provision. CCR states that “PNM proposes that it should have the option to curtail community solar facilities for economic purposes.” CCR argues that this option would

“shift[] complete operational control of the facility to the utility and [would] put[] substantial risk on the subscriber organization.” CCR adds that it “is not aware of any community solar program anywhere else in the country that currently allows for economic curtailment by the utility.” CCR states that it “is supportive of curtailment for emergency reliability or safety purposes only, which should be clearly defined in the utility interconnection manuals or the subscriber organization agreement.”

(e) CCR recommends that the Commission reject PNM’s proposed “Power Purchase Agreement.” CCR contends that PNM “proposes to use a PPA as the contractual mechanism between the utility and the subscriber organization.” CCR argues that “[t]he proposed community solar PPA appears to be modeled after utility-scale PPAs, which is problematic as community solar is an entirely different concept than utility-scale procurement.” CCR states that, in its experience in other states, utilities use subscriber organization agreements to govern the terms of the program.

(f) CCR recommends that the Commission reject EPE’s proposed Accounting Order and study it further. CCR states that “EPE’s proposed Accounting Order would create a regulatory asset to track EPE’s ‘non-avoidable costs’ for future recovery from subscribers through a ‘recovery charge’ that EPE will propose in its next general rate case.” CCR notes that the “non-avoidable costs,” as defined by EPE, include “fixed non-fuel costs related to EPE’s production, transmission, and other functions.” CCR contends that, “[i]f recovered from subscribers, the recovery charge could reduce the value of the subscribers’ bill credit substantially.” CCR argues that EPE’s proposed Accounting Order and proposed regulatory asset “appear to be an attempt to

collect transmission costs and other non-distribution costs from subscribers, in conflict with the language in the Commission rules prohibiting collection of these costs from subscribers.”

18. On October 11, 2022, CCR filed its Support of CCSA’s and REIA’s Joint Protest and Complaint in Docket No. 22-00240-UT, stating its support for the joint protests and complaints filed in Docket Nos. 22-00020-UT, 22-00240-UT and 22-00243-UT.

19. The Commission has jurisdiction over this matter.

20. The Commission accepts Staff’s recommendations to suspend all three of the advice notices. The Commission agrees with Staff’s reasoning, which is also consistent with the compelling comments and remarks made by CCSA, REIA, CCR and NEE, described above.

21. Regarding SPS’s proposed Community Solar Bill Credit, the Commission finds that it should be rejected immediately as the deduction of transmission costs is in flagrant disregard of the Community Solar Act and the Commission’s Community Solar Rule.

22. The Commission agrees with the abovedescribed comments in the record recommending that the Commission seek as much uniformity in forms and agreements among the three qualifying utilities as is practicable.

23. At this time, the Commission will not appoint a hearing examiner or schedule a public hearing in this matter. Issues concerning the advice notices will not delay the implementation of the Community Solar Program. These issues can be resolved expeditiously and without a hearing.

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IT IS THEREFORE ORDERED:

A. Southwestern Public Service Company's Advice Notice No. 309 is SUSPENDED IN PART and REJECTED IN PART. The Commission REJECTS the portion of the advice notice concerning the Community Solar Bill Credit and orders SPS to file an advice notice for a fully compliant Community Solar Bill Credit, which does not allow for deduction of transmission costs from the credit, on or before **October 14, 2022**. The remainder of the advice notice is SUSPENDED for further review and until further order of the Commission.

B. Public Service Company of New Mexico's Advice Notice No. 591 is SUSPENDED for further review and until further order of the Commission.

C. El Paso Electric Company's Advice Notice No. 279 is SUSPENDED for further review and until further order of the Commission.

D. The three qualifying utilities are ordered to file, on or before **October 20, 2022**, in Docket No. 22-00020-UT the information that Staff has identified as necessary for a complete and thorough evaluation of the advice notices. The utilities shall confer with Staff prior to filing such information to ensure that the filed information will be satisfactory to Staff.

E. The three qualifying utilities are ordered to cooperate with the Commission's advisors and program administrator to develop forms and agreements that are uniform to the extent practicable. The Commission's advisors and program administrator will contact the utilities at appropriate times in the near future for this purpose.

F. This Order is effective immediately.

G. A copy of this Order shall be served upon all persons listed on the attached certificate of service via email, if the email addresses are known, and if not known, by regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 12th day of October, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION
/s/ Cynthia B. Hall, electronically signed
CYNTHIA B. HALL, COMMISSIONER, DISTRICT 1

Voted No
JEFFERSON L. BYRD, COMMISSIONER, DISTRICT 2

/s/ Joseph M. Maestas, electronically signed
JOSEPH M. MAESTAS, COMMISSIONER, DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed
THERESA BECENTI-AGUILAR, COMMISSIONER, DISTRICT 4

/s/ Stephen Fischmann, electronically signed
STEPHEN FISCHMANN, COMMISSIONER, DISTRICT 5



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order Concerning Southwestern Public Service Company's Advice Notice No. 309, Public Service Company of New Mexico's Advice No.591 and El Paso Electric Company's Advice Notice No.279* was sent via email to the following parties on the date indicated below:

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Order Concerning Southwestern Public Service Company's Advice Notice No. 309, Public Service Company of New Mexico's Advice Notice No. 591 and El Paso Electric Company's Advice Notice No. 279

Docket No. 22-00020-UT

Docket No. 22-00240-UT

Docket No. 22-00243-UT

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DATED this 12th day of October, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

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