

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute (2019)) (LPDD). For background information on the project, see <https://lpdd.org>

MODEL STATE LEGISLATION TO PROMOTE COMMUNITY SOLAR PROJECTS

I. Introduction and Overview

A. Introduction

The goal of Chapter 19 of *Legal Pathways to Deep Decarbonization in the U.S.* is to identify ways to promote the deployment of distributed renewable generation facilities. In contrast to large, centralized electric generating facilities that often require electricity to be transmitted across large distances, distributed generating facilities are smaller, de-centralized resources typically located close to the load they serve. Distributed generation from renewables has many benefits, including diversification of resources and increased resiliency by reducing the impact of catastrophic loss of a central powerplant or large transmission lines.

Community solar projects are a form of distributed renewable generation but are built on a much larger scale than solar panels on individual homes or small businesses. This allows customers to access the cost reductions that come with scale. Instead of contracting for the installation and maintenance of solar panels on their own homes or business premises, customers can purchase a share of the electricity produced by the community solar project. These projects are typically (although not necessarily) located in the vicinity of the participants.

In addition to improved project economics, community solar also increases the pool of customers who can participate, compared to on-site solar generation, providing important energy justice co-benefits. Participants often include customers who do not own or control their own roofs, such as low-income renters. Similarly, community solar provides access to customers whose own locations are not physically suitable for on-site solar, for example, due to load limits on existing structures or rooftop shading.

To participate, customers purchase or subscribe to a share of the project's output, typically priced per unit of capacity, often in 1-kilowatt blocks (roughly equal to 2-4 residential solar panels). The revenue from participant shares is used to finance the capital and operating cost of the project. The participant's utility then reduces the participant's utility bill with a credit representing the value of the energy produced by the participant's share of the overall project.

To facilitate the sharing of emerging best practices, we have developed the model state community solar legislation appended as Attachment A. Our template is based on legislation

already enacted in several states, including Colorado,¹ Massachusetts,² New York³ and Minnesota⁴, as well as model legislation and a “Community Solar Policy Decision Matrix” prepared by the Coalition for Community Solar Access.⁵ Where appropriate, we reference provisions from these sources to highlight key principles and policy options.

Twenty states plus the District of Columbia have adopted legislation enabling community solar, at least on a pilot basis, according to the National Renewable Energy Laboratory (“NREL”).⁶ Community solar has grown dramatically in recent years, from a total of less than 50 MW of projects through 2012, to over 2,600 MW as of June 2020.⁷ However, as of June 2020, just four states host three-quarters of all community solar capacity: Minnesota, Florida, Massachusetts, and New York. According to the Coalition for Community Solar Access, New York, New Jersey, Maryland, and Illinois will likely see significant growth in the next few years.⁸

Further, NREL identifies community solar projects in 39 states, which shows that community solar is possible, though perhaps much harder, even without state legislation.⁹ Indeed, Florida has no state legislation, but in 2020 quadrupled its community solar capacity from 146 MW to 593 MW—23% of the national total—with the inception of a massive new program of up to 1,500 MW of community solar by Florida Power & Light, approved in March 2020, by the Florida Public Service Commission. Likewise, the largest single community solar project in the NREL database is an 81-MW project of an Entergy affiliate in Arkansas, another state with no community solar legislation.

Although these examples might suggest that state legislation is not necessary, that would only be true if all utilities were willing to implement community solar programs on their own, if all stakeholders were confident that existing law permitted such programs without subjecting

¹ Colorado’s “Community Solar Garden” statute is codified at Colo. Rev. Stat. 40-2-127

² Massachusetts’ community solar legislation is woven into its net energy metering program. The net metering statute allows “neighborhood net metering” for facilities that are owned by (or serve the energy needs of) a group of 10 or more customers in a single neighborhood and served by a single utility. *See* Massachusetts G.L. c. 164, §§ 138.-140; [220 CMR 18.00](#).

³ New York does not have a community solar statute. Instead, the community solar program was created by the New York Public Service Commission within its authority under the state’s net energy metering statute. *See* PSL §§ 66-j & 66-l; New York Public Service Commission CASE 15-E-0082.

⁴ Minnesota’s “Community Solar Garden” statute directs the state’s largest electric utility, Xcel Energy, to establish a community solar program. The statute contains some program guidelines, but directed the Minnesota Public Utilities Commission to determine the details of the program’s operation, which occurred in a series of orders over the subsequent two years. All other utilities may file an application with the Public Utilities Commission to establish a community solar program at their election. *See* Minn. Stat. 216B.1641 Docket No. E-002/M-13-867. For more information, see: <https://www.house.leg.state.mn.us/hrd/pubs/solargarden.pdf>.

⁵ <http://www.communitysolaraccess.org/resources/>.

⁶ <https://www.nrel.gov/state-local-tribal/community-solar.html>; <https://www.nrel.gov/docs/fy20osti/75438.pdf> at 15 (identifying California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and Washington, D.C.).

⁷ Based on data from NREL, “Sharing the Sun” database, June 2020 release, <https://data.nrel.gov/submissions/149>.

⁸ <http://www.communitysolaraccess.org/wp-content/uploads/2019/04/2019CommunitySolarPolicyMatrix-2.pdf> at 3.

⁹ <https://www.nrel.gov/docs/fy20osti/75438.pdf> at 8.

participants to unintended regulatory consequences, and if all state public utility commissions would approve and/or require such programs without a clear statutory framework. In addition, the fact that sixteen states and the District of Columbia have adopted legislation but are generally not seeing much community solar development suggests that the legislation in those jurisdictions is not working effectively.

B. Overview of Model State Legislation

Our model legislation is intended to accelerate the development of community solar projects nationwide by providing a common-sense statutory framework that can be adopted by states that currently have no legislation, and also serve as a basis for amending current legislation that has proved ineffective. Doing so will advance three primary policy goals. First, it reduces greenhouse gas (“GHG”) emissions by displacing fossil fuel generation with new renewable energy resources. Second, it provides access to renewable energy to all residential and commercial customers, including those for whom installation of solar panels on their home or business is not feasible – providing critical energy justice co-benefits. Third, it increases the reliability and resiliency of the existing electric utility grid by distributing generating resources.

II. Section-by-Section Summary and Key Policy Issues

The following summarizes each section of the model legislation and highlights the key policy issues raised. It also offers alternative approaches taken by the states that have already enacted community solar legislation.

Section 1. Findings and Purposes. This section contains the factual and policy basis for the legislation. Each state legislature should fashion the statement of findings and purposes to align with its own factual circumstances, policy goals, and political considerations.

Section 2. Definitions. The key definitions are “community solar project,” “program administrator,” “participant organization,” “participant share,” and “retail electric utility.”

The definition of “*community solar project*” limits the size of such facilities to 10MW, requires that they be located within the service territory of a retail utility, and that they be interconnected to that local utility. **Policy issue:** The 10MW limit is higher than in some states,¹⁰ but was included in order to provide flexibility. Utilities generally prefer to limit the size of community solar projects because they are concerned about loss of load and/or the cost of necessary upgrades to their transmission and/or distribution systems. Developers, on the other hand typically seek to build larger projects, which are easier to finance due to economies of

¹⁰ WA: Maximum 1 MW direct current nameplate capacity. [RCW 82.16.170\(2\)](#). MN: Maximum 1 MW nameplate capacity. Minn. Stat. 216B.1641(b). MA: Maximum 2 MW generating capacity. M.G.L. Chapter 164 § 138 (see definition of “Class III net metering facility”). NY: 5MW rated capacity. See PSL §§66-j(d), modified by *Order on Value Stack Eligibility Expansion and Other Matters*, Cases 15-E-071 & 15-E-0082 (Sep 12, 2018). The CCSA recommends a size limit of 5 MW-AC. Community Solar Policy Matrix, CCSA (March 2019) at 14.

scale. One potential drawback of a high limit is that it may restrict the number of community solar projects that can be accommodated by a particular utility.¹¹

Policy issue: The requirement that the facility be located within the service territory of a retail utility, and be interconnected to that utility, is intended to simplify the relationship between the retail utility and the community solar project. There is no inherent operational reason why a community solar project could not be located outside the service territory of the local utility that purchases its output, but it would add regulatory complexity, particularly if the utility and the community solar project are located in different states. In addition, some community solar programs require that a community solar project be located on a single parcel of land or have a single electrical connection to the utility. We have not included such requirements in order to provide flexibility, particularly with respect to smaller projects.

The “*program administrator*” provides regulatory oversight with respect to the community solar program within a particular state. **Policy issue:** We recommend that the state’s public utility commission be designated as the program administrator but allow the commission to delegate some or all of that authority to a third-party entity, subject to the commission’s ultimate review.¹² The oversight provided by a program administrator will help to ensure a level competitive playing field for participant organizations.

The definition of “*participant organization*” is intentionally broad, including for-profit and nonprofit entities, as well as local governments authorized to conduct such activities.¹³ Proposed participant organizations should be reviewed for suitability by the program administrator, and approved upon meeting established criteria. **Policy issue:** We recommend that participant organizations be certified based on uniform state-wide standards. However, the legislature might want to grandfather-in existing statutory authority or existing community solar projects. Moreover, if the public utilities commission provides limited oversight as a program administrator or delegates that role to a third party with limited authority, the legislature should include more detailed statutory provisions to ensure a level playing field between utility and non-

¹¹ Another consideration is that, as more customers leave their local utilities to obtain their power from community solar projects (or from other distributed energy resources, community choice aggregators, or other direct access providers), the remaining ratepayers may be left to pay more for the utilities’ long-term generating resources originally procured to serve the customers that have left. Utilities also bear the responsibility to provide electric service to customers returning from community solar or other energy providers as the “provider of last resort.” The Legislature or the Commission may have to address this issue with a “power charge indifference adjustment” as was done in California. See: https://www.cpuc.ca.gov/uploadedfiles/cpuc_public_website/content/news_room/fact_sheets/english/pciafactsheet010917.pdf.

¹² For example, the Massachusetts Department of Public Utilities selected a consultancy group to serve as the third-party administrator of the “Massachusetts System of Assurance of Net Metering Eligibility” (“MassACA”). It is MassACA’s responsibility “(1) to track the aggregate capacity of net metering facilities; and (2) to provide host customers and other stakeholders with an assurance, before beginning construction, that their facility may participate in the net metering program.” See <http://www.massaca.org/>.

¹³ NY allows a subscriber organization (known as a “Project sponsor”) to be “the generation facility developer, an energy service company (ESCO), a municipal entity such as a town or village, a business or not-for-profit corporation, a limited liability company, a partnership, or other form of business or civic association.” See Order Establishing A Community Distributed Generation Program and Making Other Findings, NYPSC (July 17, 2015) at 8.

utility participant organizations. Another approach would be to exclude retail utilities from serving as participant organizations.¹⁴

The definition of “*participant share*” places an upper limit on the amount of energy that may be subscribed. Each participant share shall not exceed 120% of the average annual consumption of electricity consumed at the participant’s home or business. The 120% limit reflects the fact that community solar projects are intended to serve the needs of individual homes or business. Limiting each individual participant share also encourages participation by as many interested community members as possible. **Policy issue:** Although some states impose a lower limit on the amount of energy that may be subscribed, we believe there is no need to legislate a minimum participant share. Instead, the participant organization should be given leeway to balance the administrative burden of managing many small subscriptions versus the benefit of enabling lower income customers to participate.

Policy Issue: If participant shares are purchased or subscribed to with an expectation of profit, the shares may be deemed a “security,” and thus become subject to a complex web of state and federal securities regulation that could ultimately render the arrangement economically less attractive or commercially unviable. Our model legislation largely avoids this issue because participants receive utility bill credits, rather than direct compensation for their participant share of the project’s electricity output. Any “excess” credits are rolled over to the next month indefinitely. Participants cannot sell their participant shares or excess credits; thus, they have no opportunity for profit. Nevertheless, we recommend that the legislature consider potential securities law implications when establishing a participant share limit. We also recommend language in Section 7(k), directing the state public utilities commission to craft regulations addressing the securities law issue. For example, the participant contracts should be drafted, and the program marketed such as to make clear that the opportunity is to purchase solar energy rather than to make a profit.

The definition of “*retail electric utility*” includes both investor-owned and publicly-owned utilities. **Policy issue:** To maximize consistency, we have designed this model statute to apply to community solar projects on a statewide basis. This gives state public utility commissions authority over community solar projects located in the service areas of publicly-owned utilities, which are typically exempt from public utility commission jurisdiction. However, we preserve a certain amount of the autonomy enjoyed by publicly-owned utilities by allowing their governing bodies to set bill credit rates and program caps. **Policy issue:** Given the unique complexities around cooperative electric utilities and their relatively small share of the overall U.S. electric utility industry, we have not drafted this model legislation to apply to cooperatives. A legislature may choose to add provisions applicable to cooperatives, particularly where they provide a relatively large share of electric utility service.

¹⁴ For example, Massachusetts net metering statute provides that a “net metering facility,” including a community solar project, “shall not be: an electric utility, generation company, aggregator, supplier, energy marketer or energy broker.” G.L. c. 164 §139(e). However, it may be appropriate for the Commission to designate an electric utility as a participant organization to enable cross-subsidization for a specific purpose. For example, the Minnesota’s Public Utilities Commission ordered Xcel Energy to file a proposal to develop a utility-owned solar garden specifically for low income customers. See Order Approving Value-of-Solar Rate (September 6, 2016).

Section 3. Program Requirements. This section is the heart of the model bill.

Subsection (a) provides that the community solar project may either be owned by the participant organization, or it may be built, owned, and operated by a developer who then contracts with the participant organization. This subsection also requires that there be at least 10 participants, unless the solar facility is located on a site serving multiple residential or non-residential customers.¹⁵ No single participant may own a participant share that is more than 40% of the output.¹⁶ **Policy issue:** the purpose of these limits is to assure broad access to the benefits of community solar. The legislature may also wish to consider parameters around participant eligibility – such as whether community solar is for residential customers only or is open to residential and commercial customers.

Subsection (b) provides that an organization cannot participate in the community solar program without the approval of the program administrator. **Policy Issue:** Because participant organizations play such an important role – both with respect to retail electric customers and the local electric utility – we recommend that they be subject to program administrator review and approval. However, the review and approval process should be as streamlined as practicable.

Subsections (c) through (g) govern the bookkeeping/reporting relationship between the participant organization and the retail electric utility. The participant organization maintains its participant list and the share of generation attributable to each participant, which it then provides to the retail electric utility each month. The utility creates a consolidated bill for each participant, including retail electric utility charges, a bill credit for the participant’s share of the community solar project output, the participant share fee for the billing period, and any other applicable fees, charges, and taxes. Finally, the utility reports participant-specific and aggregate bill credit amounts to the participant organization each month, and disperses the participant share fees to the participant organization. **Policy issue:** our model legislation requires consolidated billing by the utility, rather than two separate bills from the utility and the participant organization. This is easier for the customer, lowers administrative costs, and makes the project easier to finance.

¹⁵ New York originally imposed a 10 member minimum. The City of New York, Solar One, GRID Alternatives, Natural Resources Defense Council, The Association for Energy Affordability, and Environmental Defense Fund filed a petition to modify this requirement, pointing out that direct-metered customers living in multi-unit buildings and master-metered buildings with fewer than ten units are unable to site a community solar project on their building roof. The Commission created an exception to the 10-subscriber minimum for projects located on site of a property serving multiple customers. See NYPSC Order March 13, 2017.

¹⁶ In New York, each individual subscriber must subscribe to a minimum of 1,000 KWh annually but cannot take a percentage share of the output that is more than the subscriber’s historic average annual consumption. Large subscribers (greater than 25 kW) cannot make up more than a 40% share of output of the project. See NYPSC Establishing Order at 7-8 & 12. Minnesota requires a minimum of 5 subscribers, with no one subscriber having more than 40% interest. Each subscriber must have at least 200 watts. Minn. Stat. 216B.1641(b). Massachusetts requires a “neighborhood net metering facility” to serve at least 10 residential customers. G.L. c.164 §138. The statute allows the Department of Public Utilities to further define the term “neighborhood” and limit the number of subscribers. *Id.* at §140(b). The Coalition’s model legislation requires a minimum of three customers and does not impose a maximum percentage subscribed by one customer, but the Coalition policy matrix recommends that such share limits can work, and uses a 40% limit in its sample language for such a provision.

Subsection (h) requires that the retail electric utility provide bill credits to a community solar project’s participants. The credits are to be set either at a fixed rate or at a rate resulting from a methodology that may produce rate variations over time, as determined by the Commission or the governing body of a publicly-owned utility, as the case may be. But in either case the rate or methodology would remain in place for not less than 25 years from when the facility is first interconnected to the retail utility’s system. This is intended to make it easier to finance such facilities, and to provide assurance to potential participants. The Commission or governing body of a publicly-owned utility would be free to change the rate or methodology on a prospective base, but such change would not affect the rate or methodology established for facilities previously interconnected.

Subsection (i) assures participants that they can relocate within a utility’s service territory without losing their participant share. The only changes would reflect differences in electricity consumption between the old and new locations.

Subsection (j) requires participant organizations to maintain a queue of qualified customers interested in becoming participants. **Policy issue:** although much of the unsubscribed capacity should be allocated on a first-come, first-served basis, we recommend that participant organizations be authorized to set-aside a portion for more transitory populations, such as renters, who might not otherwise make it to the top of the queue.

Subsection (k) addresses the treatment of the renewable energy certificates (“RECs”) that are created by the generation of solar power. **Policy issue:** there are basically two choices. First, the RECs could be sold by the participant organization, either to the local utility or on the open REC market. This would generate additional revenue, but it would also mean that the participants cannot truthfully claim to be using renewable energy. An example of this is Minnesota, where the Commission required Xcel to offer to purchase RECs from participant organizations at a rate of \$ 0.02/kWh for large facilities and \$ 0.03/kWh for small facilities “to help ensure that the total payment for garden energy would be sufficient to allow for the creation and financing of solar gardens.” However, this led to customer confusion regarding what they were purchasing. The Minnesota Attorney General cautions:

Many people want to purchase community solar participant shares in order to support renewable energy. Consumers should be aware, however, of exactly how far their support goes. Many community solar projects have elected to sell the renewable benefits of their facilities—known as renewable energy certificates or “RECs”—to Xcel. If a community solar developer elects to sell the RECs to Xcel, consumers need to know that they are not purchasing or using “renewable” energy. Instead, these RECs can be used by Xcel to meet its renewable energy mandates or, if Xcel has met its mandates, can be sold by Xcel to others. This may lower the need of Xcel or an entity who purchases RECs from Xcel to construct additional renewable facilities.¹⁷

¹⁷ <https://www.ag.state.mn.us/Consumer/Publications/CommunitySolarGardens.asp>

Similar issues have arisen in New York, where “too often, consumers don’t grasp what they’re getting—or not getting”¹⁸ when they subscribe to community solar.

The second option is for the participant organization to include the value of the RECs in the participant share fee and retire the RECs on the participants’ behalf. This would cause participants to pay for, and allow participants to legitimately “take credit” for using, renewable energy. Our model legislation adopts the latter option because it ensures that participants receive what they think they are paying for – renewable energy – and that community solar efforts are additional to the renewable portfolio standards that utilities must already meet.

Section 4. Utility obligation to purchase output from community solar projects. The success of a community solar project depends on integrating the facility’s output with the other generating resources used by the retail electric utility to serve its load. That integration depends not only on the total amount of energy produced, but on the time of day and season it is produced, because electricity produced at a time when it is not needed has little or no value to the local utility and its ratepayers (including the community solar participants). The importance of timing grows with the share of intermittent renewable energy in the overall supply.

Policy issue: We recommend that each utility be required to purchase electricity from one or more community solar projects located within its service territory, subject to a cap.¹⁹ The cap would be based on the demand for participation in community solar projects, and on the present and future energy needs of the retail utility, including the time of day. In this way, participant organizations would be incentivized to develop projects that maximize production at the time of day needed. That might include pairing a community solar project with an energy storage project, either one that is co-located or somewhere else on the retail electric utility’s system. Doing so would mitigate the intermittency of solar power, thereby producing higher *value* energy, rather than the greatest *quantity*.

The public utilities commission would establish the cap for investor-owned utilities, and the same would be done by the governing body in the case of publicly-owned utilities. Once the cap is established, participant organizations would apply to the program administrator for an allocation of the amount to be purchased by a retail electric utility. Applications would be granted in an amount to be determined by the program administrator, with preference given to projects that more closely match the time-of-use needs of the local utility. The utility would then be required to purchase the output of that solar facility at a rate determined by the public utilities commission in the case of investor-owned utilities, and by the governing body in the case of publicly-owned utilities. The price at which the utility purchases output from the solar facility is the bill credit rate reflected on the subscriber’s utility bill. Our model legislation does not specify a bill credit pricing methodology, leaving that to the public utilities commission or governing body, as the case may be (see Sections 3(h) and 7(c)).²⁰ We recommend that the pricing

¹⁸ <https://www.greentechmedia.com/articles/read/clearing-up-confusion-over-community-solar-in-new-york>

¹⁹ For example, MA imposes an aggregate net metering cap of “7 per cent of the distribution company's peak load.” Massachusetts G.L. 164 §139(f).

²⁰ For example, Minnesota uses a Value of Solar rate set by the Commission to calculate bill credit rate. The value of solar is determined by “vintage year.” Each vintage year has a pre-set schedule of bill credit rates for the 25-year

methodology be kept as simple and straight forward as possible, or be tied to an existing program pricing structure, such as a net energy metering program.

Section 5: Relationship to Renewable Portfolio Standard and GHG Reduction

Statutes. About 30 states and Washington D.C. have enacted renewable portfolio standards (“RPS”) that require retail utilities to include a certain percentage of renewables in their generation portfolios.²¹ Typically, the percentage increases over time, and often can be satisfied either by producing renewable energy, buying it, or by purchasing RECs. In addition, about 10 states require their utilities to dramatically reduce their GHGs over time, typically requiring an elimination of all GHG emissions sometime near mid-century.²² **Policy issue:** It is important to integrate community solar legislation with existing RPS and GHG reduction statutes. Because we recommend that RECs produced by a community solar project be retired by the participant organization, we also recommend that the output of community solar projects be excluded from the calculation of a utility’s generation portfolio for purpose of compliance with both RPS and GHG statutes.²³ This would facilitate utility compliance with those statutes without resulting in a double-counting of environmental attributes.

Section 6. Limitations on Commission regulatory authority. This section makes clear that participant organizations are not “public utilities” for purposes of a public utility commission’s very broad jurisdiction over virtually every aspect of investor-owned utilities. However, participant organizations would be subject to the jurisdiction of the program administrator, which may be the public utilities commission if it has not delegated that authority to a third-party entity. But that jurisdiction would be limited to approval to do business as a participant organization, and compliance with accounting and consumer protection regulations.

Section 7. Rulemaking. The public utilities commission and – for those specific actions reserved for the governing body of publicly-owned utilities as specified in Section 7 of the model legislation – the governing body of publicly-owned utilities are directed to promulgate rules establishing program caps; standard-offer bill credit rates; standards for the approval of participant organizations by the program administrator; information sharing requirements; uniform standards, fees, and processes for the interconnection of community solar projects; means to facilitate participation by low-income customers; and requirements for participant contracts and marketing materials. **Policy issue:** policymakers should consider whether retail electric utilities should charge participant organizations for interconnection costs, the cost of billing system upgrades, and internal administrative costs, or allow them to recover these costs from ratepayers.

Section 8. Severability. Self-explanatory.

life of the community solar project. See Xcel tariff, Solar*Rewards Community Program (Tariff Section 9, available at https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Me_Section_9.pdf).

²¹ <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx>

²² See LPDD Model Law: State Legislation to Decarbonize the Generation of Electricity, available at <https://lpdd.org/resources/lpdd-model-law-state-legislation-to-decarbonize-the-generation-of-electricity>.

²³ See, for example, the approach taken by Oregon in its administrative rules. See Or. Admin. R. 860-088-0150.

ATTACHMENT A

MODEL STATE LEGISLATION TO PROMOTE COMMUNITY SOLAR PROJECTS

Section 1. Findings and Purposes. The Legislature hereby finds and declares that:

- (a) Solar energy is an abundant, domestic, renewable, and non-polluting energy resource;
- (b) Community solar can provide access to local, affordable, and clean energy options to all energy customers, including low-income customers;
- (c) Locally-generated solar energy can contribute to a more resilient electrical grid, avoiding or deferring the need for costly investments in transmission and distribution systems;
- (d) Community solar provides consumers, including homeowners, renters, and businesses, access to the benefits of local solar energy generation, unconstrained by the physical attributes of their home or business, such as roof space, shading, or ownership status; and
- (e) Community solar can foster economic growth in [State] by expanding the market for solar energy and reducing the cost of energy for both residential and commercial customers.

Section 2. Definitions. As used in this Act, unless the context otherwise requires:

- (a) “Bill credit” means the monetary value of the electricity (in kilowatt-hours) generated by the community solar project allocated to a participant to offset that participant’s electricity bill.
- (b) “Bill credit rate” means the dollar-per-kilowatt-hour rate used to calculate a participant’s bill credit, as determined by the Commission or the governing body of a publicly-owned utility pursuant to Section 3(h) of this Act.
- (c) “Commission” means the state’s public utility commission.
- (d) “Community solar program” or “program” means the program created pursuant to this Act to facilitate the development of community solar projects.
- (e) “Community solar project” means one or more facilities that generates electricity by means of solar photovoltaic devices, whereby participants receive a bill credit for the electricity generated in proportion to the size of their participant share. A community solar project shall:
 - i. not have an aggregate nameplate rating of greater than 10 megawatts,

- ii. be located entirely within the service territory of a retail electric utility, and
 - iii. be connected to the electric distribution system of such retail electric utility.
- (f) “Low-income customer” means an individual or household.
 - i. with an income of not more than 80 percent of the area median income based on United States Department of Housing and Urban Development guidelines;
 - ii. with an income of not more than 200 percent of the Federal Poverty Level; or
 - iii. who qualifies for a [insert low-income utility rate assistance program or other relevant state assistance programs] ²⁴
- (g) “Participant” means a retail customer of a retail electric utility who subscribes to a participant share and who has identified one or more physical premises to which the participant share is attributed. Such physical premises and the community solar project must be within the service territory of the same retail electric utility. The participant may change from time to time the premises to which the community solar project electricity generation shall be attributed, so long as the premises are within the service territory of the same retail electric utility.
- (h) “Participant organization” means any for-profit or nonprofit entity [except a retail electric utility] authorized to conduct business within the state or any local government or subdivision of state government consistent with its authorized powers and authorized to perform the responsibilities of a participant organization by the program administrator.
- (i) “Participant share” means a proportional interest in the electricity and associated renewable energy credits generated by a community solar project. Each participant share shall be sized to supply no more than 120% of the average annual consumption of electricity by each participant at the premises to which the participant share is attributed, after deducting any electricity generated by solar facilities located at such premises.
- (j) “Participant share fee” is the subscription cost for the participant share, to be determined by the participant organization.
- (k) “Program administrator” means the entity administering the state’s community solar program. The Commission may serve as the program administrator or may,

²⁴ This definition of “low-income customer” can be replaced by an existing statutory definition or linked to an existing state program. The definition should create multiple possible ways to qualify low-income customers for participation in the community solar program.

at its discretion, select a third-party entity to serve as the program administrator, subject to oversight by the Commission.

- (l) “Program cap” or “cap” means the amount of capacity available under the community solar program in a retail electric utility’s service territory.
- (m) “Renewable energy certificates” means the claim on the renewable and environmental attributes associated with the production of electricity from a renewable source.
- (n) “Retail electric utility” means an investor-owned or publicly-owned utility operating within the state.

Section 3. Program Requirements

- (a) The community solar project may be owned by a participant organization. The community solar project may also be built, owned, and operated by a third party under contract with the participant organization. Each community solar project shall have at least 10 participants, unless the solar facility is serving one or more master-metered, multiple-dwelling premises with a total of at least 10 residents. No single participant may have a participant share that is more than 40 percent of the output of the community solar project.
- (b) The participant organization’s participation in the community solar program shall be subject to program administrator approval.
- (c) The participant organization shall, on a monthly basis and in a standardized electronic format, provide to the retail electric utility a participant list, updated as necessary, indicating for the applicable billing cycle (i) the kilowatt hours of generation attributable to each of the retail customers participating in a community solar project in accordance with the participant’s portion of the output of the community solar project and (ii) the participant share fee due from each participant. The retail electric utility shall apply bill credits and charge participant share fees (as directed in paragraph (d) of this section) through participant bills within one billing cycle following the cycle during which the energy was generated by the community solar project.
- (d) A retail electric utility shall provide a consolidated bill to each participant, including (i) otherwise applicable retail electric utility charges, (ii) a bill credit for the proportional output of a community solar project attributable to that participant, (iii) the participant share fee for the billing period, and (iv) any other applicable fees, charges, and taxes.
- (e) The value of the bill credit for the participant shall be calculated by multiplying the participant’s portion of the kilowatt-hour electricity production from the community solar project by the applicable bill credit rate for the participant. Any

amount of the bill credit that exceeds the participant's monthly bill shall be carried over and applied to the next month's bill in perpetuity.

- (f) The retail electric utility shall, on a monthly basis and in a standardized electronic format, provide to the participant organization a report indicating the total value of bill credits generated by the community solar project in the prior month, as well as the amount of the bill credit applied to each participant.
- (g) The participant organization shall collect participant share fees directly from the retail electric utility, rather than through a separate bill to participants.
- (h) The retail electric utility shall provide bill credits to a community solar project's participants based on a rate (or a methodology for establishing a rate) to be established by the Commission or governing body of a publicly-owned utility, as applicable. Such rate or methodology shall remain fixed for not less than 25 years from the date the community solar project is first interconnected to the retail electric utility. The Commission or governing body of a publicly-owned utility may change such rate or methodology on prospective base, but such change shall not affect the rate or methodology established for facilities previously interconnected.
- (i) If a participant ceases to be a customer at the premises on which the participant share is based but, within 30 days, becomes a customer at other premises in the service territory of the retail electric utility and within the geographic area served by the community solar project, the participant may indicate that they intend to retain their participant share and transfer it to the new premises at the time of termination of service at the existing premises. A transferred participant share shall continue in effect, but the bill credit and other features of the participant share shall be adjusted as necessary to reflect any differences between the new and previous premises' customer classification and average annual consumption of electricity.
- (j) Each participant organization shall maintain a queue of qualified customers interested in becoming participants and shall offer participant shares for unsubscribed capacity to customers in the queue on a first-come, first-served bases, except that capacity shall be set aside for low-income residential customers in a percentage determined by the program administrator.
- (k) All environmental attributes associated with a community solar project, including renewable energy certificates, shall be retired by the participant organization.

Section 4. Utility obligation to purchase output from community solar projects.

- (a) Each retail electric utility shall offer to purchase electricity from one or more community solar projects located within its service territory, subject to the applicable program cap.
- (b) Once the cap is established, participant organizations may apply to the program administrator for an allocation of the amount to be purchased by a retail utility. Such applications shall be granted by the program administrator in accordance with regulations to be adopted by the Commission.
- (c) Until the electricity output of a community solar project is fully subscribed, but not longer than [X] years after the community solar project is energized, the retail electric utility shall purchase the unsubscribed renewable energy from the participant organization at a rate to be determined by the Commission or, for those specific actions reserved for the governing body of publicly-owned utilities as specified below, by the governing body of publicly-owned utilities. The participant organization shall first apply any such revenue to meeting the current liabilities of the community solar project.

Section 5: Relationship to Renewable Portfolio Standard and Zero-Carbon

Statutes. The renewable energy output of community solar projects shall be excluded from the calculation of a retail electric utility’s generation portfolio for purpose of compliance with [identify state renewables portfolio standard or greenhouse gas emission standard].

Section 6. Limitations on Commission regulatory authority. Neither the owners of, nor the participants in, a community solar project shall be considered public utilities subject to regulation by the Commission solely as a result of their ownership interest or participation in a community solar project. Prices paid for participant shares in community solar projects shall not be subject to regulation by the Commission.

Section 7: Rulemaking. Within 180 days after the effective date of this Act, the Commission and, for those specific actions reserved for the governing body of publicly-owned utilities as specified below, the governing body of publicly-owned utilities, shall adopt implementing regulations that:

- (a) facilitate the creation, financing, and accessibility of community solar projects;
- (b) establish a program cap for each retail electric utility service territory with input from the program administrator, except that in the case of publicly-owned utilities, the cap shall be determined by the public utility’s governing body. Such cap shall be established after considering: (1) the demand for participation in community solar projects; (2) the extent which purchases by retail utilities would enhance the financing of community solar projects; and (3) the present and future

energy needs of the retail electric utility. Once established, the cap may be revised in response to a petition filed with the Commission in the case of investor-owned utilities, or with the governing body in the case of publicly-owned utilities, or on the initiative of the program administrator or governing body, as the case may be;

- (c) establish bill credit rates pursuant to Section 3(h) of this Act. The bill credit rates shall be set at a level that fairly compensates the participant, and that is sufficient to enable the community solar program to achieve the policy goals of this Act;
- (d) establish uniform, state-wide standards for the approval of participant organizations by the program administrator;
- (e) establish a streamlined, accelerated process by which the program administrator approves participant organization participation in the community solar program;
- (f) specify the information that must be provided to potential participants by retail utilities and/or participant organizations to ensure full and fair disclosure of costs and benefits of participant shares;
- (g) establish uniform standards, fees, and processes for the interconnection of community solar projects that (i) consolidate charges, credits, and fees from both the retail electric utility and the participant organization in a single bill from the retail electric utility to each participant as required by Section 3(d), (ii) allow the participant organization to collect participant share fees from the retail electric utility under Section 3(g), and (iii) allow the retail electric utility to recover reasonable interconnection costs, the cost of billing system upgrades, and internal administrative costs;
- (h) specify the information that must be shared between a retail electric utility and a participant organization in order to facilitate operations and accounting with respect to community solar projects;
- (i) specify the means by which retail electric utilities and participant organizations shall facilitate participation in community solar projects by low-income customers, including financing options;
- (j) specify the means by which retail electric utilities and participant organizations shall promote participation in community solar projects through public outreach;
- (k) establish requirements for participant contracts and marketing materials to minimize the risk that participant shares become subject to state or federal securities requirements; and
- (l) such other matters beneficial to the effective implementation of this Act.

Section 8. Severability. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.