

1 SENATE BILL 374

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Jeff Steinborn and Benny Shendo

5
6
7
8
9
10 AN ACT

11 RELATING TO UTILITIES; ENACTING THE LOCAL CHOICE ENERGY ACT;
12 AUTHORIZING LOCAL CHOICE OF ENERGY PROVIDERS; PROVIDING POWERS
13 AND DUTIES; REQUIRING RULEMAKING.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
17 cited as the "Local Choice Energy Act".

18 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
19 Local Choice Energy Act:

20 A. "commission" means the public regulation
21 commission;

22 B. "cooperative" means a rural electric
23 distribution cooperative;

24 C. "local choice energy program" means a program
25 enacted, pursuant to the Local Choice Energy Act, by a

.211925.3

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 municipality, county or Indian nation, tribe or pueblo to
2 combine the loads of multiple end-use customers for the sale or
3 purchase of electric energy or the provision of other electric
4 energy related services;

5 D. "local choice energy provider" means a
6 municipality, county or Indian nation, tribe or pueblo, or a
7 combination of municipalities, counties or Indian nations,
8 tribes or pueblos, that enacts a local energy choice program;
9 and

10 E. "public utility" means an investor-owned
11 electric public utility.

12 SECTION 3. [NEW MATERIAL] GENERAL AUTHORIZATION.--

13 A. Customers within a municipality, county or
14 tribal jurisdiction shall have the right to aggregate their
15 electric loads as members of their local community with a local
16 choice energy provider in accordance with the provisions of the
17 Local Choice Energy Act.

18 B. A local choice energy program shall not be
19 enacted within the jurisdiction of an electric utility owned
20 and operated, directly or indirectly, by a municipal
21 corporation that provided electrical service as of January 1,
22 2019.

23 C. A municipal, county or tribal government that
24 serves as a local choice energy provider shall offer the
25 opportunity to purchase electricity to all residential

.211925.3

underscored material = new
[bracketed material] = delete

1 customers within its jurisdiction.

2 D. A local choice energy provider shall be solely
3 responsible for all electricity generation procurement
4 activities on behalf of the local choice energy provider's
5 customers, except where other generation procurement
6 arrangements are expressly authorized by statute.

7 E. A local choice energy provider may group retail
8 electricity customers to solicit bids, broker and contract for
9 electricity and energy services for those customers. The local
10 choice energy provider may enter into agreements for services
11 to facilitate the sale and purchase of electricity and other
12 related services.

13 F. A local choice energy provider shall comply with
14 the renewable portfolio standard as provided in Section 62-16-4
15 NMSA 1978.

16 SECTION 4. [NEW MATERIAL] ENROLLMENT--OPT-OUT.--

17 A. An affirmative declaration shall not be required
18 to become a customer of a local choice energy provider, but
19 each customer shall be informed of the customer's right to opt
20 out of the local choice energy program. If a negative
21 declaration is not made by a customer, that customer shall be
22 served through the local choice energy program.

23 B. If an existing local energy choice program
24 customer moves the location of the customer's electric service
25 within the jurisdiction of the local choice energy provider,

.211925.3

underscored material = new
[bracketed material] = delete

1 the customer shall retain the same subscriber status as prior
2 to the move, unless the customer affirmatively changes the
3 customer's subscriber status. If a customer moves the location
4 of the customer's electric service from outside to inside the
5 jurisdiction of a local choice energy provider, the customer
6 shall be informed of the customer's right to opt out of the
7 local choice energy program.

8 SECTION 5. [NEW MATERIAL] IMPLEMENTATION.--

9 A. A local choice energy provider shall develop an
10 implementation plan detailing the process and characteristics
11 of the local choice energy program. The implementation plan,
12 and any subsequent changes to it, shall be considered and
13 adopted at a duly noticed public meeting. If the
14 implementation plan is adopted, it shall be filed with the
15 commission. The implementation plan shall contain:

- 16 (1) an organizational structure for the
17 program and its operations;
- 18 (2) a rate-setting process and all anticipated
19 costs to participating customers, including exit fees;
- 20 (3) provisions for disclosure and due process
21 in rate-setting and allocating costs among participating
22 customers;
- 23 (4) the methods for entering and terminating
24 agreements with other entities;
- 25 (5) the rights and responsibilities of

.211925.3

1 participating customers;

2 (6) provisions for termination of the program;

3 and

4 (7) evidence of adequate resources to meet the
5 energy needs of its participating customers, or a plan to
6 procure adequate resources to meet the energy needs of its
7 customers when the program begins service.

8 B. Within ten days after a local choice energy
9 provider files its implementation plan with the commission, the
10 commission shall notify any public utility serving the
11 customers eligible for service by the local choice energy
12 provider that an implementation plan has been filed.

13 C. Within thirty days after a local choice energy
14 provider files its implementation plan, the commission shall
15 acknowledge that it has received the implementation plan.

16 D. Prior to serving customers, a local choice
17 energy provider shall adopt the following documents and reports
18 pursuant to the local choice energy provider's own decision-
19 making rules and procedures, the adoption of which is the
20 responsibility of the local choice energy provider and is not
21 subject to commission oversight:

22 (1) an energy procurement policy that defines
23 and includes criteria for the selection of energy resources
24 that are the most cost-effective among feasible alternatives
25 and meet the local choice energy provider's goals with respect

underscored material = new
[bracketed material] = delete

1 to local workforce development, climate and environment and
2 public safety;

3 (2) an annual budget that reflects the local
4 choice energy provider's projected total revenues from sales of
5 electricity and related services and its total costs, including
6 the cost of electricity and distribution and any fees that are
7 required to be charged as required by statute or by the
8 commission in rule;

9 (3) a fiscal management policy that provides
10 guidance for the local choice energy provider's financial
11 decision making;

12 (4) a determination that the local choice
13 energy provider has adequate resources to meet the needs of its
14 customers; and

15 (5) a determination that public safety is met
16 for the generation facilities from which the local choice
17 energy provider obtains the power that is ultimately sold to
18 its customers.

19 SECTION 6. [NEW MATERIAL] FORMATION.--

20 A. An entity that is eligible to be a local choice
21 energy provider and elects to implement a local choice energy
22 program within its jurisdiction shall do so by municipal or
23 county ordinance or, in the case of a tribal government,
24 through the tribal government process in place.

25 B. A municipality, county or Indian nation, tribe

.211925.3

underscored material = new
~~[bracketed material] = delete~~

1 or pueblo, or any combination of the foregoing, may authorize,
2 by affirmative resolution of its governing council or board,
3 that another entity that is authorized to be a local choice
4 energy provider act as the local choice energy provider on its
5 behalf. If a municipality, county, Indian nation, tribe or
6 pueblo, or any combination of the foregoing, by resolution,
7 authorizes another entity to be the local choice energy
8 provider for the municipality, county, Indian nation, tribe or
9 pueblo, that authorized entity shall comply with the
10 requirement of Subsection A of this section.

11 C. Two or more entities authorized to be a local
12 choice energy provider may jointly enact a local choice energy
13 program pursuant to the Local Choice Energy Act through a joint
14 powers agency established pursuant to the Joint Powers
15 Agreements Act.

16 D. The commission shall not, as a condition of
17 participation in a local energy program or otherwise, require
18 customers of a local choice energy program to assume debts,
19 liabilities or obligations of the entity that enacted the local
20 choice energy program.

21 E. Following adoption of a local choice energy
22 program through the ordinance or lawmaking required by
23 Subsection A of this section, the program shall allow any
24 retail customer to opt out and the customer shall continue to
25 be served by the existing public utility or cooperative, or its

.211925.3

underscoring material = new
[bracketed material] = delete

1 successor in interest, on the same terms and conditions as are
2 applicable to retail customers from the same class.

3 F. Energy distribution and transmission services
4 shall be provided by a public utility or cooperative at the
5 same rates, terms and conditions, as approved by the
6 commission, to local choice energy customers and retail
7 customers that are served by a public utility or cooperative.

8 G. Once enrolled in a local choice energy program,
9 any customer that chooses to opt out within sixty days, or two
10 billing cycles, of the date of enrollment may do so without
11 penalty and shall be entitled to receive service pursuant to
12 Subsection E of this section.

13 H. Customers that return to a public utility or
14 cooperative to procure electricity services shall be subject to
15 the same terms and conditions that are applicable to retail
16 customers from the same class, as determined by the commission
17 and as authorized by the commission pursuant to the Public
18 Utility Act.

19 I. Nothing in this section shall be construed as
20 authorizing a local choice energy provider to restrict the
21 ability of a retail customer to obtain or receive electric
22 service from any authorized electric service provider in a
23 manner consistent with law.

24 SECTION 7. [NEW MATERIAL] NOTICE.--

25 A. A local choice energy provider shall provide

.211925.3

1 notice to:

2 (1) eligible participating customers at least
3 twice within two calendar months, or sixty days, in advance of
4 the date of commencing automatic enrollment; and

5 (2) enrolled participating customers for not
6 less than two consecutive billing cycles following enrollment.

7 B. Notice may be provided concurrently with
8 billing, in direct mailings to customers or in inserts in
9 water, sewer or other utility bills.

10 C. Notice shall include:

11 (1) a statement that the customer will be
12 automatically enrolled in the local choice energy program and
13 that the customer has the right to opt out of the local choice
14 energy program without penalty;

15 (2) the terms and conditions of the services
16 offered; and

17 (3) a description of the process by which a
18 customer may opt out of the local choice energy program. The
19 opt-out may take the form of a self-addressed return postcard
20 expressing the customer's election to remain with, or return
21 to, electrical service provided by the public utility or
22 cooperative, or another direct means by which the customer may
23 elect to receive electrical service through the public utility
24 or cooperative providing service in the area.

25 D. The local choice energy provider may request the

underscoring material = new
~~[bracketed material] = delete~~

1 commission to order the public utility or cooperative to
2 provide the notice required by this section. A public utility
3 or cooperative shall be entitled to recover from the local
4 choice energy provider the reasonable costs incurred for
5 providing the notice. The public utility or cooperative shall
6 fully cooperate with the local choice energy provider in
7 determining the feasibility and costs associated with using the
8 public utility or cooperative's normally scheduled monthly
9 billing process to provide one or more of the notices required.

10 SECTION 8. [NEW MATERIAL] COOPERATION OF PUBLIC UTILITIES
11 AND COOPERATIVES.--

12 A. Public utilities and cooperatives shall
13 cooperate fully with any local choice energy provider that
14 investigates, pursues or implements a local choice energy
15 program, including by providing the local choice energy
16 provider with:

- 17 (1) appropriate billing and electrical load
18 information;
- 19 (2) electrical consumption data; and
- 20 (3) other data detailing electricity usage and
21 patterns of usage, as determined by the commission and in
22 accordance with procedures established by the commission.

23 B. Public utilities and cooperatives shall continue
24 to provide metering, billing, collection and customer service
25 to retail customers that participate in local choice energy

.211925.3

underscored material = new
[bracketed material] = delete

1 programs; provided that if the local choice energy program
2 makes a formal request to the public utility or cooperative to
3 assume some or all of the metering, billing, collection or
4 customer service to customers, the local choice energy program
5 shall assume these responsibilities. Bills shall identify the
6 local choice energy provider as providing the electrical energy
7 component of the bill and shall include bill inserts provided
8 and paid for by the local choice energy provider upon request.

9 C. The commission shall expedite the complaint
10 process for disputes regarding a public utility or
11 cooperative's violation of its obligations pursuant to this
12 section in order that all complaints are resolved no more than
13 one hundred eighty days following the filing of a complaint.

14 D. If the commission finds that a public utility or
15 cooperative has violated this section, the commission shall
16 consider the impact of the violation upon the local choice
17 energy provider in determining remedies.

18 E. The commission shall exercise its authority to
19 enforce the requirements of this section when it finds that the
20 requirements of this section have been violated.

21 SECTION 9. [NEW MATERIAL] OPERATION WITH PUBLIC UTILITY
22 OR COOPERATIVE.--

23 A. A local choice energy provider shall have an
24 operating service agreement with the applicable public utility
25 or cooperative prior to furnishing electric service to

.211925.3

underscoring material = new
~~[bracketed material] = delete~~

1 customers within its jurisdiction.

2 B. The commission shall develop and approve as part
3 of its rulemaking a standard operating agreement that addresses
4 the basic rules and responsibilities of each party and includes
5 equitable responsibilities and remedies for all parties.

6 C. A local choice energy provider shall notify the
7 commission upon entering into an operating service agreement
8 with a public utility or cooperative. The commission may
9 require the local choice energy provider to submit basic
10 information to the commission to ensure that the operating
11 service agreement complies with basic consumer protection rules
12 and legal requirements, but the information required shall not
13 be burdensome to produce or unreasonable in cost or scope and
14 provision of the information may be conditioned on a
15 confidentiality agreement or protective order.

16 D. Once the operating service agreement between the
17 local choice energy provider and the public utility or
18 cooperative is executed, the local choice energy provider shall
19 notify the public utility or cooperative that local choice
20 energy service will commence as soon as thirty days from the
21 date of the notice or a later date determined by the local
22 choice energy provider and included in the notice.

23 E. Once notified of the commencement of a local
24 choice energy program, the public utility or cooperative shall
25 transfer all applicable accounts to the local choice energy

.211925.3

underscored material = new
[bracketed material] = delete

1 program within thirty days from the date of the close of the
2 normally scheduled monthly metering and billing process.

3 SECTION 10. [NEW MATERIAL] COST RECOVERY.--

4 A. A public utility or cooperative may charge local
5 choice energy customers in its service territory an exit fee to
6 compensate remaining customers of the public utility or
7 cooperative for the above-market cost of power that was
8 procured on behalf of local choice energy customers prior to
9 their departure from the public utility or cooperative;
10 provided that the following requirements are met:

11 (1) a public utility or cooperative shall only
12 charge an exit fee after the commission has determined the
13 amount of the exit fee and after the commission has found that
14 the public utility or cooperative has met the requirements in
15 this section; and

16 (2) a public utility or cooperative seeking to
17 establish or supplement an exit fee shall have the burden of
18 proving in a compliance filing that the costs that it seeks to
19 recover are just and reasonable, in the public interest and
20 consistent with the Local Choice Energy Act and the Public
21 Utility Act.

22 B. For purposes of establishing or amending an exit
23 fee, a public utility or cooperative shall submit an annual
24 compliance filing to the commission that contains:

25 (1) a five-year forecast of departing load and

.211925.3

underscoring material = new
~~[bracketed material] = delete~~

1 power demand and supply presented in a load and resource table
2 that:

3 (a) takes into account the load that is
4 expected to depart from the public utility or cooperative for
5 local choice energy programs in the public utility's or
6 cooperative's service territory;

7 (b) demonstrates in a transparent manner
8 the different resources in the public utility's or
9 cooperative's portfolio on a consistent and comparable basis,
10 showing all existing and anticipated or planned supply and
11 demand-side resources;

12 (c) identifies the cost of each resource
13 through its projected life; and

14 (d) specifically identifies excess power
15 supply held by the public utility or cooperative when taking
16 into account anticipated and existing departing load;

17 (2) the cost and depreciation schedule for
18 each resource identified in the five-year forecast;

19 (3) a comprehensive list of all capital
20 expenditures over one million dollars (\$1,000,000) that the
21 public utility or cooperative has committed to undertake and is
22 planning to undertake in the next five years; and

23 (4) an affirmative showing that the public
24 utility or cooperative has used all reasonable efforts to
25 reduce the value of eligible power supply costs through

.211925.3

underscoring material = new
~~[bracketed material] = delete~~

1 auctions, bilateral sales or other competitive wholesale
2 transactions, including the sale of existing utility-owned
3 generation, to local choice energy programs or other third
4 parties.

5 C. A local choice energy program shall have the
6 right to inspect and review all documentation and data
7 supporting the calculation of the exit fee, including
8 documentation and data concerning the five-year forecast of
9 departing load and power supply needs, portfolio reduction or
10 divestment efforts and underlying contracts and payment
11 schedules, including cost and depreciation schedules and
12 capital expenditure documentation. The local choice energy
13 program's right to inspect and review may be conditioned on a
14 confidentiality agreement or protective order; provided that
15 the commission shall determine that the protections are
16 necessary and in the public interest.

17 D. The exit fee shall not be imposed for more than
18 ten years from the date that it is first imposed on customers
19 or a group of customers of a local choice energy program.
20 These limitations shall not apply to payments made by a local
21 choice energy program to a public utility or cooperative
22 pursuant to a freely negotiated agreement for the purchase of
23 energy or related goods or services.

24 E. The commission may establish additional
25 requirements regarding exit fees; provided that the

.211925.3

underscored material = new
[bracketed material] = delete

1 requirements shall be consistent with the Local Choice Energy
2 Act.

3 SECTION 11. [NEW MATERIAL] COMMISSION RULEMAKING.--

4 A. The commission shall adopt rules to implement
5 the Local Choice Energy Act within one hundred eighty days of
6 its passage. The rules shall include the requirements and
7 mechanisms for load data sharing, operating service agreements,
8 cost recovery and fee structures.

9 B. The commission shall not authorize service by a
10 local choice energy provider until the commission has adopted
11 rules for implementing the Local Choice Energy Act.

12 C. The rules shall mandate that a public utility or
13 cooperative maintain authority over transmission and
14 distribution services and that the local choice energy provider
15 has authority over rates and procurement.

16 D. Customers of a local choice energy provider
17 shall only be required to pay charges for goods, services or
18 programs for which they are eligible or that benefit them
19 directly. Customers of a local energy choice provider shall
20 not be required to pay charges for goods, services or programs
21 for which they are ineligible or that do not directly benefit
22 them.

23 SECTION 12. [NEW MATERIAL] DEVELOPMENT AND PROCUREMENT.--

24 A local choice energy provider:

25 A. shall adopt a procurement policy that defines

underscored material = new
[bracketed material] = delete

1 and includes criteria addressing the following:

- 2 (1) local workforce development;
- 3 (2) the selection and use of resources that
- 4 are the most cost-effective among all feasible alternatives;
- 5 (3) climate and environmental goals; and
- 6 (4) public safety;

7 B. may enter into contracts with third parties,
8 including public utilities and cooperatives, to contract for
9 energy production; and

10 C. may develop generating facilities, own
11 generating facilities or acquire generating facilities from
12 third parties, including public utilities and cooperatives.

13 SECTION 13. [NEW MATERIAL] TERMINATION.--

14 A. A local choice energy provider may terminate
15 services subject to an affirmative vote of its governing body.
16 Prior to termination, the local choice energy provider shall
17 hold a duly noticed public meeting regarding termination and
18 provide advance notice to its customers regarding their options
19 to obtain electrical service from other providers.

20 B. The commission shall not terminate the services
21 of a local choice energy provider.

22 C. A public utility or cooperative shall not
23 terminate the services of a local choice energy provider.