

SENATE BILL 83

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

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

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

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

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the

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Local Choice Energy Act:

- A. "commission" means the public regulation commission;
- B. "cooperative" means a rural electric distribution cooperative;
- C. "local choice energy program" means a program enacted, pursuant to the Local Choice Energy Act, by a municipality, county or Indian nation, tribe or pueblo to combine the loads of multiple end-use customers for the sale or purchase of electric energy or the provision of other electric energy-related services;
- D. "local choice energy provider" means a municipality, county or Indian nation, tribe or pueblo, or a combination of municipalities, counties or Indian nations, tribes or pueblos, that enacts a local energy choice program; and
- E. "public utility" means an investor-owned electric public utility.

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

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

SCONC→A. A municipality, county or Indian nation,

tribe or pueblo shall have the right to aggregate the electric loads of customers within its jurisdiction in a local choice energy program. ←SCONC

B. A local choice energy program shall not be enacted within the jurisdiction of an electric utility owned and operated, directly or indirectly, by a municipal corporation that provided electrical service as of January 1, 2021.

C. A municipal, county or tribal government that serves as a local choice energy provider shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

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

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

SECTION 4. [NEW MATERIAL] RENEWABLE PORTFOLIO STANDARD.--

A. A local choice energy provider shall at a

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minimum meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio as demonstrated by its retirement of renewable energy certificates. Requirements and targets of the renewable portfolio standard are as follows:

(1) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of the local choice energy provider's total retail sales to New Mexico customers;

(2) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of the local choice energy provider's total retail sales to New Mexico customers;

(3) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico; and

(4) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

B. A local choice energy provider shall prepare and publicly post a summary of its purchases and generation of renewable energy during the preceding calendar year.

C. A local choice energy provider shall meet the requirements and targets of the renewable portfolio standard

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pursuant to Subsection A of this section as demonstrated by the provider's retirement of renewable energy certificates associated with energy assigned to the provider.

SECTION 5. [NEW MATERIAL] ENROLLMENT--OPT-OUT.--

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

B. If an existing local choice energy program customer moves the location of the customer's electric service within the jurisdiction of the local choice energy provider, the customer shall retain the same subscriber status as prior to the move, unless the customer affirmatively changes the customer's subscriber status. If a customer moves the location of the customer's electric service from outside to inside the jurisdiction of a local choice energy provider, the customer shall be informed of the customer's right to opt out of the local choice energy program.

SECTION 6. [NEW MATERIAL] IMPLEMENTATION.--

A. A local choice energy provider shall develop an implementation plan detailing the process and characteristics of the local choice energy program. The implementation plan, and any subsequent changes to it, shall be considered and

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adopted at a duly noticed public meeting. If the implementation plan is adopted, it shall be filed with the commission. The implementation plan shall contain:

- (1) an organizational structure for the program and its operations;
 - (2) a rate-setting process and all anticipated costs to participating customers, including exit fees;
 - (3) provisions for disclosure and due process in rate-setting and allocating costs among participating customers;
 - (4) the methods for entering and terminating agreements with other entities;
 - (5) the rights and responsibilities of participating customers;
 - (6) provisions for termination of the program;
- and
- (7) evidence of adequate resources to meet the energy needs of its participating customers, or a plan to procure adequate resources to meet the energy needs of its customers when the program begins service.

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

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

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

(1) an energy procurement policy that defines and includes criteria for the selection of energy resources that are the most cost-effective among feasible alternatives and meet the local choice energy provider's goals with respect to local workforce development, climate and environment and public safety;

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

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

(4) a determination that the local choice

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energy provider has adequate resources to meet the needs of its customers; and

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

SECTION 7. [NEW MATERIAL] FORMATION.--

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

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

C. Two or more entities authorized to be a local choice energy provider may jointly enact a local choice energy

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program pursuant to the Local Choice Energy Act through a joint powers agency established pursuant to the Joint Powers Agreements Act.

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

E. Following adoption of a local choice energy program through the ordinance or lawmaking required by Subsection A of this section, the program shall allow any retail customer to opt out and the customer shall continue to be served by the existing public utility or cooperative, or its successor in interest, on the same terms and conditions as are applicable to retail customers from the same class.

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

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

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

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

SECTION 8. [NEW MATERIAL] NOTICE.--

A. A local choice energy provider shall provide notice to:

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

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

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

C. Notice shall include:

(1) a statement that the customer will be automatically enrolled in the local choice energy program and

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that the customer has the right to opt out of the local choice energy program without penalty;

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

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

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

SECTION 9. [NEW MATERIAL] COOPERATION OF PUBLIC UTILITIES AND COOPERATIVES.--

A. Public utilities and cooperatives shall

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cooperate fully with any local choice energy provider that investigates, pursues or implements a local choice energy program, including by providing the local choice energy provider with:

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

B. Public utilities and cooperatives shall continue to provide metering, billing, collection and customer service to retail customers that participate in local choice energy programs; provided that if the local choice energy program makes a formal request to the public utility or cooperative to assume some or all of the metering, billing, collection or customer service to customers, the local choice energy program shall assume these responsibilities. Bills shall identify the local choice energy provider as providing the electrical energy component of the bill and shall include bill inserts provided and paid for by the local choice energy provider upon request.

C. The commission shall expedite the complaint process for disputes regarding a public utility's or cooperative's violation of its obligations pursuant to this section in order that all complaints are resolved no more than

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one hundred eighty days following the filing of a complaint.

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

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

SECTION 10. [NEW MATERIAL] OPERATION WITH PUBLIC UTILITY OR COOPERATIVE.--

A. A local choice energy provider shall have an operating service agreement with the applicable public utility or cooperative prior to furnishing electric service to customers within its jurisdiction.

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

C. A local choice energy provider shall notify the commission upon entering into an operating service agreement with a public utility or cooperative. The commission may require the local choice energy provider to submit basic information to the commission to ensure that the operating service agreement complies with basic consumer protection rules and legal requirements, but the information required shall not

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be burdensome to produce or unreasonable in cost or scope and provision of the information may be conditioned on a confidentiality agreement or protective order.

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

E. Once notified of the commencement of a local choice energy program, the public utility or cooperative shall transfer all applicable accounts to the local choice energy program within thirty days from the date of the close of the normally scheduled monthly metering and billing process.

SECTION 11. [NEW MATERIAL] COST RECOVERY.--

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

(1) a public utility or cooperative shall only charge an exit fee after the commission has determined the

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amount of the exit fee and after the commission has found that the public utility or cooperative has met the requirements in this section;

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

(3) the commission shall issue a ruling or decision that includes findings and approves or denies an exit fee as described in this section. The ruling or decision shall be made on the basis of whether the exit fee:

- (a) is just and reasonable;
- (b) fairly balances the interests of shareholders and ratepayers;
- (c) is in the public interest; and
- (d) is consistent with traditional ratemaking principles, the Local Choice Energy Act and the Public Utility Act.

B. The exit fee described in this section shall be limited to costs. For purposes of this section, eligible costs shall not include return on equity or any other measures of profit or net income owed to the public utility or cooperative, regardless of whether they were previously approved by the

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commission:

(1) if a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015, to construct, operate or lease an electric generation facility, in whole or in part, and the investment in that facility has been permitted recovery as part of the utility or cooperative's rate base before 2015; and

(2) contracts or utility-owned generation that have been offered for sale in a competitive solicitation process since the passage of the Local Choice Energy Act that complies with the Public Utility Act and commission rules. Regardless of the duration of the contract or anticipated life cycle of utility-owned generation, nothing in this subsection shall be interpreted to delay, frustrate or conflict with the termination of the exit fee contained in Subsection E of this section.

C. For purposes of establishing an exit fee, a public utility or cooperative shall submit a compliance filing to the commission that contains:

(1) a ten-year forecast of departing load and power demand and supply presented in a load and resource table that:

(a) takes into account the load that is expected to depart from the public utility or cooperative for local choice energy programs in the public utility's or

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cooperative's service territory;

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

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

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

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

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

(4) an affirmative showing that the public utility or cooperative has used all reasonable efforts to reduce the value of eligible power supply costs through auctions, bilateral sales or other competitive wholesale transactions, including the sale of existing utility-owned generation, to local choice energy programs or other third parties.

D. A local choice energy program shall have the

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right to inspect and review all documentation and data supporting the calculation of the exit fee, including documentation and data concerning the ten-year forecast of departing load and power supply needs, portfolio reduction or divestment efforts and underlying contracts and payment schedules, including cost and depreciation schedules and capital expenditure documentation. The local choice energy program's right to inspect and review may be conditioned on a confidentiality agreement or protective order; provided that the commission shall determine that the protections are necessary and in the public interest.

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

F. The commission may establish additional requirements regarding exit fees; provided that the requirements shall be consistent with the Local Choice Energy Act.

SECTION 12. [NEW MATERIAL] EQUAL OPPORTUNITY.--

A. The commission shall not discriminate against local choice energy programs in the administration or award of

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funding, eligibility for programs or applicability of standards under the Energy Transition Act or other laws.

B. Local choice energy programs shall have the same and equal opportunity to obtain funding, participate in programs and take other actions that require approval by the commission as public utilities and cooperatives.

SECTION 13. [NEW MATERIAL] COMMISSION RULEMAKING.--

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

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

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

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

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them.

SECTION 14. [NEW MATERIAL] DEVELOPMENT AND PROCUREMENT.--

A local choice energy provider:

A. shall adopt a procurement policy that defines and includes criteria addressing the following:

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

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

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

SECTION 15. [NEW MATERIAL] TERMINATION.--

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

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

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

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