



The local choice energy provider is to develop an implementation plan for adoption by the local governing authority or combination of authorities. The implementation plan should consist of (1) an organizational structure, (2) a rate-setting process and all anticipated costs, (3) provisions for disclosure and due process in rate-setting and allocating costs, (4) methods for entering and terminating agreements with other entities, (5) right and responsibilities of participating customers, (6) provisions for program termination, and (7) evidence of adequate resources or of a plan to procure resources to meet customer needs. Once adopted, the plan is to be filed with the PRC.

The PRC is to notify affected public utilities under its jurisdiction of the implementation plan's existence. Prior to serving customers, the local choice energy provider is to adopt a number of documents and reports pursuant to its own rules and procedures but not subject to the PRC's jurisdiction. In order to support the service provided by local choice energy providers, public utilities are to provide energy distribution and transmission services at PRC approved rates to both local choice energy customers and to its own retail customers.

Following sufficient and timely notice by a local choice energy provider as defined in this bill, every residential customer is automatically enrolled unless they opt out. If they opt out, they will continue to be served by the existing public utility. Once enrolled in a local choice energy program, a customer has 60 days (or two billing cycles) to opt out without penalty. The local choice energy provider may request the PRC to order affected public utilities provide said notice at a reasonable cost to be recovered from the local choice energy provider.

Public utilities are to cooperate fully with any local choice energy provider with respect to the provision of billing and load information, energy consumption data, and other usage as determined by the PRC. Public utilities are to provide metering, billing, collection and customer service to retail customers that participate in local choice energy programs if and until the local choice energy provider formally requests the assumption of those responsibilities. The PRC is to expedite the complaint process regarding a public utility's obligation to fully cooperate with the local choice energy provider and to ensure that complaints are resolved within 180 days. The PRC shall exercise its authority and may order remedies concerning insufficient cooperation by the public utilities.

A standard operating agreement shall be developed and approved by the PRC which addresses the basic rules and of public utilities and local choice energy providers. Prior to providing service, a local choice energy provider shall have an operating service agreement with the affected public utility. The PRC shall be notified of the existence of an operating service agreement and the NMPRC may require the local choice energy provider to submit basic information to ensure the operating service agreement is compliant with consumer protection rules and legal requirements to the extent the provision of such information is not burdensome or unreasonable. Once the operating service agreement is in place, local choice energy service may commence as soon as 30 days after notice to the public utility and the public utility shall subsequently transfer all applicable accounts to the local choice energy provider.

A public utility may charge an exit fee to departing customers in order to compensate remaining customers for the above-market cost of power that was heretofore procured by the public utility to serve customers departing the public utility once the PRC has determined the amount of the exit fee and once the public utility has demonstrated the exit fee is reasonable, in the public interest and consistent with the Local Choice Energy Act and the Public Utility Act (PUA).

In order to support the determination of an exit fee, a public utility shall submit a compliance filing to the PRC which contains (1) a 10-year forecast of departing load and power demand/supply presented in a load and resource table with detailed information about departing load, existing and planned supply and demand-resources, cost by resource, and any resulting excess power supply, (2) cost and depreciation by resource, (3) a list of committed capital expenditures in excess of \$1 million, and (4) an affirmative showing about reasonable efforts to dispose of any excess capacity or energy.

A local choice energy provider shall have the right to review a public utility's documentation and data supporting the determination of the exit fee. The PRC may establish additional requirements regarding exit fees to the extent they are consistent with this bill. The PRC shall rule on the approval or denial of an exit fee based on traditional ratemaking principles and consistency with the Local Energy Choice Act. The exit fee is to be limited to public utility costs not including return on equity or other profit or net income measures under certain conditions.

The PRC shall adopt rules to implement this bill within 180 days of its passage. Until these rules are promulgated, the PRC shall not authorize service by a local choice energy provider. These rules shall provide for public utilities to maintain authority over transmission and distribution services and shall establish that the local energy choice provider has authority over rates and procurement.

The PRC shall not discriminate against local energy choice programs with respect to the award of funding, eligibility for programs, or applicability of standards. Local choice energy programs shall have equal opportunity to obtain funding, participate in programs, or take other actions for which public utilities require Commission approval.

A local choice energy provider may terminate services subject to an affirmative vote of its governing body. Neither the PRC nor a public utility shall terminate the services of a local choice energy provider.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

Senate Bill 83 does not have an appropriation.

The PRC stated that the agency would need two additional staff at a cost of \$170 thousand in order to meet requirements of SB83. This would be a recurring expense to the general fund.

The PRC is currently understaffed for the amount of statutory requirements of recent years, such as the Energy Transition Act, passed in the 2019 regular session.

The PRC has also experienced hiring freezes mandated by the State Personnel Office during Covid-19, delaying critical hires that are needed for statutorily required mandates.

The following was provided by the Public Regulation Commission (PRC):

The bill does not carry an appropriation to provide necessary funding for the New

Mexico Public Regulation Commission (NMPRC or Commission) to employ the additional Staff required to implement the Local Choice Energy Act. As indicated below, under administrative implications, the Local Choice Energy Act would result in various additional duties for the NMPRC and its staff.

The Local Choice Energy Act could result in a loss of customers to public utilities and rural electric cooperatives as a result of customers switching electricity providers. This, in turn, could result in increased rates to remaining utility and cooperative ratepayers. For example, California recently raised costs on Community Choice Aggregation (CCA) programs to avoid cost shifts that may arise when consumers switch electricity providers. See significant issues. The \$170 thousand recurring Operating Budget impact would be for 2 Economist positions at midpoint plus associated operating costs per FTE.

## SIGNIFICANT ISSUES

The following was provided by the Public Regulation Commission (PRC):

The traditional regulatory compact model for the provision of electricity is codified in the PUA. The regulatory compact is that public utilities are regulated monopolies which have been granted the exclusive right to serve the customers in their respective service territories with their electricity needs and they are obligated to serve their customers' needs. In return, public utilities are subject to the regulatory oversight of the PRC. The PRC's oversight extends to the approval the rates which, when applied to all of the public utility's customers, provide it with the opportunity to recover the reasonable cost of providing service. SB83 rejects the regulatory compact by allowing local governing authorities to provide unregulated electric service to its residents in its jurisdiction. To the extent that municipalities seek to establish local choice energy programs, public utilities are at risk of losing a significant share of its residential customers thus reducing the size of its customer base from which to recover the utility's cost of providing service, which may increase the cost of electricity to the remaining customers, as illustrated above.

Community choice aggregation, also known as municipal aggregation, ("CCA") are recently adopted programs throughout the United States that allow local governments to procure power on behalf of their residents, businesses, and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider.

Source: <https://www.epa.gov/greenpower/community-choice-aggregation>

CCA programs have been established by law in California, Illinois, Massachusetts, New Jersey, New York, Ohio, and Rhode Island. These programs empower local governments to aggregate the electricity loads of residents, businesses, and/or municipal facilities. Most CCA programs emphasize reducing the cost of electricity. Some also focus on reducing greenhouse gas emissions, establishing new revenue streams to support local energy programs, or creating local jobs. Some are designed to accomplish several of these goals.

Source: <http://leanenergyus.org/cca-by-state/>

According to the EPA, advantages and challenges of CCAs are as follows:

Advantages:

- Potential retail electric rate reduction
- Enables rapid shift to greener power resources
- Local control of electricity generation, which can be responsive to local economic and environmental goals
- Expands consumer choices
- Can spur local jobs and renewable energy development

Challenges:

- Implementation is dependent on enabling state legislation
- Requires successful navigation of various CCA regulations and passing the appropriate ordinances
- Administrative costs
- Opt-in versus opt-out clauses can be confusing to consumers
- Opt-out clauses may result in locking in customers who do not want to be in the local choice program but failed to timely opt out
- Potential for push-back from utilities in traditionally regulated electricity states that would face new competition under CCAs
- Cost shifts to other customers of utilities when certain customers choose a CCA
- Low income customers may be harmed by signing up for higher rates

Source: <https://www.epa.gov/greenpower/community-choice-aggregation>

According to Lean Energy US, non-profit municipal utilities, or “munis”, provide highly reliable electricity supply at rates averaging 15 to 20 percent below the rates of traditional investor-owned utilities. Like munis, CCAs offer cost efficiencies, flexibility, and local control. But unlike munis, they do not face the capital-intensive and open-ended challenge of valuing, purchasing, and maintaining expensive utility infrastructure. CCA offers a “hybrid” approach that exists between the investor-owned (often monopoly) utility and a municipal (or member coop) utility. CCA reaps the benefits of controlling power supply and generation without the financial drag of purchasing and maintaining sometimes antiquated utility infrastructure. In this way, it is a great option for municipalities who want control over their power supply but don’t want the financial and operational burdens of owning their own utility.

### **California**

In California, the Public Utilities Commission voted unanimously in October 2018 to raise costs on CCA programs and direct access customers to avoid cost shifts that may arise when consumers choose local choice electricity providers. Under California state law, departing customers must pay an exit fee to cover the cost of electricity utilities have already committed to buy on their behalf. The California Commission voted to raise the power charge indifference adjustment (PCIA) to protect utilities’ remaining customers from higher bills resulting from the loss of customers that switch providers.

Source: <https://www.bloomberg.com/news/articles/2018-10-11/california-raising-costs-for-defectors-from-electric-utilities>

### **Massachusetts**

Massachusetts and New York Attorney Generals have taken positions that retail choice is harming residential customers.

On March 29, 2018, the Massachusetts Attorney General’s Office released a report that found that Massachusetts residential consumers paid competitive electric suppliers \$176.8 million more than they would have paid for electricity from their utility between July 2015 and June 2017. The report also found that low-income consumers are disproportionately affected because low-income consumers are more likely to sign up for competitive supply and are more likely to be charged higher rates.

See report at:

<https://www.mass.gov/files/documents/2018/03/29/Comp%20Supply%20Report%20Final%20032918.pdf>

### **ADMINISTRATIVE IMPLICATIONS**

The following was provided by the Public Regulation Commission (PRC):

This FIR reflects PRC’s technical staff’s analysis consistent with Commission policy, rules, and precedent, but does not reflect a position ratified by a vote of the full Commission.

The Local Choice Energy Act would result in an increased workload for the Commission and its staff because it requires the Commission to review new, additional filings, increases caseload, and requires litigation and rulemakings as specified below.

- Subsection A of Section 6 of the Act would require a local choice energy provider’s implementation plan to be filed with the Commission. Subsection B would require the Commission to notify any public utility serving customers eligible for service by the local choice energy provider that an implementation plan has been filed. Subsection C would require the Commission to acknowledge that it has received the implementation plan.
- Subsection D of Section 8 of the Act provides that the local choice energy provider may request the Commission to order the public utility or cooperative to provide the notice required by this section.
- Subsection C of Section 9 of the Act would require the Commission to expedite the complaint process for disputes regarding a public utility or cooperative’s violation of its obligations such that all complaints are resolved no more than 180 days following the filing of a complaint. Subsection D of Section 8 would require the Commission to determine remedies for violations. Subsection E of Section 8 would require the Commission to enforce the requirements of Section 8.
- Subsection B of Section 10 of the Act would require the Commission to 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.

- Section 11 of the Act would require the Commission to review a single compliance filing regarding exit fees. The section would also require the Commission to determine the appropriate amount of exit fees. The Commission would be further required to rule with an approval or denial of an exit fee based on regulatory criteria such as justness and reasonableness, a balancing of shareholder and ratepayer interests, the public interest, and consistency with the traditional ratemaking principles, the Local Choice Energy Act, and the PUA. However, Subsection B of Section 11 limits the exit fee to costs not including public utility return on equity or profit under certain conditions.
- Section 13 of the Act would require the Commission to adopt rules to implement the Local Choice Energy Act within 180 days of its passage.

## TECHNICAL ISSUES

The following was provided by the Public Regulation Commission (PRC):

Subsection D of Section 7 of the Act states that, “Once enrolled in a local choice energy program, any 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.” The Act does not provide for how to switch or how often one can switch which other States have in their laws. On its face, the Act does not allow customers to ever switch if they do not quickly opt out or stay in. An open question is whether the Commission can adopt rules to avoid a situation where customers from either side switch opportunistically creating an uncertain customer base for both the utility and the local choice provide which makes resource planning very problematic.

The Local Choice Energy Act appears, on its face, to not grant authority to the PRC over the local choice energy provider, as set forth below.

Subsection C of Section 6 of the Local Choice Energy Act would require the Commission to acknowledge that it has received the local choice energy provider’s implementation plan; but the Act does not state how the Commission is to make such an acknowledgment or whether Commission rules should include requirements for such implementation plan.

Subsection D of Section 6 of the Act requires that the local choice energy provider adopt an energy procurement policy, annual budget, fiscal management policy, determination of adequate resources to meet needs of customers, and determination that public safety is met for generation facilities from which provider obtains power that is ultimately sold to customers, but such documents and reports are not subject to Commission oversight.

Subsection C of Section 10 of the Act provides that 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 that the information required shall not 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.

Subsection B of Section 13 of the Act would prohibit the Commission from authorizing service by a local choice energy provider until the Commission has adopted rules for implementing the Local Choice Energy Act.

Subsection B of Section 15 of the Act provides that the Commission shall not terminate the services of a local choice energy provider.

On the other hand, Paragraph (3) of Subsection A of Section 11 requires the Commission to rule or decide about the approval or denial of an exit fee while Paragraph (1) of the same Subsection provides for the Commission to determine an exit fee. It is unclear what the implications of a Commission ruling denying an exit fee would be toward an ultimate determination of an exit fee. Also, an exit fee is not to recover public utility return on equity or profit on generating assets approved by the Commission before January 1, 2015. SB83 does not address whether the exit fee would recover any portion of a public utility’s existing long term power purchase agreement.

While the PRC’s authority over local energy choice providers appears to be very limited, Section 12 provides for the Commission to not discriminate against local energy choice programs with respect to funding awards, program eligibility or applicability of standards. Local energy choice energy choice programs are also to have the same opportunity to obtain funding, participate in programs and take other action for which public utilities and cooperatives would require PRC approval. Any PRC role over funding, programs or standards that would apply to cooperatives and public utilities but not to local energy choice providers is unclear.

While Section 4 provides for local energy choice providers to be subject to the current renewable portfolio standard requirements applicable to public utilities, SB83 is silent about whether local energy choice providers are subject to other requirements such as those for energy efficiency and transportation electrification.

**OTHER SUBSTANTIVE ISSUES**

The following was provided by the Public Regulation Commission (PRC):

The following table provides known CCA state policies.

State	Year Established	Statute	Notes and Resources
California	2002	<a href="#">Assembly Bill 117</a> and Senate Bill 790	Includes an opt-out provision. Public Utility Commission <a href="#">Customer Choice (ca.gov)</a> .
Illinois	2009	<a href="#">House Bill 362</a>	Includes an opt-out provision.
Massachusetts	1997	<a href="#">Acts 1997, Chapter 164</a>	Includes an opt-out provision and 100%

State	Year Established	Statute	Notes and Resources
			green option. Cape Light Compact, the country's oldest CCA, <a href="#">web page</a> . Department of Energy Resource's <a href="#">Guide to Municipal Electrical Aggregation in Massachusetts</a> .
New Jersey	2003	<a href="#">Assembly Bill 2165</a>	Includes an opt-out provision.
New York	2014	<a href="#">Governor's Press Release, Public Service Commission documents pending</a>	<a href="#">Reforming the Energy Vision (REV) web page</a> and <a href="#">fact sheet</a> .  100% green option.
Ohio	1999	<a href="#">Senate Bill 3; Senate Bill 221</a> (2007)	<a href="http://energychoice.ohio.gov/Pages/What is Aggregation.aspx">energychoice.ohio.gov/Pages/What is Aggregation.aspx</a>  Localities can select an opt-out or opt-in provision.  100% green option
Rhode Island	2002	<a href="#">House Bill 7786</a>	Includes an opt-out provision.  The Rhode Island Energy Aggregation Program <a href="#">web page</a> .

**TABLE: COMMUNITY CHOICE AGGREGATION STATE POLICIES**

Source: <http://www.ncsl.org/research/energy/community-choice-aggregation.aspx>

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The following was provided by the Public Regulation Commission (PRC):

The existing regulatory compact will remain in place in that electric utilities will continue to have the exclusive right and the obligation to serve and meet the customers' electric service needs in their respective service territory while that service remains under the PRC's jurisdiction.

**AMENDMENTS**

The following was provided by the Public Regulation Commission (PRC):

The Act could include a section to clarify the authority, if any, the Commission would have over the local choice energy provider regarding the details of the energy

implementation plan, the energy procurement policy, its annual budget, its fiscal management policy, its determination of adequate resources to meet needs of customers, or its determination that public safety is met for generation facilities from which provider obtains power that is ultimately sold to customers.

The Act could include a section to clarify when, how to and how often customers could switch (opt in or opt out of the local energy provider) and/or require the Commission to establish clear switching rules in order to avoid a problem where customers switch providers opportunistically.

JM/rl/al