

SENATE BILL 165

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Carrie Hamblen

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 CUSTOMERS OF A PUBLIC UTILITY OR COOPERATIVE TO AGGREGATE THEIR ELECTRIC LOADS IN THEIR LOCAL COMMUNITY AS A LOCAL CHOICE ENERGY PROVIDER; PROVIDING POWERS AND DUTIES OF LOCAL CHOICE ENERGY PROVIDERS; REQUIRING RULEMAKING; PROVIDING A PENALTY.

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

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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 Local Choice Energy Act:

A. "commission" means the public regulation commission;

B. "cooperative" means a rural electric distribution cooperative that has opted to participate in a local choice energy program;

C. "local choice energy program" means a program enacted 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.--

A. Customers of a public utility or a cooperative 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

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accordance with the provisions of the Local Choice Energy Act.

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, 2023.

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

D. A municipal, county or tribal government that serves as a local choice energy provider may purchase, sell or trade electricity with a public utility, cooperative, local choice energy provider or facility that produces, transmits or distributes electricity.

E. 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.

F. 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.

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

A. A local choice energy provider shall at a 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 associated with energy assigned to the provider. 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.

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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 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

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program and its operations;

(2) a rate-setting process ~~SCONC~~→, ~~including~~←SCONC ~~SCONC~~→that ensures that every rate made, demanded or received shall be just, fair and reasonable and←SCONC provisions for notice and customer protection;

(3) the methods for entering and terminating agreements with other entities;

(4) the rights and responsibilities of participating customers;

~~SCONC~~→(5) a complaint process that provides a customer with an opportunity to make a written complaint regarding the adoption of just, fair and reasonable rates, provide factual information to support the complaint and obtain a written response;←SCONC

~~SCONC~~→(5)←SCONC ~~SCONC~~→(6)←SCONC provisions for termination of the program; and

~~SCONC~~→(6)←SCONC ~~SCONC~~→(7)←SCONC a plan to procure adequate resources to meet the energy needs of its customers when the program begins service.

B. Within fifteen days after a local choice energy provider files its implementation plan with the commission, the commission shall:

(1) notify a 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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(2) acknowledge that the commission has received the implementation plan SCONC→.←SCONC SCONC→; and←SCONC

SCONC→(3) approve the implementation plan if the commission finds that the local choice energy provider has complied with the requirements in Subsection A of this section.←SCONC

C. Prior to serving customers, a local choice energy provider shall adopt the following documents and reports pursuant to the local choice energy provider's 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;

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(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 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.

D. Prior to serving customers, a local choice energy provider shall:

(1) establish rates for different classes of customers who own or lease rooftop solar systems, including:

(a) a rate, including a value, for the consumption of electricity supplied by the local choice energy provider in consideration of any applicable renewable energy credit for which the local energy choice provider is eligible; and

(b) a rate or value for the electricity that is supplied to the grid by the customer; and

(2) establish a process applicable for customers who own or lease rooftop solar systems for net metering to determine the net energy delivered from the local choice energy provider to the customer and from the customer to the local choice energy provider for each time-of-use or single

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rate period, as applicable, during a billing period.

E. To the extent feasible, a local choice energy provider shall establish rates and make other arrangements that honor customer subscriptions to community solar programs.

SECTION 7. [NEW MATERIAL] FORMATION.--

A. A municipality, county or Indian nation, tribe or pueblo that 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 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, 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 program through a joint powers agency established pursuant to the Joint Powers Agreements Act.

D. Following adoption of a local choice energy program through the ordinance or lawmaking required by

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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 rural electric distribution cooperative, or its successor in interest, on the same terms and conditions as are applicable to retail customers from the same class.

E. A privately owned community solar facility and subscribers of a privately owned community solar facility located within the jurisdiction of a local choice energy provider are automatically excluded from the local choice energy program but may opt in.

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 that 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 D of this section.

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

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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] RURAL ELECTRIC DISTRIBUTION COOPERATIVES--PARTICIPATION.--

A. A rural electric distribution cooperative may participate in a local choice energy program if a majority of its governing board votes to authorize participation.

B. A rural electric distribution cooperative that opts to participate in a local choice energy program is subject to the provisions of the Local Choice Energy Act.

SECTION 9. [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 in the local choice energy program; 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 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 a public utility or cooperative, or another direct means by which the customer may elect to receive electrical service through a 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 that has opted to participate in a local choice energy program 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

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billing process to provide one or more of the notices required.

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

A. Public utilities and cooperatives shall 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 that have opted to participate in a local choice energy program 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

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provider upon request.

C. The commission shall expedite the complaint process for disputes regarding a violation of the obligations of a public utility or cooperative pursuant to this section in order that all complaints are resolved no more than 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 and may impose a penalty on a public utility or cooperative that fails, omits or neglects to obey, observe or comply with a lawful order of the commission in accordance with Chapter 62, Article 12 NMSA 1978.

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 11. [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. Within one hundred eighty days of the effective date of the Local Choice Energy Act, the commission shall develop and approve as part of its rulemaking a standard operating agreement that addresses the basic rules and

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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 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 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 12. [NEW MATERIAL] PUBLIC EMPLOYEES.--

A. A person employed by a local choice energy

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provider within a municipality or county is a public employee.

B. An employee of a local choice energy provider or other entity that is a public employer that has a collective bargaining agreement in place with that provider shall retain the employee's bargaining agreements, benefits and bargaining units.

C. An employee of a local choice energy provider or other entity that is a public employer that is a member of an employee organization that provides its own retirement plan and health care plan may choose to keep the employee's existing retirement and health care plans or opt into the employer's retirement and health care plans.

D. The provisions of this section shall not apply to contracts for goods and services ~~SCONC~~→, including services for and relating to power, ←SCONC into which a local choice energy provider may enter.

SECTION 13. [NEW MATERIAL] EQUAL OPPORTUNITY.--

A. The commission shall not discriminate against local choice energy programs in the administration or award of funding, eligibility for programs or application of law.

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 rural electric distribution cooperatives.

SECTION 14. [NEW MATERIAL] COMMISSION RULEMAKING.--

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A. The commission shall adopt rules to implement the Local Choice Energy Act within ~~SCONC~~→one hundred eighty days←SCONC ~~SCONC~~→one year←SCONC of the effective date of that act. The rules shall include the requirements and mechanisms for load data sharing, standard operating agreements 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 not be required to pay charges for goods, services or programs for which they are ineligible or that do not directly benefit them.

E. The commission shall not require customers of a local choice energy program to assume debts, liabilities or obligations of the entity that enacted the local choice energy program.

SECTION 15. [NEW MATERIAL] DEVELOPMENT AND PROCUREMENT.--

A local choice energy provider:

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

- (1) local workforce development;

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(2) the selection and use of resources that are the most cost-effective among all feasible alternatives;

SCONC→(3) the verification of appropriate professional licensure;←SCONC

SCONC→(3)←SCONC SCONC→(4)←SCONC climate and environmental goals; and

SCONC→(4)←SCONC SCONC→(5)←SCONC public safety;

B. shall establish goals in its procurement policy and annually thereafter review those goals and make any updates or amendments necessary;

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

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

SECTION 16. [NEW MATERIAL] SALES.--A local choice energy provider may:

A. sell energy and related products and services to customers located within its jurisdiction;

B. provide retail service; and

C. engage in the wholesale market.

SECTION 17. [NEW MATERIAL] TERMINATION.--

A. A local choice energy provider may terminate services subject to an affirmative vote of its governing body.

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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.

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

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