

SENATE BILL 165

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

INTRODUCED BY

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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:

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

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underscored material = new
[bracketed material] = delete

1 distribution cooperative that has opted to participate in a
2 local choice energy program;

3 C. "local choice energy program" means a program
4 enacted by a municipality, county or Indian nation, tribe or
5 pueblo to combine the loads of multiple end-use customers for
6 the sale or purchase of electric energy or the provision of
7 other electric energy-related services;

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

13 E. "public utility" means an investor-owned
14 electric public utility.

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

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

21 B. A local choice energy program shall not be
22 enacted within the jurisdiction of an electric utility owned
23 and operated, directly or indirectly, by a municipal
24 corporation that provided electrical service as of January 1,
25 2023.

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

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

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

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

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

22 A. A local choice energy provider shall at a
23 minimum meet the renewable portfolio standard requirements, as
24 provided in this section, to include renewable energy in its
25 electric energy supply portfolio as demonstrated by its

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1 retirement of renewable energy certificates associated with
2 energy assigned to the provider. Requirements and targets of
3 the renewable portfolio standard are as follows:

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

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

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

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

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

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

23 A. An affirmative declaration shall not be required
24 to become a customer of a local choice energy provider, but
25 each customer shall be informed of the customer's right to opt

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1 out of the local choice energy program. If a negative
2 declaration is not made by a customer, that customer shall be
3 served through the local choice energy program.

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

14 SECTION 6. [NEW MATERIAL] IMPLEMENTATION.--

15 A. A local choice energy provider shall develop an
16 implementation plan detailing the process and characteristics
17 of the local choice energy program. The implementation plan,
18 and any subsequent changes to it, shall be considered and
19 adopted at a duly noticed public meeting. If the
20 implementation plan is adopted, it shall be filed with the
21 commission. The implementation plan shall contain:

22 (1) an organizational structure for the
23 program and its operations;

24 (2) a rate-setting process, including
25 provisions for notice and customer protection;

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

3 (4) the rights and responsibilities of
4 participating customers;

5 (5) provisions for termination of the program;
6 and

7 (6) a plan to procure adequate resources to
8 meet the energy needs of its customers when the program begins
9 service.

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

13 (1) notify a public utility serving the
14 customers eligible for service by the local choice energy
15 provider that an implementation plan has been filed; and

16 (2) acknowledge that the commission has
17 received the implementation plan.

18 C. Prior to serving customers, a local choice
19 energy provider shall adopt the following documents and reports
20 pursuant to the local choice energy provider's rules and
21 procedures, the adoption of which is the responsibility of the
22 local choice energy provider and is not subject to commission
23 oversight:

24 (1) an energy procurement policy that defines
25 and includes criteria for the selection of energy resources

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1 that are the most cost-effective among feasible alternatives
2 and meet the local choice energy provider's goals with respect
3 to local workforce development, climate and environment and
4 public safety;

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

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

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

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

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

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

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

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

7 (2) establish a process applicable for
8 customers who own or lease rooftop solar systems for net
9 metering to determine the net energy delivered from the local
10 choice energy provider to the customer and from the customer to
11 the local choice energy provider for each time-of-use or single
12 rate period, as applicable, during a billing period.

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

16 **SECTION 7. [NEW MATERIAL] FORMATION.--**

17 A. A municipality, county or Indian nation, tribe
18 or pueblo that elects to implement a local choice energy
19 program within its jurisdiction shall do so by municipal or
20 county ordinance or, in the case of a tribal government,
21 through the tribal government process in place.

22 B. A municipality, county or Indian nation, tribe
23 or pueblo may authorize, by affirmative resolution of its
24 governing council or board, that another entity that is
25 authorized to be a local choice energy provider act as the

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1 local choice energy provider on its behalf. If a municipality,
2 county, Indian nation, tribe or pueblo, by resolution,
3 authorizes another entity to be the local choice energy
4 provider for the municipality, county, Indian nation, tribe or
5 pueblo, that authorized entity shall comply with the
6 requirement of Subsection A of this section.

7 C. Two or more entities authorized to be a local
8 choice energy provider may jointly enact a local choice energy
9 program through a joint powers agency established pursuant to
10 the Joint Powers Agreements Act.

11 D. Following adoption of a local choice energy
12 program through the ordinance or lawmaking required by
13 Subsection A of this section, the program shall allow any
14 retail customer to opt out and the customer shall continue to
15 be served by the existing public utility or rural electric
16 distribution cooperative, or its successor in interest, on the
17 same terms and conditions as are applicable to retail customers
18 from the same class.

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

24 F. Energy distribution and transmission services
25 shall be provided by a public utility or cooperative at the

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1 same rates, terms and conditions, as approved by the
2 commission, to local choice energy customers and retail
3 customers that are served by that public utility or
4 cooperative.

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

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

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

21 SECTION 8. [NEW MATERIAL] RURAL ELECTRIC DISTRIBUTION
22 COOPERATIVES--PARTICIPATION.--

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

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

4 SECTION 9. [NEW MATERIAL] NOTICE.--

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

7 (1) eligible participating customers at least
8 twice within two calendar months, or sixty days, in advance of
9 the date of commencing automatic enrollment in the local choice
10 energy program; and

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

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

16 C. Notice shall include:

17 (1) a statement that the customer will be
18 automatically enrolled in the local choice energy program and
19 that the customer has the right to opt out of the local choice
20 energy program without penalty;

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

23 (3) a description of the process by which a
24 customer may opt out of the local choice energy program. The
25 opt-out may take the form of a self-addressed return postcard

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1 expressing the customer's election to remain with, or return
2 to, electrical service provided by a public utility or
3 cooperative, or another direct means by which the customer may
4 elect to receive electrical service through a public utility or
5 cooperative providing service in the area.

6 D. The local choice energy provider may request the
7 commission to order the public utility or cooperative to
8 provide the notice required by this section. A public utility
9 or cooperative shall be entitled to recover from the local
10 choice energy provider the reasonable costs incurred for
11 providing the notice. The public utility or cooperative that
12 has opted to participate in a local choice energy program shall
13 fully cooperate with the local choice energy provider in
14 determining the feasibility and costs associated with using the
15 public utility's or cooperative's normally scheduled monthly
16 billing process to provide one or more of the notices required.

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

19 A. Public utilities and cooperatives shall
20 cooperate fully with any local choice energy provider that
21 investigates, pursues or implements a local choice energy
22 program, including by providing the local choice energy
23 provider with:

24 (1) appropriate billing and electrical load
25 information;

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

5 B. Public utilities and cooperatives that have
6 opted to participate in a local choice energy program shall
7 continue to provide metering, billing, collection and customer
8 service to retail customers that participate in local choice
9 energy programs; provided that if the local choice energy
10 program makes a formal request to the public utility or
11 cooperative to assume some or all of the metering, billing,
12 collection or customer service to customers, the local choice
13 energy program shall assume these responsibilities. Bills
14 shall identify the local choice energy provider as providing
15 the electrical energy component of the bill and shall include
16 bill inserts provided and paid for by the local choice energy
17 provider upon request.

18 C. The commission shall expedite the complaint
19 process for disputes regarding a violation of the obligations
20 of a public utility or cooperative pursuant to this section in
21 order that all complaints are resolved no more than one hundred
22 eighty days following the filing of a complaint.

23 D. If the commission finds that a public utility or
24 cooperative has violated this section, the commission shall
25 consider the impact of the violation upon the local choice

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1 energy provider in determining remedies and may impose a
2 penalty on a public utility or cooperative that fails, omits or
3 neglects to obey, observe or comply with a lawful order of the
4 commission in accordance with Chapter 62, Article 12 NMSA 1978.

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

8 SECTION 11. [NEW MATERIAL] OPERATION WITH PUBLIC UTILITY
9 OR COOPERATIVE.--

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

14 B. Within one hundred eighty days of the effective
15 date of the Local Choice Energy Act, the commission shall
16 develop and approve as part of its rulemaking a standard
17 operating agreement that addresses the basic rules and
18 responsibilities of each party and includes equitable
19 responsibilities and remedies for all parties.

20 C. A local choice energy provider shall notify the
21 commission upon entering into an operating service agreement
22 with a public utility or cooperative. The commission may
23 require the local choice energy provider to submit basic
24 information to the commission to ensure that the operating
25 service agreement complies with basic consumer protection rules

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1 and legal requirements, but the information required shall not
2 be burdensome to produce or unreasonable in cost or scope and
3 provision of the information may be conditioned on a
4 confidentiality agreement or protective order.

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

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

17 SECTION 12. [NEW MATERIAL] PUBLIC EMPLOYEES.--

18 A. A person employed by a local choice energy
19 provider within a municipality or county is a public employee.

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

25 C. An employee of a local choice energy provider or

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1 other entity that is a public employer that is a member of an
2 employee organization that provides its own retirement plan and
3 health care plan may choose to keep the employee's existing
4 retirement and health care plans or opt into the employer's
5 retirement and health care plans.

6 D. The provisions of this section shall not apply
7 to contracts for goods and services into which a local choice
8 energy provider may enter.

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

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

13 B. Local choice energy programs shall have the same
14 and equal opportunity to obtain funding, participate in
15 programs and take other actions that require approval by the
16 commission as public utilities and rural electric distribution
17 cooperatives.

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

19 A. The commission shall adopt rules to implement
20 the Local Choice Energy Act within one hundred eighty days of
21 the effective date of that act. The rules shall include the
22 requirements and mechanisms for load data sharing, standard
23 operating agreements and fee structures.

24 B. The commission shall not authorize service by a
25 local choice energy provider until the commission has adopted

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1 rules for implementing the Local Choice Energy Act.

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

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

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

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

15 A local choice energy provider:

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

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

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

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

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

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

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

11 B. provide retail service; and

12 C. engage in the wholesale market.

13 SECTION 17. [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.