

1 SENATE BILL 83

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

18 B. A local choice energy program shall not be
19 enacted within the jurisdiction of an electric utility owned
20 and operated, directly or indirectly, by a municipal
21 corporation that provided electrical service as of January 1,
22 2021.

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

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1 customers within its jurisdiction.

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

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

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

14 A. A local choice energy provider shall at a
15 minimum meet the renewable portfolio standard requirements, as
16 provided in this section, to include renewable energy in its
17 electric energy supply portfolio as demonstrated by its
18 retirement of renewable energy certificates. Requirements and
19 targets of the renewable portfolio standard are as follows:

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

24 (2) no later than January 1, 2030, renewable
25 energy shall comprise no less than fifty percent of the local

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1 choice energy provider's total retail sales to New Mexico
2 customers;

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

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

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

13 C. A local choice energy provider shall meet the
14 requirements and targets of the renewable portfolio standard
15 pursuant to Subsection A of this section as demonstrated by the
16 provider's retirement of renewable energy certificates
17 associated with energy assigned to the provider.

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

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

25 B. If an existing local choice energy program

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

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

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

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

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1 agreements with other entities;

2 (5) the rights and responsibilities of
3 participating customers;

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

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

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

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

18 D. 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 own decision-
21 making rules and procedures, the adoption of which is the
22 responsibility of the local choice energy provider and is not
23 subject to commission 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 SECTION 7. [NEW MATERIAL] FORMATION.--

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

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1 through the tribal government process in place.

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

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

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

23 E. Following adoption of a local choice energy
24 program through the ordinance or lawmaking required by
25 Subsection A of this section, the program shall allow any

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1 retail customer to opt out and the customer shall continue to
2 be served by the existing public utility or cooperative, or its
3 successor in interest, on the same terms and conditions as are
4 applicable to retail customers from the same class.

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

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

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

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

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1 SECTION 8. [NEW MATERIAL] NOTICE.--

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

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

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

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

12 C. Notice shall include:

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

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

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

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1 or cooperative providing service in the area.

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

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

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

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

25 B. Public utilities and cooperatives shall continue

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

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

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

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

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

25 A. A local choice energy provider shall have an

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1 operating service agreement with the applicable public utility
2 or cooperative prior to furnishing electric service to
3 customers within its jurisdiction.

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

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

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

25 E. Once notified of the commencement of a local

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1 choice energy program, the public utility or cooperative shall
2 transfer all applicable accounts to the local choice energy
3 program within thirty days from the date of the close of the
4 normally scheduled monthly metering and billing process.

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

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

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

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

24 (3) the commission shall issue a ruling or
25 decision that includes findings and approves or denies an exit

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1 fee as described in this section. The ruling or decision shall
2 be made on the basis of whether the exit fee:

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

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

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

22 (2) contracts or utility-owned generation that
23 have been offered for sale in a competitive solicitation
24 process since the passage of the Local Choice Energy Act that
25 complies with the Public Utility Act and commission rules.

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1 Regardless of the duration of the contract or anticipated life
2 cycle of utility-owned generation, nothing in this subsection
3 shall be interpreted to delay, frustrate or conflict with the
4 termination of the exit fee contained in Subsection E of this
5 section.

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

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

12 (a) takes into account the load that is
13 expected to depart from the public utility or cooperative for
14 local choice energy programs in the public utility's or
15 cooperative's service territory;

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

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

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

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

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

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

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

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

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

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

13 A. The commission shall not discriminate against
14 local choice energy programs in the administration or award of
15 funding, eligibility for programs or applicability of standards
16 under the Energy Transition Act or other laws.

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

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

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

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1 cost recovery and fee structures.

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

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

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

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

17 A local choice energy provider:

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

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

25 B. may enter into contracts with third parties,

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1 including public utilities and cooperatives, to contract for
2 energy production; and

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

6 SECTION 15. [NEW MATERIAL] TERMINATION.--

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

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

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