

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 165

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

DISCUSSION DRAFT

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

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 choice energy program;

12 E. "percent of the local choice energy provider's
13 total retail sales" means the percentage of megawatt hours or
14 kilowatt hours of total retail sales; and

15 F. "public utility" means an investor-owned
16 electric public utility.

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

18 A. A municipality, county or tribal jurisdiction
19 served by a public utility or a cooperative shall have the
20 right to aggregate the electric loads of eligible retail
21 electricity consumers within the jurisdiction by forming a
22 local choice energy program in accordance with the provisions
23 of the Local Choice Energy Act.

24 B. A local choice energy program shall not be
25 enacted within the jurisdiction of an electric utility owned

1 and operated, directly or indirectly, by a municipal
2 corporation that provided electrical service as of January 1,
3 2023.

4 C. A local choice energy provider shall offer
5 customers within its jurisdiction the opportunity to purchase
6 electricity or sell electricity back to the provider.

7 D. A municipal, county or tribal government that
8 serves as a local choice energy provider may enter into an
9 agreement to purchase, sell or trade electricity with a public
10 utility, cooperative, local choice energy provider or facility
11 that produces, transmits or distributes electricity.

12 E. A local choice energy provider shall be solely
13 responsible for all electricity generation procurement
14 activities on behalf of the local choice energy provider's
15 customers.

16 F. A local choice energy provider may solicit bids,
17 broker and contract for the sale and purchase of electricity
18 and energy services for all or some of the loads of eligible
19 retail electricity consumers.

20 SECTION 4. [NEW MATERIAL] RENEWABLE PORTFOLIO STANDARD--
21 IN-STATE POWER GENERATION 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 of the renewable
3 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 the local choice
7 energy provider's 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 the local choice
11 energy provider's customers;

12 (3) no later than January 1, 2040, renewable
13 energy shall comprise no less than eighty percent of the local
14 choice energy provider's total retail sales to the local choice
15 energy provider's customers; and

16 (4) no later than January 1, 2045, renewable
17 energy shall comprise no less than one hundred percent of the
18 local choice energy provider's total retail sales to the local
19 choice energy provider's customers.

20 B. At least fifty percent of a local choice energy
21 provider's power generation shall be in-state.

22 C. A local choice energy provider shall prepare and
23 publicize a summary of its purchases and generation of
24 renewable energy during the preceding calendar year. If a
25 local choice energy provider has failed to meet the

1 requirements of Subsection A or B of this section during the
2 preceding calendar year, the local choice energy provider shall
3 present a plan to achieve compliance at a duly noticed public
4 meeting pursuant to the local choice energy provider's rules
5 and procedures.

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

7 A. A retail customer, including a resident,
8 business or government facility, shall be automatically
9 enrolled in the local choice energy program. Each customer
10 shall be informed of the customer's right to opt out of the
11 local choice energy program at any time.

12 B. If an existing local choice energy program
13 customer moves the location of the customer's electric service
14 within the jurisdiction of the local choice energy provider,
15 the customer shall retain the same electric service as prior to
16 the move. If a customer moves the location of the customer's
17 electric service from outside to inside the jurisdiction of a
18 local choice energy provider, the customer shall be
19 automatically enrolled in the local choice energy program and
20 informed of the customer's right to opt out of the local choice
21 energy program.

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

23 A. A local choice energy provider shall develop an
24 implementation plan detailing the process and characteristics
25 of the local choice energy program. The implementation plan,

1 and any subsequent changes to it, shall be considered and
2 adopted at a duly noticed public meeting. If the
3 implementation plan is adopted, it shall be filed with the
4 commission. The implementation plan shall contain:

5 (1) an organizational structure for the
6 program and its operations;

7 (2) a rate-setting process that ensures that
8 every rate made, demanded or received shall be just, fair and
9 reasonable and provides for notice and customer protection;

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

12 (4) the rights and responsibilities of
13 participating customers;

14 (5) a complaint process that provides a
15 customer with an opportunity to make a written complaint
16 regarding the adoption of just, fair and reasonable rates,
17 provide factual information to support the complaint and obtain
18 a written response;

19 (6) provisions for termination of the program;
20 and

21 (7) a plan to procure adequate resources to
22 meet the energy needs of its customers when the program begins
23 service, including an assessment of available conservation,
24 efficiency and other resources available for meeting loads, a
25 power supply plan to meet the renewable portfolio and in-state

1 energy generation standards set forth in the Local Choice
2 Energy Act, a range of forecasts of the loads to be served by
3 the local choice energy provider for, at a minimum, the first
4 five years, a description of the basis of the forecasts and a
5 reserve margin to meet the provider's projected loads.

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

9 (1) notify a public utility serving the
10 customers eligible for service by the local choice energy
11 provider that an implementation plan has been filed;

12 (2) acknowledge that the commission has
13 received the implementation plan; and

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

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

23 (1) an energy procurement policy that defines
24 and includes criteria for the selection of energy resources
25 that are the most cost-effective among feasible alternatives,

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1 meet the local choice energy provider's goals with respect to
2 local workforce development and public safety and will ensure
3 compliance with the renewable portfolio and in-state energy
4 generation standards set forth in the Local Choice Energy Act;

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. A local choice energy provider shall publish the
22 documents and reports required by Subsection C of this section
23 in such a manner that the documents and reports are available
24 to the local choice energy provider's customers.

25 E. Prior to serving customers, a local choice

1 energy provider shall:

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

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

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

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

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

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

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

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1 B. A municipality, county or Indian nation, tribe
2 or pueblo may authorize, by affirmative resolution of its
3 governing council or board, another entity to be a local choice
4 energy provider and act on its behalf; provided that the entity
5 is compliant with the provisions of the Local Choice Energy
6 Act.

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 as determined by the commission and as
19 authorized by the commission pursuant to the Public Utility
20 Act.

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

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

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

12 H. Customers that return to a public utility or
13 cooperative to procure electricity services shall be subject to
14 the same terms and conditions that are applicable to retail
15 customers from the same class.

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

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) a current list of the names, mailing
25 addresses, account numbers and any other information necessary

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1 for the provider to provide notice of enrollment;

2 (2) appropriate billing and electrical load
3 information;

4 (3) electrical consumption data; and

5 (4) other data detailing electricity usage and
6 patterns of usage, as determined by the commission and in
7 accordance with procedures established by the commission.

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

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, including services for and
8 relating to power, into which a local choice energy provider
9 may enter.

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

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

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

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

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

25 B. The commission shall not authorize service by a

1 local choice energy provider until the commission has adopted
2 rules for implementing the Local Choice Energy Act.

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

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

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

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

16 A local choice energy provider:

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

- 19 (1) local workforce development;
20 (2) the selection and use of resources that
21 are the most cost-effective among all feasible alternatives;
22 (3) the verification of appropriate
23 professional licensure;
24 (4) the renewable portfolio and in-state
25 energy generation standards set forth in the Local Choice

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1 Energy Act;

2 (5) public safety;

3 (6) the construction of facilities that
4 generate electricity for retail customers that employ
5 apprentices, subject to the availability of qualified
6 applicants, from an apprenticeship program for in-state power
7 supply; and

8 (7) the payment of workers by contractors at
9 the prevailing wage;

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

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

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

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

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

23 B. provide retail service; and

24 C. engage in the wholesale market.

25 SECTION 17. [NEW MATERIAL] TERMINATION.--

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

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

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

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