

3-24-1. Electric utility; municipality may acquire and operate; certain municipalities may acquire by contract or condemnation.

A. Any municipality may, by ordinance, acquire, operate and maintain an electric utility for the generation and distribution of electricity to persons residing within its service area. The service area of a municipality includes:

- (1) territory within the municipality;
- (2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;
- (3) the sale of electricity to the United States government, the state of New Mexico or any department or agency of these governments; and
- (4) as further provided in [Section 3-24-8](#) NMSA 1978.

B. No municipality may sell electric power and energy on a retail basis except as provided in Subsection A of this section.

C. The acquisition of any electric utility facility beyond the municipal boundary shall be financed only by the sale of revenue bonds.

D. Any municipality that owns a generating facility or an interest in a jointly owned generating facility may sell surplus electric power and energy on a wholesale basis either within or outside its service area. Any contract or agreement to sell surplus electric power and energy may be entered into on a public bid basis, a competitive basis or a negotiated basis, as the municipality may determine; provided, however, that subject to the sale or other interchange of power and energy with a joint participant or a co-member of a power pool necessary or convenient to the economical operation of a generating facility or a jointly owned generating facility or contractual requirements of a power pool in which the municipality is a member, such surplus electric power and energy shall be subject to a preference right to purchase by:

- (1) first, municipalities that own electric facilities on July 1, 1979;
- (2) second, public electric utilities, investor-owned utilities and electric cooperatives subject to general or limited regulation by the New Mexico public utility commission and the United States of America or any of its departments or agencies; and
- (3) any other person or entity.

E. Municipalities located within a class A county and having a population of more than sixty thousand, but less than one hundred thousand according to the 1990 federal decennial census, may acquire, maintain, contract for and condemn for use as a municipal utility privately owned electric facilities used or to be used for the furnishing and supply of electricity to the municipality or inhabitants within its service area. The service area of a municipality authorized to acquire, maintain, contract for or condemn private facilities pursuant to this subsection includes customers located in:

- (1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) United States government-owned installations, the state or any department or agency of these governments; and

(4) as further provided in [Section 3-24-8](#) NMSA 1978.

F. A municipality that acquires, maintains, contracts for or condemns privately owned electric facilities for use as a municipal utility pursuant to the provisions of Subsection E of this section shall:

(1) not use revenues earned from the electric facilities for any purposes other than those directly related to the furnishing and supply of electricity to the municipality or inhabitants within the service area;

(2) not restrict use of the electric facilities or distribution system to any person authorized to use the facilities or distribution system pursuant to state law; and

(3) adopt a shared payment policy for line extensions, with public input, that is fair and equitable, requiring reasonable contributions from the persons who will directly benefit from the line extension and not imposing an unreasonable burden on the municipality or inhabitants within the service area that do not directly benefit from the line extension.

G. Condemnation authorized in this section shall be conducted in the manner of proceedings provided by the Eminent Domain Code [[42A-1-1](#) through [42A-1-33](#) NMSA 1978].

History: 1953 Comp., § 14-23-1, enacted by Laws 1965, ch. 300; 1979, ch. 260, § 4; 1993, ch. 282, § 5; 1997, ch. 228, § 2.