
**COMMUNITY CHOICE
AGGREGATION:
GENERIC DATA PROTECTION PLAN**

VILLAGE, TOWN, CITY OF _____

PARTICIPATING IN

NEW YORK

ENERGY BUYING GROUP _____

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INTRODUCTION

On April 21, 2016, the New York State Public Service Commission (“Commission” or “NYSPSC”) issued its Order Authorizing Framework for Community Choice Aggregation Opt-out Program (“CCA Order” or “the Order”), in which it requires the CCA Administrator to submit a Data Protection Plan (“DPP” or “Plan”). The DPP must describe how the CCA Administrator will ensure that each entity that has access to personally identifiable information as part of the CCA Program, which may or may not include the Municipality, contractors, and selected suppliers, provides the same level of consumer protections as currently provided by Utilities and ESCOs. This includes data security protocols and restrictions to prevent the sale of the data or their use for inappropriate purposes, such as advertising. The DPP will ensure that municipalities and the CCA Administrator protect data through their CCA Plans and practices as is currently required of Utilities and ESCOs.

Since Utilities must be assured that the data that they provide will be protected and used appropriately, this DPP will incorporate the most recent version of any and all Data Security Agreements (DSA) between Utilities and the CCA Administrator, which will be updated from time to time, to ensure that this plan adheres to the most current regulations and guidance applicable to CCAs. The CCA Order directed all Utilities affected by the Order to develop and file a proposed standard DSA outlining how the data from the Utility can be transferred and protected consistent with Utility security practices. To the extent that the DSA is inconsistent with this DPP, the DSA shall govern. As needed this DPP will be revised and filed with the Commission to ensure consistency with applicable rules for a given Utility. The DSA appropriate to the Utility(ies) serving each municipality will be attached to this document as Appendix A.

GENERAL STATEMENT

The cornerstone of MEGA’s DPP is in identifying, differentiating, and understanding the types of data that would be handled in a CCA Program. Different categories of data require different levels of security, and the access to data categories would be limited to those parties involved in the formation and operation of a CCA who would require access to those data in order to perform their respective roles. Thus, data protection protocols will be tailored to the categories of data involved and the roles of persons with access to those data.

TYPES OF DATA, USES, AND SECURITY PROTOCOL

As per the Order, three types of data¹ are necessary to implement a CCA Program: Aggregated Customer and Consumption (usage), Customer Contact Information, and Detailed Customer Information. Below is a description of the data, their intended use in the CCA Program, and the corresponding protocol and restrictions to not only protect the data, but to prevent the sale of the data or their use for inappropriate purposes.

AGGREGATED CUSTOMER AND CONSUMPTION (USAGE) DATA

This information will include summary load data for all automatically eligible customers² to be transferred from the Utility to the CCA Administrator within twenty days of its request, as specified in the Order. These data will be used by the Municipality and/or CCA Administrator to bid out the energy consumption needs of a given municipal jurisdiction to ESCOs. Aggregate data will not include any personal or sensitive information about any individual customer. Rather, these aggregate data will include the number of customers by service class, the aggregated peak demand (kW) by month for the past 12 months by service class to the extent possible³, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class, and any other aggregated data authorized by the Commission in the future or specifically negotiated between the Utility and the CCA. MEGA acknowledges the Order's position that a Utility not provide data for any service class that contains so few customers, or in which one customer makes up such a large portion of the load, that the aggregated information could provide significant information about an individual customer's usage.

¹ MEGA originally identified an additional data type "basic/geographic customer data" needed to avoid inadvertent enrollment of non-residents. In the Joint Utilities' Response to MEGA Petition for Clarification (Case 14-M-0224; Issued April 27, 2017) the JU indicated that aggregated customer and consumption (usage) data could be aggregated based on appropriate tax district and/or zip code and that a detailed review of addresses contained in the customer contact information data set would be possible before the opt-out process begins. The combination of this additional support of the Utilities makes the need for "basic/geographic customer data" redundant.

² AUTOMATICALLY ELIGIBLE CUSTOMERS: shall mean customers in those utility service classes eligible for inclusion in the CCA Program on an opt-out basis, as set forth in the NYSPSC Order Authorizing CCAs, Appendix C, or as otherwise specified by the Commission. Generally, these classes of customers include those receiving residential electric or gas supply service, including those in multi-family housing, certain types of institutions, and some small commercial customers covered by "small general service" class designations. Automatically Eligible Customers shall not include customers' accounts that have already been enrolled in service through an ESCO, enrolled in utility programs which require them to take supply service from their current utility, or that have a block on their utility account at the time of CCA formation; those customers shall be eligible to participate on an opt-in basis, if they so desire.

³ MEGA is assuming that "aggregated peak demand" refers generally to aggregated monthly peak usage which each utility may have a unique way to calculate and may identify with a slightly different term (e.g. peak load contribution)

However, MEGA suggests that, rather than treating all aggregate data as potentially confidential to avoid this problem, the Utility(ies) should be permitted to alert a CCA Administrator that there exists a service class with only one or a few customer(s), and to suggest that this service class be combined with another of a similar type when the aggregate data are released, in order to protect the member(s) of the unique service class, as contemplated by the CCA Order.⁴ Additionally, the Aggregated Customer and Consumption (usage) Data will be aggregated by the Utility by tax district and/or zip code in a way so as to ensure only the inclusion of data from automatically eligible consumers served by the Utility that are located within the Municipality (city, town, village)⁵.

The parties handling the Aggregated Customer and Consumption (usage) Data that would be provided by the Utility will be the Municipality and the CCA Administrator. This information will not include personal data that can be used to identify customers served by the Utility. Personal data includes, but is not limited to: customer name, email address, utility account number, consumption or payment history. Additionally, potentially sensitive data such as Social Security Number, passport number, drivers' license number, credit card or debit card number will not be included in the Aggregated Customer and Consumption (usage) Data.

Therefore, beyond the Municipality's and/or the CCA Administrator's avowal to only use this type of data for CCA purposes, and to not sell the data, no specific data security protocol is required. The protocol for data transfer will be electronic, following a process acceptable to the Utility, as outlined in the Data Security Agreement.

CUSTOMER CONTACT INFORMATION

The CCA Order recognizes a second category of basic customer data which is meant to be used for the opt-out process. The CCA order refers to these data as "Customer Contact Information." (CCA Order at 43.) MEGA believes that this basic eligibility-related data should be further broken into two datasets which are needed for different purposes, which would be handled by different entities and which require different levels of protection.

The first dataset will be sent directly from the Utility to the selected ESCO and will be the Customer Contact Information as defined in the Order.⁶ The second dataset will be generated by the ESCO and sent directly to MEGA. This second dataset will be a subset of the Customer Contact Information and contain only service addresses and customer classifications.

⁴ CCA Order at 44.

⁵ Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Joint Utilities Response to MEGA Petition for Clarification (Issued April 27, 2017).

⁶ In accordance with the CCA Order, the information requested in this transaction would include the name of the customer of record, mailing address, account number, and primary language, if available, as well as any customer-specific alternate billing name and address. This information shall not include customer-specific usage data or low-income status, which will not be exchanged during this step of the CCA formation process. See CCA Order at 44-45.

These data are used to confirm that each service address contained in the list is in fact within the Municipality's jurisdiction, based on tax maps and/or other public information. Any edits of this dataset will be provided to the ESCO allowing them to generate a final, confirmed list of automatically eligible service addresses located within a given municipal jurisdiction and to which opt-out letters should be sent. While the form and content of the opt-out letters will be prepared by the CCA Administrator and the municipality, approved by the State, and sent to customers on Municipal letterhead as required by the CCA Order, the selected ESCO will be responsible for mailing those letters to the appropriate customers based on Customer Contact Information obtained from the Utility and the accurate record of automatically eligible accounts obtained from the CCA Administrator through this process.

This subset of data and their use for authenticating eligibility and location of service addresses will preserve the integrity of the role of elected governing boards as a proxy for customer consent, as discussed in the White Paper and Order⁷ and ensure customers not residing within municipalities authorizing CCA are not inadvertently enrolled in a CCA Program for which they are not eligible.

The only party receiving the complete set of Customer Contact Information from the Utility will be the selected ESCO. MEGA asserts that the subset of the Customer Contact Information shared with MEGA by the Utility, i.e. – a list of customer service addresses within a Municipality's jurisdiction, without names, account numbers or other personal information — represents information which is already publicly available in municipal records, such as tax assessment rolls, and thus is information that requires no additional protection beyond the Municipality's normal data-handling procedures. As is the case with the Aggregated Customer and Consumption (usage) Data, no personal and/or sensitive data about any individual customer will be requested from the Utility or exchanged with the CCA Administrator or Municipality. Therefore, no specific data security protocol is required other than the Municipality's and/or the CCA Administrator's covenant to not sell the data, and to use them for CCA purposes only. Again, the protocol for data transfer will be electronic, following a process acceptable to the Utility, as outlined in the Data Security Agreement.

The Customer Contact Information acquired by the ESCO would be transferred between the Utility and ESCO, in accordance with data protection protocols and regulations already in place for these regulated entities. The CCA Administrator or Municipality will neither request nor accept records containing full Customer Contact Information beyond the subset of the Customer Contact Information discussed above.

⁷ See CCA Order at page 20.

DETAILED CUSTOMER INFORMATION

Detailed Customer Information will pertain to automatically eligible customers and will be transferred to the selected ESCO within five days of request as specified in the Order. These data will include, customer-specific information such as: name, service address, mailing address, utility account number, and alternate billing name and address, usage and any other Detailed Customer Information authorized by the Commission in the future or specifically negotiated between the Utility and the CCA. This information will be transferred from the Utility(ies) to the ESCO once supply contracts have been executed between the MEGA, as CCA Administrator, or Municipality(ies) and the ESCO. The Detailed Customer Information will be used by the ESCO only to enroll the automatically eligible CCA customers who have not opted out of the CCA Program. The ESCO will also provide data to the Utilities regarding final enrollment lists, customers who have opted out of the CCA, etc. The protocol for these enrollment-related data transfers will be electronic, as a file transfer made via encrypted FTP or other secure process as agreed to by the Utility and ESCO awarded the supply agreement.

Since Utilities and ESCOs are regulated entities which are obligated to adhere to customer data security protection protocols, including the UBP and DPS regulations and guidance in order to do business in New York, these entities would necessarily be required to properly handle this personally identifiable information, as they already do for their own customers. MEGA's CCA model eliminates the need for data that contain personally identifiable information to be exchanged among the other parties involved in forming and administering the CCA, which reduces the potential for inadvertent data breaches and improper use of protected information. For security reasons, Municipalities and MEGA will not request nor accept this level of customer data, whether at the enrollment stage or later in the CCA process.

Once the CCA is formed, Detailed Customer Information will be shared monthly, or with similar regularity (e.g., tied to a Utility's billing cycles), between the Utility and the ESCO awarded the supply contract to facilitate the opt-out process of new automatically eligible customers within the municipal jurisdiction. The protocol for data transfer will be electronic, as a file transfer made via encrypted FTP or other secure process as agreed to by the Utility and ESCO awarded the supply agreement.

As noted above, the Detailed Customer Information will be handled only by the ESCO once it has been awarded the CCA Energy Supply Agreement, the opt-out period has ended and the customer enrollment period has begun. Although this class of information is customer-specific, and non-anonymized, neither MEGA as the CCA Administrator nor Municipality(ies) will have access to these customer lists. It is important to note that these data are not necessary for MEGA and/or the Municipality to perform their role. Additionally, MEGA believes that an effective CCA Data Protection Plan should limit access to customer-specific information only to entities that need it to fulfill their obligations.

Customers who opt into the CCA Program (i.e. at the end of their individual ESCO contract; customers not automatically eligible for opt-out enrollment; etc.) will be required to provide their individual consent to the ESCO awarded the supply agreement as part of the opt-in process, and thus will be covered under existing UBP practices and protections.

ESCOs are already subject to Uniform Business Practices (“UBP”), and working with customer specific data, such as the Detailed Customer Information, are part and parcel of their everyday operations. UBP Section 4(F) prohibits an ESCO, its employees, agents and designees from selling, disclosing, or providing any customer information obtained from a Utility to others. Thus, ESCOs are already obligated by law to refrain from improperly using the Detailed Customer Information obtained from Utilities in connection with the CCA Program.

In conclusion, MEGA believes that this DPP ensures that the CCA Administrator, and/or Municipality(ies) will protect all categories of data at the level currently required of Utilities and ESCOs, and prevents the unauthorized release of personally identifiable information by limiting the users of Detailed Customer Information to Utilities and ESCOs only.

APPENDIX A: DATA SECURITY AGREEMENT

Upon finalization of a Data Security Agreement by the Utility(ies) providing service to the Municipality(ies), the DSA will be appended here, signed by MEGA as CCA Administrator and each involved Utility.