

NEW YORK STATE
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

Proceeding on Motion of the Commission to
Enable Community Choice Aggregation Programs.

Case 14-M-0224

PETITION FOR CLARIFICATION OF ORDER

INTRODUCTION

On April 21, 2016, the New York State Public Service Commission (“Commission” or “PSC”) issued its Order Authorizing Framework for Community Choice Aggregation Opt-out Program (“CCA Order” or “the Order”). The Municipal Electric and Gas Alliance (“MEGA”) submits this petition to clarify the Commission’s intent and the contents of the Order, as it pertains to obtaining certain customer and aggregated data during the CCA formation process.

I. REGARDING RELATIONSHIP OF ORDER WITH REV PROCEEDINGS

Given that this Order was issued within the broader context of the Reforming Energy Vision (REV) proceeding, MEGA seeks clarification and guidance regarding the interplay between the CCA Order and subsequent Orders or Decisions of the Commission on other REV matters which may overlap with the CCA Order and the development of CCA programs in New York State. Specifically, it is MEGA’s understanding that Utilities are in the process of developing Distributed System Implementation Plans (DSIPs) in case 16-M-0411, *In the Matter of Distributed System Implementation Plans*, based on guidance prepared by DPS Staff in the main REV proceeding (Case 14-M-0101). In the midst of these discussions about distributed resources, parties are still discussing how to define—and thereby how to value—concepts such as

“aggregated data.” As that proceeding moves toward a more concrete definition of “aggregated data,” MEGA is trying to understand potential implications for CCA.

The CCA Order makes reference to, and provides broad examples of, aggregated data as one of three classes of utility and consumer data an aggregating community and/or CCA Administrator will need in order to support procurement for the CCA. See CCA Order at 42-44. Ordering Clause 3 of the CCA Order directs utilities to provide aggregated data to municipalities, their contractors, and/or selected ESCOs to further the CCA formation. See CCA Order at 50-51. MEGA seeks clarification on whether, for purposes of CCA implementation, that category of information termed “aggregated data” should be read in isolation—only as it is presently defined in the CCA Order—or whether its definition should conform to that which is ultimately adopted by the Commission and Utilities for broader use in the REV proceeding, such as through the DSIP process.¹ The latter would seem to provide the most rational and consistent approach to understanding this category of information. After all, CCA is referred to throughout the Order as “part of the REV proceeding.” See, e.g., CCA Order at 49. However, MEGA respectfully requests clarification from the Commission regarding how the CCA Order should be read and implemented as REV evolves along its many interconnected paths.

II. REGARDING INTERPRETATION OF CERTAIN LANGUAGE PERTAINING TO CUSTOMER SERVICE ADDRESSES AND VERIFICATION

Under the Order, municipalities adopting CCA bear the responsibility for ensuring compliance with the CCA Order, engaging in appropriate public outreach, implementing an effective opt-out mailing process—on their own or by engaging a CCA Administrator—and

¹ In case 16-M-0411, *In the Matter of Distributed System Implementation Plans*, the Joint Utilities’ DSIP filing of November 2016 (page 142), the JUs propose a uniform level of aggregate data and “define the uniform aggregated data offering as kW and/or ICAP, customer counts, and kwh data that is aggregated by zip code and/or tax district, and segmented by rate class.”

ultimately acting as a proxy for their residents in providing consent to be switched from utility to the CCA's selected ESCO. See CCA Ordering Clauses 6-8 and pages 20, 23-27, 28-30. This process will necessarily require that, before the opt-out process, a CCA program verify that the customer accounts proposed to be aggregated are physically located within the municipal jurisdiction, and thus covered by the adoption of a Local Law authorizing CCA. As some parties have suggested elsewhere in this proceeding, it would seem that failure to ensure customers are appropriately within municipal boundaries could result in unlawful "slamming" of non-resident customers not within the jurisdiction of the local law authorizing CCA. This means that, at some point between the data exchange needed to initiate the opt-out process and the enrollment of customers in ESCO service, some entity must be responsible for affirming that those customer accounts proposed to be aggregated within the CCA are physically located within the appropriate municipal boundaries. However, it is unclear from the Order which entity bears this responsibility.

In its comments and proposals in this proceeding, including its proposed Generic Data Protection Plan ("DPP"), MEGA has read the Order to mean that the information provided by the Utility to support the opt-out process—the "customer contact information" or "customer-specific contact information" as it is called in the Order—must be sufficient to allow the municipality and/or its CCA Administrator to verify the presence of each service address within municipal boundaries. Thus, when "customer contact information" is provided by the Utility, the service address will be included within the information provided. Given that the Order refers to this category of information as including both the customer name and mailing address, as well as any "alternate billing name, address, and phone number," CCA Order at 45, MEGA had interpreted this category as drawing in both the service address and, wherever applicable, an alternate mailing address used for billing purposes but not tied to the physical service address for the account. If

this is what the Commission intended in this section, MEGA respectfully requests confirmation of that interpretation.

Alternatively, if that is not what the Commission intended by this language, MEGA respectfully seeks clarification of the Commission's intention on this subject. Specifically, was it the intent of the Commission that the Utility provide customer contact information which has been verified by the Utility itself to include *only* customers residing within the CCA's jurisdiction? Do other existing Commission policies and rules already require that Utilities maintain their records in a manner which allows accurate separation of customer accounts by taxing jurisdiction? If this is the case, or if that was the Commission's intent, then it is possible MEGA has anticipated needing to perform a verification process that would, in fact, be performed by the Utility, and some revisions to MEGA's proposed DPP will be necessary to better reflect the Commission's intent.

III. REGARDING PERSONALLY IDENTIFIABLE INFORMATION

Both the Staff White Paper and the CCA Order make reference to "personally identifiable information" which triggers the need for consumer protections and "data security protocols and restrictions to prevent the sale of that data." CCA Order at 24. A CCA Administrator's Data Protection Plan ("DPP") must address how this personally identifiable information will be handled by the municipality, contractors, and suppliers, to ensure it is not inappropriately used or sold. Elsewhere, however, the CCA Order refers to customer data in terms of three categories: "(a) aggregated customer and consumption (usage) data to support procurement; (b) customer contact information to send opt-out letters; and (c) detailed customer information for the purpose of enrolling and serving each customer." CCA Order at 43. It is not clear which of these categories is considered "personally identifiable information" required to be addressed in the DPP and which is not.

Elsewhere in the Order, the Commission clearly requires that aggregated data be sufficiently anonymized such that no individual customer can be identified from the data. See CCA Order at 44. Thus, aggregated data is clearly not within the scope of the “personally identifiable information” which the Order contemplates would be covered by the DPP for purposes of protecting customers from inappropriate data use. However, it is unclear which data points the Order treats as “personally identifiable” and which are not so treated. As MEGA suggested in its draft DPP and responses to comments filed on that DPP, we do not interpret the class of “personally identifiable information” to include information which is already publicly available through other sources, such as property tax records, which already make public the names, physical addresses and tax bill mailing addresses of property owners within the municipality. The Commission’s intent on this matter is unclear, and MEGA respectfully requests guidance to clarify needed revisions to its DPP.

CONCLUSION

Through this Petition, MEGA seeks clarification and guidance from the Commission on its intent and meaning on certain matters in the CCA Order. To date, MEGA has filed its draft Implementation Plan and draft DPP, and is working with municipalities on public education and outreach required for the passage of local laws adopting CCA. Recent conversations with Utilities and comments filed in this proceeding have aided MEGA in identifying potential revisions to the draft DPP, which MEGA intends to submit very soon. Clarification and guidance on the above questions would significantly aid in these revisions, and in MEGA’s continued efforts to move CCA forward in this State.

Dated: February 24, 2017

Respectfully submitted,

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