

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 20, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman, dissenting

CASE 14-M-0224 - Proceeding on Motion of the Commission to  
Enable Community Choice Aggregation Programs.

ORDER AUTHORIZING FRAMEWORK FOR COMMUNITY CHOICE AGGREGATION  
OPT-OUT PROGRAM

(Issued and Effective April 21, 2016)

BY THE COMMISSION:

INTRODUCTION

The Commission initiated consideration of Community Choice Aggregation (CCA) as part of both Governor Cuomo's Reforming the Energy Vision (REV) initiative and its continued review and revision of retail energy markets. The goals of both REV and retail energy market reform include, among other things, increasing the ability of individuals and communities to manage their energy usage and bills, facilitating wider market-based deployment of clean energy including energy efficiency, large-scale renewables and distributed energy resources (DER), and increasing the benefits of retail competition for residential

and small non-residential customers.<sup>1</sup> A well-designed Community Choice Aggregation (CCA) program will create these benefits for participating communities. The Commission also previously approved a petition by Sustainable Westchester, Inc. (SW) requesting authorization to run a CCA Pilot Program (the SW Pilot). The Commission will use the lessons learned from this experience in its review of future CCA applications.

CCA offers residential and small non-residential customers (mass-market customers) an opportunity to receive benefits that have not been readily available to them. At its February 23, 2016 Session, the Commission responded to the failure of energy service companies (ESCOs) to create benefits for most residential and small non-residential customers, as well as increasing customer complaints, by limiting the products that can be offered to those customers to products that create real customer value.<sup>2</sup> CCA programs can result in more attractive energy supply terms than can be obtained by individual customers through the bargaining power that aggregation provides, the expertise provided by municipal or consultant experts, and the competitive public process for choosing a supplier.

More importantly, the CCA construct provides substantial positive opportunity for meaningful and effective local and community engagement on critical energy issues and the development of innovative programs, products, and services that

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<sup>1</sup> Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014); Case 12-M-0476 et al., Residential and Small Non-Residential Retail Energy Markets, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012).

<sup>2</sup> Case 15-M-0127, et al., In the Matter of Eligibility Criteria for Energy Services Companies. Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016) (February Reset Order).

promote and advance the achievement of the State's energy goals. Existing programs such as the NY Prize microgrid competition, Solarize New York, and community distributed generation have demonstrated that local governments are an effective and powerful resource for educating and engaging citizens to take action with regard to energy that is positive for the environment, the resiliency of our power grid, and their own pocketbooks. CCA programs can educate, encourage, and empower communities and individuals to take control of their energy future through engagement with existing REV and CEF opportunities and development of new DER and clean energy programs.

For these reasons, the Commission authorizes the establishment of CCA programs by municipalities statewide. This Order articulates the necessary program design principles and standards that municipalities must apply in developing and implementing CCA programs for their constituents. The process and requirements for developing a CCA Program in compliance with this Order are summarized in Appendix D.

As explained in the February Reset Order, the Commission is currently evaluating what products ESCOs should be permitted to offer to mass market customers. Decisions on those issues will be addressed separately from this Order and will control which products are eligible to be offered to mass market customers and aggregated CCA customers going forward.<sup>3</sup>

#### BACKGROUND

In December 2014, the Commission instituted a proceeding to consider establishing CCA programs in New York

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<sup>3</sup> Such decisions will not disrupt or require renegotiation of existing CCA contracts.

State and to evaluate potential structures and best practices for such programs.<sup>4</sup> A Department of Public Service Staff (Staff) White Paper regarding CCA was attached to the Instituting Order (the White Paper). The White Paper posed 18 questions on various CCA program design and implementation issues for stakeholder comment. The Instituting Order and the White Paper contain extended discussion of the background for the authorization of CCA programs in New York, including the creation and oversight of retail energy markets, past and current uses of energy aggregation in New York, and the implementation of CCA in other states.

Shortly after the issuance of the Instituting Order, SW filed a petition requesting authorization to run a CCA Pilot Program. An order partially granting the petition was issued on February 26, 2015.<sup>5</sup> Since that order was issued, at least 24 municipalities have joined the SW Pilot by conducting public outreach and passing local laws, SW has conducted a Request for Proposals (RFP) to select an energy supplier and negotiate a contract, and opt-out letters have been mailed to customers.<sup>6</sup> Experiences related to the SW Pilot have and will continue to inform the requirements identified in this Order.

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<sup>4</sup> Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (issued December 15, 2014) (Instituting Order).

<sup>5</sup> Case 14-M-0564, Sustainable Westchester, Order Granting Petition in Part (issued February 26, 2015).

<sup>6</sup> See <http://sustainablewestchester.org/>.

Several other groups have also filed petitions requesting authorization to run CCA programs.<sup>7</sup> In addition, municipalities, non-profits, and market participants have expressed interest in developing CCA programs in New York State.

In an effort to expand the record in this and other REV-related proceedings on issues regarding customer and aggregated data, Staff convened two on-the-record technical conferences<sup>8</sup> that explored issues related to third party access to both individual and aggregated customer energy data in furtherance of REV and CCA objectives. Parties were also invited to submit written comments related to the topics of the conferences.

In its February Reset Order, the Commission explained that greater oversight was necessary in order to ensure that ESCOs created value for mass market customers. Specifically,

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<sup>7</sup> See 15-E-0449, Petition of Madison County Public Utility Service Regarding a Proposed Community Net Metering Program and a Proposed Community Choice Aggregation Program and For Certain Relief Related to Implementation of the Programs.

15-E-0585, Petition of Sullivan Alliance for Sustainable Development for the authorization by the Public Service Commission, as a demonstration project under REV, a community choice aggregation project known as Sullivan County Community Choice Aggregation.

16-M-0015, Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation (CCA) Pilot Program.

In addition, Citizens for Local Power, while not filing a formal petition, have provided a proposal to Staff for consideration.

<sup>8</sup> Cases 14-M-0101 et al., supra, Notice of Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued November 3, 2015); Notice of Second Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued December 23, 2015)(Data Technical Conferences).

the order restricted ESCOs from enrolling new, or renewing contracts with existing, individual mass-market customers unless each customer was provided with guaranteed savings compared with their default utility service provider, or, alternatively, that at least 30% of their supply was from renewable resources.<sup>9</sup> Those restrictions are an interim measure while the Commission considers what further regulation or oversight should apply to ESCOs offering energy-related value-added services in general to mass market customers. The February Reset Order also enhanced enforcement provisions of the Uniform Business Practices (UBP). At this time, the portion of that order limiting the types of products that ESCOs can offer to mass market customers is stayed by an Order to Show Cause issued by the Supreme Court of Albany County.

Also relevant to this proceeding is the Commission's consideration of a Clean Energy Standard. The Staff White Paper on the Clean Energy Standard contemplates a program that involves procurement requirements on all load-serving entities, including ESCOs.<sup>10</sup>

#### NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on December 31, 2014 [SAPA No. 14-M-0224SP1]. The time for submission of comments pursuant to the Notice expired on February 17, 2015.

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<sup>9</sup> The February ESCO Order noted that CCA programs presented different issues than the types of sales addressed by the Commission and provided an exemption to the SW Pilot.

<sup>10</sup> Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Staff White Paper on Clean Energy Standard (filed January 25, 2016).

Comments were submitted by a wide variety of stakeholders representing various sectors impacted by CCA and are grouped by topic and addressed below. Also, written comments were submitted in response to questions posed at the Data Technical Conferences. A list of commenters is provided in Appendix A.

In general, the majority of stakeholders support the authorization of CCA in New York. They agreed that CCA programs are consistent with the goals of REV and have the potential to reduce costs and create benefits for customers, as well as promote a cleaner and more economically dynamic and efficient energy system. As discussed in the Instituting Order, the Staff White Paper, and several comments, CCA programs are already creating these benefits in other states.

A number of commenters expressed support for some aspects of CCA while expressing reservations about others. In addition, relevant comments received at, or filed after, the Data Technical Conferences are addressed.

#### LEGAL AUTHORITY

The Commission has the necessary statutory authority to establish and regulate CCA programs. This authority stems from the Commission's jurisdiction over gas and electric corporations, including both the utilities and the energy service companies (ESCOs); the provision of gas and electric service; and the sale of gas and electricity.

New York Public Service Law (PSL) Section 5(1) grants the Commission jurisdiction and supervision over the sale or distribution of gas and electricity. Section 5(2) requires the Commission to "encourage all . . . corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their

public service responsibilities." Pursuant to Section 65(1), every gas corporation and electric corporation must safely and adequately "furnish and provide [gas and electric] service, instrumentalities, and facilities." Section 66(1) extends general supervision to gas corporations and electric corporations having authority to maintain infrastructure "purpose of furnishing or distributing gas or of furnishing or transmitting electricity" such that the Commission may direct terms under which ESCOs will be provided retail access to distribution systems and to customer data. Pursuant to Section 66(2), the Commission may "examine or investigate the methods employed by . . . corporations . . . in manufacturing, distributing, and supplying gas or electricity," as well as "order such reasonable improvements as will best promote the public interest . . . and protect those using gas or electricity." Pursuant to Section 66(3) the Commission may prescribe "the efficiency of the electric supply system." Finally, pursuant to Section 66(5) the Commission is authorized to "examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business." Accordingly, the Commission has the jurisdiction over the gas utilities, electric utilities, and ESCOs affected by this Order to require them to comply with the requirements outlined herein.

In addition, CCA programs utilizing an opt-out method of customer enrollment are not possible without Commission authorization because, pursuant to the UBP adopted by the Commission, ESCOs cannot request customer data or enroll customers without individual customer authorization. Since such CCA programs depend on the ability of the municipality or ESCO to contact and enroll customers on an opt-out basis, Commission



action is necessary to authorize CCA programs. Furthermore, the Commission can exercise oversight of CCA programs, including by setting practices for the establishment and operation of those programs, by conditioning the ability of the ESCO to receive data and enroll customers on compliance with Commission directives.

### ANALYSIS OF ISSUES

#### Eligible Municipal Governments

With respect to policies and legal matters over qualifying municipal entities, the Joint Utilities noted in their comments that there could be considerable overlap, or even layers, of municipal subdivision boundaries that could impact a given customer and that the Commission should clarify how such conflicts will be resolved.

#### Discussion

There are four types of municipalities under New York State law that the Commission has considered for eligibility: villages, towns, cities and counties.<sup>11</sup> Villages are formed within towns, and can overlap more than one town and even more than one county. A village can also be coterminous in its entirety with a town. Towns are formed within counties and do not overlap into other counties. Cities are formed within, and in some cases overlap, counties, but do not overlap either towns or villages.<sup>12</sup> The entire State is divided into counties.

Given those realities, the Commission will extend authority for municipal approval for a CCA to occur at the

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<sup>11</sup> There are many special purpose entities that may technically be defined as "municipalities" under New York Law, but that due to their lack of general jurisdiction would not be appropriate entities to establish CCA programs.

<sup>12</sup> New York City overlaps five counties in their entirety.

lowest level of the village/town/city hierarchy of municipal government in an area.<sup>13</sup> Therefore, a village board will establish a CCA in any village; a town board will establish a CCA in the area of any town outside of any villages; and a city council will establish a CCA in any city. Consistent with this, in most instances, the municipality that has awarded the franchise for the utility company to operate in the municipality is likewise the lowest municipality in such hierarchy of municipalities and already has a franchise relationship with the utility company.<sup>14</sup> In addition, utility service territories often conflict with county boundaries, but do not generally conflict with village, town and city boundaries, such that this solution will likely eliminate additional boundary conflicts where more than one utility serves within a county. All eligible municipalities would also be able to combine with other eligible municipalities to operate joint programs pursuant to inter-municipal agreements.<sup>15</sup> With this result, counties will not be eligible to set up a CCA, but county governments may certainly actively encourage and coordinate the municipalities within the county to form an inter-municipal CCA and even work to support that CCA as in an administrative role. However, the final decision to participate will be up to the individual

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<sup>13</sup> The authority extended includes most significantly the ability to request customer data from utilities and to contact and enroll customers on an opt-out basis. This does not preclude other, opt-in aggregation programs without such authority.

<sup>14</sup> There may be some exceptions; primarily where a village was formed after a town had already awarded a gas or electric franchise to operate. In such instances, the public streets are generally transferred to the new village and any franchise renewal would have to be granted by the new village, which is consistent with the Commission's overall approach.

<sup>15</sup> Such joint programs are not limited to one utility's service territory or by any other geographical rules.

eligible cities, towns and villages. Towns with multiple villages could also perform a similar coordination role.

#### Scope of CCA Programs

In response to the proposal to permit aggregation of both electric and gas supply, CLP agrees that CCAs should be allowed to aggregate gas customers and to support the development of DER such as renewable heating and energy efficiency measures. Several parties commented that the questions and White Paper do not address the potential for CCAs to develop DER and otherwise engage in a full range of energy planning and management activities, sometimes described as CCA 2.0.

#### Discussion

CCA programs will be permitted to aggregate electric supply, gas supply, or both. While other states permitting CCA have focused on electric aggregation, comments were generally supportive of permitting gas aggregation and there were no suggestions that gas aggregation would be infeasible or inappropriate. Customers in CCA programs where both gas and electric supply are offered shall have the option to opt-out of either aggregation, individually. For those customers that currently receive their supply of gas and/or electric from an ESCO, those customers will have an ability to opt-in to a municipal CCA program, subject to their existing ESCO contract terms and the terms of the CCA program.<sup>16</sup>

CCA programs should also be designed to aggregate or otherwise integrate into their programs energy efficiency and DER options. Since CCA programs are intended to promote greater

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<sup>16</sup> The municipality or CCA Administrator for a CCA that intends to accept opt-in customers is responsible for developing a process consistent with the UBP requirements for customer enrollment to accomplish this, and may work with the selected ESCO to do so.

consumer awareness and bill savings, they present a formidable opportunity to advance the State's clean energy objectives. In considering how to include a variety of products and energy planning and management activities within the CCA program, municipalities should be open to contracting with different ESCO and DER providers for services. CCA Administrators should also take advantage of programs developed under REV, the CEF, and related proceedings, including Community Distributed Generation. As further discussed below, CCA Administrators should work with NYSERDA and the local utilities, as well as ESCOs and DER providers, to determine how DER and energy efficiency can be integrated into their programs.

#### Customer Eligibility

The Instituting Order and Staff White Paper addressed customer eligibility and included the following questions for stakeholder response:

- Should non-residential customers who are not served by ESCOs be included in CCA programs on an opt-out basis? If not, should they be included on an opt-in basis? Should any inclusion of small non-residential customers be based on the UBP definition of that phrase, or should municipalities be able to include a differently-defined group of non-residential customers in CCA? (Q1)
- Should customers already served by an ESCO be included in CCA programs? If so, how can they best be offered that opportunity? Some customers may be month-to-month under contracts with no termination fee or their contracts may be about to expire, and find the CCA contract offered attractive. Others may be willing to pay the early termination fee to obtain CCA benefits. What are the benefits and costs of allowing program participation of customers served by ESCOs? (Q2)
- What provisions, if any, should be made to allow customers who move into the region served by a CCA after it has commenced, to participate in the CCA? Similarly, what provisions should be made to allow customers who are served by an ESCO at the time the CCA has commenced, to participate in the CCA at a later time, or to allow customers who initially opted out to later opt in? (Q4)

Comments

AEA, Energy Next, Local Power Inc., and many others commented that CCA programs should include non-residential customers not served by an ESCO on an opt-out basis. Constellation agreed with AEA, but suggested limiting those non-residential customers to those with a 50kW or less demand. UIU also agreed that non-residential customers should be included in CCA programs on an opt-out basis to ensure a greater likelihood of success for the CCA program. UIU noted that established CCA programs around the country have demonstrated that the larger the scale of customer participation, the greater the ability the municipality will have to negotiate lower energy rates and more favorable terms, as well as obtaining favorable financing options for locally-owned DER.

The Joint Utilities and MI agreed that residential and non-residential customers served by an ESCO should have the ability to opt-in to a CCA program. Constellation explained that customers already served by an ESCO should not be included in an opt-out CCA because it is essential to the competitive market that a customer's choice of ESCO be respected. RESA stated that customers served by an ESCO should not be included in CCA, data submitted to the CCA Administrator should exclude ESCO customers, and that ESCO customers should be scrubbed from any CCA mailing list.

CCP noted that in California, CCA programs are the default provider for any new customers in their territory. The Joint Utilities state that it should be the responsibility of each municipality to identify approaches that would recognize customers who move in or out of their area. The UIU stated that the CCA should be required to add customers as long as the additional load does not negatively impact the load forecast, which could drive up costs for the overall CCA program.

Discussion

All customers, including residential and non-residential, regardless of size, shall be eligible to participate in CCA programs. Based on experiences in other states and considering the above comments, CCA participation can be valuable for all customer rate classes and maximizing the number of customers included in CCA programs will maximize the overall benefits for CCA customer participants.

However, recognizing the complexity of certain classes of gas and electric service, a customer shall be enrolled on an opt-out basis, as further discussed below, only if that customer is a member of a service class listed, by utility, in Appendix C. Those service classes include all residential customers as well as service to multiple dwellings and, depending on the granularity available in utility tariffs, include at least all small commercial and industrial customers. Basing this determination on service class, rather than strict adherence to the definitions of small non-residential customers in the February Reset Order, is appropriate because it will reduce cost and complexity for utilities and CCA Administrators and because large non-residential customers, as sophisticated energy consumers, are at least as capable of deciding whether to opt-out as residential and small non-residential customers. Furthermore, the CCA Administrator shall consult with the utility or utilities providing service on whether customers taking service subject to riders or other special rate treatments should be included only on an opt-in basis. No customer should be included on an opt-out basis if that inclusion will interfere with a choice the customer has already made to take service pursuant to a special rate. Customers that are already taking service from an ESCO or have placed a freeze

or block on their account<sup>17</sup> shall not be enrolled on an opt-out basis but may be included on an opt-in basis, subject to the conditions of their existing contracts.

While all customers are potentially eligible for CCA participation, municipalities may decide to develop CCA programs with more limited eligibility. Based on the difference in offering service to different types of customers, the varied options already available in the market, and varying regulatory requirements, a municipality may determine that it can create the most overall benefits by focusing its CCA program on one or more particular groups of customers. The municipality may therefore choose to apply opt-out treatment to a more limited class of customers, to only allow certain classes of customers to opt-in, or both.

The municipality may also determine whether eligible customers who move into a municipality which is participating in a CCA should be enrolled on an opt-in or opt-out basis. Once a CCA program has started providing service, the municipality may request a monthly list from the relevant utilities of new customers in the municipality. If the municipality chooses to enroll these customers on an opt-out basis, it must mail them an opt-out letter consistent with the discussion below providing an opt-out period of at least 30 days before the customer is enrolled. Such customers shall also be permitted to cancel and return to utility service or service by another ESCO with no cancellation fees or other charges any time before the end of the third billing cycle after their enrollment, consistent with the discussion below.

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<sup>17</sup> Customers who have made an express decision on their energy supply service, either by choosing a supplier or by specifically requesting an account freeze or block, which prevents their transfer to an alternate supplier, should not be transferred without express consent.

Low-Income Customer Participation

In REV and related proceedings, particular attention has been focused on ensuring that low-income customers have opportunities to participate in energy programs and are not disadvantaged by their participation. Comments on participation in CCA programs by low-income customers were received in response to the following:

- Should customers who participate in a low-income energy assistance program administered by a utility or receive Home Energy Assistance Program (HEAP) benefits be included in CCA on an opt-out basis? If not, should they be included on an opt-in basis? (Q3)

Comments

The majority of commenters stated that customers who participate in a low-income energy assistance program administered by a utility or receive HEAP benefits should be included in CCA on an opt-out basis. RESA and Direct Energy stated that low-income customers should be allowed to participate consistent with the eligibility of residential customers and the application of the various UBP requirements applicable to low-income customers.

The Joint Utilities proposed that individual municipalities should be required to work with their county's Department of Social Services to determine whether customers who are HEAP recipients or DSS direct voucher customers should be included on an opt-in or opt-out basis. Joint Utilities and NRG Retail also highlight the nexus between many issues associated with participation of low-income customers in CCA and issues now being addressed in Case 12-M-0476. Local Power Inc., noted that California Alternative Rates for Energy (CARE) customers, who receive subsidized rates for energy based upon their income, are protected equally when enrolled in a CCA program. They proposed that the CCA program should include all HEAP customers who do not opt-out of the program.



### Discussion

The Commission, with the support of Staff and the input of stakeholders, is currently evaluating how to best ensure that customers participating in utility low-income assistance programs (Assistance Program Participants or APPs) can benefit from participation in energy markets.<sup>18</sup> CCA programs may include APPs so long as those customers are enrolled in products that comply with requirements for ESCO service of APPs at the time of enrollment, but are not required to include APPs. Municipalities should consult with relevant local or state social services program administrators in considering whether to include APPs. Furthermore, for some low-income customers, a social services organization receives and pays the energy bill; in those cases, the social services organization, not the customers themselves, should make the decision regarding whether to opt-out.

### Adoption of Opt-Out Aggregation for CCA Programs

A number of comments were received regarding whether CCA programs need the enrollment of mass-market customers on an opt-out basis to be effective. Comments on this topic were received in response to several questions, including:

- Are there any reasons CCA programs should not be adopted, including issues with opt-out aggregation generally? (Q16)
- Are there any reasons supporting implementation of CCA, including descriptions of positive experiences in other states? (Q17)

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<sup>18</sup> Case 12-M-0476 et al., supra, Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets at 24 (issued February 25, 2014); Case 12-M-0476 et al., supra, Order Granting and Denying Petitions for Rehearing in Part at 6 (issued February 6, 2015) (February 2015 Retail Access Order). In addition, the Report of the ESCO Low-Income Collaborative in Case 12-M-0476 was filed with the Secretary on November 5, 2015 and the February Reset Order included action consistent with recommendations in that report.

Comments

The overwhelming majority of commenters supported the opt-out provisions for CCA. Some commenters, however, questioned the need for Commission authorization of opt-out CCA programs since opt-in programs already exist. Joint Utilities assert that opt-in rather than opt-out more appropriately protects customers from unwanted switches by commodity suppliers. Joint Utilities also address some of the challenges non-residential electric customers who also have gas accounts may present when enrolled in a CCA, particularly if a customer wants to retain its existing relationship with an ESCO for one commodity but participate in the CCA for the other commodity. NFG does not oppose adoption of CCA programs but does not believe opt-out aggregation is an essential or necessary feature for the success of CCA programs. MI urges the Commission to refrain from authorizing CCA programs on an opt-out basis.

Discussion

Affirmative consent for participation in retail energy markets has always been deemed an important consumer protection. The Commission has previously declined to authorize the enrollment of customers into ESCO service on an opt-out basis based on concerns that transferring blocks of load to ESCOs through auctions would unduly interfere with the operation of markets by undermining efforts to educate customers regarding retail choice and that such an approach would be inconsistent with the UBP, which state that transfers of customers without their affirmative consent are impermissible slamming, and the Public Service Law, which guarantees customers, subject to limited exceptions, that the utilities will always be available

as a supplier.<sup>19</sup> The Commission has required explicit customer consent prior to the transfer of data or initiation of ESCO service since the introduction of ESCOs into New York markets to protect customer choice, recognize the varying needs of different customers, and encourage voluntary participation in retail energy markets. Permitting the inclusion of customers in CCA on an opt-out basis rather than requiring explicit, affirmative consent represents a significant policy change.

As more thoroughly described in the White Paper, CCA programs in other states have only been successful where opt-out aggregation is permitted for mass-market customers, while opt-in requirements have limited the success of widespread mass-market customer aggregation in New York. Opt-in aggregation has proved valuable to certain larger customer groups, but opt-out aggregation appears necessary for CCA programs to achieve the scale that will enable ESCOs to create meaningful benefits for mass market customers. Opt-in aggregation for residential customers is limited by the same factors that limit retail market participation in general, including lack of the time, interest, or knowledge needed to consider aggregation offers, lack of awareness, and the difficulty of comparing competing offers. In order to leverage the negotiating power to draw offers from ESCOs that will benefit residents, municipalities must have a reasonable level of certainty that a critical mass of customers will be available for their programs, which is best provided through a well-designed opt-out CCA program.

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<sup>19</sup> Case 07-M-0458, Development of Competitive Retail Energy Markets, Order Determining Future of Retail Access Programs (issued October 27, 2008), p. 14; Case 00-M-0504, Provider of Last Resort Responsibilities, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets (issued August 25, 2004), pp. 23-28.

Furthermore, consumer engagement and protections designed into the CCA programs under consideration here should alleviate concerns that previously warranted the reluctance to proceed with opt-out aggregation. For instance, a new CCA program can only be established upon a decision reached by elected representatives after significant public outreach. In particular, the requirement that elected officials approve a CCA program before one is implemented represents a reasonable proxy for customer consent, when coupled with consumer education efforts and individual customer opt-out processes. These measures, consistent with Commission policy, will provide meaningful opportunities for customers to learn about retail energy markets and determine whether the product offered by the CCA program meets their needs. The customer engagement and opt-out processes, as described below, will also ensure that customers receive notice sufficient to make an informed choice and give them the opportunity to control the sharing of their data and the decision to enroll.

These characteristics of CCA programs will help ensure that customers served by ESCOs through these programs do not encounter high-pressure or deceptive sales tactics, as some other mass-market customers have experienced, because the ESCO will be chosen by the municipality through a competitive procurement process. In addition, the negotiating power resulting from the scale created by CCA programs and the ability of the municipality to compare multiple bids will allow mass-market customers served through a CCA to receive the same benefits from ESCO service that large commercial and industrial customers currently enjoy.

For these reasons, CCA programs will be permitted to enroll eligible customers on an opt-out basis. Approval of CCA as an opt-out program is specific to its context and to the

protections it provides, and should not be interpreted as an indication that the Commission intends to eliminate or modify the general requirement for explicit customer consent.

Customer Outreach and CCA Development Process

Comments on the process for establishing and implementing a CCA program, including necessary outreach to customers, were received in response to the following White Paper questions:

- Should municipalities considering CCA be required to conduct public forums or other public engagement at certain points during the process of establishing a CCA program? (Q12)
- Should municipalities be required or requested to provide to Staff for approval or review copies of communications that would be distributed to customers regarding the CCA program and the contract selected, in addition to Staff's continued review of ESCO communications to customers? (Q13)
- Should any specific modifications be made to the structure of CCA, as described above, that are not covered by the above questions? (Q15)

Comments

Constellation comments that public engagement is an important part of the CCA process and supported a requirement that municipalities be required to have a public forum or other engagement to ensure that customers are well informed about CCA and the means for opting out of the program. Joint Utilities also support public forums and additional public engagement. They remark that customers will need sufficient information to make an informed decision, especially if it involves an opt-out program.

UIU states that prior to implementing a CCA program, a municipality should develop and plan for a meaningful outreach process to give citizens an opportunity to review all aspects of the proposed CCA program and decide if the benefits associated with the program are worth the investment. UIU recommends that

this outreach plan be incorporated into an implementation plan that the municipality would be required to submit to the Commission for review and approval. ConEdison Solutions concurs that there should be a general requirement for the municipality to properly inform customers about the program and conduct an outreach and education plan, reflected in an implementation plan filed with the Commission, but that the Commission should also allow for flexibility and defer to the municipality on the specific methods, channels, and content of the customer education efforts.

Direct Energy recommends that communities seeking to implement a CCA program submit a plan to the Commission for approval and that such a plan include proposed communications to the community regarding the details of the program. They explained that a similar process is used in Massachusetts. Joint Utilities suggest a Staff-approved series of templates and recommended communication tools be provided setting forth critical/key messages that should be contained in municipal communications with constituents.

On the other hand, NYC asserts that the Commission should not intrude on municipalities' rights by developing a one-size-fits-all model for CCA programs. Rather, NYC states, the Commission should develop a set of parameters and guidelines that municipalities could use to establish their own programs. Local Power Inc. states that the Commission Staff should only review communications to confirm accuracy.

#### Discussion

The process of planning for a CCA program will vary with each municipality and program. In some cases, a non-profit, consultant, or other third party may develop a plan and solicit municipal members. In other cases, municipal officials, on their own initiative or based on requests from residents, may

develop their own plan for a CCA program and either implement it themselves or engage a third party to support them. While the discussion of process below refers to the responsibilities of a CCA Administrator, which may be the municipality itself or one or more third parties working with the municipality, the municipality will remain ultimately responsible for ensuring that the CCA program is operated in compliance with legal requirements, that it serves the interests of its residents, and that consumer information is appropriately protected.

To assist municipalities with their outreach efforts and CCA development, the New York State Energy Research and Development Authority (NYSERDA) shall be called upon to provide technical assistance in the form of advice regarding best practices for program design, model solicitations and contracts, and other resources. NYSERDA is well equipped to provide these services and should make their resources available, as part of CEF activities, at the earliest possible date. Furthermore, in consultation with Staff, NYSERDA shall develop a CCA toolkit describing best practices and including model documents such as customer outreach materials and contracts to be available to interested municipalities within 120 days of the date of this Order. The toolkit should provide municipalities with the capabilities to use the CCA construct to offer not only commodity but also energy efficiency and DER opportunities to advance energy affordability and clean energy. In addition, NYSERDA shall assist CCA Administrators in coordinating with utilities, ESCOs, and DER providers to develop innovative programs and products consistent with REV, the CEF, and the Clean Energy Standard.

It is important for municipalities to engage in robust outreach to properly inform and educate their residents on CCA so that they are able to make an informed decision about their

energy supply. Experience gained through the SW Pilot demonstrates the importance of engagement among municipalities, residents, advocates, and market participants in developing CCA programs. It is appropriate to require that all CCA Administrators develop and submit robust engagement plans. Therefore, the CCA Administrator shall file with the Secretary for Commission consideration and approval an Implementation Plan that includes a description of the program and its goals, plans for value-added services (e.g., installation of DER or other clean energy services) that will be included in an RFP, a public outreach plan, and drafts of written communications with its residents, including preliminary drafts of opt-out letters. The Implementation Plan must include multiple forms of outreach over a period of no less than two months. The Implementation Plan shall also include contact information for a CCA liaison to respond to questions or concerns by CCA customers and shall identify at least one local official or agency in each municipality that residents of that municipality may contact with questions or comments. The CCA Administrator shall file updates and supplements to the Implementation Plan as appropriate, including final versions of customer opt-out letters that provide details on program contracts.

The CCA Administrator must also file a Data Protection Plan with the Secretary for Commission consideration and approval. The Plan must describe how the CCA Administrator will ensure that each entity that has access to personally identifiable information as part of the CCA program, including 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 that data or its use for inappropriate purposes, such as advertising. The Data



Protection Plan will ensure that municipalities and the CCA Administrator protect data through their CCA plans and practices as is currently required of utilities and ESCOs. The applicable UBP requirements should be familiar to ESCOs and will apply here.

Utilities must also be provided with assurance that the data they provided will be protected and used appropriately. Based on the experiences in the implementation of the SW Pilot, it is clear that this can best be achieved through a standardized agreement between the CCA Administrator and the utility. Accordingly, to ensure this data from the utility can be transferred and protected consistent with utility security practices, the utilities affected by this Order,<sup>20</sup> in consultation with Staff, shall develop and file, within 45 days of the issuance of this Order, a proposed standard Data Security Agreement for Commission consideration. This Agreement shall be designed to be as consistent as possible among programs and utilities and shall indicate where terms may need to be modified to account for difference between utilities and between CCA programs. Data Protection Plans filed by CCA Administrators must be consistent with this agreement.

In addition, each municipality intending to implement a CCA program must exercise its Municipal Home Rule Law authority by enacting a local law, after holding a public hearing on notice, giving itself the requisite legal authority to act as an aggregator and broker for the sale of energy and

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<sup>20</sup> Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Gas East Corporation (KEDLI), The Brooklyn Union Gas Company (KEDNY), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E).

other services to residents. Any inter-municipal agreements may also require additional procedural steps imposed by the General Municipal Law or other applicable statutes. Once the requisite action has been taken, the CCA Administrator must file a certification that the CCA Program has received all necessary local authorizations.

In this early stage of the program, to ensure that each new CCA program reflects lessons learned and appropriately educates and protects consumers, the Commission shall review the Implementation Plan, Data Protection Plan, and certifications of local authorization filed by each CCA Administrator. Once all documents have been filed, the Commission will determine whether they comply with the requirements of this Order and, if they do, issue an approval. Once the Commission deems a filing compliant, updates to that document need not be subject to formal review, except as otherwise required by a Commission Order.

The Commission will continue to monitor the progress of the SW Pilot, as well as of new programs developed in compliance with this Order. The filing and compliance requirements set forth in this Order may be modified or expanded to incorporate lessons learned in those programs. In addition, those lessons will be communicated to new CCA Programs through the technical assistance provided by NYSERDA and Staff. As CCA Programs become a more common feature of New York's energy market, the Commission may eventually determine that individual review is no longer needed.

The Implementation and Data Protection Plans may be filed as soon as the municipality begins considering CCA, but they and the certifications must be filed, and approved by the Commission, before the CCA Administrator can request any data from the utilities. CCA Administrators are encouraged to file

Implementation and Data Protection Plans as soon as they are ready to facilitate Commission review.

The Implementation Plan must also be updated, and submitted for Commission consideration, at least 120 days prior to the expiration of any CCA supply contract to identify plans for soliciting a new contract, negotiating an extension, or ending the CCA program. If a new contract or contract extension is signed, CCA customers must be given the opportunity to opt-out prior to the beginning of the new contract or the extension period, consistent with the opt-out processes described below. CCA customers must also be permitted to cancel CCA service any time before the end of the third billing cycle of the new contract period without penalty or other charges, consistent with the practices described below. If a CCA program ends, each CCA customer must be returned to utility supply service, except for customers that affirmatively enter into a new, individual contract with an ESCO that complies with all relevant requirements for ESCO service to individual customers.

#### Customer Opt-Out Process

A well-designed opt-out process is necessary to ensure that customers receive the information and opportunity needed to make a well-informed and timely decision on whether to participate in a CCA program. Comments on this topic were received in response to the following questions:

- Is twenty days an adequate period within which a customer can opt-out to avoid automatic enrollment in CCA? If not, what is an adequate opt-out period? Are the opt-out provisions described above appropriate and sufficient? If not, what specific additional requirements are appropriate? Is one notification sufficient or should multiple notifications be required? (Q7)
- Should municipalities considering CCA be required to conduct public forums or other public engagement at certain points during the process of establishing a CCA program? (Q12)

Comments

MI asserted that 20 days constitutes adequate notice, particularly if a CCA program is being implemented on an opt-out basis and includes non-residential customers. Constellation and Energy Next, on the other hand, stated that 14 days is an adequate time period for customers to respond to the opt-out notice and that additional time would not provide additional value to them, citing the Illinois program approach in support. RESA supported the use of a 20 day opt-out period as reasonable. The UIU did not agree that a 20-day period is adequate, preferring 90 days, with two notifications to prospective enrollees describing the opt-out procedures. CLP and Local Power Inc. recommended a first opt-out notification 30 days prior to enrollment (one month) and a second opt-out notification 30 days following enrollment. Thus the entire opt-out window would consist of 60-90 days. The Joint Utilities stated that the most important factor in determining the length of time needed for customers to opt-out or opt-in is how well customers have been informed and educated about their options before receiving the notification.

Discussion

Municipalities shall provide information and education to potential CCA members over no less than a two month period. The mailing of an opt-out letter must also be preceded by the filing of compliant Implementation and Data Protection Plans and certifications of local authorization, as discussed above, as well as certification of the opt-out letter itself as compliant. In addition, the opt-out letter must include details about the selected ESCO and contract and therefore can only be finalized after the RFP and negotiation process has been completed. Municipalities must then provide at least one opt-out notification, on municipal letterhead, that sets an opt-out

period of at least 30 days. This period, especially when coupled with the consumer education period, is generally consistent with the recommendations by commenters.

The opt-out letter must include information on the CCA program and the contract signed with the selected ESCO including specific details on rates, services, contract term, cancellation fee, and methods for opting-out of the program. It must explain that customers that do not opt-out will be enrolled in ESCO service under the contract terms and that information on those customers, including energy usage data and APP status, will be provided to the ESCO. The letter shall be addressed as a letter from the municipality and use an envelope and letterhead that identify it as such. Further, all communications with customers must be provided in the individual customer's native language to the extent that such information is available from the utility or in municipal records.

The opt-out letter or letters must be filed at least 5 days before the CCA Administrator intends to mail them. Staff shall review the filings and respond within five days with a written acknowledgment that the filing is deemed compliant with this Order, an explanation of the filing's failure to comply with this Order, or a letter explaining that additional time is required.

In addition, customers must be permitted by the selected ESCO to opt-out and return to utility service any time before the end of the third billing cycle after enrollment without penalty. A grace period until the end of the third billing cycle allows customers to evaluate the impact of the CCA on bills without penalty and also allows customers who did not understand the opt-out process to remedy their inadvertent enrollment. Using billing cycles instead of days or months ensures that all customers receive at least two bills before

this window closes, regardless of when the CCA program is commenced. They could then opt-out up to the day of the meter reading at the end of the third billing cycle.

#### Municipal Contracts with ESCOs and Other Providers

The foundation of a CCA program is the contract between the municipality and one or more selected ESCOs. Comments related to the terms of this contract were received in response to several questions, including:

- What provisions, if any, should be made to allow customers who move into the region served by a CCA after it has commenced, to participate in the CCA? Similarly, what provisions should be made to allow customers who are served by an ESCO at the time the CCA has commenced, to participate in the CCA at a later time, or to allow customers who initially opted out to later opt-in? (Q4)
- Should the program include a requirement that the primary price contained in a CCA contract begin below a certain benchmark? What are the benefits and costs of such a requirement? If so, what benchmark is appropriate? For example, New Jersey sets a benchmark based on the distribution utility supply rate. (Q5)
- Should the Commission require that CCA contracts contain a fixed price for at least a certain minimum period? A fixed price for their entire term? If prices are permitted to vary during the contract period, should any benchmark apply to these prices? What are the benefits and costs of such requirements? (Q6)
- Should the Commission permit the presence in CCA contracts of cancellation fees for customers who do not opt-out during the opt-out period and later wish to leave the CCA program? If so, should these cancellation fees be subject to any additional requirements beyond the generally applicable rules, including the General Business Law? For example, customers might be permitted to leave CCA programs without charge for a certain period of time after the program starts or during a certain period each year. What are the benefits and costs of requirements of this nature? (Q8)

#### Comments

Most parties, including Joint Utilities, Direct Energy and RESA, stated that all pricing issues should be left to

negotiations between the municipality and any ESCOs bidding to serve the CCA program. Many commenters, including the AEA, also stated that the goals of a CCA should extend beyond price alone to social and environmental goals of the community. Only Helderberg Community Energy argued that CCA contracts should be benchmarked below the utility price, because, it opined, no one would want to join a CCA if the cost per kWh was higher than the average kWh rate currently being paid. All commenters opposed setting a fixed price requirement for any particular period.

Some commenters recommended that termination fees be prohibited so that customers can come and go as they choose. Others argued that termination fees should be the subject of negotiations over the contract between the municipality and the ESCO. CLP stated that termination fees should be permitted but only after an initial period of 90 days. Other parties argue that termination fees must be permitted, especially if fixed prices or other value added products are included in the contract. Most parties agreed that termination fees should be allowed to be negotiated between the municipalities and ESCOs, but if contained in the final contract, it should be clearly and prominently communicated to customers during the enrollment period. Some parties favored applying the General Business Law (GBL) to these fees, while others recommended that they be subject to the UBP.

The collection of any administrative fees was generally recognized as an appropriate component of the eventual ESCO service contract with the CCA provider. In addition, some municipalities have inquired about whether a fee to recover lost sales tax revenues that could result from CCA contracts may be collected.

NRG Retail commented that ESCOs participating in CCA should be provided the opportunity to establish a direct

relationship with participating customers. It asserted that the vision of CCA engaging customers in energy markets can only be realized when the supplier is able to communicate freely with customers in order to build a relationship.

Discussion

The terms of the contract between the municipality and the ESCO or ESCOs providing service must comply with generally applicable requirements for ESCO service at the time the contract is entered into, including the terms of the February Reset Order as applicable.<sup>21</sup> We also expect that contracts will be procured through an open competitive process such as an RFP. These requirements will ensure that municipalities are entering into contracts that offer value to their residents through favorable pricing, significant clean energy in their energy supply portfolio, or another Commission-approved energy-related value-added product. Further guidance on contract requirements, including the approval of such products, will appear in future orders in proceedings relating to the February Reset Order.<sup>22</sup>

CCA programs are not limited to contracting with only one ESCO and are encouraged to consider whether agreements with more than one ESCO offering different products or benefits, or with DER and energy efficiency providers in addition to one or more ESCOs, could support their development of holistic community energy initiatives. In developing such programs, CCA Administrators are encouraged to consult with NYSERDA and to consider how other Commission initiatives, such as Community

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<sup>21</sup> At this time, ordering clauses 1-3 of the February Reset Order, which required that each mass market ESCO customer receive either guaranteed savings or at least 30% renewable energy, have been stayed by the Supreme Court of Albany County. Those requirements shall only be applied to new CCA contracts after the lifting of the stay.

<sup>22</sup> Cases 15-M-0126, 12-M-0476, and 98-M-1343.



Distributed Generation, could work together with the CCA program.

Cancellation fees are permitted subject to the grace period until the end of the third billing cycle after enrollment, during which any cancellation fee will be waived, as discussed above. Termination charges after the grace period will be subject to the contract between the municipality and the ESCO, and must be consistent with the then-effective UBP provisions, which at this time are a maximum of \$100 for a contract with less than 12 months remaining, \$200 for a contract with a remaining term of more than 12 months, or twice the estimated average monthly bill.<sup>23</sup> Termination fees shall not be charged to customers that cancel their CCA service as a result of moving out of the premises served. ESCOs are already familiar with these practices, which comply with the GBL strictures on termination charges. The CCA Administrator will be responsible for informing its CCA customers in its outreach and education process and opt-out letters of all terms of its proposed program, including any termination fees. Consistent with the UBP, selected ESCOs will also provide enrolled customers with a complete sales agreement as well as a disclosure statement outlining significant terms, including termination fees if applicable.

To ensure that CCA programs are consistent with the goals of REV, as well as the goals established in the State Energy Plan for reductions in energy usage, increased renewable generation, and increased energy efficiency, CCA contracts shall not include terms that would restrict the installation or use of

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<sup>23</sup> In order to charge a cancellation fee based on the average monthly bill, an estimate of the average monthly bill and the amount of the termination fee that will be charged based on that bill must be provided in the opt-out letter, as required by the UBP.

DER or energy efficiency products by the municipality or CCA customers, or otherwise penalize the municipality or customers for reductions in energy usage or the installation of clean energy technologies. Even if such a term is coupled with lower energy prices during the contract period, preventing the use of energy efficiency and DER would inappropriately limit the acceleration of markets for new energy technology and undermine long-term savings.

As NRG Retail proposes, ESCOs will be permitted to establish a direct relationship with CCA customers subject to the details of their contract with the municipality. A municipality interested in offering CCA participants other energy-related value-added services may do so through the ESCOs providing supply, through other DER providers, or both. Relationships developed through this process can promote state and local energy goals by encouraging energy efficiency and conservation, DER deployment, and more informed energy customers.

CCA Administrators will be permitted to collect funds, through the supply charge, to pay for administrative costs associated with running the CCA program. Because most CCA customers will receive a single bill from the utility, any CCA customer payments to the CCA Administrator will have to be negotiated as part of the contract and built into the per kWh rates. Therefore, the payments to the CCA Administrator for CCA administrative purposes will be processed and remitted by the ESCO.

Including a fee in these collections to cover lost sales tax revenues would be improper and inconsistent with the intent of the tax law, which permits municipalities to impose sales tax on the distribution of energy provided by utilities when a customer does not take commodity service from an ESCO.

For that reason, the municipality shall negotiate a fee with the ESCO based only on the administrative costs of the program. Information on the administrative fees collected and on the costs of the program shall be included in required annual reports, discussed below.

#### Clean Energy Integration, Funding, and Collections

CCA programs will require funding for their development and operation. Comments related to funding and collections were received in response to the following question:

- Should municipalities be required to allocate a portion of the CCA customer payments to a clean energy or public benefit fund? For what purposes should municipalities be permitted to use these funds? Examples from other states or proposed programs include municipal-owned renewable generation, as well as energy efficiency projects. (Q9)

#### Comments

The Joint Utilities and Constellation noted that all customers would contribute to NYSERDA renewable energy and energy efficiency programs through distribution rates. Constellation added that the municipality should be permitted to determine whether additional programs should be funded through the CCA. CCP proposed that municipalities be allowed to apply for the right to administer the distribution clean energy surcharges collected from its customers. Local Power Inc. stated that CCAs could be required to collect and set aside revenues for investment in renewable DER as a condition of operation. The AEA stated that CCAs should treat energy efficiency and renewable generation as part of their core mission. However, AEA explained, these objectives need not be reached through a public benefit fund but could be integrated into the general contract negotiations with ESCOs.

Discussion

We are encouraged by the interest that municipalities have raised in employing DER technology and participating in new markets, as well as the success that CCA programs in other states have had in deploying clean energy resources. Municipalities are encouraged to, through their solicitations of and negotiations with ESCOs, design CCA programs that include integration of DER and procurement of clean energy, both through direct procurement and through offering opt-in programs to customers. Such program designs should ensure that the costs of custom improvements for individual customers are not charged to other CCA participants. Municipalities also have other methods of procuring or deploying DER and clean energy technology under their own authority. However, municipalities will not be permitted or required to allocate a portion of the CCA customer payments to a clean energy or public benefit fund at this time. Permitting separate collections for a municipal clean energy fund would result in double collections from CCA customers, who will continue to pay the System Benefit Charge (SBC).<sup>24</sup>

Staff, NYSERDA and distribution utilities should work with CCA petitioners to explore how CCA communities can accelerate the adoption of energy efficiency and DER in a manner that benefits their communities and individual customers. Many REV and CEF programs, including community distributed generation, Solarize New York, and REV demonstration projects, offer the potential of strong synergy with CCA programs. Utilities should work with CCA communities to identify services that they can supply to CCA Administrators that are of value to them and their customers and further evolve the utility business model and earnings opportunities as envisioned by REV.

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<sup>24</sup> The SBC includes collections to support utility energy efficiency programs and NYSERDA's Clean Energy Fund Portfolio.

Furthermore, consistent with the discussion in the CEF Order, the Clean Energy Advisory Council (CEAC), under Staff's direction, shall include CCA programs in developing a plan for incentivizing investments in clean energy technology that help accelerate and increase achievement of the Clean Energy Standard and State Energy Plan goals. The Clean Energy Standard, if adopted, will also offer CCA programs opportunities to support clean energy goals through self-initiated power purchase agreements with renewable energy generators or deployment of renewable energy resources. The Clean Energy Standard as proposed would also impose compliance requirements on all LSEs, including ESCOs serving CCA programs.

Provision of Customer Data

In order for a CCA program to be effectuated, the CCA Administrator must receive information from the utility regarding the customers in the municipality. Two questions were noticed related to the provision of data by the utilities to the municipalities and their selected ESCOs:

- Is ten days an adequate period in which a distribution utility must transfer initial, aggregated customer data to municipalities after a request has been submitted by a municipality that has adopted a program? Is five days an adequate period in which a distribution utility should transfer customer data to municipalities to support the mailing of opt-out notices after a request has been submitted by a municipality that has entered into a CCA contract? What data should each transfer include? (Q10)
- Should municipalities receiving personally identifiable information be required to abide by the same policies for protecting and use of that information that are currently applicable to utilities and ESCOs? If not, why not? (Q11)

In addition, comments related to the provision of data for CCA programs were received at the Customer Data Technical Conferences and in filings following those conferences.

Comments

Most commentators, including Energy Next, Colonial Power Group, Inc., ConEdison Solutions, Direct Energy and RESA, agreed that, while exact requirements for a specific CCA may vary, the use of a ten day period following a request for the utility to respond with initial aggregated data and a five day response period for customer specific data appears reasonable and sufficient for a CCA to proceed with implementation. Helderberg Community Energy proposed a longer time period of 30 days as more reasonable. Constellation proposed that all of the details about data access and enrollment for CCA customers should be included in utility tariffs.

The Joint Utilities noted that the term "initial, aggregated customer data" requires more precise definition before they comment on or commit to a response timeframe. The Joint Utilities recommended that the initial transfer should contain:

- the number of customers,
- the aggregated peak demand (kW) (for electricity) by month for the past 12 months, and
- the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months.

The Joint Utilities proposed that this data should be provided separately for opt-in and opt-out customers within the boundaries of the CCA. RESA proposed that information about the availability of interval meter data and the preferred location for installation of distributed generation be added to the data provided by the utility.<sup>25</sup> Local Power Inc. also recommends locational information be provided, which could assist in determining where to locate DERs. ConEdison Solutions submitted

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<sup>25</sup> RESA would also have the utility report gas usage in British Thermal Units (BTU).

its own preferred list of required data from the utility that included:

- A full, anonymized data-set for all customers eligible to be included in the opt-out aggregation program, including the data elements listed below. Data associated with customers already served by ESCOs would be excluded;
- 24 months of kWh consumption information;
- 24 months of kW demand information (if applicable);
- Capacity tag information used to determine NYISO capacity cost allocation;
- Service classification (rate class ID, etc.);
- Meter type, including smart meter tag or net meter tag if applicable;
- Load profile or strata indicator;
- Wholesale market capacity/load zone;
- Line loss factor; and,
- Budget billing indicator.

For the customer-specific data to be available in five days following the request from the municipality or its CCA Administrator, most commenters agreed that the aggregated customer data only need be supplemented by customer names, account numbers, service addresses and billing address. If the data is furnished directly to the ESCO serving the CCA, Joint Utilities propose to use the normal ESCO electronic data interchange (EDI) processes already in use.

While the White Paper did not explicitly address the issue of fees in the questions it posed, individual utilities have noted that undertaking certain data provision obligations related to CCA programs should be considered for treatment as value-added data services that would be provided for a fee, consistent with the REV goals and principles. The SW Order permitted utilities to charge for the provision of data for the SW Pilot.

In response to written questions posed as part of the Technical Conferences on customer and aggregated data,<sup>26</sup> AEEI, AEA, CPA, ETS, NEM, and others state that utilities should not charge qualified vendors for receiving customer usage data.

Mission:data stated that the Commission should clearly define the "basic" usage data available to consumers and service providers. National Grid commented that a standard or "base" set of data from an online web portal, the Electronic Data Interchange (EDI), or protocol such as Green Button Connect should be provided without additional charge to customers and qualified vendors. However, National Grid continued, when customers and vendors request data not conforming to standard or "base" specifications, in these situations, utilities should be permitted to charge a fee to customers and/or third parties requesting such data to cover costs incurred to accommodate their request. The MTA stated that "basic" level of energy consumption data available to large commercial consumers without a charge or fee should consist of near real-time data (up to a 15-minute lag), using advanced meters that report usage every five minutes. MTA argued that there should be no charge for authorized third party access to the data.

In regards to aggregated customer data, CAA noted that utilities have already provided demographic data free of charge through the Utility Energy Registry (UER) of New York. CAA support utilities charging for additional high-value derivative data products on a case-by-case basis.

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<sup>26</sup> Cases 14-M-0101, et al., supra, Notice of Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued November 3, 2015); Notice Extending Deadline to File Comments (issued December 23, 2015); Notice of Second Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued December 23, 2015).



Con Edison, O&R, Central Hudson, NFG, NYSEG, and RG&E, state that utilities should be permitted to charge for providing aggregated data. The aggregated information sought from them, they contend, provides significant value to third party market participants. The utility companies state that charging for this type of service is consistent with the general principle of a competitive marketplace, whereby the entities benefiting from the companies' value-added services should pay for such services and that the utility companies should be permitted to charge for these services. National Grid, filing separate comments, also states that customers and entities benefitting from CCA should bear the costs to compile and share the necessary data. Another factor that should be considered, National Grid contends, is the potential cost that is incurred to respond to specific data requests. National Grid notes that its affiliates are currently providing aggregated customer data to several municipalities in Massachusetts and that the process used to accommodate these requests is not automated, and has proven to be difficult and time consuming for utility personnel. It notes that to handle such data requests for its service territories in New York would require development of a more automated process to increase capacity and accommodate more frequent and complex data. As noted previously, National Grid believes appropriate fees and a fee structure should be addressed by interested stakeholders in the context of the Distributed System Implementation Plan and Track 2 REV proceedings.

MEGA, NYC, CLP and others oppose any utility fee charged to municipalities and other third parties for access to aggregated energy usage data for public purposes. MEGA encouraged the utilities to provide aggregate energy data voluntarily and without charge through the use of an existing UER database. NYC stated that aggregated energy usage data

should be provided to municipalities upon request, and at no cost. MEGA and NYC believe that free access to aggregated energy data is in the public interest.

AEA maintained that municipalities should have access to customer data since they are acting on behalf of the public. AEA stated that aggregated data should be provided on a periodic and automated basis for benchmarking and other energy management purposes. AEA stated that a fee may be appropriate to aggregate data from multiple sources.

Every party expressed concern about customer data security. The Joint Utilities noted that CCA providers should be required to offer the same level of consumer protections as currently provided by utilities and ESCOs pursuant to applicable laws, rules, regulations and Commission orders for residential and non-residential personally identifiable customer information. Local Power Inc. would implement that policy by requiring that the municipalities sign non-disclosure agreements and require any staff or consultants reviewing the data to also sign nondisclosure agreements. MI stated that it did not support the general release of specific customer information to any municipality or a selected ESCO as part of a CCA program without explicit customer consent. Colonial Power Group, Inc. suggested prohibiting the ESCO from using the information gained from the CCA program to cross-market other ESCO services to eligible or participating customers without the consent of the municipality. RESA noted that the UBP, already applicable to ESCOs, should be applicable to each municipality receiving personally identifiable customer information.

#### Discussion

Some elaboration of the proposed customer data provision protocols is needed. In order to effectuate CCA programs, CCA Administrators will require three types of data:

(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. The municipality or its Administrator may commence requesting aggregated data once it has signed a Data Security Agreement with the relevant utilities and the Commission has approved its Implementation and Data Protection Plans and certifications of local authorization consistent with this Order. Customer-specific contact information can be requested for all eligible customers once the municipality or municipalities demonstrate to the utility that the requisite contracts with ESCOs have been entered into and executed. Finally, detailed customer information can be requested for eligible customers who did not opt-out once the initial opt-out period described above has closed. As discussed above, CCA Administrators will be required to submit Data Protection Plans and sign Data Security Agreements guaranteeing the same level of consumer protections as currently provided by utilities and ESCOs.

After Implementation and Data Protection Plans and certifications of local authorization have been approved by the Commission, the utility shall transfer the aggregated customer and usage data within twenty days of a request from the municipality or the CCA Administrator. As indicated by the comments above, this period of time should allow ample time for the utilities to comply. This aggregated data shall include all eligible for opt-out treatment based on the terms of this Order

and the CCA program design.<sup>27</sup> This aggregated data shall include the number of customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class. Utilities shall 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. At this time, utilities shall follow their current internal policies in addressing the anonymity issue for ensuring that aggregated data is sufficiently anonymous.

After each municipality has entered into a CCA contract with an ESCO, the utility shall transfer the customer-specific data to the municipality or CCA Administrator within five days of a request to support the mailing of opt-out notices. This data shall include all customers in the municipality eligible for opt-out treatment based on the terms of this Order and the CCA program design.<sup>28</sup> The data shall consist of the customer of record's name, mailing address, telephone number, account number, and primary language, if

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<sup>27</sup> That is, it shall include all customers in service classes listed in Appendix C, except those customers currently served by an ESCO or subject to an account block or freeze or those customers on riders or other special rate treatment that render opt-out treatment inappropriate, unless the CCA program design contemplates an even narrower group of eligible customers. To the extent that a CCA program design bases eligibility on considerations other than service class, the CCA Administrator shall work with the utility to determine whether data can be limited to eligible customers without imposing substantially higher costs on the utility than a service-class-based method would require.

<sup>28</sup> See previous footnote.

available, and any customer-specific alternate billing name, address, and phone number. No other information, such as usage data or low-income status, shall be transferred at this time.<sup>29</sup>

After the opt-out period has ended, the municipality or the ESCO may submit a request to the utility for further data on the customers who have not opted-out consistent with existing EDI protocols. The utility shall transfer customer data based on the general standards for transfers of data to ESCOs through EDI, including usage data and low-income status. The ESCO may also enroll customers who have not opted out at this time.

Developing and providing this data will impose some costs on utilities, at least until fully automated systems are developed. Requiring utilities to bear those costs would result in CCA programs raising rates, however slightly, for non-participant customers. To avoid this, utilities will be permitted to charge a fee for the data they provide to CCA programs. That fee should be entirely or mostly backloaded and dependent upon the signing of an agreement with an ESCO and the enrollment of customers, to avoid creating barriers for municipalities considering and developing CCA programs and to permit the funds to pay those fees to be provided by a selected supplier and recovered through the supply service. Utilities wishing to charge such fees shall file proposed tariffs within 45 days of the date of this Order for Commission consideration. Those tariffs shall be accompanied by an explanation of why those fees are reasonably related to the value of the data and the cost to the utility of producing the data. To the extent that any municipality is ready to request data before the Commission approves tariffs for these fees, that municipality

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<sup>29</sup> The monthly list of newly eligible customers after the CCA program begins providing service, discussed above, should provide the same information.

may negotiate an individual agreement, including fee structure as appropriate, with the relevant utilities, and the utilities may provide data based on that agreement without specific Commission approval.

### Reporting

None of the questions in the Staff White Paper directly addressed potential reporting requirements. Some commenters, however, included reporting proposals in their comments.

### Comments

NFG recommended that municipalities that promote their CCAs as priced below utility rates or as a means to obtain fixed prices be required to provide annual comparison reports to their customers. CLP recommended that each municipality be required to create an annual report, provide it to CCA participants and the Commission, and conduct an annual public hearing to review that report. Pace concurred that all municipal CCA programs should file annual reports.

### Discussion

Annual reporting to constituents and the Commission is an important part of a municipality's commitment to the CCA and its members. Annual reports shall be filed with the Secretary.<sup>30</sup> Reports must be filed by March 31 each year and cover the previous calendar year. Annual reports will include, at a minimum: number of customers served; number of customers cancelling during the year; number of complaints received by the CCA liaison; commodity prices paid; value-added services provided during the year (e.g. installation of DER or other clean energy services); and administrative costs collected. The first report shall also include the number of customers who

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<sup>30</sup> A Matter Number will be created for this purpose separate from the Case Number of this proceeding.

opted-out in response to the initial opt-out letter or letters. If a CCA supply contract will expire less than one year following the filing of the annual report, the report must identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

Concerns, Questions, or Objections Related to CCA Adoption

Comments related to the application of the UBP, the allocation of CCA costs, the application of certain provisions of General Municipal Law, and the place of CCA in overall retail market policy were received in response to the following questions posed in the Staff White Paper:

- Are any revisions to the Uniform Business Practices necessary or helpful for CCA? (Q14)
- Are there matters, including concerns regarding policy and legal issues that need to be addressed? (Q18)

Comments

RESA urges that the Commission should continue to apply all the provisions of the UBP to CCA providers in a non-discriminatory manner. MI comments that all CCA program costs should be allocated to, and recovered exclusively from, participating customers, with the possible exception of certain costs that perhaps should be funded by the subject municipality and/or the ESCO serving the municipality. The Joint Utilities propose that individual municipalities should be able to be responsive to the energy needs and desires of their constituents as long as this does not increase utility administrative costs that must be borne by non-participating delivery customers.

NRG Retail, while supportive, stated that CCA should be considered as a temporary mechanism to transition New York's energy market to more robust retail competition. NRG Retail proposes that CCA programs sunset four years after a Commission Order enabling government aggregation programs. At the end of the four year transition period, NRG Retail recommends that

customers served under CCA choose to accept an offer from their aggregation program ESCO or switch to another ESCO and that default supply service from the distribution companies should no longer be an available option.

NYC comments that the ability of a municipality to establish a CCA program is established by Article 14-A of the New York General Municipal Law ("GML"), and not the Public Service Law. GML §360(7) provides that the rates and charges assessed for public utility services rendered by municipalities shall be determined by the legislative body of the municipal corporation.

Discussion

The UBP has been and will be applied to those entities subject to it, including ESCOs offering service through CCA programs, in an unbiased manner. CCA programs, as authorized in this Order, do not have the authority to and shall not impose any costs on the utility or non-participant ratepayers.

The long-term success of CCA programs in other states indicates that, contrary to NRG Retail's proposal, CCA should not be considered merely a transitional policy but instead should be viewed as a long-term addition to New York's retail energy markets. The Commission will monitor CCA progress and take action as appropriate in order to ensure that CCA programs benefit their customers and the overall market and that CCA continues to develop and expand to permit municipalities and individuals to have choices in meeting their energy needs and interacting with energy markets and systems within a protective regulatory framework. NRG Retail's broader proposals for modifying policies related to the retail energy market, including shifting away from the distribution utilities as the default service providers, are outside the scope of this proceeding.



NYC's assertions about Article 14-A of the GML are misplaced. Article 14-A grants municipalities the authority to establish and operate municipal utilities and involves situations where a municipality owns and operates electric plant and generates or purchases energy for resale to its residents. In exercising that power, municipalities are acting as the utility company. The statute is simply inapplicable to the circumstances presented in a CCA, where the municipality acts as an aggregator and broker for the sale of energy and other services to residents but does not take ownership of the energy itself or own or operate transmission or distribution facilities. Rather, given the lack of express municipal authority in the organic laws establishing the powers of municipalities (i.e., the County, General City, Town, Village and General Municipal Laws), the Commission is inviting municipalities to exercise their Municipal Home Rule Law authority to enact local laws giving themselves power to act as an aggregator and broker for the sale of energy and other services to residents.

#### CONCLUSION

Community Choice Aggregation, as a part of the REV proceeding, aligns with the Commission's vision for an energy system that is cleaner and more dynamic. It will increase the options available to mass-market customers and allow them to access benefits that were previously limited to large customers. It also enables communities to determine their own paths and goals and collaborate with individuals, ESCOs, utilities, and DER providers to meet those goals and enhance a rapidly changing energy system.

The Commission orders:

1. Municipalities (villages, towns, and cities), specifically the lowest level of municipal government with general authority in any area, are authorized to undertake Community Choice Aggregation programs consistent with the discussion in the body of this Order and the Appendices.

2. Uniform Business Practices Sections 4(B)(1)-(3), 5(B)(1), 5(D)(4), and 5(K) are suspended for municipalities participating in Community Choice Aggregation programs consistent with this Order and energy services companies (ESCOs) and utilities engaging with those municipalities, to permit: (a) transfers of aggregated and customer-specific information from utilities to municipalities, municipal contractors, and ESCOs under the terms described in the body of this Order; and, (b) the switching of customers currently receiving supply service from the utility to ESCO supply service without affirmative consent consistent with the discussion in the body of this Order.<sup>31</sup>

3. Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Gas East Corporation (KEDLI), The Brooklyn Union Gas Company (KEDNY), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E) (collectively, the Affected Utilities) are directed to provide aggregated and

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<sup>31</sup> The referenced provisions require that an ESCO receive individual and explicit customer authorization before requesting information on a customer or enrolling a customer in ESCO service. To the extent that those provisions of the UBP are renumbered, this Ordering Clause shall be construed as referring to those provisions regardless of their numbers as well as to any provisions with substantially similar effect.

customer-specific data to municipalities, municipal contractors, and ESCOs under the terms and timeframes described in the body of this Order.

4. Each Affected Utility that intends to charge fees for the provision of the data described in Ordering Clause 3 shall file, within 45 days of the date of this Order, proposed tariffs for Commission consideration. Those tariffs shall be accompanied by an explanation of why those fees are reasonably related to the value of the data and the cost to the utility of producing the data. To the extent that any municipality is ready to request data before the Commission approves tariffs for these fees, that municipality may negotiate an individual agreement, including fee structure as appropriate, with the relevant utilities, and the utilities may provide data based on that agreement without specific Commission approval.

5. The Affected Utilities shall develop, in consultation with Department of Public Service Staff, and file a proposed standard Data Security Agreement within 45 days of the issuance of this Order for Commission consideration. This Agreement shall be designed to be as consistent as possible among programs and utilities and shall indicate where terms may need to be modified to account for difference between utilities and between CCA programs.

6. Municipalities or their designees (CCA Administrators) that plan to establish CCA programs shall file an Implementation Plan, Data Protection Plan, and a certification of local authorization consistent with the discussion in the body of this Order and the Appendices. CCA Administrators may not request data from the utilities pursuant to Ordering Clause 3 until they have received Commission approval of those filings.

7. Municipalities or CCA Administrators shall file any opt-out letter or letters at least 5 days before the CCA Administrator intends to mail them. Staff shall review the filings and respond within five days with a written acknowledgment that the filing is deemed compliant with this Order, an explanation of the filing's failure to comply with this Order, or a letter explaining that additional time is required.

8. Municipalities or CCA Administrators running CCA programs shall file annual reports including number of customers served, number of customers cancelling during the year, commodity prices paid and value-added services, if any, during the year, and administrative costs collected. Reports shall be filed by March 31 each year and cover the previous calendar year. The first report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters. If a CCA supply contract will expire less than one year following the filing of the annual report, the report shall identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

9. The New York State Research and Development Authority, in consultation with Staff, shall provide technical support and assistance to CCA Administrators and municipalities, including through the development of a CCA toolkit to be available to interested municipalities within 120 days of the date of this Order.

10. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

11. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

APPENDIX A

List of Commenters in Case 14-M-0224

**AEA** - Association for Energy Affordability

**Ambit** - Ambit New York, LLC

**Bulman Elana**

**CCP** - Community Choice Partners

**City of Kingston**

**CLP** - Citizens for Local Power

**Colonial Power Group, Inc.**

**ConEdison Solutions** - Consolidated Edison Solution

**Constellation** - Constellation NewEnergy, Inc.

**Cooper Lela**

**DEC** - New York State Department of Environmental Conservation

**Direct Energy**

Direct Energy Services LLC, Direct Energy Business LLC,  
Direct Energy Business Marketing, and Direct Energy Solar

**Energy Next**

**EOPNY** - Elected Officials to Protect New York Steering Committee

**Hartsfield Michaela**

**Helderberg Community Energy, LLC**

**Joint Utilities**

Consolidated Edison Company Of New York, Inc., Orange And  
Rockland Utilities, Inc., Central Hudson Gas & Electric  
Corporation, National Fuel Gas Distribution Corporation,  
The Brooklyn Union Gas Company D/B/A National Grid NY,  
Keyspan Gas East D/B/A National Grid, And Niagara Mohawk  
Power Corporation D/B/A National Grid, New York State  
Electric & Gas Corporation And Rochester Gas And Electric  
Corporation

**Kittner, Cary**

**Local Power Inc.**

**Means, Amanda**

**MI** - Multiple Intervenors

**NEM** - National Energy Marketers Association

**NFG** - National Fuel Gas Distribution Corporation

**Noble Solutions** - Noble Americas Energy Solutions LLC

**NRG Retail** - NRG Energy, Inc.<sup>1</sup>

**NYAPP** - New York Association of Public Power

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<sup>1</sup> NRG Retail companies operating in New York include Reliant Energy Northeast LLC d/b/a NRG Home, Green Mountain Energy Company, Energy Plus Holdings LLC and Energy Plus Natural Gas LLC

**NYC** - City of New York

**Pace** - Pace Energy and Climate Center

**RESA** - Retail Energy Supply Association

**SASD** - Sullivan Alliance for Sustainable Development

**Tompkins County Legislature**

**UIU** - New York State Department of State's Utility Intervention Unit

**Walsh, Jeanne L:** Rosendale Town Supervisor (Also included, Councilmen: John Hughes; Christopher Pryslopki; and Robert Ryan)

List of Commenters for the First and Second Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues

**AEA** - Association for Energy Affordability

**AEEI** - Advanced Energy Economy Institute

**CAA** - Climate Action Associates LLC

**CDRPC** - Capital District Regional Planning Commission

**CLP** - Citizens for Local Power

**The Companies**

Consolidated Edison Company of New York, Inc. Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation

**CPA** - Consumer Power Advocates

**Direct Energy**

Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, and Direct Energy Solar

**ECP&G** - East Coast Power & Gas, LLC

**ETS** - Energy Technology Savings

**IGS** - IGS Energy, IGS Generation, IGS Solar

**Joint Utilities**

Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; The Brooklyn Union Gas Company d/b/a National Grid; NY KeySpan Gas East Corporation d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a/ National Grid; and National Fuel Gas Distribution Corporation

**Local Power Inc.**

**MEGA** - EnergyNext, Inc.: Represents the Municipal Electric and Gas Alliance

**Mission:data** - Mission Data Coalition

**MTA - Metropolitan** Transportation Authority

**National Grid**

The Brooklyn Union Gas Company (KEDNY) d/b/a National Grid  
NY, KeySpan Gas East Corporation (KEDLI) d/b/a National  
Grid, and Niagara Mohawk Corporation d/b/a National Grid

**NEM** - National Energy Marketers Association

**NFG** -National Fuel Gas Distribution Corporation

**NRDC** - Natural Resources Defense Council

**NYC** - City of New York

**Otego** - Otego Microgrid Ratepayers

**Pace** - Pace Energy and Climate Center

**Renewable Highlands**

**SolarCity Corporation**

**Town of Philipstown**

**UIU** - New York State Department of State's Utility Intervention  
Unit



APPENDIX B

State Environmental Quality Review Act

FINDINGS STATEMENT

April 20, 2016

Prepared in accordance with Article 8 - State Environmental Quality Review Act (SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the New York State Public Service Commission (Commission), as Lead Agency, makes the following findings.

**Name of Action:** Reforming the Energy Vision (Case 14-M-0224 and 14-M-0564) Order Authorizing framework for Community Choice Aggregation Opt-Out Program

**SEQRA Classification:** Unlisted Action

**Location:** New York State/Statewide

**Date of Final Generic Environmental Impact Statement:** February 6, 2015.

**FGEIS available at:** <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0101>

**I. Purpose and Description of the Action**

The regulatory initiative known as Reforming the Energy Vision (REV) aims to reorient both the electric industry and the ratemaking paradigm toward a consumer centered approach that harnesses technology and markets. Distributed energy resources will become integrated into the planning and operation of electric distribution systems, to achieve optimal system efficiencies, secure universal, affordable service, and enable the development of a resilient, climate-friendly energy system. The direction taken by the Commission in the REV initiative is

consistent with the terms of the 2015 State Energy Plan [The Energy to Lead, 2015 State Energy Plan, New York State Energy Planning Board, 2015] that calls for the use of markets and reformed regulatory techniques to achieve increased system efficiency, carbon reductions, and customer empowerment.

In the attached order, the Commission authorizes a framework for municipalities in New York State to develop and implement Community Choice Aggregation (CCA) programs. The framework includes, among other things: (1) identification of the levels of municipal government that are eligible to implement CCA programs; (2) the ability of municipalities to work cooperatively on joint programs pursuant to inter-municipal agreements; (3) adoption requirements that include outreach and education, public notice, public hearings, and local laws; (4) the ability to enroll certain mass market customers on an opt-out basis subject to specific consumer safeguards; (5) implementations plans; (6) certification requirements; (7) reporting requirements; (8) data protection plans; and (9) other program guidelines.

## **II. Facts and Conclusions in the EIS Relied Upon to Support the Decision**

In developing this findings statement, the Commission has reviewed and considered the "Final Generic Environmental Impact Statement in Case 14-M-0101 - Reforming the Energy Vision and Case 14-M-0094 - Clean Energy Fund" issued on February 6, 2015 (FGEIS). The following findings are based on the facts and conclusions set forth in the FGEIS.

### **A. Public Needs and Benefits**

The FGEIS indicates that REV is designed to rethink the regulatory structure of the electricity distribution system,

and establish an improved paradigm, supported by regulatory oversight, to accomplish the goals of active customer decision-making and involvement, increased distributed generation, deployment of real-time responsive technology and the use of distributed system platforms to reduce adverse air emissions and to increase system efficiency.

### **B. Potential Impacts**

Chapter 5 of the FGEIS describes the expected environmental impacts of the action. The authorization of Community Choice Aggregation programs was not identified as an activity that itself would create any environmental impacts. Under the category of "Increased Customer Choice", the FGEIS identifies Community Choice Aggregation programs as offering the opportunity to vastly expand the number of customers receiving energy supply from energy service companies while also providing those customers with more stable fixed rates and the potential for development of community-owned distributed energy resources. It further notes that REV aims to facilitate adoption of a regulatory framework that removes market barriers for such competitive opportunities, while providing sufficient oversight and consumer protections to allow for consumers to engage the energy markets in a robust and effective manner. In those expansion aspects the creation of Community Choice Aggregation programs will induce growth [FGEIS 9-8].

### **C. Mitigation**

Chapters 5 and 6 of the FGEIS identify mitigation measures that could address the potential adverse impacts of the action. The authorization of Community Choice Aggregation programs was not identified as an activity that would trigger the need for mitigation measures.

**D. Cumulative Impacts and Climate Change**

In aggregate, the clean energy technologies and resources promoted by REV create one common long-term, indirect effect: reducing the use of energy generated from fossil fuels. The environmental impact of a reduction in the use of fossil fuel based energy generation on the human environment is generally positive, but will occur over a long time horizon [FGEIS 5-48].

**III. Conclusion**

The REV program is anticipated to yield overall positive environmental impacts, primarily by reducing the State's use of, and dependence on, fossil fuels, among other benefits. In conjunction with other State and Federal policies and initiatives, REV is designed to reduce the adverse economic, social and environmental impacts of fossil fuel energy resources by increasing the use of clean energy resources and technologies [FGEIS ES-10].

**CERTIFICATION TO APPROVE:**

Having considered the Draft and Final Generic Environmental Impact Statement, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met; and
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable; and
3. Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

**Name of Lead Agency:**

New York State Public Service Commission

**Address of Lead Agency**

3 Empire State Plaza  
Albany, New York 12223

**Contact Persons for Additional Information:**

James Austin  
Christina Palmero  
New York State  
Department of Public Service  
3 Empire State Plaza  
Albany, New York 12223  
(518) 474-8702

APPENDIX C

LIST OF OPT-OUT ELIGIBLE SERVICE CLASSES BY UTILITY

<b>Company</b>	<b>Electric Opt-Out Service Classes</b>	<b>Gas Opt-Out Service Classes</b>
Central Hudson Gas & Electric Corporation	SC 1 Residential Service; and SC 2 General Service	SC 1 Residence Rate; and SC 2 Commercial and Industrial Rate
Consolidated Edison Company of New York, Inc.	SC 1 Residential and Religious; SC2 General - Small; SC 8 Multiple Dwellings - Redistribution; SC 12 Multiple Dwelling - Space Heating; and SC 13 Bulk Power - Housing Developments	SC 1 Residential and Religious Firm Sales Service; SC 2 General Firm Sales Service; and SC 3 Residential and Religious-Heating Firm Sales Service
KeySpan Gas East Corp. dba Brooklyn Union of L.I.	N/A	SC 1 Residential Service; SC 2 Non-Residential Service; and SC 3 Multiple Dwelling Service
National Fuel Gas Distribution Corporation	N/A	SC 1 Residential; and SC 3 General
New York State Electric & Gas Corporation	SC 1 Residential Service; and SC 6 General Service	SC 1 Residential Service; and SC 2 General Service
Niagara Mohawk Power Corporation	SC 1 Residential and Farm Service; and SC 2 Small General Service	SC 1 Residential Service; and SC 2 Small General Service

<p>Orange and Rockland Utilities, Inc.</p>	<p>SC 1 Residential Service; and SC 2 General Secondary or Primary Service</p>	<p>SC 1 Residential and Space Heating; and SC 2 General Service</p>
<p>Rochester Gas and Electric Corporation</p>	<p>SC 1 Residential Service; and SC 2 General Service - Small Use</p>	<p>SC 1 General Service</p>
<p>The Brooklyn Union Gas Company</p>	<p>N/A</p>	<p>SC 1A Residential Non-Heating Service; SC 1B Residential Heating Service; SC 2 General Service; and SC 3 Heating and/or Water Heating Service (Multi-Family Buildings)</p>

APPENDIX D  
CCA RULES SUMMARY

**Eligible Municipal Governments**

1. The three types of municipalities under New York State law eligible to form a CCA are: villages, towns, and cities.
  - a. Counties will not be eligible to set up a CCA, but county governments may actively encourage and coordinate the municipalities within the county to form an inter-municipal CCA and even work to support that CCA as in an administrative role.
  - b. The Commission will require that a village board be the entity setting up a CCA in any village; that a town board be the entity setting up a CCA in the area of any town outside of any villages; and a city council be the entity setting up a CCA in any city.
2. Municipalities may work together, such as through inter-municipal agreements, to operate joint CCA programs. There are no geographic or service territory limits on joint programs, but municipalities should be aware that combining municipalities in multiple utility service territories could result in additional costs or complications.
3. A municipality or group of municipalities may work with a non-profit, retain a consultant, or otherwise designate a third party to act as a CCA Administrator and complete some or all of the tasks described below.
  - a. As used below, the term "CCA Administrator" refers to either the municipality acting on its own behalf or to a third party acting on behalf of the municipality.
  - b. The municipality remains ultimately responsible for compliance with the law and Commission Orders and must ensure, as further described below, that any third parties appropriately protect customer data.



**Scope of CCA Programs**

4. CCA programs will be permitted to aggregate electric supply, gas supply, or both. Customers in CCA programs where both gas and electric supply are offered shall have the option to opt-out of either aggregation. For those customers that currently receive their supply of gas and/or electric from an ESCO, those customers will have an ability to opt-in to a municipal CCA program, subject to their existing ESCO contract terms and the terms of the CCA program.
5. CCA programs may aggregate or otherwise integrate into their programs energy efficiency and distributed energy resources. In considering how to include a variety of products and energy planning and management activities within the CCA program, CCA Administrators should be open to contracting with different ESCO and DER providers for services.

**Customer Eligibility**

6. All customers, including residential and non-residential, regardless of size, shall be eligible to participate in CCA programs.
7. A customer shall be enrolled on an opt-out basis only if that customer is a member of a service classes listed, by utility, in Appendix C of this Order.
  - a. Those service classes include all residential customers as well as service to multiple dwellings and, depending on the granularity available in utility tariffs, include at least all small commercial and industrial customers.
  - b. The CCA Administrator shall consult with the utility or utilities providing service on whether customers

taking service subject to riders or other special rate treatments should be included on an opt-out basis. No customer should be included on an opt-out basis if that inclusion will interfere with a choice the customer has already made to take service pursuant to a special rate.

8. Customers that are already taking service from an ESCO or have placed a freeze or block on their account shall not be enrolled on an opt-out basis but may be included on an opt-in basis, subject to the conditions of their existing contracts.
  - a. The CCA Administrator for a CCA that intends to accept opt-in customers is responsible for developing a process consistent with the UBP requirements for customer enrollment to accomplish this, and may work with the selected ESCO to do so.
9. The CCA Administrator may choose to apply opt-out treatment to a more limited class of customers, to only allow certain classes of customers to opt in, or both.
10. The CCA Administrator may determine whether eligible customers who move into a municipality which is participating in a CCA should be enrolled on an opt-in or opt-out basis.
  - a. The CCA Administrator may request a monthly list from the relevant utilities of new eligible customers in the municipality. There may be a cost associated with this list.
  - b. If the CCA Administrator chooses to enroll these customers on an opt-out basis, it must mail them an opt-out letter consistent with the discussion below providing an opt-out period of at least 30 days before the customer is enrolled.

- c. Such customer shall be permitted to cancel and return to utility service or service by another ESCO with no cancellation fees or other charges any time before the end of the third billing cycle after their enrollment.

#### **Low-Income Customer Participation**

11. CCA programs may include Assistance Program Participants or APPs so long as those customers are enrolled in products that comply with requirements for ESCO service of APPs at the time of enrollment, but are not required to include APPs.
  - a. CCA Administrators should consult with relevant local or state social services program administrators in considering whether to include APPs.
  - b. For some low-income customers, a social services organization receives and pays the energy bill; in those cases, the social services organization, not the customers themselves, should make the decision regarding whether to opt out.

#### **Customer Outreach and CCA Development Process**

12. NYSEERDA shall be available as a technical consultant to assist municipalities and CCA Administrators, including through individual consultations and through a CCA toolkit describing best practices and including model documents such as customer outreach materials and contracts.
13. Before receiving data from the utility, soliciting proposals from energy services companies (ESCOs), or starting to operate as a CCA, the CCA Administrator must file and receive Commission approval of an Implementation Plan, Data Protection Plan, and certification of local authorization.

14. The Implementation Plan shall include a description of the program and its goals, plans for value-added services (e.g., installation of DER or other clean energy services) that will be included in an RFP, a public outreach plan, and drafts of written communications with its residents, including opt-out letters.
  - a. The Implementation Plan must include multiple forms of outreach over a period of no less than two months.
  - b. The Implementation Plan shall also include contact information for a CCA liaison to respond to questions or concerns by CCA customers and identify at least one local official or agency in each municipality that residents of that municipality may contact with questions or comments.
  - c. The CCA Administrator shall file updates and supplements to the Implementation Plan as appropriate, including final versions of customer opt-out letters that provide details on program contracts.
  - d. The Implementation Plan must also be updated, and submitted for Commission consideration, at least 120 days prior to the expiration of any CCA supply contract to identify plans for soliciting a new contract, negotiating an extension, or ending the CCA program. If a new contract or contract extension is signed, CCA customers must be given the opportunity to opt-out prior to the beginning of the new contract or the extension period.
15. The Data Protection Plan must describe how the CCA Administrator will ensure the same level of consumer protections as currently provided by utilities and ESCOs; including data security protocols and restrictions to

prevent the sale of that data or its use for inappropriate purposes, such as advertising.

16. The utilities affected by this Order, in consultation with Staff, shall develop and file, within 45 days of the issuance of this Order, a standard Data Security Agreement.
  - a. This Agreement shall be designed to be as consistent as possible among programs and utilities and shall indicate where terms may need to be modified to account for difference between utilities and between CCA programs.
  - b. Data Protection Plans filed by CCA Administrators must be consistent with this agreement.
17. Each municipality intending to implement a CCA program must exercise its Municipal Home Rule Law authority by enacting a local law, after holding a public hearing on notice, giving itself the requisite legal authority to act as an aggregator and broker for the sale of energy and other services to residents.
  - a. Any inter-municipal agreements may also require additional procedural steps imposed by the General Municipal Law or other applicable statutes.
  - b. CCA Administrator must file a certification that the CCA Program has received all necessary local authorizations.
18. Once the Implementation Plan, Data Protection Plan, and certifications of local authorization have been filed, the Commission will determine whether they comply with the requirements of this Order and, if they do, issue an approval.

- a. Once the Commission deems a filing compliant, updates to that document need not be subject to formal review, except as otherwise required by a Commission Order.
19. The Implementation and Data Protection Plans may be filed as soon as the municipality begins considering CCA, but they and the certifications must be filed, and approved by the Commission, before the CCA Administrator can request any data from the utilities.
20. If a CCA program ends, each CCA customer must be returned to utility supply service, except for customers that affirmatively enter into a new, individual contract with the ESCO that complies with all relevant requirements for ESCO service to individual customers.

#### **Customer Opt-Out Process**

21. The CCA Administrator shall provide information and education to potential CCA members over no less than a two month period.
22. The mailing of an opt-out letter must be preceded by the filing of Implementation and Data Protection Plans and certifications of local authorization as well as certification of the opt-out letter itself as compliant.
  - a. The opt-out letter must include details about the selected ESCO and contract and therefore can only occur after the RFP and negotiation process has been completed.
  - b. The CCA Administrator must then provide at least one opt-out notification, on municipal letterhead, that sets an opt-out period of at least 30 days.
  - c. The opt-out letter must include information on the CCA program and the contract signed with the selected ESCO including specific details on rates, services,

contract term, cancellation fee, and methods for opting-out of the program.

- d. It must explain that customers that do not opt-out will be enrolled in ESCO service under the contract terms and that information on those customers, including energy usage data and APP status, will be provided to the ESCO.
  - e. The letter shall be addressed as a letter from the municipality and use an envelope and letterhead that identify it as such.
  - f. All communications with customers must be provided in the individual customer's native language to the extent that such information is available from the utility or in municipal records.
  - g. The opt-out letter or letters must be filed at least 5 days before the CCA Administrator intends to mail them. Staff shall review the filings and respond within five days with a written acknowledgment that the filing is deemed compliant with this Order, an explanation of the filing's failure to comply with this Order, or a letter explaining that additional time is required.
23. Customers must be permitted by the selected ESCO to opt-out and return to utility service any time before the end of the third billing cycle after enrollment without penalty.

#### **Municipal Contracts with ESCOs and Other Providers**

24. The terms of the contract between the municipality and the ESCO or ESCOs providing service must comply with generally applicable requirements for ESCO service at the time the contract is entered into, including the terms of the

February Reset Order once it comes into effect. Further guidance on contract requirements, including the approval of such products, will appear in future orders in proceedings relating to the February Reset Order.

25. CCA programs are not limited to contracting with only one ESCO and are encouraged to consider whether agreements with more than one ESCO offering different products or benefits, or with DER and energy efficiency providers in addition to one or more ESCOs, could support their development of holistic community energy initiatives.
  - a. In developing such programs, CCA Administrators are encouraged to consult with NYSERDA and to consider how other Commission initiatives, such as Community Distributed Generation, could work together with the CCA program.
26. Termination charges after the grace period will be subject to the contract between the municipality and the ESCO, and must be consistent with the then-effective UBP provisions.
  - a. Termination fees shall not be charged to customers that cancel their CCA service as a result of moving out of the premises served.
27. CCA contracts shall not include terms that would restrict the installation or use of DER or energy efficiency products by the municipality or CCA customers, or otherwise penalize the municipality or customers for reductions in energy usage or the installation of clean energy technologies.
28. CCA Administrators will be permitted to collect funds from customer payments to pay for administrative costs associated with running the CCA program.



- a. CCA customer payments to the CCA Administrator will have to be negotiated as part of the contract and built into the per kWh rates.
- b. Municipalities may not collect funds from customer payments to cover lost sales tax revenues.

### **Clean Energy Integration, Funding, and Collections**

29. Municipalities will not be permitted to allocate a portion of the CCA customer payments to a clean energy or public benefit fund at this time.

### **Provision of Customer Data**

30. The CCA Administrator may commence requesting aggregated data once the Commission has approved its filing of its Implementation and Data Protection Plans and certifications of local authorization consistent with this Order.
31. Customer-specific contact information can be requested for all eligible customers once the CCA Administrator demonstrates to the utility that the requisite contracts with ESCOs have been entered into and executed.
32. Detailed customer information can be requested for eligible customers who did not opt-out once the initial opt-out period has closed.
33. After Implementation and Data Protection Plans and certifications of local authorization have been approved by the Commission, the utility shall transfer the aggregated customer and usage data within twenty days of a request from the CCA Administrator.
  - a. This aggregated data shall include all customers eligible for opt-out treatment based on the terms of this Order and the CCA program design.

- i. This aggregated data shall include the number of customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class.
34. Utilities shall 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. At this time, utilities shall follow their current internal policies in addressing the anonymity issue for ensuring that aggregated data is sufficiently anonymous.
35. After the CCA Administrator has entered into a CCA contract with an ESCO, the utility shall transfer the customer-specific data to the CCA Administrator, within five days of a request, to support the mailing of opt-out notices.
  - a. This data shall include all customers in the municipality eligible for opt-out treatment based on the terms of this Order and the CCA program design.
    - i. The data shall consist of the customer of record's name, mailing address, telephone number, account number, and primary language, if available, and any customer-specific alternate billing name, address, and phone number.
36. After the opt-out period has ended, the CCA Administrator or the ESCO may submit a request to the utility for further data on the customers who have not opted-out consistent with existing EDI protocols. The utility shall

transfer customer data based on the general standards for transfers of data to ESCOs through EDI, including usage data and low-income status.

37. Utilities may file proposed tariffs for Commission approval within 45 days of this Order regarding fees for this data. To the extent that any CCA Administrator is ready to request data before the Commission approves tariffs for these fees, that CCA Administrator may negotiate an individual agreement, including fee structure as appropriate, with the relevant utilities, and the utilities may provide data based on that agreement without specific Commission approval.

### **Reporting**

38. Annual reports shall be filed with the Secretary and filed by March 31 each year and cover the previous calendar year.
- a. Annual reports will include, at a minimum: number of customers served; number of customers cancelling during the year; number of complaints received by the CCA liaison; commodity prices paid; value-added services provided during the year (e.g. installation of DER or other clean energy services); and administrative costs collected. The first report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters.
- b. If a CCA supply contract will expire less than one year following the filing of the annual report, the report must identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

CASE 14-M-0224

Commissioner Diane X. Burman dissenting:

As reflected in my comments made at the April 20, 2016 session, I dissent on this item.