

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on March 15, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Gregg C. Sayre  
Diane X. Burman, concurring  
James S. Alesi

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

CASE 15-E-0082 - Proceeding on Motion of the Commission as to  
the Policies, Requirements and Conditions for  
Implementing a Community Net Metering Program.

ORDER APPROVING JOULE ASSETS' COMMUNITY CHOICE AGGREGATION  
PROGRAM WITH MODIFICATIONS

(Issued and Effective March 16, 2018)

BY THE COMMISSION:

INTRODUCTION

On April 21, 2016, the New York State Public Service Commission (the Commission) established the framework for municipal Community Choice Aggregation (CCA) programs.<sup>1</sup> The CCA Framework Order supports the Reforming the Energy Vision (REV) initiative, and aims to increase consumer choice and engagement in local energy planning and deployment of Distributed Energy Resources (DERs). In a CCA program, one or more municipalities aggregate the load of their residents and small businesses on an

---

<sup>1</sup> Case 14-M-0224, Community Choice Aggregation, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order).

opt-out basis and procure energy, and potentially DER services, on their behalf. The CCA Framework Order instructed interested municipalities, on their own or through their selected CCA Administrator, to file Implementation Plans for Commission approval to initiate a CCA program.

In response to the CCA Framework Order, Joule Assets, Inc. (Joule) made a series of filings, as a CCA Administrator, to implement a CCA program for several municipalities in New York State, including the Town of Fishkill and the City of Beacon in Dutchess County; the Town of Philipstown and the Village of Cold Spring in Putnam County; the Village of Lima in Livingston County; the Village of Brockport in Monroe County; and the Town of Geneva in Ontario County. The filings consist of a Master Implementation Plan, which sets forth general protocols for the CCA program and includes a Community Distributed Generation (CDG) option, supplemented by a specific plan for each municipality, a Data Protection Plan, and certifications of municipal authorization.<sup>2</sup>

This Order approves Joule's proposed CCA program, with modifications. Specifically, the Commission approves Joule's Master Implementation Plan, with conditions; acknowledges the certifications of local authorizations; and approves Joule's

---

<sup>2</sup> Appendix A to the Master Implementation Plan is the Hudson Valley Program and includes the Towns of Philipstown and Fishkill, the City of Beacon, and the Village of Cold Spring. Appendix B to the Master Implementation Plan is the Rochester/Finger Lakes Program and includes the Villages of Lima and Brockport, and the Town of Geneva.

Data Protection Plan, consistent with the requirements of the Data Security Agreement (DSA), as established in the MEGA Order.<sup>3</sup>

BACKGROUND

CCA programs provide municipalities with the opportunity to aggregate electric and/or gas supply on behalf of their residents and small businesses on an opt-out basis. In the CCA Framework Order, the Commission recognized that CCA offers residential and small non-residential customers an opportunity to receive more favorable energy supply terms through the bargaining power that aggregation provides, the expertise provided by municipal or consultant experts, and the competitive public process for choosing a supplier.<sup>4</sup>

The CCA Framework Order requires that one or more municipalities, or their designee in the role of a CCA Administrator, file an Implementation Plan and Data Protection Plan for Commission approval and submit certifications of local authorization before requesting data from a utility, soliciting proposals from energy service companies (ESCOs), or beginning operation of a CCA program.<sup>5</sup>

The CCA Framework Order requires that the Implementation Plan include: (a) a description of the program and its goals, including plans for value-added services; (b) a public outreach plan, including multiple forms of outreach and engagement over a period of no less than two months; (c) drafts of written communications with residents, including opt-out

---

<sup>3</sup> Cases 16-M-0015, Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation (CCA) Pilot Program, and 14-M-0224, supra, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017) (MEGA Order).

<sup>4</sup> CCA Framework Order, pp. 1-2.

<sup>5</sup> CCA Framework Order, p. 51 and Appendix D, p. 5.

letters; (c) contact information for a CCA liaison to respond to questions or concerns by potential CCA customers; and (d) identification of at least one local official or agency in each municipality that residents of that municipality may contact with questions or comments. The CCA Administrator is also required to file final versions of customer opt-out letters, after the supply procurement is finalized, that provide details on program contracts. Furthermore, an updated Implementation Plan must be 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.<sup>6</sup>

A CCA Administrator is also required to execute a DSA with the utility prior to the transfer of aggregated data and customer contact data and file a Data Protection Plan that details data security protocols and restrictions to prevent the sale of data or use of data for inappropriate purposes.<sup>7</sup>

In addition, certifications of municipal authorization must be filed to demonstrate that each municipality in the CCA has exercised 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 or broker for the sale of energy and other services to residents.<sup>8</sup>

Once an implementation plan is approved by the Commission, the CCA Framework Order requires each utility serving customers in a municipality joining the CCA Program to provide aggregated and customer-specific data to municipalities, municipal contractors, including CCA Administrators, and ESCOs,

---

<sup>6</sup> CCA Framework Order, Appendix D, p. 5.

<sup>7</sup> CCA Framework Order, p. 51 and Appendix D, pp. 5-6.

<sup>8</sup> CCA Framework Order, p. 43 and Appendix D, p. 6.

under the terms and timeframes described in the CCA Framework Order and subsequent orders.<sup>9</sup>

As noted, Joule's proposed CCA program includes a CDG option. CDG programs provide opportunities for participation in solar and other forms of clean distributed generation to utility customers that would not otherwise be able to access that generation directly. Many utility customers lack control over sites that can be effectively configured for a clean generation facility, such as solar photovoltaic (PV) panels. Many of those customers nonetheless are interested in participating in the development of clean generation facilities. A program that allows such customers to directly support clean generation offers them an opportunity to support their own and New York's clean energy goals.

#### SUMMARY OF JOULE'S FILINGS

##### Master Implementation Plan

Joule, established in 2010, is a private firm representing small and medium-sized customers in energy reduction and efficiency markets. Joule's Master Implementation Plan, first filed on November 9, 2017, and supplemented with Appendix A and Appendix B on January 16, 2018, provides the general framework of the processes, protocols, and activities that will occur during the various stages of CCA formation in municipalities that select Joule as a CCA Administrator. Joule has organized its CCA program around four principles: community engagement and development; local autonomy; renewable energy; and transparency, consumer protection, and equity. Joule states that central priorities for the program are incentivizing local renewable generation and demand-side resources and creating a

---

<sup>9</sup> CCA Framework Order, pp. 42-44 and Appendix D, pp. 10-11.

mechanism for flexibly integrating DER into the programs, as they become available.

Joule's CCA proposal is designed so that CCA customers can become CDG members as part of their participation in the CCA program. As proposed, municipalities will choose whether to offer a Clean Power Product that contains CDG credits as a component of the default supply option on an opt-out basis, or to offer CDG as an "opt-up" option requiring active enrollment. As proposed, the CDG subscription fee will be a percentage of the CDG credit value in that month, such that in any given month the savings on the customer's utility bill will exceed the subscription fee. Joule, as the CCA Administrator, will bear the responsibility of managing the integration and accounting of CDG Credits with the utility and oversight of the Competitive Supplier(s) to ensure proper collection and remittance of fees and CDG charges. All CDG contracts will be in compliance with the Commission's CDG Order.<sup>10</sup>

Joule's Plan also proposes a single consolidated bill format that would include the CDG subscription fee, along with the CDG credits, on the customer's utility bill with the delivery and supply charges. Joule states that a single bill would present a clear and transparent value proposition to program customers in a familiar format, but recognizes that consolidated billing is currently under consideration in the Value of Distributed Energy Resources (VDER) proceeding.<sup>11</sup> As an alternative, Joule presents a two-bill structure, consistent with the current CDG model, where CDG credits appear on the

---

<sup>10</sup> Case 15-E-0082, Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015) (CDG Order).

<sup>11</sup> Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources (VDER).

utility bill, while the CDG subscription fee is separately billed. Joule explains that under the two-bill structure, any opt-out participant that failed to pay the CDG subscription fee would be returned to the default product option but would not be subject to penalties or other fees.

The Plan also includes operational details of the CCA program and the roles and responsibilities of the Program Municipalities,<sup>12</sup> Local Organizer,<sup>13</sup> Joule as the CCA Administrator, and the competitively selected supplier(s). These operational details include education and outreach, notifications to the local utilities, customer opt-in and opt-out procedures, CDG options, solicitation of bids for energy supply and services, energy service agreements with supplier(s), and other miscellaneous governance guidelines.

The Master Implementation Plan notes that Joule, in its role as CCA Administrator, will support program municipalities in soliciting and evaluating project proposals and represent them in negotiation with developers and other DERs suppliers. Additionally, they will facilitate the solicitation of renewable generation and other DERs, as directed by program municipalities.

Joule will supplement its Master Implementation Plan (IP) with a new appendix for each CCA Program created. At the

---

<sup>12</sup> Defined by Joule as a municipality or municipalities that have passed Enabling Local Legislation, and are filing for PSC approval in connection with this Implementation Plan. Program Municipalities may capitalize on economies of scale and solicit offers from Suppliers collectively, or implement independently. Implementation Plan, p. 11.

<sup>13</sup> Defined by Joule as a local stakeholder committed to the success of the CCA program. Local Organizer is responsible for management of the Local Operation, spearheading grassroots community organizing, consensus-building, education and outreach, stakeholder engagement, and customer service. Implementation Plan, p. 9.

time of this Order, appendices were submitted for the Hudson Valley Program (Appendix A) and the Rochester/Finger Lakes Program (Appendix B). The Appendices also detail education and outreach performed or planned in each municipality, as well as a generic opt-out letter specific to each CCA Program; they do not include opt-out letters specific to each municipality. As discussed below, each opt-out letter will be subject to review by Staff to assure compliance with the requirements set forth in the CCA Framework Order, the MEGA Order, the Good Energy Order,<sup>14</sup> and this Order. These appendices are intended to be dynamic documents that will be updated and filed with the Department of Public Service as each municipality joins the CCA Program and is added to an existing or new CCA Program.

#### Data Protection Plan

Joule's draft Data Protection Plan, filed on January 4, 2018, identifies and differentiates the categories of data that are necessary to implement a CCA program, as detailed in the CCA Framework Order. The types of data include: aggregated customer number and consumption (usage); customer contact information; and customer specific information for enrollment purposes. Joule states that, as the CCA Administrator, it is responsible for secure and lawful custody, exchange, and treatment of both anonymized and customer-specific data<sup>15</sup> relating to the program. It states that aggregated anonymized data will be shared with municipalities and prospective suppliers. Customer contact information for mailing of opt-out notices will be shared with the Program

---

<sup>14</sup> Case 14-M-0224, supra, Order Approving Community Choice Aggregation Programs with Modifications (issued January 18, 2018) (Good Energy Order).

<sup>15</sup> Defined by Joule as, collectively, customer-specific contact and consumption data. DPP, p. 3.



Stakeholders,<sup>16</sup> who will secure and/or encrypt the data while it is in their custody. Enrollment data will be transmitted between the utility and supplier, via EDI transactions. Joule asserts it will work cooperatively with the utilities to implement its Data Protection Plan, as well as implement any actions required in the Data Security Agreement.

Municipal Authorizations

On January 16, 2018, Joule filed Appendix A and Appendix B, which include verifications of local authorization for the Town of Fishkill and the City of Beacon in Dutchess County; the Town of Philipstown and the Village of Cold Spring in Putnam County; the Village of Lima in Livingston County; the Village of Brockport in Monroe County; and the Town of Geneva in Ontario County. Each Appendix contains a copy of the signed local law authorizing establishment of the CCA program for each municipality and a public outreach plan describing the activity in each municipality prior to its enactment of the local law.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (SAPA Notice) was published in the State Register on December 13, 2017 [SAPA No. 14-M-0224SP16] for Joule's initial Implementation Plan and Data Protection Plan filing. The time for submission of comments pursuant to that Notice expired on February 11, 2018. Those submitting comments included the Joint Utilities,<sup>17</sup> Ampion,

---

<sup>16</sup> Defined by Joule as stakeholders to the CCA Administrator, Program Municipalities, and/or Energy Service Providers. DPP, p. 3.

<sup>17</sup> The Joint Utilities include Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (Orange & Rockland), Central Hudson Gas & Electric Corporation (Central Hudson), The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), KeySpan Gas East Corporation d/b/a

the City of New York (the City), Hudson Valley Regional Council (HVRC), and Natural Resources Defense Council (NRDC). Fourteen public comments were received. Appendix A of this Order includes a complete list of commenters. On February 22, 2018, Joule filed a response to the Joint Utilities' comments.

#### LEGAL AUTHORITY

As explained in the CCA Framework Order, the Commission's legal authority to authorize and regulate CCA programs 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 66(1) extends general supervision to gas corporations and electric corporations having authority to maintain infrastructure for the "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." Accordingly, the Commission has the jurisdiction

---

National Grid (KEDLI), Niagara Mohawk Power Corporation d/b/a National Grid (together with KEDLI and KEDNY, National Grid), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E).

over the gas utilities, electric utilities, and ESCOs affected by this Order to require them to comply with the requirements outlined herein. Furthermore, the Commission can exercise oversight of CCA programs, including those with a CDG component, by setting practices for the establishment and operation of those programs and by conditioning the ability of the CCA Administrator and the ESCO to receive data and enroll customers on compliance with Commission directives.

COMMENTS

Ampion commented that it supports the proposal to incorporate CDG credits into the default program supply option on an opt-out basis. It asserts that inherent synergies exist between the CCA and CDG programs, in that both programs provide community-based methods for electricity consumers to access clean power. By allowing both the CCA and CDG programs to operate on an opt-out basis, CCAs are ultimately empowered to provide more reliable, cleaner, local energy to more consumers, particularly low and moderate-income consumers that might not otherwise be able to participate in such programs. It states that the savings built into Joule's proposed CDG arrangements result in a "win-win" situation for all CCA consumers.

The NRDC supports CCA projects that are designed to further deploy renewables in a manner that offers customers the chance to opt-out, rather than requiring customers to opt-in to individual renewable projects. The NRDC states that this type of CCA program design could ease the financial obligations of these CDG projects by reducing customer acquisition cost and management cost, along with minimizing the possibility that the project will not be fully subscribed. NRDC encourages the Commission to carefully evaluate CCA implementation plans to ensure that they will advance New York State climate and clean

energy goals, while also supporting local energy planning processes and priorities.

The City supports the proposal for utilities to include CDG charges and credits as discrete line-items on the consolidated bill to further promote CDG participation and reduce the risk of customer confusion. The City has concerns, however, that consolidating CDG credits and charges onto a single utility bill may open customers to the risk of service termination for nonpayment of CDG subscription charges, where no such risk presently exists for CDG customers. The City states that by allowing CDG providers to participate in CCA programs, the Commission will encourage more DER development, providing net positive societal benefits consistent with the City's goals. Further, by approving the Plan, the Commission would set precedent that it encourages municipalities to tailor CCA programs as they deem appropriate and that it is not attempting to develop a one-size-fits-all model for CCA programs. Lastly, by offering CCA customers a mechanism through which they may receive CDG credits, the Commission would be encouraging consumers to take a more active role in their energy choices, thereby advancing a core REV objective.

The Joint Utilities comment that Joule's Plan to add CDG charges to customers' utility bills would require utilities to collect the charges and remit those charges to a third party (either Joule, an ESCO, or a CDG developer). This could lead to customer confusion and utility service termination if the CDG charge is considered a utility charge, subject to the utility's payment and collections processes. The Joint Utilities note that the implementation of this proposal will require not only significant changes to utility systems, but also will require a CCA Administrator, ESCO, and/or CDG developer to establish detailed processes and mechanics to communicate, charge, and

remit payments among these stakeholders and utilities. Given that Joule's filing fails to provide an appropriate level of detailed analysis and no demonstration of the feasibility of consolidated CDG billing, the Joint Utilities urge the Commission to defer consideration of Joule's proposal until further analysis can be completed and considered in a separate generic proceeding.

The Joint Utilities also assert that opt-out CDG and consolidated billing for CDG projects should not be approved until further evaluation and development of necessary consumer protections and other business rules has taken place in a generic proceeding with interested stakeholders. The Joint Utilities express concern that premature approval of consolidated billing here could potentially subvert that process, leading to recommendations for CDG and consolidated billing that are inconsistent with the Uniform Business Practices (UBP) for DER, not supported by the record, and not properly vetted with interested stakeholders.

Senator Parker requested that CDG guidelines be revised to reflect improvements that enable developers and owners to offer energy on a competitive basis, as the success of CDG for NYS consumers is dependent on what we do today. Senator Parker supports CCA/CDG integration and the implementation of a single bill that includes CDG charges and credits.

Hudson Valley Regional Council (HVRC) commented that the incorporation of community solar into the default CCA products mix will support municipalities' efforts to implement impactful clean energy actions.

350 Brooklyn urges the Commission to approve the Implementation Plan, which would increase the ability of CCA programs to offer green energy to New Yorkers.

The Adirondack Council, the People of Albany United for Safe Energy (PAUSE), and Solarize Albany support allowing CCA to include community-generated solar power, which could increase access to locally generated, renewable energy and could help finance the development and expansion of new community arrays. They believe this will provide New York residents with a greater range of consumer choices that are friendly to the environment and affordable, which will likely increase the program's enrollment and propel its success.

Delaware River Solar comments that Joule's CCA Implementation Plan provides a unique opportunity that will increase solar development to levels initially envisioned by REV, give local communities greater control over their energy sources, and scale economic benefits throughout communities by reducing electric bills and spurring economic development.

Sullivan Alliance for Sustainable Development (SASD) strongly supports the Joule's CCA Master Implementation Plan because it proposes a way to align CCA and CDG that will benefit customers and help New York State achieve its target Clean Energy Standards in a timely way.

First Unitarian Church of Rochester, Irondequoit (NY) Mothers Out Front Team, Town of Geneva, Rochester People's Climate Coalition (RPCC), Village of Brockport, and Village of Lima Board, all commented in support of Joule's IP, and encouraged the Commission to promptly approve their CCA plan. They assert that the Joule CCA Plan's provisions will advance the transition to renewable energy by driving the accelerated development of DERs and NYS Clean Energy Standard Goals.

Response to Joint Utilities' Comments

On February 22, 2018, Joule filed a response to the Joint Utilities' comments providing clarification related to processing customer opt-outs, CDG guaranteed savings

information, disconnection for non-payment of CDG charges, and additional data sets requested.

#### DISCUSSION AND CONCLUSION

The CCA Framework Order provided the model framework to guide the creation and operation of CCA programs in New York. As each new CCA Program has been reviewed by the Commission, the framework has been clarified and refined. Joule's Master Implementation Plan is generally consistent with the framework and is therefore approved, subject to modifications, described below, to bring it into consistency with decisions made in prior orders. Joule may add additional municipalities or additional CCA Programs based on the Master Implementation Plan by submitting revised or additional program appendices.

#### Consolidated Billing

Consolidated billing for CDG and other DERs is under consideration in the VDER proceeding. In addition to open policy issues, significant technical work is needed to make consolidated billing a possibility in utility billing systems. For that reason, consolidated billing will not be available to the Joule CCA programs at this time. When consolidated billing becomes generally available, Joule may transition to a consolidated billing model.

#### Opt-Out CDG

In authorizing CCA, the Commission determined that opt-out enrollment of certain service classes was necessary to achieve the scale necessary to create meaningful benefits for mass market customers.<sup>18</sup> The integration of CDG on an opt-out basis has the potential to create similar benefits, as well as support local and state clean energy goals.

---

<sup>18</sup> CCA Framework Order, Appendix D, p. 2.

The CCA Framework Order encouraged the development of CCA programs that included integration of DER and procurement of clean energy, provided value to the customers, and further evolved the utility business model and earnings opportunities as envisioned by REV. Joule's proposal, which offers customers the benefits of CDG while guaranteeing that, each month, the monetary value of the CDG credits is greater than the monthly CDG subscription fee, is appealing. However, Joule's proposal lacks sufficient details. Further, the absence of consolidated utility billing may cause confusion for customers who were automatically enrolled in the CDG.

Joule will be required to submit a CDG Implementation Plan for Staff review and approval to ensure the program will not produce customer confusion and will comply with Commission requirements before enrolling customers in a CDG program on an opt-out basis. The further submission should explain the magnitude of participating CDG projects, the target subscription class, the scope and structure of the guaranteed savings, the billing arrangement, and any additional outreach and education it intends to provide.

Once implemented, for each CDG project, Joule must make quarterly filings, 45 days after the end of each quarter and beginning the first quarter in which customers are billed CDG subscription fees, demonstrating that CDG credits provided in that quarter exceeded CDG subscription fees charged in that quarter, thereby providing a guaranteed savings to customers enrolled in the CDG project. In addition, customers must be permitted to opt-out or cancel their CDG membership at any time without penalty. Further, the CCA Administrator, as well as municipalities, ESCOs, DER suppliers, or other participants in the CCA program, will not be permitted to initiate collection activity, impose cancellation fees, or reallocate CDG credits,



except on a prospective basis, if a CCA member enrolled on an opt-out basis objects to paying the CDG subscription.

If CDG is integrated into the CCA program, additional annual reporting will be required for the CDG portion. As discussed in the CCA Framework Order, annual reports are filed with the Secretary by March 31 of each year and cover the previous calendar year. In addition to the reporting requirements laid out in the CCA Framework Order<sup>19</sup>, CCA programs with CDG projects will include in their annual reports, at a minimum: overall number of CDG projects; number of CDG projects that began in that reporting year; number of municipalities who choose to offer CDG credits; overall number of CDG subscribers; number of complaints received by the CCA liaison related to CDG; and number of customers who opted-out of the CDG membership.

Because consolidated billing is not approved in this Order, the issues related to the potential service disconnection for non-payment of CDG associated charges will not be addressed at this time and will instead be considered in the broader consolidated billing context.

#### Additional Outreach for CDG

As with a "traditional" CCA program, outreach and education are imperative to consumer protections. With the introduction of an opt-out CDG component to the CCA program, the need for education and outreach is even greater.

As directed in the MEGA Order, outreach and education are to continue once an ESCO is selected and before the opt-out period begins to ensure that residents are informed of the prices of commodity and service being offered by the contracted ESCO.<sup>20</sup> This will ensure that residents, including those that

---

<sup>19</sup> CCA Framework Order, p. 46.

<sup>20</sup> MEGA Order, p. 16.

participate in utility low-income programs, have an opportunity to seek additional information and become well-informed regarding the details of the program's rate before deciding whether to opt-out. Therefore, at least one additional meeting must be held in each municipality after an ESCO is selected and prior to opt-out letters being mailed to residents. To clarify, the opt-out period, of at least 30 days, is separate from the outreach period, which are both required under the CCA Framework Order.<sup>21</sup>

With respect to the proposed opt-out letter provided in the Master Implementation Plan, the Commission underscores that Joule will need to file any opt-out letter, with language specific to each municipality, at least five business days in advance of mailing for Staff review and acceptance, in accordance with the process established in the CCA Framework Order and clarified in the MEGA Order. If the original opt-out letter does not include the CDG program information, a second opt-out letter will need to be created and reviewed by Staff, then mailed to customers. Moreover, Joule will be required to file with Staff any requests for proposal (RFP) seeking ESCOs or other suppliers for commodity supply or any other service.

Joule's plans assert the selected ESCO(s) or Local Organizer will be responsible for some of the requirements set forth in the CCA Framework Order. It is important to note that, while the municipalities can outsource requirements to vendors, the municipality is ultimately the one responsible for ensuring its compliance with all portions of Commission Orders.

Additional outreach that focuses primarily on the CDG integration model is required for Program Municipalities who elect to integrate CDG into their CCA program. A CDG focused

---

<sup>21</sup> CCA Framework Order, Appendix D, p. 5.

outreach meeting should take place prior to the opt-out letters containing a CDG component being mailed to residents. This meeting could be combined with the additional meeting that must be held in each municipality after an ESCO is selected and prior to opt-out letters being mailed to residents.

Low Income Customers

If Joule intends and the municipality elects to have the CCA serve participants in utility low-income assistance programs (APPs), those customers must be provided with guaranteed savings. Joule and its selected ESCO shall make a compliance filing, prior to mailing opt-out letters, describing the guaranteed savings product that will be offered to APPs and demonstrating: (a) an ability to calculate what the customer's total bill would have been if the commodity had been provided by the utility; (b) a willingness and ability to ensure that the customer will be paying no more than what they would have paid to the utility; and (c) appropriate reporting and ability to verify compliance with these assurances. The compliance filing must also include a tailored opt-out letter for those customers that explains the product they will be enrolled in. Department of Public Service Staff shall review this filing to ensure that it is consistent with the requirements in the Low-Income Order.

If Joule intends to serve APPs, aggregated data and customer contact information provided to municipalities, Community Choice Aggregation Administrators, or Energy Service Companies pursuant to the CCA Framework Order shall include data related to customers with utility-initiated blocks on their accounts.

In addition, Joule and the participating municipalities are reminded to consult with the relevant local or state social services program administrator, which receives and pays the energy bills for some low-income customers,

regarding the participation of those customers in the CCA Program.<sup>22</sup> Drafts of any additional written communications to residents shall also be filed with Staff.

Limited English Proficiency

As outlined in the Good Energy Order, the Implementation Plan must be updated to include information regarding Limited English Proficiency (LEP) customers and how they will be identified and provided information in their native language, as required in the CCA Framework Order and the UBP. Additionally, information regarding the availability of translation services must be added to the Implementation Plan. These provisions will ensure that all consumers can only make an informed decision on whether to participate in the CCA program, as well as receive answers regarding any questions they may have throughout the life of the program. The opt-out letters shall advise customers that translation services are available.

Green Energy

In order to help achieve New York State's clean energy goals, and to the extent that Joule intends to offer green energy, it must ensure that such energy is generated by biomass, biogas, hydropower, solar energy, or wind energy, as defined in and subject to the environmental attributes and delivery rules of the Commission's Environmental Disclosure Program. ESCOs selling green products are required to disclose to customers the premium the customer will be charged for the purchase of the green product separate from the underlying commodity charge. ESCOs providing green energy in the context of CCA must maintain auditable New York specific records to demonstrate that such customers are receiving green energy compliant with the environmental attributes and delivery rules of the Commission's

---

<sup>22</sup> CCA Framework Order, p. 17.

Environmental Disclosure Program. Failure to maintain such auditable New York specific records or to allow access to such records by Department Staff or its designee would be grounds for disqualifying the ESCO or its affiliates from using the utility distribution systems to provide any services to any customers in New York State.

Additional Data Request

In the CCA Framework Order, the Commission specified that utilities must provide aggregated data regarding eligible customers to support procurement and customer contact information. The required aggregated data includes the number of customers by service class, the aggregated peak demand or capacity data for the past 12 months by service class to the extent possible, and the aggregated volumetric consumption data for electricity or gas by month for the past 12 months by service class. In addition to the data sets identified in the CCA Framework Order, Joule has requested the following additional data sets to be provided by the Joint Utilities:

1. Number of Default Consumers, by Municipality and service class, enrolled in specialized rate classes, namely interval day/night and other time of use rates.
2. Monthly kWh consumed by Default Consumers enrolled in specialized rate classes, namely interval day/night and other time of use rates, over the previous 12 months, by municipality, service class, and rate interval (day/night, hourly).
3. Number of Default Consumers, by Municipality and service class, enrolled in a budget billing program.

4. Methodology employed by Utility in data set construction, including the basis for municipal coding and reconciliation of self-reported addresses.

The CCA Data Fee Order<sup>23</sup> defined the fees for required CCA data, but did not include guidance regarding the scope of and fees for data requests that go beyond the data sets ordered in the CCA Framework Order. The cost of fulfilling requests for additional data sets not included in the CCA Framework Order should be worked out on a case-by-case basis between the CCA Administrator and the utility, based on the time needed and labor costs detailed in special services provisions of tariff or similar provisions (i.e., fully loaded labor rates).

Joule and the Joint Utilities have expressed the willingness to work together to verify the accuracy of the information provided to facilitate a CCA program in order to prevent erroneous enrollments. Joule should revise its DPP and remove data request #4 and instead continue to work with the Joint Utilities on this matter.

#### UBP-DERs Requirements

Joule's or its contracted DER supplier's provision of CDG service to CCA customers must comply with the UBP-DERs, though, as with the UBP, the requirement for explicit customer consent is waived and replaced with a requirement for municipal consent and an opt-out process compliant with this Order. In particular, Joule must register as a DER provider or ensure that the project is run by a registered DER provider, and each CDG customer must be provided with a Standard Disclosure Form.

---

<sup>23</sup> Case 14-M-0224, supra, Order Establishing Community Choice Data Access Fees (issued December 14, 2017).

Municipal Authorizations

The Commission recognizes that the Town of Fishkill and the City of Beacon in Dutchess County; the Town of Philipstown and the Village of Cold Spring in Putnam County; the Village of Lima in Livingston County; the Village of Brockport in Monroe County; and the Town of Geneva in Ontario County, as evidenced by the filings submitted by Joule, have each exercised their Municipal Home Rule Law authority to initiate a CCA program, consistent with the requirements in the CCA Framework Order.

The Commission orders:

1. Joule Assets, Inc. (Joule) shall file an updated Master Implementation Plan within 60 days of the date of this Order, consistent with the discussion in the body of this Order.

2. Joule shall file the final Data Protection Plan within 60 days of the issuance of this Order.

3. Joule is authorized to implement its Community Choice Aggregation Program, consistent with the terms of this Order, as soon as it has completed the requirements in Ordering Clause numbers 1 and 2 and has entered into a Data Security Agreement with the relevant utility or utilities.

4. Joule shall be permitted to add municipalities to its existing CCA program or create new programs, provided it files certifications of each local authorization for CCA formation from each municipality and supplements to the existing Plan appendices, or submits a new appendix, demonstrating that outreach and education consistent with the Master Implementation Plan, the CCA Framework Order, the MEGA Order, the Good Energy Order, and this Order was conducted in each municipality.

5. If Joule intends to serve participants in utility low-income assistance programs (APPs), those customers

must be provided with guaranteed savings. Joule and its selected Energy Service Company shall make a compliance filing, prior to mailing opt-out letters, describing the guaranteed savings product that will be offered to APPs and demonstrating: (a) an ability to calculate what the customer's total bill would have been if the commodity had been provided by the utility; (b) a willingness and ability to ensure that the customer will be paying no more than what they would have paid to the utility; and (c) appropriate reporting and ability to verify compliance with these assurances. The compliance filing must also include a tailored opt-out letter for those customers that explains the product they will be enrolled in. Department of Public Service Staff shall review this filing to ensure that it is consistent with the requirements in the Low-Income Order.

6. If Joule intends to serve APPs, aggregated data and customer contact information provided to municipalities, Community Choice Aggregation Administrators, or Energy Service Companies pursuant to the CCA Framework Order shall include data related to customers with utility-initiated blocks on their accounts.

7. Joule shall submit a CDG Implementation Plan, consistent with the requirements in the body of this Order, for Staff review and approval before enrolling customers in a CDG program on an opt-out basis. Joule may not enroll any customers in a CDG program on an opt-out basis unless and until Staff has approved the CDG Implementation Plan.

8. If Joule implements a CDG program as part of its CCA program, Joule must make quarterly filings, 45 days after the end of each quarter and beginning the first quarter in which customers are billed CDG subscription fees, demonstrating that CDG credits provided in that quarter exceeded CDG subscription fees charged in that quarter.



9. If Joule integrates CDG projects into its CCA program, it shall include the additional reporting on those projects, consistent with the body of this Order, in its annual reports.

10. If Joule integrates green products into its CCA program, it shall design and manage those products consistent with the requirements in the body of this Order.

11. Joule shall file any request for proposals or similar solicitation seeking commodity supply or other energy services and any draft correspondence on such services with Staff for review.

12. 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.

13. These proceedings shall be continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary

APPENDIX A

Commenters:

350 Brooklyn

Adirondack Council

Ampion

City of New York

Delaware River Solar

First Unitarian Church of Rochester

Hudson Valley Regional Council (HVRC)

Irondequoit (NY) Mothers Out Front Team

Joint Utilities<sup>1</sup>

Natural Resources Defense Council (NRDC)

Nevel, Doug

People of Albany United for Safe Energy (PAUSE)

Rochester People's Climate Coalition (RPCC)

Senator Kevin Parker, 21st Senatorial District

Solarize Albany

Sullivan Alliance for Sustainable Development (SASD)

Town of Geneva

Village of Brockport

Village of Lima Board

---

<sup>1</sup> 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, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation.