

numerous licensed Energy Service Companies (“ESCOs”) that are actively serving electricity and natural gas customers throughout New York.¹ NRG is also an active participant in CCA programs in New Jersey, New York, Illinois, and Massachusetts. Through our Direct Energy Services brand, we have been awarded CCA contracts to serve over 350,000 customers since 2018 on fixed rate and/or renewable products. NRG offers the below comments on the Whitepaper.

5.1 Program Standardization and Uniformity

Program Structure

Staff recommends the creation of standardized templates and specific guidelines for meeting program requirements. Staff would like the ability to change these templates without Commission approval to allow flexibility to adapt to experience gained through CCA Programs. NRG is in favor of using standardized templates and guidelines for the CCA Administrators to follow, however, processes must be established to ensure that these templates and guidelines are following the letter of the law and only modified as required for any such exercise of the Commission’s rule-making powers. Allowing DPS Staff to modify these templates unilaterally may impose other requirements that are not currently in the Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (“Framework Order”) which was issued and effective on April 21, 2016, in this Case Number or any other rules that come about as a result of this proceeding. A slight change to the language can change the entire meaning of the template and cause many repercussions as CCA Administrators try to adapt the program to meet the template requirements. Requiring Commission approval provides that extra step of checks

¹ With the closing of its acquisition of Direct Energy on January 5, 2021, the NRG Energy Inc. Retail Companies operating in New York now comprise Direct Energy Business, LLC (“DEB”), Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, and Gateway Energy Services Company in addition to Green Mountain Energy Company, Reliant Energy Northeast LLC d/b/a NRG Home and d/b/a NRG Business Solutions, Energy Plus Holdings LLC, Energy Plus Natural Gas LLC, Independence Energy Group LLC d/b/a Cirro Energy, XOOM Energy New York, LLC, and Stream Energy New York, LLC.

and balances to ensure the change complies with the rules, and also ensures that any such rules will be respected by the courts as a valid exercise of the Commission's rulemaking authority. The templates and guidelines should also be open for Stakeholder input and comments before they are created or changed and should only be modified through a valid exercise of the Commission's rulemaking powers.

Outreach and Education

NRG generally agrees with DPS Staff's proposal to develop a uniform filing structure to reduce duplicative filings and the use of standardized outreach and education templates and guidelines for communicating with customers. Stakeholders should have the ability to review the education templates and guidelines and be allowed an opportunity to comment. Any changes to these templates will impact current documents and processes that various Stakeholders are currently using and therefore DPS Staff should be mindful of the costs to implement any such changes. In addition, many of the Stakeholders have been participating in these programs for several years and in multiple states and can therefore provide useful knowledge and input of things that may or may not work. These guidelines should be created collaboratively, and NRG is available to participate in these discussions.

Inconsistency of CCA Program Rate

DPS Staff recommends all program participants be enrolled in the same rate, regardless of when they join the CCA, unless they voluntarily choose a different option. NRG prefers the ability to enroll new participants on a different rate due to seasonality and price risk. NRG recommends focusing on clarity and transparency and suggests this information be provided in the program literature. Including a statement that customers who sign up after the initial enrollment period may be charged a rate that varies from the original program rate would provide this clarity. Prices in the market vary dramatically

during different times of the year and are directly related to weather and peak seasons. During peak seasons the rates will be higher and during shoulder and off-peak seasons the rates will be lower. If ESCOs do not have the ability to sign up new participants on a different rate, all program participants may see higher rates in future programs to account for the associated risk.

Program and Administrator Websites

DPS Staff recommends issuing set guidelines for what information is required on program websites and further recommends that these websites are reviewed by DPS Staff before use. NRG recommends providing set guidelines as to what must be included in program websites, however the review process may cause delays in program participation and/or extra costs for program changes. Currently, NRG serves as an ESCO in NY and as such is required to show customers certain information as part of the enrollment process. The Uniform Business Practices (“UBP”) outline what information needs to appear as part of an electronic enrollment. DPS Staff does not review an ESCO’s websites but puts the onus on the ESCOs as to the accuracy and compliance of the information listed. Following a similar process by which the website rules are provided, and parties are responsible for compliance is more efficient than the DPS Staff reviewing all the webpages and links before use.

5.2 Utility Standardization and Process

Utility Website CCA Information

NRG agrees with DPS Staff that requirements must be established on what information a utility includes on its website about CCA programs. Utility websites can be difficult to navigate at times and having this information in a clear and conspicuous location would help.

Price Information

NRG does not necessarily agree with the proposal surrounding the price to compare. First, the price to compare in NY is not a fair apple to apples comparison. Utilities adjust and true up their rates after the fact, making it impossible for ESCOs to compete with the rate. There also may be some costs that are not accurately included in the price to compare as they may be shared by all customers. In addition, Utilities are free to adjust their commodity prices going forward due to changing market conditions, undermining the validity of any attempt to compare a utility's current or historic default service rates and ESCO price offerings for service to be provided at a future date.

As a result, including the price to compare on a customer's bill will be misleading and not an accurate summation of the value they are receiving from participating in the CCA program. This is particularly true in the case of programs that include a fixed rate, which cannot accurately be compared with the utility's variable rate that not only varies month to month but also includes adjustments and true ups. Many CCA programs also come coupled with a green component and some may also include Community Distributed Generation ("CDG") such as Community Solar. Comparing the unique CCA program products to the ordinary price to compare will result in customer confusion, customer complaints, and customers exiting the program prematurely before they have a chance to recognize any of the benefits.

CCA Program Identification on Utility Bills

NRG agrees with DPS Staff that including the name of the CCA program on the utility bill will provide clarity to customers. Changes that reduce customer complaints and customers who opt-out and then opt back in due to confusion are welcomed.

Billing Errors

NRG also agrees that standardized processes and requirements be established for billing errors. The utilities should be responsible for notifying DPS Staff, the CCA Administrators, ESCOs, municipalities, and

customers of any errors that occur and the remedies that have been adopted for correction. NRG has seen a multitude of different billing errors that are caused by the utilities or limitations in the utilities' customer systems. Customers often blame the ESCO for the problem and cancel service without so much as a call to our customer service. Forcing utilities to take responsibility for their actions and mistakes by notifying customers and other involved parties is key to the success of not only CCA programs, but all retail energy programs in the State.

Customer Enrollment Errors

DPS Staff recommends various remedies for customer enrollment errors. The remedies should be based on a "whose fault is it" approach. If the ESCO is at fault, it should be the responsibility of the ESCO to right the wrong and make the customer whole by either refunding them back any money charged in error (the difference between what they were charged and what they should have been charged) or refraining from charging any additional monies owed. Likewise, if the error is the utility's fault, the utility should be responsible for correcting the problem and making the customer whole. Specifically, if the customer has been enrolled in error and not yet billed, they should be backdated and returned to the utility. If the account has already been billed, the account should be corrected and if they were overbilled, a refund should be provided (for the difference between what they were charged and what they should have been charged) in the form of a credit and a letter should be sent notifying the customer. The party at fault should be responsible for providing the letter and the credit. If the customer was underbilled, they should not be charged the difference, however the customer should be notified by a letter. Once again, the party at fault should be responsible for notifying the customer and making the other party whole. If a customer is "not enrolled" in error, the utility should credit the account if the customer was overcharged. If the customer was undercharged the customer should not be charged the difference. A notification letter should be sent by the party at fault and the customer

should be made whole. Through all these scenarios it is important to hold parties accountable for their errors and not effectively punish the customers or other parties involved. When backdating enrollments or making other adjustment the customer's load should also be adjusted and the numbers provided to the New York independent System Operator ("NYISO") for settlement purposes.

Notification Letters

DPS Staff recommends changing the utility notification letters for CCA participants. We agree with the recommendation to include the CCA program name and contact information for customers who are participating in CCA programs. It would also be helpful, however, if the letter included some other educational information about how CCAs work or a link to pertinent websites containing CCA information. This would alleviate confusion and provide a learning opportunity for customers wishing to find out more information. NRG also agrees with DPS Staff that suppressing the letters for customers in CCA programs that are simply renewing (even if they are changing ESCOs) is beneficial and will eliminate customer confusion and complaints.

Utility Role in CCA Program Opt-Out Requests

DPS Staff discusses an issue that ESCOs are all too familiar with. Utility customer service representatives are sometimes not capable of explaining the process of taking service through an ESCO and often discourage customers from participating in ESCO programs including CCAs. ESCOs do not expect utility representatives to be experts on ESCO products, however, should explain how shopping and CCAs work and refer the customer to the ESCO or CCA Administrator for more information. We urge the Commission to address this issue in all facets of the NY market to ensure that ESCO programs are treated equally.

NRG generally agrees with DPS Staff's recommendation that the utility keep lists and promptly notify the serving ESCO of all "opt-outs" received during the opt-out period and track customers who ask for a block on their account. The report should be sent after the opt-out period to the CCA Administrators and should be updated monthly. NRG has a concern about the opt-out categories that are suggested here and in the Annual Reporting section of the Whitepaper. Currently, NRG often does not know what the opt-out reason is as this information is coming from a variety of different sources. Therefore, NRG does not track opt-outs in any categories and changes would need to be made in our systems to add these.

5.3 Streamlined Filing Process

Filing Process

DPS Staff recommends streamlining the filing and tracking process for CCA documents by providing a public centralized CCA tracking database that could easily be queried, track compliance, and record program information. A public facing CCA database dashboard is also suggested to better understand and analyze performance of CCA Programs. NRG is in favor of both improvements as long as customer data privacy is maintained.

NRG urges the Commission to make further improvements to the filing process. The Commission matter filing system does not currently work with many of the newer browsers that corporations are using. Often an alternative (older browser) must be used for these filings and these older browsers do not always work with corporate firewalls and other protections. Updating the system to allow Microsoft Edge and other browsers would help to alleviate some of the filing problems.

5.4 Modifications of Requirements

5.4.1 Provision of Customer Data

Data Security Agreement

DPS Staff recommends replacing the existing Data Security Agreements with the newer agreements that came out of the Cybersecurity Order. NRG disagrees and suggests this item be tabled for now as the new Order Adopting a Data Access Framework and Establishing Further Process, Case No. 20-M-0082 was issued on April 15, 2021 which completely changes not only the procedures behind who can access the data but also all the agreements that are necessary for each party. It would be duplicative for all current entities participating in CCAs to sign these agreements and then potentially be forced to sign a third round of agreements after the Data Access Framework Order processes are defined.

Aggregated Data

NRG has some specific asks regarding both the aggregated data set and the customer specific contact information set. These asks are based on real life experiences and participation in CCA programs. Sometimes the rules may seem appropriate on paper, however, when actually implementing the program they are not practical in nature.

The aggregated data set should provide the customer's bill cycle and period codes, rate class, and NYISO ICAP tags and zones, as these fields are necessary for ESCOs to accurately price customers and prepare a bid. The bill cycle and period codes are the most important pieces of information for timing purposes. Batches of information must be sent to the utility according to bill cycle. Therefore, we need to know the count of accounts that are within each bill cycle and when the earliest bill cycle will occur. NRG also agrees that utilities should be responsible for providing accurate data on a timely basis and when accurate data is not provided or is provided on an untimely basis, all impacted parties should be notified and made whole by the utility to the extent that the error causes customer enrollments to be delayed or submitted in error. Often incorrect rate classes are provided, and customers are priced inappropriately.

ESCOs need accurate and timely data in order to complete all of the tasks to set up the programs efficiently.

Privacy Screens

NRG agrees with DPS Staff on the removal of privacy screens as the data is already anonymized and all parties have executed Data Security Agreements.

Customer Specific Contact Information

NRG appreciates the recommendation from DPS Staff to add information to the customer specific contact information data set. NRG agrees with the suggestion but would include two more data fields to the list: customer rate class and budget billing indicator. The customer specific contact information list should therefore include the following:

- a. Meter read data to include bill cycle and period code
- b. Tax-exempt status
- c. Net metered/VDER/solar account indicator
- d. Dual meter indicator
- e. Customer rate class
- f. Budget Bill indicator for Bill Ready markets

Additionally, under the current practice, the utility will not allow the winning ESCO to request data. It would be helpful going forward if the ESCO is recognized as an active party to the process whereby the utility communicates data directly to the ESCO instead of via the CCA Administrator.

Opt-out CDG Program Data

NRG agrees with the proposal set forth regarding the exclusion of certain customers from the aggregated data and customer specific data when opt-out CDG programs are implemented as part of a CCA program. The customers to be excluded are customers who already have an active onsite or

remote net metering account, customers already subscribed to a CDG project, or customers ineligible to participate in a CGD program.

Timeframe Expectations

Any discussion of data would be incomplete without mentioning the timing challenges that are faced when attempting to implement the program. Once an ESCO is chosen for the CCA, the utility has five business days to send the customer specific data to the ESCO. After the opt-out period ends the ESCO may request detailed customer data regarding normal EDI protocols. Waiting five business days for the customer specific data puts ESCOs at risk for not meeting the customer notification timelines (opt-out letters). Accounts must be loaded into our system at least 30 days before any enrollment is submitted to the utility. This is in order to conduct the notification mailing and ensure that we have a way to keep track of opt-outs. If the timeline for this notification letter is missed, customer enrollments are delayed by a month or potentially longer resulting in customer complaints and dissatisfaction. In some cases, the utilities have taken even longer than five business days to send the data.

NRG suggests the customer specific data be provided to ESCOs immediately after the ESCO is chosen for the CCA or within one business day. This would enable the ESCO to get the customer opt-out letters mailed in a timely fashion allowing enough time for processing. In addition, the detailed customer data should also be received within one business day of when the opt-out period ends. The detailed customer data includes the information necessary to submit the enrollment. Ideally, NRG would like to be able to submit the enrollment to the utility at least seven days in advance to allow for any rejections or system issues to be corrected. Obtaining this data as soon as possible will enable time for any unforeseen problems.

NRG agrees with DPS Staff that a Dispute Resolution process should be outlined for situations where the utility is not providing timely data, or the data is inaccurate. The process should be accelerated in that the ESCO does not have a lot of time to get these customers notified and enrolled, and therefore a lengthy Dispute Resolution Process will not work in this case. The current process that is in the UBPs while effective, may take months to resolve. CCA programs are for a limited amount of time and the parties cannot take months to get a resolution.

Proxy ID Numbers

With respect to Proxy ID numbers, NRG is in favor of providing a unique identifier to each potential CCA program customer account that would enable portability and remove the need for the account number for enrollment purposes. It is important to note that this change may take some time for the utilities and ESCOs to set up and internally program, therefore allowing enough time to implement this change is critical.

5.4.2 Customer Eligibility

Service Class Data

DPS Staff recommends that the utilities clean up their opt-out eligible customer service classes, define any sub-classes, and remove any accounts that are not eligible for opt-out from the list. NRG agrees with this approach as the more accurate information available, the smoother the program runs.

New Service Classes and Rate Structures

When utilities start developing new rate classes for demand response or other programs, it is imperative that this information be provided to ESCOs and all other interested parties so that our records can be updated, and our systems mapped accordingly. The meter read cycles and period codes and other pertinent information will also need to be provided so that these customers can be included in the CCA programs as appropriate.

5.4.3 Opt-out Process

Eligible Customers

NRG agrees that customers who have opted out in the past should remain opted out for life as long as customers can always opt back in if they change their mind and chose to participate.

Newly Eligible List

The utilities should establish a process to eliminate any incorrect customer accounts from the newly eligible list or add an identifier as to why the account is newly eligible. This would help streamline the process to enable newly eligible customers to participate as quickly as possible. ESCOs are not able to ascertain why the customers are newly eligible – so having that indicator (name change, rate class change, etc.) would help streamline the process.

Additional Meeting Requirement

NRG agrees with DPS Staff's suggestion of revising the opt-out letter to include notice about the upcoming informational meeting so long as the ESCO is made aware of the change ahead of time and has ample time to update the letter. As mentioned previously, the deadlines for mailing the notices are very tight and changing anything in the process may cause additional delays.

5.4.4 Opt-in Process

DPS Staff recommends suspension of the customer authorization requirement for CCA opt-in purposes. NRG agrees with this recommendation as this customer authorization requirement caused many headaches in the early days of CCAs. When a customer initially opts-out of a CCA program and then later decides he/she wants to participate, they often call the CCA Administrator to make that request. There was some confusion early on as to how that information should be captured and what authorization would be necessary. CCA Administrators are not equipped to do third party voice verifications or other

procedures that would appropriately capture a customer’s consent as required by the UBP Section 5 (B) (1). Removing the requirement to obtain and verify the consent will allow CCA Administrators to capture this data in a means they see fit and provide the information to the ESCO for the customer to be enrolled in the program.

5.4.5 Product Pricing

Fixed Rate with a Price Limit

NRG disagrees with DPS Staff’s recommendation to include a 5% cap over the utility 12 month trailing average rate on commodity product offerings. There should be no limitation placed on CCA programs as these programs have traditionally been exempt from the rules set forth in the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process issued on December 12, 2019 and the subsequent Order on Rehearing, Reconsideration, and Providing Clarification issued on September 18, 2020 in Case Nos. 15-M-0127, 12-M-0476, and 98-M-1343 (“Market Reset Order”). This is because CCA programs have a proven track record of providing effective rates and other value-added products like renewables that benefit not only customers but municipalities. The Framework Order states “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 promote and advance the achievement of the State’s energy goals.”² Placing a cap on these programs will kill innovation and the opportunities CCAs offer.

In addition, the price of Renewable Energy Credits (“RECs”) has risen significantly (as discussed in more detail below). Capping the commodity rate at 5% will prevent ESCOs from bidding to serve CCA programs with renewables, programs that municipalities often favor. “CCA programs can educate,

² Order Authorizing Framework for Community Choice Aggregation Opt-Out Program, Case No. 14-M-0224, April 21, 2016, (“Framework Order”), page 2.

encourage, and empower communities and individuals to take control of their energy future through engagement with existing REV [Reforming the Energy Vision] and CEF [Clean Energy Fund] opportunities and development of new DER [Distributed Energy Resources] and clean energy programs.”³ Capping the rate stifles innovation and renewables in the market.

5.5 CDG Opt-Out with Consolidated Billing Process

CDG Programs with an Opt-Out CDG Component

NRG does not oppose the inclusion of CDG programs in CCAs and does not oppose adding these types of programs to existing CCAs with the required implementation plan documentation. However, NRG believes that these programs should only be offered on an opt-in basis due to subscription size and customer savings. Community solar projects have a certain capacity size. When more and more subscribers sign up, each of those subscribers get a smaller percentage of the project. Allowing only programs that are opt-in programs allows CDG Developers and Project Sponsors to closely monitor how many customers are signing up and close the program if necessary.

Additional Program Offering Requirements

DPS Staff is seeking shareholder input on how to incorporate other program offerings into CCA programs. NRG suggests a working group collaborative to discuss ideas about different program offerings and how they could be incorporated into the existing program design. Any rules that are created should manifest in a way that does not stifle innovation and growth. NRG has many innovative products that we’d love to offer in NY that simply cannot be offered to customers due to the restrictive rules established by the Market Reset Order. This product list includes things like carbon offsets, electric vehicle charging rates, home energy bundles which include energy efficiency products, and green gas – none of which can currently be sold to customers in the State. Municipalities may prefer one or more of

³ Framework Order, page 3.

these product offerings and wish to incorporate it into their offering. Enough flexibility should be allowed to entertain these other options while maintaining the current CCA rules that are in place.

Renewable Energy Certificates

DPS Staff is seeking input on alternative program structures to address the problem of the decline in renewable offers due to the rise in REC pricing. NRG suggests allowing nationally sourced RECs for these programs. These RECs still provide benefit to the environment and help to combat climate change. They are more easily obtainable and more cost effective. Allowing this for a limited number of years (until the local renewable supply catches up to the local renewable demand) would enable municipalities to do something for the good of the planet while pushing for a more local benefit in the upcoming years. Allowing other products such as carbon offsets, energy efficiency bundles, and home energy audits may also be an opportunity for the municipality to help their environment.

Opt-Out CDG Only Program

NRG opposes enabling standalone opt-out CDG programs. As stated in Comments filed by NRG Energy, Inc. in response to Ampion, PBC's Petition for Approval of Implementation Plan for a Community Choice Aggregation Program Featuring Opt-Out Community Distributed Generation filed on June 28, 2021 in this same Case Number ("NRG Comments on Ampion Petition"), traditionally, a CCA program can only exist through ESCO commodity supply and a CDG program is not offered as an opt-out program. The Framework Order paved the way for successful CCA programs in the State. It laid out rules and guidelines that must be followed when creating a CCA Program. The Framework Order included ESCO commodity supply as the foundation to any successful program. Other products and services could be added on, but each program started with ESCO commodity supply.

According to the Framework Order, “The foundation of a CCA program is the contract between the municipality and one or more selected ESCOs.”⁴ Eliminating ESCO commodity service from the CCA program effectively eliminates the CCA program.

The intention of the Framework Order was to have CCAs between the ESCO and the municipality while allowing other add-ons (i.e., energy efficiency, community solar, demand response). NRG is fully supportive of CDG programs as long as the program is coupled with ESCO commodity supply as was intended in the Framework Order. As per the Framework Order:

“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 consumer awareness and bill savings, they present a formidable opportunity to advance the State’s clean energy objectives.”⁵

NRG fully agrees with this statement and encourages municipalities to explore CCA programs that include ESCO commodity supply coupled with these optional services. The Framework Order also states:

“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

⁴ Framework Order, page 30.

⁵ Framework Order, page 11-12.

development of holistic community energy initiatives”⁶ (emphasis added).

Bundling the required ESCO service with energy efficiency, community solar, or demand response products would definitely advance the State’s objectives including the Reforming the Energy Vision (“REV”), Climate Leadership and Community Protection Act, and other clean energy objectives.

Eliminating the ESCO commodity supply component would also eliminate the potential for renewable product offerings. Currently, NRG serves many of our CCA programs with 100% renewable products. Utilizing an opt-out CDG program in place of a 100% renewable ESCO commodity offering totally negates any additional value that coupling both these programs could bring. Currently, NRG offers a product that is greener than the Renewable Portfolio Standard in 37 municipalities with at least 10 of those programs 100% renewable. As a matter of fact, in 2020 NRG retired over 300,000 NY Environmental Disclosure Program compliant Renewable Energy Credits for customers that are served through CCA programs.

Lastly, all New Yorkers should have access to community solar – not just residents of a particular municipality. Allowing standalone CDG opt-out programs in only certain municipalities might prevent other New Yorkers from obtaining community solar. There are a limited number of developers and a limited amount of community solar available. It is also quite possible that certain municipalities might include little or no low-income customers and therefore those customers might be prevented from participating in community solar projects.

⁶ Framework Order, page 32.

5.6 Annual Reporting

Currently the annual report requirements are a mixed bag stemming from the original Framework Order and modified along the way in different cases and matters. DPS Staff is hoping to standardize these reports by providing templates for providing the information so that the CCA Administrators are all providing the same information in the same format. Additionally, DPS Staff is recommending an additional filing requirement – a quarterly filing which would include all the CCA and CDG numbers. The quarterly filing would also be a template constructed to calculate the annual numbers for inclusion in the annual report. NRG is generally supportive of this idea as long as the template is easy to work with, does not change frequently, and makes practical sense. Additionally, ESCOs and CCA Administrators will need time to program and develop the quarterly filing process.

Complaint Reporting and Complaint Categories

The Whitepaper suggests expanding customer complaint reporting to include all complaints received by ESCOs, DER, CCA Administrator, and municipality. NRG agrees. DPS Staff also recommends that the rules include standardized and defined specific complaint categories. Requiring complaints to be captured and catalogued may require system programming and other costly actions. As an example of potential categories, our system currently captures complaints into the following category buckets:

- Collection
- Service Termination
- Billing/High Rate
- Disputed Enrollment
- Unauthorized charges
- Marketing/sales
- General Complaint
- Quality of Service
- General Inquiry
- Awards Issue
- Account Update
- Property Damage

- Leasing/Billing
- Equipment Issue/Performance
- Servicing

This is an exhaustive list and, in our experience, captures every scenario that is likely to arise.

Opt-out Reporting Categories

As stated above, including specific categories for opt-out enrollment are not necessary and will require additional programming and process changes. DPS Staff suggests the following specific categories for capturing why a customer is opting out of a program: 1. does not agree with opt-out enrollment, 2. is unfamiliar with the program or its offerings, 3. does not like CCA program or Admin, 4. does not feel they will benefit from program, and 4. other. ESCOs are currently getting this information from a variety of sources (calls, emails, postcards, CCA Administrators, etc.) Customer literature and telephone scripts would need to be updated to add these fields and systems would need to be programmed. Agents will also need to be trained regarding this new approach. It is unclear what additional benefits these changes would bring and whether the benefits would exceed the cost of the change. Lastly, if this change occurs all parties will need enough time to implement.

6. Environmental Disclosure Program Label

The Environmental Disclosure Program (“EDP”) label process desperately needs updating. On August 17, 2018, Sustainable Westchester submitted a Petition to Modify the Environmental Disclosure Program to Provide Separate Labels for Municipalities in Community Choice Aggregation and to Increase the Frequency of Data Reporting. In addition, at the June 19, 2019 Staff Round Table meeting the issue was raised again by multiple ESCOs who were present in the room. It is now 2021 and no changes have been made to accommodate these requests. Customers need to receive clear and transparent information, a message that is repeated in just about every Order and Whitepaper relating to the retail energy market. Yet – the EDP labels are confusing, contain information that is outdated and that no longer makes sense in a world where more and more products are renewable.

While NRG appreciates DPS Staff's efforts to get the correct information into the hands of the customer, accomplishing that through a manual work around is not only labor intensive, but leaves room for errors and inaccuracies. NRG would be happy to work in conjunction with DPS Staff to improve the EDP labels and provide input into the design. Automating this process as soon as possible is critical to getting the customers the correct information in the format that is required.

7. Enforcement Mechanism

DPS Staff seeks comments on an enforcement process to ensure all CCA participants act fairly and conduct business in a way to protect the CCA market and create a more positive CCA program. ESCOs serving CCA customers must abide by the rules in the UBPs. In addition, companies providing CDG would have to abide by the rules in the Distributed Energy Resource UBPs. The municipality officials are ultimately responsible to their constituents and will likely not be re-elected if there is any type of unfair or unprofessional business practice. Therefore, no additional enforcement requirements are necessary for these parties.

8. Long Island CCA Participation

DPS Staff recommends including Long Island CCA Programs in the normal review and approval process consistent with the programs in the rest of the State. NRG is fully supportive of CCA Program development in Long Island and agrees that the programs should be handled in the same way that other programs in the State are implemented. As discussed in NRG Retail Companies' Reply Comments Regarding the Invitation to Submit Comments on the Benefits of Retail Competition in the Long Island Electricity Market, filed on January 19, 2021 in Matter No. 15-02754, NRG is supportive of many other broad changes to the Long Island market that would enable the full opening of retail energy competition in a meaningful way.

A Process Outlining the Treatment for Gross Receipts Tax Should be Identified

In addition to all the items mentioned in the Whitepaper, NRG has one item that needs to fully be explored. There appears to be some inconsistencies in the way Gross Receipts Tax (GRT) is viewed and applied in the CCA programs. Many years ago it was determined that customer who purchasing energy supply from an ESCO would not be subject to GRT where, as is generally the case, title to the energy in question transfers to the customer outside of the municipal boundaries of the taxing jurisdiction. For that reason, the GRT is not charged or collected in any city in NY except for New York City when an ESCO is serving the customer. New York City is excluded because it collects GRT under a different statutory framework and because the transfer of title to the energy happens within New York City.

It has recently come to our attention that the municipalities sponsoring some of the newer CCA Programs are requesting that GRT be included in the bid price and collected from customers. For the reasons noted above, NRG does not believe that these municipalities are authorized to impose GRT on customers taking service under CCA programs. Any suggestion that NRG and other ESCOs should increase their charges to CCA customers and then make payments to such municipalities “in lieu of” GRT would violate Rule 28 of the Commission’s CCA Rules, which expressly provides that “Municipalities may not collect funds from customer payments to cover lost sales tax revenues.”⁷ If that rule changes at some point, NRG would be happy to start collecting and remitting GRT on behalf of customers, but until that time, the Commission must not approve CCA programs providing for the payment of these unauthorized charges.

⁷ 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*, Appendix D p. 10 (Issued and Effective April 21, 2016).

NRG fully understands why municipalities would want this tax to be collected and remitted as it is a source of income. Other states have instead included an “administrative fee” that can be added onto the program so that the municipality earns some extra funding for administering the program. If such a fee would be allowed and instructed by the Commission, NRG would be happy to collect and remit it as part of the program. Either way, the Commission should provide clear guidance regarding the collection and remittance of this tax or fee.

Conclusion

As a trusted and experienced ESCO serving customers in CCA Programs in several states, NRG offers its subject matter expertise as a resource to Staff in this policy discussion. NRG found the last CCA Round Table meeting to be helpful and informative and would encourage DPS Staff to host more such discussions and opportunities for collaboration among stakeholders. NRG appreciates the opportunity to comment and looks forward to involvement in future projects.

Respectfully submitted,

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