

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

**Case 14-M-0224 – Proceeding on Motion of the
Commission to Enable Community Choice
Aggregation Programs**

Case No. 14-M-0224

**AMPION, PBC’S PETITION FOR APPROVAL OF IMPLEMENTATION
PLAN FOR A COMMUNITY CHOICE AGGREGATION PROGRAM
FEATURING OPT-OUT COMMUNITY DISTRIBUTED GENERATION**

INTRODUCTION

Through this Petition, Ampion, PBC (“Ampion”) respectfully asks the Commission to approve the enclosed Implementation Plan for a Community Choice Aggregation (“CCA”) program featuring opt-out Community Distributed Generation (“CDG”) as the sole initial offering of the program to participating municipalities. While Ampion believes the Implementation Plan warrants approval based on the information set forth therein, we write separately here given the unique features of this proposed CCA. The Commission has approved CCA Implementation Plans featuring commodity electricity service plus an opt-in CDG program¹ and, more recently, a CCA Implementation Plan featuring commodity electricity service plus an opt-out CDG program.² The Ampion CCA would be the first to feature an opt-out CDG program as the sole initial offering to the residents of participating municipalities.³

For the following reasons, Ampion believes the proposed CCA program meets the criteria set

¹ Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications, Cases 14-M-0224 and 16-M-0015, (Issued and Effective October 19, 2017) (“MEGA Order”).

² Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications, Cases 14-M-0224 and 15-E-0082, (Issued and Effective March 16, 2018) (“Joule Assets Finger Lakes Order”).

³ At some point in the future, Ampion may offer additional products and services, on an opt-in or opt-out basis, and we will file an updated Implementation Plan when such products and services are available. We do not anticipate and do not seek approval to offer electricity or natural gas commodity service on either an opt-in or opt-out basis.

forth by the Commission in the various orders addressing CCAs and we thus seek approval of the enclosed Implementation Plan.

BACKGROUND

Ampion is a public benefit corporation, organized under the laws of the State of Delaware. Based in Boston, Ampion was founded in 2014 with the central purpose of providing a technology-enabled turnkey solution for developers and operators of community energy assets. As an early entrant into the CDG market, Ampion has deep market experience and offers what we believe is the industry-standard subscriber experience and revenue management system for community energy assets in the states in which we are engaged. Ampion has an existing CDG presence in New York through stand-alone CDG programs offered in partnership with solar developers and operators and through opt-in CDG programs offered in conjunction with several CCA programs. Ampion currently has more than 300 MW of community energy assets under management.

Ampion sees the opt-out CDG-only CCA model as a logical evolution of the CCA market in New York. From the beginning, the Commission has recognized the potential for the CCA model to contribute to New York's ambitious decarbonization and renewable energy goals and, as noted above, the Commission has already approved both opt-in and opt-out CDG options within the context of CCA's offering traditional energy commodity service through an ESCO. In our discussions with various municipalities, Ampion has found that some smaller towns and villages are less interested in the use of CCA to control commodity prices than they are in using it as a means to incentivize local renewable development, thereby contributing to statewide decarbonization goals. For example, the Town of Ballston, with whom Ampion has been in discussions to offer the first CDG-only opt-out CCA should this Petition be approved, has about

10,000 residents across 3,200 households and does not believe that its collective electricity demand would be sufficient to attract commodity service bids that the Town could be confident would beat the National Grid's default service rate over time. By participating in a CDG-only opt-out CCA, however, the Town could drive the development of as much as 20 MW or more of new solar capacity, infusing approximately on the order of \$30MM into the local economy and contributing to the State's goal of deriving 50 percent of its electricity from renewable sources by 2030.

Towns like Ballston are likely to be the sweet spot for a CDG-only opt-out CCA: municipalities that may not see much savings on commodity service from a traditional CCA but that can guarantee savings to their residents while contributing to the development of a material amount of new solar capacity in the region. Moreover, the municipalities Ampion has in mind for such programs would not be so large that providing CDG on an opt-out basis to all participating residents would present an insurmountable task for the developer who would be siting and building the solar facility. Finally, the Commission and a highly-engaged group of stakeholders have been moving quickly to implement an essential element of unlocking the potential for CDG-only opt-out CCAs: utility consolidated billing for distributed energy resources, also known as "net crediting" in the context of CDG programs.⁴ Net crediting resolves several issues that would otherwise stand in the way of allowing a CDG sponsor to enroll the great majority of accounts in a municipality without regard to factors such as individual credit scores.

For these reasons, as explained further below, Ampion developed the Implementation Plan that is the subject of this Petition to address the portion of the potential CCA market that is more interested in driving new renewable development than in attempting to improve upon the

⁴ See Case No. 19-M-0463, In the Matter of Consolidated Billing for Distributed Energy Resources.

utility's default service rate by some small amount or charging a premium for REC-based renewable supply.

ARGUMENT

I. THE COMMISSION HAS SUFFICIENT AUTHORITY TO APPROVE A CDG-ONLY OPT-OUT CCA.

The Commission's authority to establish and administer CCA programs was first described in the CCA Framework Order⁵ and was later expanded to include CCA programs that include a CDG component in the Joule Assets Finger Lake Order:

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 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.**⁶

In approving the opt-out CDG component of the Joule Assets program, the Commission recognized the potential benefits of such a program for a municipality's residents and the State:

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. 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.⁷

⁵ Case 14-M-0224, Community Choice Aggregation, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order).

⁶ Joule Assets Finger Lake Order at 10-11 (emphasis added).

⁷ Id. at 15 (footnote omitted).

The Commission did express concerns about the details of the Joule Assets opt-out CDG program and its dependence on utility consolidated billing for community net-metered assets, which had only recently begun development at the time. These concerns were of a factual nature and, as discussed further below, have been addressed since then, both by Joule Assets in further filings and by Ampion’s Implementation Plan, for which this Petition seeks approval. The concerns do not negate to any degree the Commission’s unambiguous conclusion that allowing an opt-out CDG program is consistent with the Commission’s authority and would be in the public interest provided the various factual predicates identified in the Joule Assets Finger Lake Order are met.

The only remaining question with respect to the Commission’s authority to allow an opt-out CDG-only program is whether the absence of a commodity component of the CCA program would deprive the Commission of its authority to approve such a program. The answer is no; the Commission’s authority to regulate DERs generally and CDG specifically is independent of its authority over retail commodity sales and, thus, the Commission is free to approve a CCA with opt-out CDG with or without the presence of a commodity component. The Commission made this clear in the order that established a framework for the regulation of DERs in New York and promulgating uniform business practices for DERs.⁸ The Commission found that it has direct authority over DER providers pursuant to Articles 1 and 2 of the Public Service Law, due to the status of many DER providers as “electric corporations,” and also indirect authority over DER providers to the extent they participate in “Commission-authorized and/or utility or DSP-operated programs, tariffs, or markets.”⁹

⁸ Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers, Case No. 15-M-0180 (Issued and effective October 19, 2017) (DER Oversight Framework Order).

⁹ *Id.* at 9.

The New York State Court of Appeals has also held that the Commission has broad authority to condition access to utility distribution systems on adherence to measures intended to protect consumers.¹⁰ The uses CDG programs, whether opt-out or opt-in, make of the utility distribution system¹¹ is separate from the use that ESCOs make of those systems in providing commodity electricity or natural gas service to end-use customers, and is not dependent in any way on the participation of an ESCO. In fact, most CDG customers in New York participate in those programs while remaining on utility default service.

In short, even in the absence of a commodity component, the Commission has ample authority to approve a CDG-only opt-out CCA program.

II. THE COMMISSION SHOULD APPROVE THE AMPION IMPLEMENTATION PLAN ON THE GROUNDS THAT IT MEETS ALL OF THE ESTABLISHED REQUIREMENTS FOR A CCA PROGRAM AND WOULD BE IN THE PUBLIC INTEREST.

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 approval¹¹, and submit certifications of local authorization” before proceeding with the steps required to implement a CCA. This filing includes a generic Implementation Plan for a CDG-only opt-out CCA and data protection plan for Commission approval, and Ampion will submit certificates of local authorization for participating municipalities once those are approved. Ampion has worked closely with DPS Staff in preparing the Implementation Plan and data protection plan, and we are confident that they meet the various criteria established in the DPS’s

¹⁰ Matter of National Energy Marketers Assn. et al. v New York State Pub. Serv. Commn., 33 NY3d 336 (2019).

¹¹ These uses include interconnection of DER assets at the distribution level, the use of utility metering and information systems to track and allocate community net metering credits and, with the advent of net crediting, the use of utility billing systems to bill and collect for amounts owed to CDG sponsors by subscribers.

review of documents filed by other CCA Administrators and, as such, we request that they be approved.

Ampion recognizes that the central question raised by this filing is not whether the generic Implementation Plan and data protection plan contain the necessary elements for approval, but rather whether the Commission should approve a model for CCA programs that focus initially on an opt-out CDG offering with no accompanying commodity component. We believe that such a model is strongly in the public interest and should be approved.

A. A CDG-only CCA Offers Municipalities a Streamlined Method of Providing Guaranteed Savings to Residents While Enabling the Development of Local Clean Power Assets.

As is well-documented in the December 2019 Reset Order¹² and the accompanying September 2020 Order on Rehearing¹³ in the same cases, the Commission has for some time questioned the competitive market's ability to deliver savings for mass market customers buying commodity electricity or natural gas from ESCOs. One of the Commission's justifications for approving opt-out CCA programs was that they might bring savings that had often eluded mass market customers acting on their own in the retail market:

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.¹⁴

With the absence of a known forward utility default rate for ESCOs to aim for in bidding to serve commodity CCAs, however, participating in a commodity CCA program brings no guarantee that customers will save money, although they frequently do. In contrast, a CDG-only

¹² Case 15-M-0127, et al., ESCO Eligibility, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019).

¹³ Case 15-M-0127, et al., ESCO Eligibility, Order on Rehearing, Reconsideration, and Providing Clarification (Issued and Effective September 18, 2020).

¹⁴ CCA Framework Order at 2.

opt-out CCA program as described in Ampion's generic Implementation Plan provides guaranteed savings to all participants in the program. The value proposition of such programs could not be simpler: subscribers receive credits on their monthly utility bill that exceed the amount they have paid for those credits by an agreed-upon percentage. Every participating customer saves money on his or her utility bill, regardless of whether they are on utility default service or taking commodity electricity service from an ESCO.

Every customer also saves regardless of his or her status with respect to the receipt of low-income assistance (APP customers). As noted in the Joule Assets Finger Lakes Order, CCAs electing to provide APP customers with commodity service through an ESCO must guarantee that those customers save money versus what they would have paid on utility default service.¹⁵ To make good on this guarantee, a CCA Administrator and the ESCO serving a CCA must, at the very least, demonstrate that they can identify APP customers who qualify for guaranteed savings and then track what those customers would have paid had they remained on utility service. This is a non-trivial exercise that is completely avoided in the program described in the Ampion Implementation Plan. Ampion need not even discover a customer's APP status as it is irrelevant to the value proposition presented by the CDG program: all customers save, period.

The development of net crediting for CDG programs contributes to the streamlining of a CDG-only opt-out CCA. Ampion was skeptical of net crediting when the Commission first took up the issue, but we have become convinced that the ability to leverage the utility's billing relationship with all delivery customers in its service territory will be essential to our proposal. The alternative would be for Ampion or another CDG sponsor to attempt to establish a billing relationship with potentially upwards of 80 or 90 percent of the households in a municipality.

¹⁵ Joule Assets Finger Lakes Order at 19-20.

This would be a logistical challenge that might greatly reduce the participation and, thus, the effectiveness of an opt-out CDG program. The work done by CDG stakeholders and utilities since the Commission opened its examination of net crediting and since the Commission issued its order establishing the details and implementation instructions for a net crediting program¹⁶ has progressed the concept to the point where Ampion is confident that a CDG-only opt-out CCA program can be up and operational in calendar 2021.

This streamlined approach, which uses net crediting and guarantees savings to all participating customers, allows municipalities that adopt it to focus on what attracts many municipalities to CCAs in the first place: the development of new local clean energy assets. The Commission recognized from the beginning that possible savings on commodity service would not be the only reason for a municipality to implement a CCA program:

[T]he 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. 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.¹⁷

Since the CCA Framework Order was issued, the statewide need for new clean energy assets has only increased. Shortly after that Order was released, the Cuomo Administration announced its goal of deriving 50 percent of New York's electricity from renewable sources by 2030. Two years later, that goal was supplemented with a commitment to achieve 100 percent

¹⁶ Case No. 19-M-0462, Order Regarding Consolidated Billing for Community Distributed Generation, (Issued and Effective December 12, 2019).

¹⁷ CCA Framework Order at 2-3.

carbon-free electricity production by 2040. The following year, the New York State Legislature passed the Climate Leadership and Community Protection Act, which commits New York to a statewide economy with net-zero carbon emissions by 2050. Municipalities can play a key role in achieving these goals, and CDG-only Opt-out CCA programs can be a critical policy tool for smaller towns and villages across the State in fulfilling that role.

B. A CDG-only CCA Program Is Consistent with A CCA Offering Commodity Electricity and/or Natural Gas and Will Not Prevent the Development of Further Such Programs.

While Ampion’s program does not include a commodity component, we wish to be clear that we support the continued development of CCAs that do include such a service offering. Commodity CCAs do offer municipalities the ability to manage their energy supply in ways that benefit their residents and New York’s overall carbon reduction goals. A commodity offering can be “greened up” with additional renewable energy credits or through the incorporation by an ESCO of a local renewable energy asset into the portfolio it uses to supply electricity to the community. Moreover, in the next phase of the Commission’s investigation into the products that ESCOs can offer to mass market customers, the Commission and stakeholders will be examining the possibility of the development of green gas products, which may contribute to the further decarbonization of New York’s energy economy. Such products may eventually be included into CCAs that include a natural gas commodity component. In short, there are many reasons for the Commission and municipalities across the state to continue to be bullish on the use of opt-out CCA programs that include commodity electricity and/or natural gas.

Ampion’s CDG-only opt-out CCA program is completely consistent with the further development of the broader CCA market. A commodity component can be added at a later time either by Ampion or by another entity acting on behalf of the municipality. The municipality and

the CCA Administrator would need to undertake additional consumer education efforts at the time, but the CCA market is increasingly sophisticated in its ability to convey the nature and benefits of these programs to municipal residents and we are confident that a follow-on commodity service, should it ever be offered with a CDG-only CCA, can be explained to residents in a manner that will meet the Commission's approval.

Perhaps most importantly, the net crediting system being developed by National Grid, whose service territory will be the focus of Ampion's initial efforts to deploy the CDG-only opt-out CCA model, anticipates the potential presence of an ESCO as the commodity supplier of electricity or natural gas. This is a necessary feature of the program as it needs to accommodate the model approved by the Commission in the Joule Assets Finger Lakes Order, in which a CCA includes both opt-out commodity service, which would be provided by an ESCO, and an opt-out CDG component.

CONCLUSION

A CDG-only opt-out CCA program holds a great deal of promise in furthering New York State's ambitious climate goals ahead. The Implementation Plan Ampion has developed can make this promise a reality and, for the reasons set forth above, we respectfully ask the Commission to approve the Plan, the data protection plan, and other supporting documents enclosed herein.

Respectfully submitted this 7th day of April.

AMPION, PBC

_____/s/_____
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