

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 18, 2018

COMMISSIONERS PRESENT:

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

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

ORDER APPROVING COMMUNITY CHOICE AGGREGATION PROGRAMS
WITH MODIFICATIONS

(Issued and Effective January 18, 2018)

BY THE COMMISSION:

INTRODUCTION

On April 21, 2016, the Public Service Commission (Commission) established the necessary framework for the development of municipal Community Choice Aggregation (CCA) programs.¹ The CCA framework, which was developed as part of the Reforming the Energy Vision (REV) initiative, aims to increase consumer choice and participation in energy markets, while also supporting 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 opt-out basis and procure energy, and potentially DER services, on their behalf. The CCA Framework

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

Order authorized interested municipalities, on their own or through their selected CCA Administrator, to make a series of filings for Commission consideration to initiate a CCA program.

In response to the CCA Framework Order, Good Energy, L.P. (Good Energy) made a series of filings, as a CCA Administrator, to implement a CCA program for several municipalities in New York State, including the Towns of Cairo and New Baltimore, Greene County; the Village of Coxsackie, Greene County; and the Villages of Fayetteville and Minoa, Onondaga County. These filings include a Master Implementation Plan, a general Data Protection Plan, and certifications of municipal authorizations to form a CCA Program.²

This Order approves Good Energy's proposed CCA program, with certain modifications. Specifically, the Commission approves Good Energy's Master Implementation Plan, with conditions, acknowledges the certifications of local authorizations, and requires Good Energy to file a modified Data Protection Plan consistent with the requirements of the utility Data Security Agreement (DSA), as established in the MEGA Order.³

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

² Appendix D to the CCA Framework Order provides a summary of the CCA Rules required to form and implement a CCA program.

³ Cases 14-M-0224, et al., supra, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017) (MEGA Order).

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.⁴

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.⁵

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 its residents, including opt-out 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 updates and supplements to the Implementation Plan as appropriate, including final versions of customer opt-out letters 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 in order to identify plans

⁴ CCA Framework Order, pp. 1-2.

⁵ CCA Framework Order, p. 51 and Appendix D, p. 5.

for soliciting a new contract, negotiating an extension, or ending the CCA program.⁶

A CCA Administrator is also required to file a Data Protection Plan that ensures CCA customers will receive at least the same level of consumer protections as currently provided by utilities and ESCOs. The Data Protection Plan must specifically detail data security protocols and restrictions to prevent the sale of data or use of data for inappropriate purposes.⁷ The MEGA Order approved a generic utility DSA to govern the responsibilities of the CCA Administrator and other parties receiving utility data, and required the Data Protection Plan to be consistent with that DSA.⁸

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.⁹

Once these filings are 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, under the terms and timeframes described in the CCA Framework Order.¹⁰

⁶ CCA Framework Order, Appendix D, p. 5.

⁷ CCA Framework Order, p. 51 and Appendix D, pp. 5-6.

⁸ MEGA Order.

⁹ CCA Framework Order, p. 43 and Appendix D, p. 6.

¹⁰ CCA Framework Order, pp. 42-44 and Appendix D, pp. 10-11.

THE FILINGS

Good Energy, established in 2000, is a national energy management and consulting company that specializes in structuring and implementing CCA programs. Within their filings, Good Energy explains that it has been in communication with more than 80 municipalities across New York that are eager to move forward with the implementation of their CCA Program; to date, Good Energy has been selected as a CCA Administrator by several of those municipalities. With these municipalities, Good Energy has developed a proposed CCA program and would, contingent upon Commission approval, including the eventual solicitation and management of energy supply agreements for CCA customers. Good Energy filed a generic Master Implementation Plan for Commission consideration and explained that the Plan would be updated with detailed outreach and education information specific to each municipality, as well as verification of the passing of local laws.

Master Implementation Plan

Good Energy's Master Implementation Plan, as filed on December 23, 2016, and supplemented on November 10 and November 28, 2017, provides the general framework of the processes, protocols, and activities that would occur during the various stages of CCA formation in municipalities that select Good Energy as a CCA Administrator. It contains a description of the process by which municipalities have executed and would execute a CCA agreement with Good Energy as the CCA Administrator. It also includes operational details of the CCA program and the roles and responsibilities of the municipality, Good Energy, and the competitively selected ESCO. These operational details include customer contact and service, education and outreach, notifications to the local utilities, customer opt-in and opt-out procedures, solicitation of bids for energy supply and

services, energy service agreements with ESCOs, and other miscellaneous governance guidelines.

The Master Implementation Plan notes that Good Energy would work with the municipality to determine whether it would benefit from joining a Buying Group¹¹, which can help municipalities leverage their aggregated load with other municipalities' aggregated load to further reduce energy expenses for all participating residents. Each municipality would have the independent authority to decide whether to join or leave a Buying Group. Good Energy proposes, on behalf of each municipality, to solicit bids seeking competitive pricing, various contract terms and options for increased volumes of renewable energy, and other energy related value-added products and services based upon the needs and priorities of participating municipalities.

The Master Implementation Plan contains several attachments. Attachment 1 is a CCA Fact Sheet that Good Energy states would be used in conjunction with informational materials provided to municipal members. Examples of other forms of outreach and education are included in the Implementation Plan

¹¹ Good Energy defines a Buying Group as participating municipalities that join with other municipal aggregators in combining its load for purposes of soliciting bids from ESCOs. The purpose of the Buying Group is to allow municipal aggregators to capture the benefits of collective purchasing power while retaining full municipal autonomy. Each municipality participating in the Buying Group would be represented by a designee(s) of their choosing on the executive committee of the Buying Group. A municipality, through its designee, would select an ESCO based on the needs of the municipality and would not be required to select the same terms or ESCO as other members of the Buying Group. Each participating municipality would be free to join or leave the Buying Group at any time and would be required to take all proper steps to approve the Program as if the municipality were implementing a CCA program of its own, including enactment of a local law as outlined further below.

itself. Included in Attachment 2 are the Local Law Filings for the Towns of Cairo and New Baltimore, Greene County; the Village of Coxsackie, Greene County; and the Villages of Fayetteville and Minoa, Onondaga County. Attachment 3 is an example for a request for proposal (RFP) that would be used during the bid process. Attachment 4 is a template for the draft opt-out letter that provides information on the CCA program and the process for customers to opt-out, if so desired. Opt-out letters based on this template would be used to notify residents of the terms of the ESCO supply contract that is ultimately procured for the CCA. As discussed below, each opt-out letter would be subject to review by Department of Public Service Staff (Staff) to assure compliance with the requirements set forth in the CCA Framework Order, the MEGA Order, and subsequent Commission orders. These appendices are intended to be dynamic documents that would be updated and filed with Staff as each municipality joins the CCA Program and is added to an existing or new Buying Group.

Data Protection Plan

Good Energy's draft Data Protection Plan, filed on December 23, 2016 and refiled on November 28, 2017, 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 count and consumption (usage); customer contact information; and, customer specific information for enrollment purposes. Good Energy's proposed Data Protection Plan asserts that only the selected ESCO would have access to customer-specific data. Good Energy and the municipality would only have access to aggregated customer data and customer contact data. Good Energy states that it would work cooperatively with the utilities to implement

its Data Protection Plan, as well as implement any actions required in the Joint Utilities' Data Security Agreement.

Municipal Authorizations

On September 15, 2017, Good Energy filed verification of local authorizations for the Towns of Cairo and New Baltimore, Greene County; the Village of Coxsackie, Greene County; and the Villages of Fayetteville and Minoa, Onondaga County. Each local approval package contains a copy of the signed local law authorizing establishment of a CCA program and a public outreach plan that ensued 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 January 18, 2017 [SAPA No. 14-M-0224SP14] for Good Energy's initial Implementation Plan and Data Protection Plan filing. The time for submission of comments pursuant to that SAPA Notice expired on March 6, 2017. Those submitting comments included the Joint Utilities,¹² National Fuel Gas Distribution Corporation (NFG), and the Utility Intervention Unit (UIU). Good Energy's supplemental Implementation Plan, filed on November 10, 2017, reflected consideration of the comments.

¹² 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 National Grid (KEDLI), and 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).

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 ESCOs; the provision of gas and electric service; and the sale of gas and electricity.

New York Public Service Law (PSL) §5(1) grants the Commission jurisdiction and supervision over the sale or distribution of gas and electricity. PSL §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 PSL §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 requisite 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 setting practices for the establishment and operation of those programs, by conditioning the ability of the CCA Administrator and the ESCO to receive data and enroll customers on compliance with Commission directives.

COMMENTS

The Joint Utilities addressed several issues regarding Good Energy's filings. Specifically, they proposed: a correction to the definition of eligible customer; a clarification that the CCA would be implemented at the individual municipality level; a modification to remove telephone numbers, low-income status, and customers' existing power supply option from a data definition; a correction of enrollment timelines; and, a clarification of opt-out procedure. The UIU shared the Joint Utilities' request for removal of telephone numbers from a data definition and recommended that customers moving into a CCA area be given the same opt-out treatment as eligible customers. NFG agreed with, and expanded upon, the Joint Utilities' request for correction to the enrollment timelines. Attachment A to Good Energy's November 10, 2017 filing addressed the comments that had been made by providing clarification, and in some cases, correction to the Plan.

DISCUSSION AND CONCLUSION

Good Energy's proposal is consistent with the goals and requirements of the CCA program, as established by the Commission, and is therefore approved, subject to conditions and modifications as described below. These modifications and conditions will ensure that the implementation of Good Energy's CCA program is consistent with the Commission's requirements and is protective of both participating and non-participating customers.

Consistent with the discussion in the MEGA Order, Good Energy shall remove customer account number from its definition of "Customer Contact Information" in its Implementation Plan (Attachment A) and Data Protection Plan

(Attachment B). The Commission determined in the MEGA Order that account numbers are not essential during the opt-out phase and that allowing utilities to withhold account numbers reduced the risk to customers.¹³

Good Energy's Implementation Plan Supplement advises that "[i]f necessary, the selected ESCO will provide bilingual or multilingual customer support to explain the opt-out procedure to non-English speaking residents during this period and throughout the initial procurement term."¹⁴ ESCOs are bound by the conditions of the Uniform Business Practices (UBP), which includes provisions for limited English proficiency (LEP) consumers. The Marketing Standards of the UBP require that "any written materials, including contracts, sales agreements, marketing materials and the ESCO Consumer Bill of Rights, must be provided to the customer in the same language utilized to solicit the customer."¹⁵ In addition, the CCA Framework Order requires that all communications with LEP consumers, to the extent they can be identified by utility and/or municipal records, be provided in their native language.¹⁶ This provision is to ensure that all consumers cannot only make an informed decision on whether to participate in the CCA program, but are also able to receive answers regarding any questions they may have throughout the life of the program. As such, translation service must be available for all stages of a CCA program, including the internal call center that Good Energy advises it has created to be "staffed with experts to take calls from municipal residents inquiring about the municipality's CCA

¹³ MEGA Order, pp. 22-23.

¹⁴ Good Energy's Implementation Plan Supplement, p. 12.

¹⁵ Case 98-M-1343, Uniform Business Practices (issued February 2015), p. 62.

¹⁶ CCA Framework Order, Appendix D, p. 8.

program throughout its term.”¹⁷ The ESCO might be unable to address some questions or concerns, such as implications of switching in and out of the CCA program; therefore, it is essential that Good Energy’s call center includes translation service capabilities. Additionally, all documentation sent to identified LEP consumers must be in their native language, throughout the life of the CCA program.

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.¹⁸ This will ensure that residents, including those that 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 and terms 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.¹⁹ In other words, the opt-out period cannot start until after the outreach of no less than two months has already ended. Good Energy’s Planned Schedule²⁰ shows education to begin on day 52, additional public outreach meeting on day 55, and opt-out notices to be mailed on day 80. The would indicate that the opt-out notices would be mailed 28 days after outreach/education begins, which would be in violation of the

¹⁷ Good Energy’s Implementation Plan Supplement, p. 12.

¹⁸ MEGA Order, p. 16.

¹⁹ CCA Framework Order, Appendix D, p. 5.

²⁰ Good Energy Attachment A, p. 17.

order. Keeping with consumer education/outreach beginning on day 52, the soonest Good Energy would be able to mail opt-out notices would be day 112. The planned schedule and outreach timeline must be updated with correct timelines (education/outreach period, ESCO selection, and additional outreach meeting(s) before opt-out letters are to be mailed).

In addition, Good Energy 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.²¹ Good Energy shall update and file their Master Implementation Plan within 60 days of the issuance of this Order, to describe the additional outreach that will be provided. Drafts of any additional written communications to residents shall also be filed with Staff.

Consistent with the MEGA Order, Good Energy may only serve participants in utility low-income assistance programs (APPs) if it offers them a product consistent with Commission rules for ESCO service to APPs. At this time, those rules require that APPs be provided with guaranteed savings.²² If Good Energy intends to serve APPs, it 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

²¹ CCA Framework Order, p. 17.

²² Cases 12-M-0476 et al., Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (Low-Income Order) (December 16, 2016).

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. Staff shall review this filing to ensure that it is consistent with the requirements Low-Income Order and any other applicable requirements.

With respect to the proposed opt-out letter provided in the Master Implementation Plan, the Commission underscores that Good Energy will need to file, for Staff's review and acceptance in accordance with the process established in the CCA Framework Order, any finalized opt-out letter at least five days in advance of its intention to mail them. The MEGA Order clarified that drafts of the letter shall be provided to Staff at least five business days in advance of mailing to allow Staff the appropriate time to review.²³ Moreover, Good Energy will also be required to file with Staff any RFP seeking bids or proposals from ESCOs or other suppliers for commodity supply or any other service.

Good Energy's plans assert that the selected ESCO(s) will be responsible for compliance with 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 responsible for ensuring the CCA program's compliance with all portions of the CCA Framework Order.

²³ MEGA Order, p. 17.

Municipal Authorizations

The Commission recognizes that the Towns of Cairo and New Baltimore, Greene County; the Village of Coxsackie, Greene County; and the Villages of Fayetteville and Minoa, Onondaga County, as evidenced by the filings submitted by Good Energy, have each exercised their Municipal Home Rule Law authority in order to initiate a CCA program, consistent with the requirements in the CCA Framework Order.

The Commission orders:

1. Good Energy, L.P. shall file an updated Master Implementation Plan within 60 days of the date of this Order containing changes consistent with the discussion in the body of this Order.

2. Good Energy, L.P. shall file an updated Data Protection Plan in accordance with the discussion in the body of this Order and the final Data Security Agreement, within 60 days of the issuance of this Order.

3. Good Energy, L.P. is authorized to implement its Community Choice Aggregation Program as filed and supplemented, and consistent with the discussion and modifications noted in the body of this Order, as soon as it has complied with the requirements in Ordering Clause numbers 1 and 2 and has entered a Data Security Agreement with the relevant utility or utilities.

4. Good Energy, L.P. shall be permitted to add municipalities to its existing Buying Group or create new Buying Groups, provided it files certifications of each local authorization for CCA formation from each municipality and supplements to the Implementation Plan demonstrating that outreach and education consistent with the Master Implementation Plan, the Order Authorizing Framework for Community Choice

Aggregation Opt-Out Program issued April 21, 2016 in Case 14-M-0224 (CCA Framework Order), the Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (MEGA Order) issued October 19, 2017 in Cases 16-M-0015 and 14-M-0224, and this Order was conducted in each municipality.

5. If Good Energy, L.P. intends to serve participants in utility low-income assistance programs, those customers must be provided with guaranteed savings. Good Energy, L.P. 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 low-income assistance program participants 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 Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (Low-Income Order) issued December 16, 2016 in Cases 12-M-0476 et al.

6. If Good Energy, L.P. intends to serve low-income assistance program participants, 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, consistent with the discussion in the MEGA Order.

7. Good Energy, L.P. shall file any request for proposals or similar solicitation seeking commodity supply or other energy services and any draft correspondence on such services with Department of Public Service Staff for review.

8. 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.

9. This proceeding shall be continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary