

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 19, 2017

COMMISSIONERS PRESENT:

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

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

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

ORDER APPROVING COMMUNITY CHOICE AGGREGATION PROGRAM AND
UTILITY DATA SECURITY AGREEMENT WITH MODIFICATIONS

(Issued and Effective October 19, 2017)

BY THE COMMISSION:

INTRODUCTION

On April 21, 2016, the Commission established the necessary framework for the development of municipal Community Choice Aggregation (CCA) programs.¹ The CCA Framework Order, which was issued as part of the Reforming the Energy Vision (REV) initiative, aims to increase consumer choice and participation, 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 its residents and small businesses on an opt-out basis and procures

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).

energy, and potentially DER services, on their behalf. The CCA Framework 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, the Municipal Electric and Gas Alliance, Inc. (MEGA) 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 Oneonta, Otsego County; the Town of Horseheads and City of Elmira, Chemung County; the Town of Binghamton and the Town of Union, Broome County; and the Town of Montour and the Village of Montour Falls, Schuyler County. These filings include a Master Implementation Plan framework; a general Data Protection Plan; and certifications of municipal authorizations to form a CCA Program.² MEGA also filed a Petition for Clarification (Petition) of the CCA Framework Order on data issues. Concurrent with these filings, the Joint Utilities³ filed a Data Security Agreement (DSA) for Commission consideration, as directed by the CCA Framework Order. The proposed DSA defines the obligation of the CCA Administrator and its representatives to protect and limit the use of aggregated data and customer information provided by the utilities as part of the formation

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

³ 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).

of a CCA program.⁴ Consistent with the CCA Framework Order, the Commission has considered these filings to ensure that they are appropriately protective of customers and will result in benefits to participants, including based on lessons learned from the Sustainable Westchester CCA Pilot Program.

This Order approves MEGA's proposed CCA program. In particular, the Commission approves MEGA's Master Implementation Plan, with conditions; acknowledges the certifications of local authorizations; clarifies the issues raised in MEGA's Petition; approves the Joint Utilities' DSA, with modifications; and requires MEGA to file a modified Data Protection Plan consistent with the requirements of the DSA, as modified.

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.⁵

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

⁴ All filings can be found at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-M-0224&submit=Search>

⁵ CCA Framework Order, pp. 1-2.

proposals from energy service companies (ESCOs), or beginning operation of a CCA program.⁶

The CCA Framework Order also requires the Joint Utilities to develop, in consultation with Department of Public Service Staff (Staff), a proposed standard DSA for Commission consideration to ensure that customer information that is shared with CCA Administrators is adequately protected. The Joint Utilities filed a proposed DSA on June 6, 2016.

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 to identify plans for soliciting a new contract, negotiating an extension, or ending the CCA program.⁷

A CCA Administrator is also required to file a Data Protection Plan that ensures CCA customers will receive at least

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

⁷ CCA Framework Order, Appendix D, p. 5.

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.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

SUMMARY OF MEGA'S FILINGS

MEGA is a not-for-profit Local Development Corporation established in New York State in 2001 and is an aggregator of electricity, natural gas, and other energy products and services. MEGA explains that it has engaged with individual municipalities looking to explore and adopt a local law authorizing the formation of a CCA and has been selected as a CCA Administrator by several of those municipalities. With those municipalities, MEGA has developed a CCA program and will implement that program following Commission approval, including the eventual solicitation and management of energy supply

⁸ CCA Framework Order, p. 51 and Appendix D, pp. 5-6.

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

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

agreements for CCA customers. MEGA filed a generic Master Implementation Plan for Commission consideration as well as details on how that plan was followed in each municipality. MEGA expects to add further municipalities to its CCA Program under the same generic Master Implementation Plan, which will be updated with detailed outreach and education information specific to each municipality.

Master Implementation Plan

MEGA's Master Implementation Plan, first filed on July 7, 2016, and modified and refiled on June 23, 2017, provides the general framework of the processes, protocols, and activities that will occur during the various stages of CCA formation in municipalities that select MEGA as a CCA Administrator. It contains a description of the process by which municipalities would execute a CCA agreement with MEGA as the CCA Administrator. It also includes operational details of the CCA program and the roles and responsibilities of the municipality, MEGA, and the competitively selected ESCO. These operational details include customer contact and service, 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, including definitions of key terms.

The Master Implementation Plan notes that MEGA will provide administrative services to municipalities on an individual and group basis and that municipalities will be assigned to regionally based aggregation groups based on utility service territory and New York Independent System Operator, Inc. load zone (Aggregation Group). MEGA proposes, on behalf of each Aggregation Group, 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 appendices. Appendix A is a template that will be used to list all the municipalities within an Aggregation Group. Appendix B 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 will 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 will be subject to review by Staff to assure compliance with the requirements set forth in the CCA Framework Order as well as this Order. Appendix C is a template that will list the education and outreach activities and materials used to inform municipal residents on the CCA program, tailored to each municipality within the Aggregation Group.¹¹ 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 Aggregation Group.

Data Protection Plan

MEGA's Data Protection Plan, originally filed October 20, 2016, and modified and refiled on June 23, 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 number and consumption (usage); customer contact information; and, detailed customer information for enrollment purposes. MEGA's proposed data protection plan provides data handling protocols tailored to each data set and describes the

¹¹ On June 23, 2017, MEGA filed examples of outreach and education materials.

roles and responsibilities of each entity with access to each data set.

For aggregated customer data, MEGA acknowledges that a utility should not provide data for any service class that contains so few customers, or in which one customer makes up such a large portion of the load, that the aggregated information could provide significant information about an individual customer's usage. MEGA recommends combining service classes to ensure that aggregated data remains fully anonymized. MEGA further opines that since the anonymized aggregated data will only be used by the CCA Administrator and the municipality for CCA purposes, it does not need any specific data security protocols. MEGA proposes that aggregated data be transferred electronically, following the protocols outlined in the Joint Utilities' DSA, discussed further below.

MEGA is also proposing that eligible customer contact information, necessary to begin the opt-out process, be divided into two datasets, which would be handled by different entities and which, MEGA believes, require different levels of protection. MEGA proposes that the first data set, the complete detailed customer contact information, be sent directly from the utility to the selected ESCO.¹² The second dataset would then be generated by the ESCO and sent directly to MEGA. This second dataset is a subset of the customer contact information and is proposed to contain only service addresses and customer service classifications. This second dataset would be used to confirm that each service address contained in the list is within the intended municipality's jurisdiction. The customer contact

¹² The information requested in this transaction would include the name of the customer of record, mailing address, account number, and primary language, if available, as well as any customer specific alternate billing name and address.

information acquired by the ESCO would be transferred between the utility and ESCO in accordance with data protection protocols and regulations already in place for these regulated entities.¹³ As proposed, MEGA, as the CCA Administrator, and the municipality will neither request nor accept records containing full customer detailed information beyond the service address and customer classification noted above. Finally, MEGA's proposed Data Protection Plan includes Appendix A, which serves as a placeholder for the final DSA that will be signed by MEGA and each involved utility.

Petition for Clarification

On February 24 2017, MEGA filed a petition for clarification (Petition) of the CCA Framework Order with respect to aggregated and customer specific information. MEGA seeks three points of clarification: 1) the definition of "aggregated data" as it relates to the CCA Framework Order and other Commission proceedings and whether alternative aggregated data products can be substituted for the data that utilities are required to provide to CCA Administrators; 2) the responsible entity for determining the accuracy of the customer contact information provided by the utility for the purpose of sending the opt-out letters; and, 3) the category of data that is considered personally identifiable information that needs to be included in a Data Protection Plan.

¹³ In its October 20, 2016 filing, MEGA notes that ESCOs are already subject to Uniform Business Practices (UBP), and working with customer specific data, such as the Detailed Customer Information, are part and parcel of their everyday operations. MEGA further notes that UBP Section 4(F) prohibits an ESCO, its employees, agents and designees from selling, disclosing, or providing any customer information obtained from a Utility to others. Thus, ESCOs are already obligated by law to refrain from improperly using the Detailed Customer Information obtained from utilities in connection with the CCA program (Data Protection Plan, p. 7).

Municipal Authorizations

On June 23, 2017, August 15, 2017, and September 1, 2017, MEGA filed packages of local authorizations for the Town of Oneonta, Otsego County; the Town of Horseheads and the City of Elmira, Chemung County; the Town of Binghamton and the Town of Union, Broome County; and, the Town of Montour and the Village of Montour Falls, Schuyler County. MEGA has assigned the Town of Oneonta to Aggregation Group "NYSEG E" and the rest of the municipalities to "NYSEG C." Each local approval package contains a copy of the signed local law authorizing the establishment of a CCA program and a signed resolution adopting, by incorporation, MEGA's Implementation Plan and Data Protection Plan. Each package also contains updated appendices to reflect the opt-out letter template with each respective municipality's letter-head and the detailed outreach and education activities that ensued in each municipality prior to its enactment of the local law. This outreach included information of municipal websites, posters, brochures, town meetings, local newsletters, press releases, and radio advertisements.

JOINT UTILITIES' FILING

Data Security Agreement

The Joint Utilities' proposed DSA is a comprehensive standardized agreement that would be entered into by the municipality or its CCA Administrator and the pertinent utility. The DSA obligates the CCA Administrator and its representatives to protect from disclosure, limit use of, and establish data access controls and a data security program for "confidential Utility Information," which the Joint Utilities define as information provided by the utility to the municipality or CCA Administrator including, without limitation, all aggregated and anonymized information, authorized customer specific

information, personal data, and utility data.¹⁴ The data access controls and security program requirements describe rigorous data handling and security measures that are detailed throughout the DSA and include requirements for encryption of all records, audits, and investigations. The proposed DSA would also require the CCA Administrator and its third party representatives¹⁵ to obtain cyber liability insurance covering third-party financial losses with limits not less than \$10 million per occurrence and annual aggregate.

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 July 27, 2016 [SAPA No. 16-M-0015SP2] for MEGA's initial Implementation Plan filing. The time for submission of comments pursuant to that Notice expired on September 12, 2016. Those submitting comments included the Joint Utilities and Constellation New Energy, Inc. and Constellation New Energy-Gas Division, LLC. (together Constellation). In response to comments, MEGA filed a final revised Implementation Plan and Data Protection Plan on June 23, 2017 for consideration. The Joint Utilities, in response, filed

¹⁴ The DSA defines "personal data" to mean any information that can be used to identify, locate, or contact an individual, including an employee, customer, or potential customer of utility and "utility data" as any data held by the utility, whether produce in the normal course of business or at the request of the Aggregator or third party.

¹⁵ The DSA defines third party "representatives" as municipal members and contractors, including without limitation, ESCOs as well as its and their respective officers, directors and employees.

additional comments on MEGA's revised Data Protection Plan on August 9, 2017.

A SAPA Notice was also published in the State Register on June 22, 2016 [SAPA No. 14-M-0224SP4] on the Joint Utilities' proposed Data Security Agreement. The time for submission of comments pursuant to that Notice expired on August 6, 2016. Comments were filed by MEGA, Good Energy, L.P. (Good Energy) and the Retail Energy Supply Association (RESA). The comments and discussion below address the unresolved issues relating to MEGA's filings and the Joint Utilities' Data Security Agreement. Clarification on data issues is also provided in the discussion in response to MEGA's Petition.

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 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 by 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.

DISCUSSION AND CONCLUSION

MEGA's Master Implementation Plan

Comments

The Joint Utilities express concern with MEGA's proposal to consolidate individual municipalities into Aggregation Groups and claim that this consolidation is inconsistent with the CCA Framework Order since the Commission required the authority over the CCA to remain with the individual municipalities, not with an Aggregation Group. The Joint Utilities assert that the relationship and opt-out authority is between the utility, the municipality, and the municipality's ESCO, and not between the utility and the larger Aggregation Group.

The Joint Utilities also raise questions about MEGA's plans to offer "value-added" services such as renewable energy and how MEGA will bill the CCA customers for these services. The Joint Utilities note that utilities' purchase of receivables (POR) programs are designed to apply only to the sale of commodity and that there is no mechanism for MEGA or other CCA Administrators to use the POR to charge customers for other

energy-related value-added products and services on the utility bill.

Finally, the Joint Utilities object to MEGA's proposal to permit ESCO participation in outreach efforts by the CCA Administrator and/or municipality to inform customers of new initiatives or product and services. The Joint Utilities contend that this approach would be inconsistent with ordinary customer expectations for the protection of customer privacy and customer data, which could lead to inappropriate use or disclosure of customer data. Therefore, the Joint Utilities urge that ESCOs and MEGA not be permitted to solicit customers or advertise new initiatives or offerings using customers' personally identifiable information obtained in connection with the CCA.¹⁶

Determination

MEGA's formation of Aggregation Groups is consistent with the CCA Framework Order, which notes that municipalities may work together to operate joint CCA programs. MEGA has appropriately filed certifications of local authorization for each municipality that has chosen to join the larger CCA program that MEGA is developing. The Joint Utilities' concern about the formation of Aggregation Groups is misplaced. While they are correct that the CCA Framework Order is clear that the final decision to participate in a CCA program and to adopt a particular program design rests with each individual city, town, and village,¹⁷ MEGA has appropriately worked with each municipality. The inclusion of multiple municipalities in an Aggregation Group represents the type of inter-municipal cooperation, authorized by each participating municipality,

¹⁶ Constellation filed comments in support of MEGA's Implementation Plan.

¹⁷ CCA Framework Order, p.50 and Appendix D, p. 1

which the CCA Framework Order envisioned. MEGA's Master Implementation Plan is, therefore, approved as consistent with the CCA Framework Order.

Each individual municipality, of course, can withdraw from a CCA, enlist a different CCA Administrator, or seek to develop a new CCA with a different design at its own discretion. Furthermore, each municipality remains responsible for ensuring that the CCA program, as implemented within its boundaries, complies with the CCA Framework Order and other relevant requirements. In addition, customers who participate or opt out of the CCA program will be tracked and recorded by municipality, not solely by Aggregation Group.

MEGA, in its role as CCA Administrator, will be permitted to add municipalities to its Aggregation Groups, provided that it complies with the approved Master Implementation Plan and files a certification of local authorization for each municipality. In addition, it must file supplements to the Implementation Plan demonstrating that outreach and education was conducted in each municipality consistent with the Master Implementation Plan, the CCA Framework Order, and this Order. This is consistent with the CCA Framework Order's anticipation that updates to the Commission-approved compliance document would be necessary.¹⁸

The Joint Utilities' objection to ESCOs participating in outreach efforts is also misplaced. The CCA Framework Order states that ESCOs are permitted to establish a direct relationship with CCA customers subject to the details of their contract with each municipality. It is clarified here, however, that the customer list provided to a municipality and/or MEGA for purposes of the opt-out process must be used for that

¹⁸ CCA Framework Order, p. 26 and Appendix D, pp.6-7.

purpose only. MEGA's Master Implementation Plan addresses the need to ensure that CCA customer data, such as contact information, is not used for inappropriate purposes, such as solicitation of business unrelated to the goals and objectives of a CCA program. However, once a CCA is formed after the opt-out process, a municipality interested in offering CCA participants other energy-related value-added services may do so through the ESCOs providing supply, through other DER providers, or both.¹⁹ It is important that municipalities, their CCA Administrators, and their selected ESCO effectively communicate with residents throughout the span of the CCA program, especially when offering additional services. MEGA will also be required to file with Staff any request for proposal (RFP) seeking ESCOs or other suppliers for commodity supply or any other services.

In addition, MEGA shall continue outreach and education once an ESCO is selected and before the opt-out period ends to ensure that residents are informed of the prices of commodity and service being offered by the contracted ESCO. This will ensure that residents 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. In addition, MEGA 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

¹⁹ CCA Framework Order, p. 34

CCA Program.²⁰ MEGA 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 respect to the proposed opt-out letter provided in the Master Implementation Plan, there is no indication whether any fees, such as a cancellation fee, will be associated with a customer switching out of the CCA program and back to the default utility once the opt-out grace period has ended. The CCA Framework Order requires that this information be included.²¹ These fees, if any, must be stated in the final opt-out letter; if there are no such fees, the letter should so indicate. In addition, MEGA will need to file any opt-out letter at least five days in advance of its intention to mail them for Staff's review and acceptance, in accordance with the process established in the CCA Framework Order. It is clarified here that drafts of the letter shall be provided to Staff at least five business days to allow Staff the appropriate time to review.

With respect to billing arrangements for services other than commodity supply, the issue of consolidated billing for DER services has been raised and is under consideration in the Value of Distributed Energy Resources (VDER) proceeding.²²

²⁰ CCA Framework Order, p.17.

²¹ The CCA customer is permitted to opt-out and return to the utility service, without penalty, any time before the end of the third billing cycle after enrollment. CCA Framework Order, p.29 and Appendix D, p.8.

²² Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Order on Net-Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (VDER Order).

Specifically, the Commission tasked Staff to work with market participants and the utilities to review opportunities for consolidated billing for community distributed generation subscriptions "to improve the customer experience and reduce collections costs."²³ Until this issue is further examined, CCA Administrators, DER providers, or ESCOs working with a CCA Administrator are permitted to bill a member that elects, on an opt-in basis, to participate in a DER program or purchase a DER product separately. In the event a CCA Administrator, DER provider, or ESCO working with a CCA Administrator is able to work with a utility to develop a form of consolidated billing for those services, a proposal must be filed for the Commission's consideration before implementation. CCA Administrators are also reminded that their provision of DER products and services is subject to the regulations detailed in the DER Oversight Order issued concurrently with this Order.²⁴

Inclusion of Assistance Program Participants

In the Low-Income Order issued on December 16, 2016, the Commission established a prohibition on ESCO enrollments and renewals of customers who are participants in utility low-income assistance programs (APPs).²⁵ The Low-Income Order determined that ESCOs should only be permitted to serve APPs where they guaranteed savings to those customers and required ESCOs wishing to offer a guaranteed savings product to APPs to petition the

²³ VDER Order, p. 144.

²⁴ Case 15-M-0180, Regulation and Oversight of Distributed Energy Resource Providers and Products, Order Establishing Oversight Framework and Rules for Distributed Energy Resource Suppliers (issued October 19, 2017).

²⁵ Case 12-M-0476, et al., Retail Access, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (issued December 16, 2016) (Low-Income Order).

Commission for a waiver of the Low-Income Order's prohibition.²⁶ The Low-Income Order explicitly exempts CCA programs from the prohibition but does not specifically state whether the guaranteed savings requirement extends to CCA programs.²⁷ In this Order, the Commission clarifies that the guaranteed savings requirement does extend to CCA programs. Therefore, if MEGA intends to serve APPs, it must ensure that those customers are enrolled in a product that provides guaranteed savings by the ESCO or ESCOs that it selects to serve its customers.

Because CCA programs are exempted from the prohibition, neither MEGA nor its selected ESCO are required to apply to the Commission for a waiver in order to enroll APPs on the guaranteed savings product. However, MEGA 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. Staff shall review this filing to ensure that it is consistent with the requirements in the Low-Income Order.

Because the Low-Income Order is implemented through a block placed by the utility on the accounts of APPs and customers with a block on their account are normally considered ineligible customers for the purpose of data exchanges between the utility and the CCA, modifications to those data exchanges are necessary to facilitate the participation of APPs in CCAs

²⁶ Id.

²⁷ Id. at 26 n.38.

that offer guaranteed savings products for them. For a CCA that indicates that it intends to serve APPs, the utilities shall include, in creating the initial aggregated data set, data related to customers with utility-initiated blocks on their accounts and should also specifically break out the number of customers that fall into this category and the consumption of those customers. Subsequently, as part of the customer contact information, utilities shall provide a separate list containing contact information for customers with utility-initiated blocks on their accounts so that the CCA can ensure that those customers are enrolled in the guaranteed savings product. The CCA should also develop a tailored opt-out letter for those customers that explains the product they will be enrolled in, if they choose not to opt-out, and file that letter as part of the compliance filing regarding APP service described above.

The Joint Utilities' Data Security Agreement

Comments

Comments on the Joint Utilities' Data Security Agreement were received from RESA, MEGA, and Good Energy. These commenters raised issues with the degree of controls mandated by the proposed agreement and the requirement for cyber insurance. The commenters contend that the information being exchanged between the utility and the CCA Administrator is not highly sensitive, especially the aggregated data. MEGA notes that the draft DSA does not properly recognize and distinguish between the types of data needed during the various phases of the CCA formation process and the entities that will have access to such data. MEGA further contends that not all data requires security, especially anonymized aggregated data, and that the degree of specificity in the DSA for data control is excessive. Good Energy states that the amount of cyber insurance coverage (i.e., \$10 million) does not appear to be tied to any meaningful

benchmark and is excessive. It states that costs can be upwards of \$40,000 to procure such an insurance policy and that, if it is required, many small and medium sized municipalities will not be able to afford to implement CCA programs.

The comments also assert that clarification is needed regarding certain definitions in the DSA. MEGA objected to the language that defines "Authorized Customer-Specific Information" to mean "that the Aggregator has received the customer's written, oral and recorded, or electronic permission, which the Aggregator shall retain for as long as the customer is part of the aggregation so that permission may be verified, to receive customer specific data from the Utility."²⁸ MEGA asserts that the use of Authorized Customer-Specific Information is unnecessary, as the Commission suspended the relevant provision of the Uniform Business Practices (UBP) that required individual authorization for participants to switch to an ESCO in the CCA Framework Order.

Determination

There are three types of data required from the utilities in order to form a CCA program: i) aggregated customer number and consumption (e.g., usage) data to support procurement of an ESCO; ii) customer contact information to send opt-out letters; and, iii) detailed customer information for the purpose of enrolling each eligible customer who has not opted out of the program with the ESCO that has been selected through a competitive procurement process. The specific aggregated data required to support the procurement process includes the number of customers by service class and the aggregated peak demand and energy by month for the past 12 months. Customers already receiving service from an ESCO, and customers with a block on

²⁸ Joint Utilities' draft Data Security Agreement, p.0 [sic].

their account, will be removed from this data set.²⁹ The aggregated data provided by the utility is required to be sufficiently anonymized, pursuant to the CCA Framework Order, so that no information could identify any individual customer or its energy usage. The Commission established a privacy screen³⁰ in Case 16-M-0411, which should be used for aggregated data.³¹ Anonymized aggregated data does not need to be subject to the DSA to the extent that it is otherwise available to the public. Customized non-public anonymized aggregated data will be considered confidential and subject to the DSA.

Customer contact information used for opt-out letters, pursuant to the CCA Framework Order, includes the customer of record's name, mailing address, account number, primary language, if available, and any customer-specific alternate billing name and address. While the customer contact information does not include highly sensitive information such as social security numbers, driver's license numbers, or credit card information, it is nonetheless information that should be treated confidentially. While customer account numbers were originally envisioned as useful information in the CCA Framework Order to clearly identify customers who were to be enrolled in the program after the opt-out process, the Commission now finds that the account numbers are not essential to identify customers to conduct the opt-out phase. In the unlikely event of a security breach, account numbers could be misused to, among

²⁹ CCA Framework Order, p. 44 and Appendix D, p. 11.

³⁰ The Commission adopted a 15/15 privacy standard which states that an aggregated data set may be shared only if it contains at least 15 customers, with no single customer representing more than 15 percent of the total load for the group.

³¹ Case 16-M-0411, In the Matter of Distributed System Implementation Plans, Order on Distributed System Implementation Plan Filings (issued March 9, 2017), pp. 25-27.

other things, inappropriately sign a customer up to an ESCO without the customer's knowledge and consent, a process known as slamming. By allowing utilities to withhold account numbers and use an alternative method to identify customers at this stage in the process, the risk of slamming due to a breach will be eliminated. For that reason, the customer contact information should not include account numbers, but should include the other information required in the CCA Framework Order.

Detailed customer information required for ESCO enrollment, once the opt-out period has ended, will be transmitted to the ESCO pursuant to the then existing UBP protocols through Electronic Data Interchange (EDI) processes, and should be subject to the level of protection deemed sufficient for ESCOs generally. Thus, utility information transferred to the CCA Administrator will not be highly sensitive.

Paragraph four of the Joint Utilities' proposed DSA appropriately requires the CCA administrator to hold confidential information in confidence, to limit its use to the United States and in connection with the CCA, and to not disclose, securely store, and use reasonable care to avoid disclosure of confidential information. This paragraph is similar to the provision contained in the Data Access and Non-Disclosure Agreement used in the Sustainable Westchester (SW) CCA pilot. The proposed DSA contains several provisions that go beyond paragraph four and beyond the SW agreement. Paragraphs eight (audits), nine (investigations), ten (data security incidents) and 12 (additional obligations regarding derivative information, compliance with applicable security laws, having reasonable security processes and systems, and assistance to utilities in event of inquiries or incident) are reasonable additions to the SW agreement. Paragraphs 13 (data access

controls such as system maps, log files, encryption protocols) and 14 (information security program pertaining to written security program, risk assessments, program reviews, security testing and training) are, however, overly prescriptive given the kind of information that is being exchanged. Again, the information being exchanged from the utility to the CCA Administrator is not of a highly sensitive nature and, while CCA Administrators will be required to employ reasonable protections to prevent breaches, the Commission finds that a greater degree of flexibility is warranted and therefore paragraphs 13 and 14 should be removed.

The proposed DSA also would require the CCA Administrator to procure cyber insurance of at least \$10 million covering third party losses resulting from a security breach. The information that is being exchanged is not highly sensitive and CCA Administrators will be obligated to maintain reasonable security measures. Further, in the unlikely event of a breach, claims against the utility should be rare and without good foundation. For these reasons, cyber insurance will not be mandated.

The Commission also agrees with MEGA that the DSA should not require the CCA Administrator to obtain and retain the customer's written permission to receive customer specific information. That requirement is not consistent with the opt-out regime that applies to the CCA program.

For the reasons stated above, the Joint Utilities will be required to modify the DSA to conform to the above discussion. The Joint Utilities shall file the revised DSA within 30 days of the issuance of this Order.

MEGA's Data Protection Plan

Comments

Constellation requests that the Commission clarify that the aggregated customer consumption data provided by the utility to the municipality and CCA Administrator will also be authorized for release to ESCOs who meet the CCA's qualification requirements to bid on the CCA supply contract. The Joint Utilities comment that MEGA's Data Protection Plan does not sufficiently protect the aggregated and customer specific data obtained from a utility. While it notes that aggregated data may not require the same level of protection as customer specific data, it contends that aggregated data for a specific CCA program is a customized work product created by the utilities and, as such, should be treated confidentially and not disclosed or marketed freely for any purpose.

The Joint Utilities also note that MEGA's proposal to create a new subset of customer-specific data aims to relieve MEGA from data protection requirements, including from having to execute the DSA. The Joint Utilities contend that this is inconsistent with the CCA Framework Order and that the protocols in their proposed DSA must be in place to appropriately safeguard customer or proprietary information.

The Joint Utilities further state that the ability to receive, analyze, and protect data received from the utilities is a fundamental and necessary role of the CCA Administrator and that, based on experience with the Sustainable Westchester CCA, a CCA Administrator must be able to discuss, review, and have access to customer-specific information and, therefore, must be obligated to protect the confidentially of such information. Finally, the Joint Utilities state that they remain committed to working with MEGA and Staff to develop an appropriate DSA that takes into account the varying degrees of protection needed for

the different types of data to be shared as part of a CCA program.

Determination

This Order clarifies that it will be necessary for MEGA to share the anonymized aggregated usage data, subject to the DSA, with ESCOs that meet the CCA's qualification requirements to bid on the CCA supply contract, as noted by Constellation. Further, MEGA correctly notes in its Data Protection Plan that it is the responsibility of the municipality, working with its CCA Administrator, to ensure that the customer list provided by each utility to begin the opt-out process is, in fact, within the municipality's jurisdiction and that customers not residing within the municipality are not inadvertently enrolled in the CCA Program for which they are not eligible. However, as noted by the Joint Utilities, MEGA's intention to limit the customer data received by it and the municipality to only the service address and classification (without names and other information) would appear to make it more difficult for the municipality and MEGA, in its role as CCA Administrator, to respond to questions and concerns raised by residents in the early stages of the CCA opt-out process and throughout the CCA in general. Therefore, after the CCA Administrator has entered into a CCA contract with an ESCO, the utility will transfer the customer-specific data to the CCA Administrator to support the mailing of the opt-out notices and the CCA Administrator will be bound by the Joint Utilities' final DSA. In the event that MEGA's Energy Service Agreement contract with a selected ESCO includes a provision that the ESCO is responsible for mailing out the opt-out letters,³² the utility

³² MEGA's Data Protection Plan notes that the municipality and CCA Administrator will be responsible for the form and content of the opt-out letter.

will be permitted to send the customer contact information directly to the ESCO, as described in MEGA's Data Protection Plan, and MEGA will be responsible for informing the utility of this arrangement prior to any data transfer. MEGA is required to modify its Data Protection Plan to conform to the above discussion and the final DSA of the Joint Utilities, and to file the revised Data Protection Plan within 60 days of the issuance of this Order, prior to requesting any data from a utility.

Municipal Authorizations

Determination

The Commission recognizes that The Town of Oneonta, Otsego County; the Town of Horseheads and City of Elmira, Chemung County; the Town of Binghamton and the Town of Union, Broome County; and the Town of Montour and the Village of Montour Falls, Schuyler County, as evidenced by the filings submitted by MEGA, 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. The Municipal Electric & Gas Alliance, Inc. (MEGA) shall file, in Case 16-M-0015, an updated Master Implementation Plan within 60 days of the date of this Order describing the additional outreach that will occur in each municipality after an award with an ESCO has been made and prior to mailing out any opt-out letters, consistent with the discussion in the body of this Order.

2. 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, and 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 (collectively, the Joint Utilities) shall file an updated standard Data Security Agreement in Case 14-M-0224 in accordance with the terms of this Order within 30 days of the issuance of this Order.

3. The Joint Utilities shall provide data, consistent with the requirements in this Order and the Order Authorizing Framework for Community Choice Aggregation Opt-Out Program issued April 21, 2016 in Case 14-M-0224 (CCA Framework Order) and this Order, to MEGA once it has entered into the DSA and requested such data.

4. MEGA shall file an updated Data Protection Plan in Case 16-M-0015 in accordance with the terms of this Order and the final Data Security Agreement within 60 days of the issuance of this Order.

5. MEGA 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 4, and entered into a Data Security Agreement with the relevant utility or utilities.

6. Customer contact information provided to municipalities, Community Choice Aggregation Administrators, or Energy Service Companies pursuant to the CCA Framework Order shall not include customer account numbers.

7. If MEGA intends to serve participants in utility low-income assistance programs (APPs), those customers must be provided with guaranteed savings. MEGA 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.

8. For CCAs that intend 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, consistent with the discussion in the body of this Order.

9. MEGA shall be permitted to add municipalities to its existing Aggregation Groups or create new Aggregation Groups, provided that 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 CCA Framework Order, and this Order was conducted in each municipality.

10. MEGA shall file any request for proposals or similar solicitation seeking commodity supply or other energy services and any draft correspondence on such services with members of the CCA program.

11. 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.

12. These proceedings shall be continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary