STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of

Municipal Electric and Gas Alliance (MEGA)

For Approval of a Two-Year Demonstration
Community Choice Aggregation Program

Case 16-M-0015

REPLY COMMENTS OF THE
MUNICIPAL ELECTRIC AND GAS ALLIANCE (MEGA)
TO COMMENTS MADE BY THE JOINT UTILITIES

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The Municipal Electric and Gas Alliance ("MEGA"), the Petitioner in this proceeding, is seeking to create a Community Choice Aggregation ("CCA") Demonstration Program to provide energy supply to interested municipalities, including communities that already get their energy through longstanding MEGA programs, as well as others looking to procure lower-cost power for their residential customers. MEGA filed its Petition on January 12, 2016,¹ and notice of the Petition was published in the New York State Register on February 10, 2016. On March 28, 2016, the Joint Utilities submitted comments on the Petition. A number of issues were raised by the Joint Utilities in their comments, to which MEGA seeks to respond by these comments.

Approval of the MEGA Petition is Timely and Should Proceed

MEGA has actively participated in the New York energy market for over 18 years. During that time, MEGA has proven itself as an effective aggregator, broker, consultant and advocate for the public interest, and has established a track record of negotiating fair and cost-saving energy contracts for municipalities—consumers who rely on affordable, predictable electric prices to protect their taxpayers from ever-rising costs. In fact, MEGA was held up as an example of an existing aggregation program already working in New York in the Staff White Paper on CCAs.²

Since the commencement of the Reforming the Energy Vision ("REV") Proceeding³ and, in particular, since the Generic CCA Proceeding was commenced December 14, 2014,⁴ MEGA has closely followed, with great interest, the many new developments and opportunities these

¹ Case 16-M-0015, Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation (CCA) Pilot Program (filed January 12, 2016)("MEGA Petition").
² Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (December 15, 2014) ("Generic CCA Proceeding") at page 3.
³ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision ("REV Proceeding").
⁴ Case 14-M-0224, Generic CCA Proceeding.
overarching policy discussions continue to generate. As the Generic CCA Proceeding has taken shape, MEGA has participated in technical conferences, submitted comments and ideas, and tracked the progress of other proposed CCA pilot programs, including petitions filed by Sustainable Westchester,\textsuperscript{5} and Sullivan County Community Choice Aggregation,\textsuperscript{6} as well as a proposal by Citizens for Local Power to establish a CCA program in Ulster County.\textsuperscript{7} MEGA continues to follow developments in these proceedings, as well as to actively participate in the Generic CCA Proceeding, and fully intends to draw from other groups' experiences.

Significant upfront effort and time were invested in the proposed CCA before this Petition was filed. MEGA spent months reaching out to its participating communities educating them on and discussing the possibilities a CCA program could create, gathering support for a MEGA-sponsored CCA, and researching the best methods and practices for operating a successful CCA. MEGA engaged experts from Energy Next, Inc. a group experienced in developing other successful New York energy initiatives, and Satori Energy, who helped make CCA a reality in the State of Illinois. More than 33 municipal governments have written letters formally supporting the proposal and expressing interest in participating, including the Counties of Broome, Cortland, Fulton, Genesee, Lewis, Rensselaer, Saratoga, Schuyler, Tioga, Tompkins, Warren, numerous individual municipalities within those counties, as well as cities, towns and villages in the Counties of Albany, Chemung, Delaware, Essex, Hamilton, Jefferson, Livingston, Otsego, Ulster, and

\textsuperscript{5} Case 14-M-0564, Petition of Sustainable Westchester for Expedited Approval of the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester (“Sustainable Westchester CCA”).

\textsuperscript{6} Case 15-E-0585, Petition of Sullivan Alliance for Sustainable Development for the Authorization by the Public Service Commission, as a Demonstration Project Under REV, of a Community Choice Aggregation Project Known as Sullivan County Community Choice Aggregation (October 2, 2015).

\textsuperscript{7} See comments filed in a Central Hudson rate case (Cases 14-E-0318 and 14-G-0319) (April 19, 2015), as well as http://www.citizensforlocalpower.com/community-choice--cca-.html.
Wayne. Once it became clear that the support and potential participation was there, MEGA proceeded in filing its Petition.

MEGA is aware of the anticipated CCA Guidance forthcoming from the PSC in the near future, as well as the Commission’s February 23, 2016 “Resetting Order” and the petitions and challenges filed in that proceeding. Further, MEGA continues to participate in, and monitor the outcome of, the Generic CCA Proceeding. As the Joint Utilities note in their comments, the Generic CCA Proceeding has generated a “robust record” to guide the formation of workable CCAs. MEGA has drawn from this “robust record” in developing its proposed CCA model, and will continue to plumb the records in all relevant proceedings, in New York and in other states, to develop the best CCA possible. However, nothing in those ongoing proceedings prevents the MEGA CCA from moving forward concurrently. Obviously, should the Commission include specific requirements or restrictions in any generic CCA-related order, MEGA would ensure that its CCA was in compliance with these mandates. As other CCAs gain experience which might be helpful to MEGA, the Alliance fully intends to learn from that experience, and to make adjustments accordingly. The Resetting Order specifically exempts Pilot CCA programs and other government aggregation programs—a class in which MEGA is already included—from the application of that Order, therefore the ramifications of that specific decision are not directly applicable here, but will certainly help to inform MEGA as it moves forward. A MEGA CCA pilot will provide data

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8 See MEGA Petition at pages 4-5 and Exhibits 1 and 2, as well as public comments filed in these proceedings by the Counties of Rensselaer and Warren.
10 Case 16-M-0015, Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation (CCA) Pilot Program, Comments of the Joint Utilities (March 28 2016) (“Joint Utilities Comments”), page 3
11 Resetting Order at fn 22.
surrounding savings on supply for mass market ESCO customers and as such may help inform a resolution on the Resetting Order.

The bottom line is that there is nothing preventing the MEGA CCA from moving forward while the various and ongoing energy- and CCA-related discussions continue. And there is no reason that MEGA could not move forward with the project and periodically incorporate findings and new ideas into the CCA as they come to light. Once the MEGA CCA demonstration project is approved, if that is the Commission’s will, a great deal of work will remain to make the CCA a reality. Municipalities will need to hold meetings to consider joining, review potential agreements or memoranda of understanding, obtain advice and counsel, solicit public input, and vote on participating in the CCA. MEGA will need to gather the necessary data to develop its Request for Proposals, and undertake public information campaigns to ensure residents understand the process and their opt-out rights should their community decide to aggregate. The technical process of customer aggregation will take time. Once an RFP is issued to procure power, it will take time for bidders to submit their information. Contract negotiations will be required. All of this work can proceed with the Commission’s blessing, and the broader policy conversations and development of best practices can continue concurrently.

The Sustainable Westchester CCA was proposed by Petition dated December 23, 2014. More than one year elapsed between the filing of their Petition and the release of their first RFP, which was posted January 29, 2016.12 The Commission granted the Sustainable Westchester Petition by Order dated February 26, 2015.13 Most of Sustainable Westchester’s participating

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13 Case 14-M-0564, Sustainable Westchester CCA Order (February 26, 2015).
municipalities adopted local laws or ordinances enabling the CCA between June 2015 and November 2015, then held meetings in January and February 2016 to approve MOUs to participate in the CCA, while a handful of others are still considering those agreements.\textsuperscript{14} The Westchester Power website just launched on April 5, 2016,\textsuperscript{15} and, according to recent news reports, enrollment in the CCA will start May 1, 2016.\textsuperscript{16} This means that, from the date of approval of the Sustainable Westchester CCA, it took about 14 months to get the CCA off the ground. While MEGA’s experience may be different, there would be plenty of time—between the Commission’s approval of the demonstration project and the date the CCA could begin supplying power to its customers—for MEGA to implement any necessary mechanisms to comply with an Order in the Generic CCA Proceeding, and to continue learning from the experience of other CCAs in New York and elsewhere. The Joint Utilities’ assertion that approval of the MEGA Petition would be premature at this time is not supported by the current circumstances, or by the Sustainable Westchester experience.

Furthermore, the MEGA proposal will provide different information and experience to the Commission in its version of the CCA model. While the Sustainable Westchester CCA involves multiple types of local governments and more than one utility service territory, the experience of a single-county pilot project will differ in important ways from a CCA project that is broader in scope, geographically and across multiple utility service territories, regions and load zones. The Westchester market, although robust and clearly interested in implementing a CCA, is different

enough from Central New York, the Capital Region, and the North Country, for example, that lessons from the Westchester experience may not necessarily be the same as those that would be gleaned from CCAs in other parts of the State. In addition, the MEGA proposal includes potential participation by 11 county-level governments, as well as smaller municipalities, compared with the towns, villages, and two cities included in the current Sustainable Westchester CCA. Were counties to be incorporated into the program, the MEGA CCA would substantially differ from any other CCA established in the State. Different types of communities respond differently to energy opportunities. Economics, demographics, market and regulatory circumstances vary from region to region across the state, as does the cost of energy and availability of renewable generation and behind-the-meter energy systems. Pilot programs provide information on best practices that can drive the appropriate design of generic policy and guidance, which could be used anywhere in the State. Running different pilot programs in multiple areas in the State will provide data the Commission will find useful, among other purposes, as to how CCAs can support the continued evolution of New York energy policy and markets. The Commission itself has recognized the importance of testing different methods of implementation for REV demonstration projects, noting the importance of having “a portfolio of demonstration projects that will test various technologies, business models. . . and customer participation levels,” and emphasizing that, in selecting demonstration projects, “consideration should be given to the diversity of projects and the relevant information they will provide to the overall REV initiative.”\(^ {17}\) Approving an additional demonstration project will aid the Commission in exploring the potential of CCAs statewide and

\(^{17}\) Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Memorandum and Resolution on Demonstration Projects (December 12, 2014) at page 7. This order also emphasizes the need to ensure REV demonstration projects serve the program goals of scalability, developing competitive markets, encouraging partnerships and customer engagement, and offering flexibility and innovation.
provide valuable opportunities to compare approaches and experiences between approved programs.

There is no doubt that New York's energy industry is undergoing significant and rapid changes. While some of these innovations may create uncertainties in the short term, MEGA believes the opportunities and ideas developed through these initiatives will yield substantial long-term benefits to ratepayers, municipalities and the State as a whole, the energy markets, and the environment. The purpose of a demonstration program, such as the proposed CCA, is to try a new way of doing things. This necessarily involves some unknowns—unforeseen challenges that will need to be addressed, and potential unexpected benefits this program might yield. Yet the advantage that this CCA will have is that MEGA will start off, on day one, with nearly two decades of experience in this field. Recognizing the need to remain flexible in responding to new developments as the CCA model evolves in New York, MEGA intends to ensure its CCA can easily adapt to today's rapidly-changing environment, remaining flexible to adjustments in how it operates and incorporating new ideas and best practices gleaned from other demonstration projects, while still offering supply stability and cost-savings to its customers through the energy contracts it negotiates. Now is not the time to shy away from change, but to embrace it. That was the underlying vision of the REV proceeding, and it is in keeping with that spirit that the MEGA Petition should be considered and the proposed CCA approved.

Customer Data Sharing and Protection

MEGA has managed "opt-in" aggregation programs across the state since being authorized by the Commission to do so in 1998, and has significant and unique experience in using aggregate customer data to support competitive energy procurements. Currently, MEGA successfully
manages energy supply procurement for several thousand utility accounts owned by more than 275 local government entities, plus dozens of private entities and hundreds of residential customers. In nearly two decades of competitive procurements, MEGA has never had an instance in which a customer’s data was inappropriately breached, nor has any competitive bidder notified MEGA that the data provided as part of a competitive procurement was inaccurate, incomplete or otherwise not useful. MEGA is committed to continuing its efforts to ensure the security and privacy of customer data, and recognizes the importance of ensuring that any data-sharing required for the CCA is undertaken responsibly and in accordance with industry best practices.

In preparing its Petition, MEGA's staff and consultants examined the Utility Energy Registry (UER), a joint effort by the New York Energy Research and Development Authority (NYSERDA) and Climate Action Associates, and found that the UER’s ability to generate accurate aggregate data will be adequate to support a competitive energy supply procurement under a CCA scenario, while minimizing the potential for privacy violations or inappropriate data breaches. The Joint Utilities underestimate the usefulness of the UER database. The simplicity and value of the UER registry will be an asset as the Commission moves forward not only with CCA, but also with other aspects of REV. While it is true that this data was developed before the REV proceeding began, and was not compiled expressly for CCA purposes, the objective of collecting the data was to serve the public interest and advance smart energy policy. If this data happens also to be useful in the CCA context, then the State’s investment in the UER will have been a prudent one which has the unintended positive consequence of advancing a new energy initiative not even conceived at the time the data was collected. Given that the Joint Utilities have expressed concern, in the
Generic CCA Proceeding, about costs associated with providing data to CCAs,\(^{18}\) use of the UER should obviate much of that concern, and would save both sides from having to spend money recreating a data set which already exists.

Under MEGA’s proposal, aggregate data would be used for market-sizing purposes, not for the enrollment of specific customers in the CCA program. The primary purpose of the aggregate data collected from the UER will be for ESCO bidding. A bidding ESCO will need the ability to make projections based on the aggregate data. However, it is understood that not all customers will participate in the CCA, and thus that any projections will be rough estimates, rather than concrete and certain numbers. Therefore, while UER data may not prove to be 100 percent accurate in all cases, an ESCO’s projections will have accounted for variability in participation rates, such that small discrepancies will have essentially been factored into these estimates, or otherwise rendered inconsequential.

In terms of individual customer data, the Joint Utilities concerns are also misplaced. Any detailed individual customer energy account data would not be used by or even available to either MEGA staff or municipal agencies; the detailed individual customer data would be used by an ESCO that has been awarded the bid to provide energy to eligible customers in the CCA, conveyed to the ESCO, in MEGA’s proposal, directly by the utility. Certain basic information, such as customer addresses, would be used by the municipality to verify that a customer is eligible to participate in the CCA. However, more detailed information beyond that needed to confirm eligibility would not be required by MEGA or the municipalities participating. As the Commission has already noted, “the municipalities currently possess much of the information that the utility

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\(^{18}\) Case 14-M-0224, Proceeding on the Motion of the Commission to Enable Community Choice Aggregation Programs, Initial Comments of the Joint Utilities (February 17, 2015) at page 13 and Utility Comments (January 13, 2016) at pages 7-8.
will be providing, and should be expected to protect personally identifiable customer information that is confidential."\(^{19}\) Given that MEGA would not be handling detailed, confidential customer information, additional cybersecurity insurance for the CCA is unnecessary.

As noted in MEGA’s Petition, the ESCO selected to provide power to the CCA would be responsible for managing the customer information during the opt-out process. “After bids are received, and an award made by MEGA and the participating municipalities, the winning ESCO will be able to contact the utility, request and receive specific customer contact information, utility account numbers, etc. in order to initiate supply service.”\(^{20}\) It is MEGA’s understanding, based on its participation in Generic CCA Technical Conferences, that the UER can work with utilities/ESCOs to aggregate customer data by tax ID number. MEGA is aware that efforts will need to be made to ensure that customers are appropriately selected based on their location in a given taxing jurisdiction, not merely based on address or zip code. With nearly 20 years of experience working with municipalities, and with many Board and Corporate members who are also municipal officials, MEGA has become very familiar with how to address differences in taxing jurisdiction location, utility service territory, and NYISO load zone. MEGA anticipates being able to facilitate cooperative working relationships between ESCOs selected to provide energy and the participating municipalities, to ensure that customers are aggregated accurately and appropriately, and that any concerns regarding a customer’s eligibility for participating in the CCA based on location in a taxing jurisdiction or service territory can be resolved through this cooperative relationship, and/or in cooperation with an individual customer or customers.

\(^{19}\) Case 14-M-0564, Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester, Order Granting Petition in Part (issued February 26, 2015), page 10

\(^{20}\) Case 16-M-0015, Petition of Municipal Electric and Gas Alliance for Approval of a Two-Year Demonstration Community Choice Aggregation Program, (submitted January 12, 2016), page 7.
Lastly, the Joint Utilities raise a concern about the privacy rights of low-income customers in the event that the CCA were provided with information on customer income status or budget billing. MEGA raised this issue because of its awareness of the broader conversation about price guarantees for ESCOs serving APPs.21 However, this concern may now be moot in light of the Resetting Order and the possibility that such guarantees would be required of ESCOs serving all mass market customers. MEGA will comply with applicable Commission rules and guidance on this issue and invites the Commission to provide specific guidance on how CCAs should or should not address the issue of low-income customers.

The Opt-Out Approach and the UBP

The Commission has already affirmed the usefulness and preferability of the opt-out approach for CCAs, and the Uniform Business Practices (UBP) waivers requested by MEGA, holding in the Sustainable Westchester Order:

“The economies of scale and bargaining power that large-scale opt-out aggregation programs create are expected to translate into tangible benefits for customers. In order to help ensure costs savings or rate stability for CCA participants, the Uniform Business Practices are waived to the extent necessary to allow for the enrollment of customers and transmittal of customer information by the utility to the ESCO without express customer consent only for this specific CCA demonstration program.”22

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22 Case 14-M-0564, Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester, Order Granting Petition in Part (issued February 26, 2015), page 12.
The same rationale applies to the MEGA proposal. These issues should be considered resolved by the Commission’s prior decision.

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Respectfully Submitted,

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On Behalf of the Municipal Electric and Gas Alliance (MEGA)