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By Email for Electronic Filing  
Honorable Michelle L. Phillips  
Secretary  
State of New York Public  
Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

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

Dear Secretary Phillips:

In accordance with the Commission's April 27, 2021 *Notice Soliciting Comments*, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, the Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, Orange & Rockland Utilities, Inc., PSEG Long Island on behalf of the Long Island Power Authority, and Rochester Gas & Electric Corporation submit the attached comments in response to the Department of Public Service Staff Whitepaper on Community Choice Aggregation Programs.

Please contact me if you have any questions.

Very truly yours,  
/s/  
Kerri Kirschbaum  
Associate Counsel



The Joint Utilities support standardizing guidelines, processes, and procedures for CCA programs and look forward to working with Staff and stakeholders, including CCA developers and program administrators, to provide the best possible options to customers. As discussed below, however, some Staff recommendations are infeasible and cannot be cost-effectively implemented at this time. Others require additional collaboration to develop necessary program rules and details, especially as it relates to integrating Community Distributed Generation (CDG) on an opt-out basis. In the subsequent sections, the Joint Utilities provide responses to recommendations made in the Whitepaper, following the labeling system used in that document. To the extent the Joint Utilities oppose or request modification of Staff's recommendations in the Whitepaper that are later described in Appendix B, the Joint Utilities recommend that Appendix B be modified in a manner consistent with these comments.

### **III. Program Standardization and Uniformity**

The Joint Utilities generally agree with and support standardizing CCA program requirements, filings, and outreach and education, as well as the templates and guidelines suggested in the Whitepaper. The Joint Utilities strongly support Staff's sentiment that, while "flexibility to tailor CCA programs to the needs and interests of individual municipalities is important, CCA Administrators must ensure that the programs are consistent with the CCA Rules and Commission direction, and that any differences between programs are based on appropriate reasons, are properly communicated to Staff, as well as detailed in education and outreach materials."<sup>5</sup> Many of the Joint Utilities have gained significant CCA experience in recent years and welcome the opportunity to provide expertise based on lessons learned.

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<sup>5</sup> CCA Proceeding, Whitepaper, p. 8.

- A. *Program Structure:* The Joint Utilities generally agree with and support a uniform filing structure to eliminate redundancy. Documents should continue to be filed and available in the Document and Matter Management (DMM) system so that stakeholders, including the Joint Utilities, have an opportunity to respond.
- B. *Outreach and Education:* The Joint Utilities agree with and support standardized outreach and education templates and guidelines. Customer education and awareness is paramount for CCA programs to be successful in New York. Outreach and education templates created by Staff should require clear and transparent information to be communicated to customers about the CCA program itself, the timing and process for opt-out, the various supply options, and any other program offerings.<sup>6</sup>
- C. *Program and Administrator Websites:* The Joint Utilities agree with and support establishment of minimum guidelines for CCA program websites.

#### **IV. Utility Standardization and Process**

The Joint Utilities support Staff's goal of establishing uniform and defined CCA information on websites and customer communications as well as processes for handling issues that arise.

- A. *Utility Website CCA Information:* The Joint Utilities generally agree with and support standardized outreach and education guidelines across the many sources of information about CCA programs and support Staff's recommendation that uniform information be provided on utility websites. Specifically, the Joint Utilities support uniform information that would include, at a minimum, CCA Administrator and program information, links to

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<sup>6</sup> The Joint Utilities would welcome the opportunity to collaborate with Staff and other stakeholders to provide input and review on outreach and education materials.

the CCA webpage and the NYSERDA CCA Toolkit, utility points of contact for Administrators, and a clear price to compare. However, utility website guidelines should separate requirements for customer-facing sites versus those intended for an Energy Service Company (ESCO) or CCA administrator. For example, utility points of contact for Administrators should not appear on pages built for utility customers.

In terms of posting a clear price to compare, the Joint Utilities have previously worked with Staff on this topic, and currently post the quarterly 12-month trailing average electricity and natural gas supply rates for mass market customers on the Joint Utilities' respective websites.<sup>7</sup> To ensure consistency, the Joint Utilities recommend using the quarterly 12-month trailing average price to define the price to compare for the CCA market. However, further discussion among stakeholders regarding the public-facing display of such information is warranted to determine whether using the current 12-month trailing prices is sufficient, how to best present residential and non-residential service classification information most clearly, and what effect displaying the price has on the different programs during the life of the CCA program contracts.

*B. Price Information:* As mentioned above, the Joint Utilities recommend using the quarterly 12-month trailing average price to define the “price to compare” displayed on utility websites. The Joint Utilities recommend this approach rather than using custom pricing determined by customer bill period to ensure consistency, expedite implementation, and minimize incremental costs. The approach outlined above is consistent with Staff’s recommendation that the “price to compare” be defined as “the

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<sup>7</sup> Case 98-M-1343, *In the Matter of Retail Access Business Rules et al.*, Order on Rehearing, Reconsideration and Providing Clarification (issued December 12, 2019), Ordering Clause 7. LIPA would also be willing to post a quarterly 12-month trailing average electricity supply rate but does not currently do so.

utility rate + Merchant Function Charge (MFC) + any other defined adder that applies to utility supply customers but not ESCO customers.”<sup>8</sup> Regardless of how the “price to compare” is defined, the Joint Utilities do not currently have the ability to add “price to compare” information on ESCO customer bills at this time (given that bill format modifications take time and resources to implement and utilities may be in varying stages of system modifications and upgrades), and look forward to working with Staff to consider and develop a Joint Billing Plan as referenced in the Whitepaper.

C. *CCA Program Identification on Utility Bills:*<sup>9</sup> Staff recommends that each utility be required to include the CCA program name where the ESCO supplier name is currently provided on the customer’s utility bill. Additionally, Staff also recommends that the ESCO contact information section of the bill be consistent with the approved Implementation Plan for each program and confirmed with the CCA Administrator prior to customers receiving billing for the CCA program. The Uniform Business Practices (UBPs)<sup>10</sup> require the Joint Utilities to display the ESCO name on a customer’s bill. It is important for customers to know their ESCO and to have its contact information regardless of whether they are served through a CCA. Providing such information supports full disclosure and gives customers necessary information to contact ESCOs directly for ESCO-related issues. For example, customers may need to contact the ESCO about a missing supply charge, or to participate in budget billing for their supply charges

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<sup>8</sup> CCA Proceeding, Whitepaper, p. 14. LIPA does not have a separate Merchant Function Charge but does recover such costs through its Power Supply Charge. LIPA would identify the appropriate price components in its “price to compare.”

<sup>9</sup> Consolidated billing is not yet available in LIPA’s service territory. LIPA and PSEG Long Island have proposed, and intend to implement, a utility consolidated billing option for ESCOs and CCAs. See Matter 15-02754, *In the Matter of Examining the Potential Benefits of Retail Competition for Long Island Electric Customers*, Comments of PSEG Long Island and the Long Island Power Authority (December 17, 2020).

<sup>10</sup> Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Order Adopting Uniform Business Practices and Requiring Tariff Amendments (issued January 22, 1999).

under a Utility Consolidated Bill Ready model where the ESCO is calculating and passing through the charges onto the utility bill.

While the Joint Utilities support CCA program identification on utility bills, this should be accomplished in a way that creates minimal impact and utilizes existing processes. For example, the CCA name and contact information could be provided through existing ESCO bill message capabilities, such as, “Thank you for being a Community Choice Aggregation participant in the [CCA Program Name] program.” Sustainable Westchester already uses this approach. Each ESCO is allowed 6 lines of 80 characters of text to be presented in a message on the same page as ESCO charges on a utility bill. Requiring the Joint Utilities to reconfigure their customer bills to include both the ESCO name and the CCA name or other information is time- and resource-intensive and unnecessary considering the other avenues CCAs have to provide information to customers on bills. Furthermore, the CCA’s own outreach and education materials can easily explain, even by example, what the customer will see on their utility bill once they are enrolled in the CCA program.

*D. Billing Errors:* Staff recommends establishing “standardized utility processes and requirements to address billing errors, including requirements regarding communications and error correction with regard to Staff, CCA Administrators (and the serving ESCO), municipalities, and customers.”<sup>11</sup> However, Staff makes no specific recommendations for these processes. Of course, all parties aim to avoid and minimize billing errors and the Joint Utilities fully recognize that billing errors must be addressed in a manner compliant with applicable laws and regulations. It is not practicable, however, to

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<sup>11</sup> CCA Proceeding, Whitepaper, p. 2.

establish overly prescriptive, detailed processes to address every instance of possible future errors. These rare errors are more expeditiously addressed on a case-by-case basis. Trying to create a one-size-fits-all process to address billing errors that are few and far between is inefficient and impractical, given that often the resolution of the error can differ based on numerous factors. The Joint Utilities are not opposed to exploring whether a general framework would be useful, including development of a prescriptive notification process for billing issues among the Joint Utilities, Staff, ESCOs, and CCA Administrators. Finally, the Commission should not approve any billing error processes that would change ESCOs' billing responsibility as outlined in Joint Utility agreements with ESCOs and UBPs.

*E. Customer Enrollment Errors:* Staff recommends prescriptive processes for handling customer enrollment errors. The recommendations generally require the Joint Utilities to fix the enrollment issue, credit customers if a credit would be due, forego a backbill if the earlier enrollment would harm customers, and provide letters explaining the enrollment issues to customers. While the Joint Utilities appreciate Staff's intention with these recommendations, the recommendations are inconsistent with the Commission's residential and non-residential billing rules and the Commission's clear direction that CCA Administrators, and, ultimately, municipalities are responsible for accurate enrollment.<sup>12</sup> As the entities that run enrollment campaigns and compile and transmit enrollment data, ESCOs and CCAs must continue to bear responsibility for the enrollment data's accuracy. There is no administrative or policy reason to shift this responsibility to the utility. The Joint Utilities' customers are enrolled in CCA programs

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<sup>12</sup> CCA Proceeding, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016).



based on the EDI enrollments received from the CCA's ESCO. CCA Administrators, municipalities, and ESCOs have ample time and the necessary information to ensure proper customer enrollment. The Joint Utilities are not aware of any data showing that there is a systemic issue or process needing correction that would justify re-allocation of existing accountability for ESCO and CCA enrollment. Rather, it appears that there has been a relatively low number of enrollment errors overall. In each instance of such an error the utilities have worked with CCA administrators to determine and resolve. These errors should be addressed by the ESCO/CCA Administrator and utility on a case-by-case basis and the entity causing the error should be responsible for any associated costs. Therefore, the Joint Utilities oppose Staff's recommendations, but support continued collaborative work to identify ways to avoid potential enrollment errors in the CCA opt-out process.

*F. Notification Letters:* Staff recommends development of a uniform utility notification letter template that clearly indicates the notification letter is for enrollment in the CCA program. Staff also recommends that if the CCA program is going through a contract renewal, CCA program participants should **not** receive a new notification letter, even if the ESCO serving the program changes. The Joint Utilities do not agree that customers served by an ESCO through a CCA program should be treated differently than other customers receiving supply directly from an ESCO when there is a change in ESCO. All ESCO customers should be entitled to the same UBP protections, especially as it relates to the potential for a change in ESCO once a new CCA contract is signed. Per UBP guidelines, CCA customers switching ESCOs should continue to receive a utility letter to notify them of their effective date of switch and to allow them to cancel the enrollment

with the utility at least a day in advance of the switch. By the time the utility notification letter is sent, the opt-out period is over. Directing customers elsewhere can lead to customers being enrolled and billed under the program for a period of time if the ESCO doesn't provide a drop transaction in time to prevent the switch. The Joint Utilities have long established automated processes for compliance with the UBPs and believe the UBP switch notification letter serves an important purpose, even in the context of CCAs. Customers may have missed the opt-out letters and other outreach materials, and until they see communication from their utility they may not realize a switch of supplier is happening. Therefore, the Joint Utilities recommend no changes to the existing switch letter process. The Joint Utilities will consider potential options to modify the enrollment letter to indicate it is CCA-related. Indeed, some utilities are already capable of doing this, and include the ESCO's name along with a CCA indicator.

*G. Utility Role in CCA Program Opt-Out Requests:* Staff recommends that, during a CCA program opt-out period, the utility be required to maintain a record of every customer that contacts them to opt out or to have an ESCO enrollment block placed on their account for the purpose of CCA program opt-out, and that this information be provided to the CCA Administrator at the end of the opt-out period. The Joint Utilities oppose this recommendation. During the opt-out period, the Joint Utilities direct customers to follow instructions in their opt-out letters. There are little to no benefits in requiring the Joint Utilities to track customers who contact them during the opt-out period or who request an ESCO enrollment block on their account. Notably, this additional tracking and reporting is needless since the enrollment in the CCA will not happen if the customer has requested a block on their account during the opt-out period. In addition, customers may request a

block for any number of reasons, and it is unreasonable to require that the Joint Utilities track which customers have requested a block because of the CCA specifically or because of general opposition to enrollment with an ESCO.

## **V. Streamlined Filing Process**

Staff recommends that the process for filing and tracking CCA documents be streamlined, with additional provisions for setting up publicly accessible information once the streamlined process is established. The Joint Utilities support transparency, and as long as interested parties who sign up still receive notification of filings, the Joint Utilities support Staff's recommendations.

## **VI. Modification of Requirements**

- A. Provision of Customer Data:* The Joint Utilities are not opposed to the CCA Data Security Agreement (DSA) being replaced with the requirements established in the Cybersecurity Order, but modifications would need to be made to address customer consent. Any future requirements developed as part of the Data Ready Certification process in the Data Access Framework (DAF) Order should be applicable to CCA Administrators.
- B. Data Access Fees:* As outlined in the Joint Utilities' comments in rehearing,<sup>13</sup> the process for CCA data requests is not yet automated. CCA-related data requests are expected to increase in the future and take up more time and utility resources. For example, in this Whitepaper, many of Staff's recommendations would require additional

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<sup>13</sup> Case 20-M-0082, *In the Matter of the Strategic Use of Energy Related Data* (IEDR Proceeding), Joint Utilities' Petition for Rehearing Regarding Order Adopting a Data Access Framework and Establishing Further Process, pp. 1-3. LIPA did not join this Petition.

time and resources toward processes that have not been automated, further increasing costs. All customers should not bear these costs – they should be paid by participating municipalities, CCA developers, and participating customers. The Joint Utilities recommend maintaining data access fees for programs associated with CCA, including opt-out CDG, until another mechanism to address costs is in place.

*C. Meter Reads for Aggregated Data:* Staff recommends that the “distribution of meter reads be provided in the aggregated data set, and to recognize utility responsibility for accuracy of the data being provided, Staff further recommends the utilities be required to determine the most accurate means by which CCA eligible accounts’ meter read dates can be pulled.”<sup>14</sup> The Joint Utilities need further clarification on Staff’s request to provide distribution of meter reads in aggregated data, or what is meant by determining the most accurate “means by which CCA eligible accounts’ meter read dates can be pulled.” Staff should provide additional specificity concerning what data or other information it proposes utilities should provide and in what format. The Joint Utilities reserve the right to comment substantively on what is meant by these recommendations, whether the additional information is necessary to provide as part of the aggregated data set, and the time and resources needed to provide the additional information.

*D. Privacy Screens:* CCA aggregated data should continue to be required to pass privacy screens. Absent this protection, Personally Identifiable Information (PII)/protected data may no longer be adequately protected. The Joint Utilities recommend that the privacy screen remain intact, but are not opposed to reducing the existing 15/15 standard

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<sup>14</sup> CCA Proceeding, Whitepaper, p. 21.

for aggregated data to the 4/50 standard privacy screen currently applicable to requests for whole-building data.

*E. Customer-Specific Contact Information:* The Joint Utilities oppose Staff's recommendation to provide additional data points in the customer-specific contact information data set that is sent to CCA Administrators solely to run their opt-out campaigns. Staff specifically requests that the following be added to the contact data set: meter read data including bill cycle and period code, tax-exempt status, whether the customer is net metered/VDER/has a solar account indicator, and a dual meter indicator. The Joint Utilities are not opposed to providing bill cycle/period code information in the customer-specific contact set but are strongly opposed to the remaining Staff recommendations because they jeopardize customer privacy – *before customers have the opportunity to opt out* – and are not needed for the CCA Administrator to send opt-out letters. Notably, all of this information is available to the CCA/ESCO, for enrolled customers, once the opt-out period has concluded, and it should not be provided prior to that step. In any decision regarding an individual customer's data, the Commission should exercise utmost care to protect customer expectations of privacy. It is reasonable to expect that utility customers do not want their data shared with third parties. Accordingly, the customer-specific data included in the initial contact data set should be carefully tailored to the specific purpose: notifying customers about the opt-out process. Customer-specific data that is *not* necessary for conducting the opt-out process should not be disclosed. The Joint Utilities look forward to further collaboration with Staff on the types of data needed and the customer-specific contact set, and further clarification of certain data elements such as "dual meter indicator".

*F. Opt-Out CDG Program Data:* Staff recommends excluding customers from the aggregated data and customer-specific contact information if they have an active onsite or remote net metering account, are already subscribed to a CDG project, or are otherwise deemed ineligible for CDG enrollment in accordance with applicable regulations. The Joint Utilities are not opposed to exploring ways to filter this information out of the data sent for CDG opt-out integration. However, the Joint Utilities recommend further stakeholder input to determine what data are necessary. The Joint Utilities recommend that after a determination of relevant data is made, the Commission clearly specify eligibility rules for integrating an opt-out CDG program and whether one combined data set or separate data sets for CCA supply and CDG opt-out are necessary. System considerations at individual utilities may make it difficult to exclude and filter certain types of customers or provide a combined data set that reflects the requested information in the desired manner. In addition, the Commission should consider whether an ESCO block should preclude a customer from participating in the CDG opt-out portion, since Distributed Energy Resource (DER) blocks, once implemented, could provide a CDG block. Requirements in prior orders for development and provision of CCA supply data were very clear and constructive, and an equally clear set of instructions is needed now that CDG is potentially added into the mix. Therefore, the Joint Utilities believe a stakeholder session is necessary to articulate more carefully what these data requirements should be.

*G. Timeframes:* The Joint Utilities recommend that the timeframes outlined in the CCA Framework Order<sup>15</sup> should be viewed as flexible guidelines that depend on the number

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<sup>15</sup> CCA Proceeding, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (Issued April 21, 2016) (CCA Framework Order), p. 28-30 and p. 43-44.

and size of the CCA and CDG requests. CDG opt-out programs may require different data and the filters may not be readily available in utility billing systems – if that is the case, CDG may require more time (and more funding if billing system upgrades are necessary). Any issues with accuracy should be assessed on a case-by-case basis.

*H. Proxy ID:* Staff’s recommendation to assign a proxy ID number for each potential CCA program customer account is being explored in the Integrated Energy Data Resource (IEDR) proceeding,<sup>16</sup> and the Joint Utilities will soon be submitting required filings regarding the feasibility of assigning proxy IDs.

*I. Customer Eligibility:* The Joint Utilities note that the CCA Order already provides information on which service classes are eligible for participation in CCA programs. Further, the Joint Utilities also provide information on eligible service classes and the pricing for each service class on their websites. The Joint Utilities<sup>17</sup> are not opposed to submitting a filing indicating the subclasses or rates available within the service classes identified by the Commission as qualifying for opt-out treatment. However, it is not the role of the utility to determine which subclasses should be included by the CCA Administrator for opt-out treatment. The Commission should either determine that customers enrolled in certain rates are ineligible or make clear that it is the responsibility of each CCA to determine which service class or subclass it wants to serve, to include a clear indication of this decision in its Implementation Plans, and to notify the utility when they are working together to provide data.

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<sup>16</sup> IEDR Proceeding, Order Adopting a Data Access Framework and Establishing Further Process, p. 70-71.

<sup>17</sup> If requested by the Commission or the Department of Public Service, PSEG Long Island would make a similar informational filing.

*J. New Service Classes and Rate Structures:* As mentioned above, it is not the responsibility of each utility to choose the best rate for CCA customers. CCAs are competitive suppliers and the Joint Utilities believe it is not appropriate for utilities to be involved in the selection of suppliers or description of benefits and disadvantages of CCAs. When new rates are implemented by the utilities, there are already robust mechanisms for providing public notice and informing customers of rate availability. Moreover, it is the responsibility of the CCA to educate customers so that they are equipped to make informed choices regarding the CCA's product offerings and rates. Indeed, the CCA Administrators have access to utility tariffs and explanations of rates, especially if they are considering CDG, and they can include such information in their RFP to ESCOs should they prefer to include multiple, more nuanced rates for CCA customers. Finally, in Section 5.4.2 Staff states:

Current CCA customers are excluded from being opt-out enrolled in a new utility service class or rate structures without demonstration by the utility that the customer will receive a higher benefit by leaving the CCA. Such information should be provided to the Commission as part of any petition for approval of a new utility service class or rate structure.

This language is somewhat confusing, but it appears to suggest that Staff recommends that customers participating in a CCA be essentially locked out of a utility's new rate structures and service classifications unless the utility makes a "demonstration" that the customer will receive "a higher benefit by leaving the CCA." It is unclear what such a showing would require, since benefits could come in different forms, such as pricing, ease of use, convenience, or customer preference for more sustainable/renewable energy utilization. Moreover, it is unclear whether such a restrictive practice would even be permitted pursuant to the public service law or Commission regulations. The utility retains the obligation to



serve and that obligation is not qualified – particularly with respect to requiring demonstration of a “higher benefit.” Proposed and Commission-approved rate changes go through a notice and comment period, providing utility rate and tariff information to CCA Administrators, ESCOs, and customers. CCAs are then in the best position to use that public information to assist CCA customers in making informed decisions about whether to remain enrolled with the CCA. Because the CCA has the necessary information and is best positioned to advise customers participating in the particular CCA, the Commission should not adopt the Whitepaper’s recommendation that utilities make these assessments and demonstrations.

## **VII. CDG Opt-Out with Consolidated Billing Process**

### *CCA Programs with an Opt-Out CDG Component:*

Staff recommends allowing all CCA Administrators to integrate opt-out CDG as part of their program offerings. Staff also asks for comment on whether opt-out CDG on a standalone basis, not as part of a CCA, should be approved, and what the program rules should be for opt-out CDG. It is clear from the comments filed in response to the Ampion Petition<sup>18</sup> that there are many issues that remain to be discussed regarding whether opt-out CDG should be permitted, and what the applicable rules governing opt-out CDG should be. The Joint Utilities are not opposed to well-designed opt-out CDG programs, either as an integration into a supply-related CCA or independent of a CCA. As the Joint Utilities stated in comments in response to

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<sup>18</sup> CCA Proceeding, Petition for Approval of Implementation Plan for a Community Choice Aggregation Program Featuring Opt-Out Community Distributed Generation (filed April 9, 2021) (Ampion Petition). Stakeholders including the Utility Intervention Unit, Joule Assets, NRG, Citizens for Local Power, and the Joint Utilities (excluding NFG, which, as a gas-only utility, does not take a formal position on CDG issues at this time) filed comments on the Ampion Petition on June 28, 2021 raising issues that the Commission should resolve concerning the Opt-Out CDG construct.

Ampion’s petition, stakeholder sessions should be held to carefully develop program rules for opt-out CDG so that it can be implemented in an effective and orderly manner that also provides robust education to customers to eliminate the potential for confusion.

The Joint Utilities recognize that CDG projects can provide savings to participating customers while also contributing to the State’s clean energy objectives, especially in conjunction with net crediting mechanisms.<sup>19</sup> Net crediting not only eliminates the need for CDG developers to separately bill participating customers, but also means that participating customers’ bills are never higher as a result of CDG participation since the customer will only see a credit on the bill, not a charge. Moreover, an opt-out CDG program that is part of a CCA has the potential to provide community-wide benefits if structured properly, including robust, transparent, and timely customer outreach and education.

As it has with CCA programs, the Commission should establish detailed requirements to be included in Implementation Plans submitted by CCAs or CDG-only administrators, and Staff should, in advance, hold stakeholder sessions to develop specific program rules. Rules, such as how and which customers can be targeted, or how competing projects<sup>20</sup> would effectively be managed, must be carefully considered and set at the outset, so that CDG developers and the Joint Utilities have clarity and can avoid confusion and inefficiency. In addition, the Commission should require opt-out CDG programs to guarantee savings, or that developers use net crediting, which would prevent customers from incurring unexpected costs from the opt-out program. Once the Commission establishes rules, individual implementation plans should be

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<sup>19</sup> Case 19-M-0463, *In the Matter of Consolidated Billing for Distributed Energy Resources*, Order Regarding Consolidated Billing for Community Distributed Generation (issued December 12, 2019).

<sup>20</sup> For example, customers may receive marketing materials from opt-out CDG developers associated with an aggregation and conventional CDG developers operating outside of a CCA but within the same municipality.

subject to public comment and Commission approval. All of the protections and requirements that are currently in the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS) should be incorporated into those plans, as well as the requirements identified in the Commission's *Order Approving Joule Assets' Community Choice Aggregation Program with Modifications*<sup>21</sup> and Staff's recommendations in the Whitepaper, and any other applicable regulatory requirements. Finally, if an entity seeks Commission approval to implement a CDG-only program, such a program should not be referred to as a CCA because stated simply, it is not a CCA. CCA, as adopted by the Commission, is a supply aggregation program, and includes well-defined rules for approval and implementation. There should be distinct programs for CCA, including the integration of CCA with other energy-related programs, and CDG-only opt-out programs. Each program should be considered in a dedicated case before the Commission in order to provide interested parties a meaningful opportunity to participate.

Additionally, there are conceptual design elements that the Joint Utilities urge the Commission to consider and address before either extending the ability to combine opt-out CDG with CCA or allowing opt-out CDG-only programs. These design elements include:

1. Compensation that reflects reduced developer costs of the opt-out CDG model;
2. Potential inequities among municipalities based on community profile;
3. Utility data considerations;
4. Customer protections; and
5. Implementation and administration changes for opt-out CDG.

Each of these issues is briefly described below.

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<sup>21</sup> CCA Proceeding (*et al.*), Order Approving Joule Assets' Community Choice Aggregation Program with Modifications (issued March 16, 2018) (Joule Order).

### Compensation That Reflects Reduced Developer Costs of Opt-Out CDG

In a CCA, the CCA administrator incurs up-front costs to administer the CCA program, but it can recover those administrative costs through the ESCO providing supply to the CCA. Moreover, because CCAs allow customer enrollment on an opt-out basis, customer acquisition, onboarding, and management costs are significantly reduced compared to opt-in programs. This differs from conventional CDG rules, tariffs, and Commission orders, which require developers to market and recruit customers on an opt-in basis, incurring time and expense to solicit and onboard each customer. Establishing programs that would allow CDG developers, whether in combination with a CCA or on their own, to provide CDG on an opt-out basis will greatly reduce or eliminate many expenses these developers currently face. The incentives that were designed to jumpstart the CDG market may soon become too rich and may provide unnecessary subsidies to developers with all customers bearing the costs. The Joint Utilities recommend that the Commission closely monitor and adjust CDG compensation to make these programs as cost-effective as possible and avoid overcompensating developers to ensure that all customers receive the benefits of potential cost reductions.

### Potential Inequities Among Municipalities Based on Community Profile

Certain communities are likely to be more attractive to CDG developers than others.<sup>22</sup> For example, larger cities may struggle to attract sufficient CDG capacity to enable a significant proportion of residents to participate and receive meaningful benefits. Some communities may not have the municipal resources to organize implementation of an opt-out CDG program. For example, smaller communities or communities with fewer resources to organize (*i.e.*, to identify

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<sup>22</sup> See CCA Proceeding, Ampion Petition, p. 3, for a discussion of communities likely to be a “sweet spot” for CCA opt-out CDG.

and negotiate with CDG developers) may also be communities with higher proportions of low- and moderate-income customers who would benefit most from participation in a CDG program. Thus, community-based resource constraints may exacerbate inequities and cross-subsidization issues as customers located in communities that do not align with developers' preferred profiles will continue to bear certain costs of supporting CDG compensation statewide without realizing the associated benefits.

Opt-out CDG could also, potentially, diminish competitiveness and customer choice. Subscribers in an opt-out CDG program may unknowingly receive a minimum subscription size without the ability to negotiate for a higher allocation percentage. Depending on the size of the participating community, an opt-out CDG project may need to offer lower allocation percentages (*i.e.*, lower or nominal credits) in order to maximize the number of customers served. An opt-out CDG project could be sized such that the benefits realized by individual customers in the host community would be nominal,<sup>23</sup> while also precluding or making it much more difficult for other CDG projects to also target the area with a project. Such a result could erode public support for CDG more broadly, make it harder for alternative CDG projects to find interested customers in those communities, and present administrative barriers and delays for customers who would like to leave an opt-out CDG project to enroll in more beneficial alternatives. This would weaken benefits for customers and be contrary to the State's clean energy goals that CDG is intended to advance. The Commission should weigh such considerations in determining how to proceed with opt-out CDG.

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<sup>23</sup> For example, a large community with many customers in an opt-out CDG program could see very small monthly per customer credits based on current CDG rules that allow a 5% savings rate and a minimum participation threshold of 1,000 kWh/customer/year, which could result in bill credits of less than \$0.50 per month.

## Utility Data Considerations

As noted in Section VI above, the Joint Utilities recommend that the Commission hold a stakeholder session to address what data would be required from utilities in order to facilitate opt-out CDG programs as part of a CCA program, or as part of a stand-alone opt-out CDG program. In either case there are complex data-related issues to address (*e.g.*, solar customer eligibility for opt-out enrollment in a CCA vs. CDG, utilities' capacity to deliver highly customized datasets based on an expanding list of requirements to include or exclude certain sub-groups of customers, changes to the data security agreement to reflect a CDG-only CCA construct) that will influence what data the utilities are able to provide, and under what timeframes. These issues must be discussed more fully with stakeholders before a formal proposal is presented to the Commission, including tariff leaves spelling out what data-related services are to be provided by utilities in each scenario.

## Customer Protections

### *Customer Education and Outreach*

The Commission has established customer education requirements for opt-out CDG programs in the past,<sup>24</sup> and such requirements should apply to all opt-out CDG proposals. Customers must be apprised of how their monthly bills will change, whom to contact when questions or issues arise, and other pertinent information. Such outreach and education must also be clear and transparent, and provided in a timely fashion to customers so that they understand when they may need to take action to opt out, and when they will see changes to their bill. Similarly, if the CDG developer intends to serve only a subset of community customers, it

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<sup>24</sup> CCA Proceeding, Joule Order, p. 15-19.

should proactively engage with the municipality and customers well in advance of municipal approval and program implementation to explain how enrollment and prioritization will work. Customers within a proposed opt-out CDG program must be provided information resources concerning the program sufficiently in advance of any timeline milestones for deciding whether to opt out of participation.<sup>25</sup>

### *Prioritization of Low-Income Customers*

The Joint Utilities recommend that the Commission direct an opt-out CDG administrator to prioritize the participation of low- and moderate-income customers. Municipalities should be required to work with state and community agencies to identify and facilitate engagement with low- and moderate-income customers for opt-out CDG participation.<sup>26</sup> In addition, the Commission should consider directing state and local agencies that provide social service programs to consult with CDG developers to assist with enrolling low-income customers in all CDG programs.

### Implementation and Administration Changes for Opt-Out CDG

In addition to the above program parameters, other implementation and administration procedures for opt-out CDG have not yet been defined. A variety of practical issues must be addressed well in advance of the launch of an opt-out CDG program, including what data will be

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<sup>25</sup> For example, as the Commission directed, at least one additional meeting must be held in each municipality after an energy service company is selected and prior to opt-out letters being mailed to residents. *See CCA Proceeding et. al., Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation Pilot Program*, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017) (MEGA Order), p. 16.

<sup>26</sup> The Joule Order required Joule to inform low-income customers of the guaranteed savings that will be provided to them. The Commission also required Joule to include a tailored opt-out letter for review by Staff.

shared and how it will be shared with developers, and procedures for balancing customers across CDG projects when limited project capacity is available to serve the customers in a municipality.

#### *UBP-DERS Exclusions*

The Joint Utilities agree that an analysis should be conducted to determine whether there are any requirements in the UBP-DERS, or stemming from other proceedings, that need to be suspended or imposed for opt-out CDG programs, whether associated with a CCA program or not. Additionally, to the extent that the Commission moves forward with an expansion of CCA policy beyond opt-out CDG, further analysis should be undertaken to determine in what instances the UBP-ESCO or UBP-DERS would apply, and/or whether the UBPs should be modified to account for additional programmatic scenarios.

#### *Stakeholder Input is Vital to Development of CDG Rules*

Prior to approving broad use of the Opt-Out CDG Model, Staff should conduct stakeholder sessions to determine appropriate program rules. Rules must be established to address how CDG Administrators will determine which customers in a municipality to target and how CDG Administrators will then filter that subset of customers to prevent customers from receiving numerous CDG solicitations when sufficient capacity may not be available to provide advertised service. It is imperative that this, and many other logistical challenges be addressed at the outset, as they were when the Commission issued the CCA Framework,<sup>27</sup> to avoid confusion among customers and developers and so that community solar across the state can be successfully implemented without unworkable, competing projects. Moreover, there are

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<sup>27</sup> CCA Proceeding, CCA Framework Order.



logistics to be developed between Staff, CDG administrators, and the Joint Utilities regarding the process, timing, and necessary data for efficient opt-out implementation.

#### *Additional Program Offering Requirements*

The Joint Utilities support the continued improvement and evolution of CCAs in New York State in ways that balance community choice, consumer protections, and achievement of the State’s clean energy goals. Staff recommends “establishing requirements for new programmatic offerings under the CCA construct that would apply not only for an integrated CDG component, but for any other CCA program offerings as well. These requirements should be clearly defined and integrated into the CCA Rules by the Commission to assist with Staff review.”<sup>28</sup> The Joint Utilities caution that creating a set of blanket requirements for as yet undefined new offerings may not be achievable considering the potential number of permutations that could arise as CCAs continue to experiment and innovate. Instead, the Joint Utilities believe that the Commission should establish an ongoing framework under which it will consider authorization of new CCA programmatic offerings. In addition, program rules should address customer protections, billing and data requirements, and the interaction of numerous offerings.

### **VIII. Environmental Disclosure Program (EDP) Label**

Staff recommends working with the CCA ESCO to manually create the CCA-specific EDP label, which would then be posted on the Department of Public Service website, as is currently done for other manually created labels. The Joint Utilities support this recommendation, as long as the CCA EDP label is posted to the New York Generator Attribute

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<sup>28</sup> CCA Proceeding, Whitepaper, p. 30

Tracking System (NYGATS) website and a process is in place to ensure no double-dipping between ESCOs' CCA and non-CCA customers.

## **IX. Long Island CCA Participation**

Staff recommends that CCA programs on Long Island be reviewed and approved in a manner consistent with existing processes as well as those proposed in the Whitepaper.

The Joint Utilities support this recommendation. Regarding electric CCAs, LIPA's Tariff for Electric Service already provides that LIPA, CCA administrators, ESCOs, and participating municipalities will follow the CCA guidance of the Department of Public Service, and that disputes regarding CCAs will be referred to the Department of Public Service as part of the resolution process.<sup>29</sup> A collaborative stakeholder process regarding potential enhancements to electric choice programs in the LIPA service territory is underway and is expected to result in recommendations from the Department of Public Service to the LIPA Board of Trustees to further align LIPA's choice programs with the rest of the State. Regarding natural gas CCAs, the Joint Utilities agree that the treatment of CCA programs on Long Island should be consistent with the treatment of natural gas CCA programs in the rest of the State.

## **X. Cost Recovery**

Many of Staff's recommendations will require the Joint Utilities to modify existing

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<sup>29</sup> LIPA Tariff for Electric Service, Leaf 297B.

processes and systems, thus incurring costs. The Commission should allow the Joint Utilities<sup>30</sup> to recover these costs, with a surcharge the preferred mechanism, in a manner that limits imposition of such costs on non-participating customers.

## **XI. Conclusion**

The Joint Utilities support the continued improvement and evolution of CCAs in New York State in ways that balance community choice, consumer protections, and achievement of the State's clean energy goals. The Joint Utilities appreciate Staff's considerable efforts to evaluate and improve the CCA construct in New York through the recommendations made in the Whitepaper. The Joint Utilities support many of Staff's objectives, including those focused on consistency and uniformity where practical and cost-effective. In addition, the Joint Utilities support the Whitepaper's recommendations related to customer outreach and education, and have made suggestions in the sections above to strengthen such requirements to benefit customers and reduce the potential for confusion. The Joint Utilities look forward to working with the Commission, Staff, and other stakeholders to evolve the administration of CCAs in advancement of the State's policy objectives.

Dated: July 6, 2021

Respectfully submitted,

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<sup>30</sup> PSEG Long Island would make a similar proposal to the LIPA Board, which provides for comment by the Department of Public Service and the general public.

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