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February 1, 2019

Honorable Kathleen H. Burgess
Secretary
State of New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

CC: Ted Kelly, Assistant Counsel, Dept. of Public Service
Kelly Strait, Office of Markets and Innovation, Dept. of Public Service

Re: Case 14-M-0224: Proceeding on Motion of the Commission to Enable Community Choice Aggregation

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.

SUSTAINABLE WESTCHESTER'S REQUEST FOR PROPOSALS ("RFP") FOR AN ENERGY SERVICE COMPANY TO SUPPLY PARTICIPATING MUNICIPALITIES IN NEW YORK STATE GAS & ELECTRIC (NYSEG) SERVICE AREA

Secretary Burgess:

Pursuant to the MEGA Order¹ and subsequent Orders² in Case 14-M-0224, CCA Administrators must file any Requests for Proposals ("RFP") from Energy Service Companies ("ESCOs") for commodity supply.

Accompanying this letter please find the RFP that will be issued by Sustainable Westchester ("SW"). The RFP will seek bids for an ESCO licensed to supply electricity in New York State to supply

¹ Cases 16-M-0015, Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation (CCA) Pilot Program, and 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017) (MEGA Order).

² Case 14-M-0224, supra, Order Approving Community Choice Aggregation Programs with Modifications (issued January 18, 2018) (Good Energy Order); Case 14-M-0224, supra, Order Approving Joule Assets' Community Choice Aggregation Program with Modifications (issued March 16, 2018) (Joule Order).

electric power to municipalities participating in the Westchester Power Community Choice Aggregation Program in the New York State Gas & Electric (NYSEG) utility service area beginning May 1 2019, following the April 30, 2019 expiration of the current Electric Service Agreement for participating municipalities in the NYSEG territory.

Thank you for your attention,

A handwritten signature in blue ink that reads "Dan Welsh". The signature is written in a cursive, flowing style.

Dan Welsh

Westchester Power Program Director



**SUSTAINABLE WESTCHESTER
WESTCHESTER POWER
CCA PROGRAM**

REQUEST FOR PROPOSALS

**Accounts Served by
New York State Electric and Gas**

February 1, 2019

Proposals must be received on or before 11 am EST, February 21, 2019 and must be submitted by email to dan@westchesterpower.org, belliot@sustainablewestchester.org, and jenna@sustainablewestchester.org.

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Purpose

Sustainable Westchester, Inc. ("SW") seeks, via this Request for Proposals ("RFP") an Energy Services Company ("ESCO") licensed to supply electricity in New York State to supply electric power to municipalities in the New York State Electric and Gas ("NYSEG") utility service area that will be participating ("Participating Municipalities") in the Westchester Power Community Choice Aggregation ("CCA") Program ("CCA Program").

The selected ESCO will sign an Electric Service Agreement ("ESA") with Participating Municipalities and SW to supply electricity for the CCA Program that will begin with meter read dates in May 2019 in accordance with terms and specifications described in this RFP and its attachments. This ESA will be substantially in the form of the template ESA provided as **Attachment 1 ("Template ESA")**.

Background

CCAs in New York State are enabled and governed by the *Order Authorizing Framework for Community Choice Aggregation Opt-Out Program* (Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation) ("CCA Framework Order") issued by the Public Service Commission ("PSC") on April 21, 2016. The CCA Framework Order is provided as **Attachment 2**. ESCOs that submit a response to this RFP ("Respondents") must comply with all requirements of this RFP and its attachments.

Westchester Power Program is the first, and as of the issuance of this RFP, the only CCA in full operation in New York State, having been authorized initially as a pilot under the PSC's *Order Granting Petition in Part* (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), issued February 26, 2015.

SW is a 501(c)(3) non-profit organization with 43 member municipalities (42 Villages, Towns and Cities, as well as Westchester County). SW serves as the administrator for the CCA Program ("CCA Program Administrator"), organizing the procurement, overseeing ESCO performance under the ESAs, organizing educational outreach activities and, complementary with the ESCO, providing customer service. Under the CCA Framework Order, SW is further tasked, as CCA Program Administrator, with working with ESCOs, municipalities and other parties to promote other elements of the NY State "Reforming the Energy Vision" ("REV") energy plan.

The CCA Program has been in operation since 2016 when it launched with 20 municipalities, 17 in the Consolidated Edison service territory, and 4 in NYSEG territory (Bedford is in both). There are separate template ESAs for each utility's service territory. The current ESA for the NYSEG service territory ("2016 NYSEG ESA") ends on April 30, 2019. The ESA for the Con Ed service territory ("2019 Con Ed ESA") will end on December 31, 2020.

Eligible Customer Classes

Under the CCA Framework Order, all customers in the Residential and Small Commercial ("General Service" in NYSEG) rate classes are eligible for opt-out treatment in CCAs.

The current enrollments in the 2016 NYSEG ESA include the following rate classes:

- SC 1 – Residential
- SC 5 – Outdoor Lighting
- SC 6 – General Service
- SC 8 – Residential Day/Night
- SC 9 – General Service Day/Night
- SC 12 – Residential Time-of-Use

In addition, there are also a small number of active SC 2, General Service with Demand, accounts enrolled in the CCA Program. This occurs when the utility changes the rate class of a participating SC 6 customer to an SC 2 due to increased demand.

SC 8 & 9 As Optional Opt-in Offering, SC12 Excluded

The NYS Department of Public Service has indicated that CCAs should not include special billing classes in the opt-out cohort where the CCA does not offer a matching product. For this reason, Day/Night accounts (SC 8 – Residential Day/Night and SC 9 – General Service Day/Night) will be excluded from the opt-out data load for the 2019 NYSEG ESA. However, bidders are encouraged to optionally provide Day/Night rates, which would be offered for accounts in these rate classes for voluntary opt-in enrollment.

SC12 Time-Of-Use accounts will be excluded from this RFP.

Participating Municipalities

Table 1 below lists Participating Municipalities. Participating Municipalities have passed enabling legislation, been approved for participation by the PSC, and have executed a binding Memorandum of Understanding ("2019 MOU") that commits them to participate in the CCA Program beginning in May 2019 that will be serviced by the qualifying ESCO selected by SW through this RFP process (the "Selected ESCO").

Table 1 - Participating Municipalities

	Municipality	Local enabling law enacted	2019 MOU Status
1.	Town of Bedford	7/7/2015	Executed/attached
2.	Town of Lewisboro	7/3/2015	Executed/attached
3.	Town of North Salem	7/28/2015	Executed/attached
4.	Town of Pound Ridge	4/3/2018	Anticipated Feb 7
5.	Town of Somers	7/9/2015	Anticipated Feb 7

All of the signed MOUs of Participating Municipalities as of the issuance of this RFP are included as **Attachment 3**. The remaining MOUs for Pound Ridge and Somers await the next Town Board meetings and will be provided immediately thereafter.

Aggregated Data

The CCA Framework Order provides that SW may share with Respondents certain aggregated utility data ("Aggregated Data") for each Participating Municipality, including the number of eligible customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class. This Aggregated Data shall not include any 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.

The Aggregated Data will be provided as **Attachment 4** to this RFP, which will be sent via supplemental email only once a Respondent submits an executed copy of the Confidentiality Agreement in **Attachment 5**. This authorization to use the Aggregated Data expires on April 1, 2019.

Proposal Submission

Compliant Bid Criteria

Respondents must submit a compliant bid that meets the below criteria ("Compliant Bid Criteria"):

1. Price

The price for Firm Full-Requirements Power Supply, as defined in the Template ESA in Attachment 1, must meet the requirements specified in the MOU in Attachment 3 and the Template ESA in Attachment 1, be inclusive of fees owed to Program Manager, and be less than:

- a. Residential accounts: 7.38 cents/kwh
- b. Small commercial accounts: 7.46 cents/kwh

2. Products

Respondents must provide a supply quote for each of the two following electricity products:

- a. Standard Product that meets the all New York State requirements including the Renewable Portfolio Standard.
- b. 100% Renewable Clean Power Product generated by hydropower, solar energy or wind energy, as defined in, and subject to, the environmental attribute and

delivery rules of the Public Service Commission's Environmental Disclosure Program. Respondent shall provide this price offer by separately listing the fixed price quote for the 100% renewable generation and all additional costs to bring the full percentage of renewable energy in its offering to 100%.

Required Documents

Respondents' proposals may include any information that they believe will help SW understand their capacity to service the CCA Program, but must include the following:

1. Acknowledgement of Key Elements of the Electric Service Agreement **(Attachment 6)**
2. Supplier Qualifications **(Attachment 7)**
3. Pricing and Product Proposal **(Attachment 8)**
4. Financial Ability to Undertake **(Attachment 9)**

In addition, as noted above, Respondent should return the Confidentiality Agreement **(Attachment 5)** as soon as possible so that SW can supply the Aggregated Data.

Respondent firms that have not provided the information required in Attachment 9 (Financial Ability to Undertake) with their RFI submission (questions 13-16 of the RFI) should **submit this by 11:00am on February 14, 2019**. Respondents that completed provided this information with the RFI are not required to submit Attachment 9.

Submission Method

Respondents must deliver their response to this RFP to the contacts indicated below via email by the due date. Please provide the name and contact information (phone,

fax, email, cell phone number) for the sales representative that will accept and process the ESA. If different from the above, the name and contact information (phone, fax, email, cell phone number) for the sales representative that will manage the ESA.

Email submissions, and any questions and correspondence should be made to the following contacts at Sustainable Westchester:

Dan Welsh
Westchester Power Program Director
dan@westchesterpower.org
(914) 242-4725 x 101

Bob Elliott
Executive Director, Sustainable Westchester
belliott@sustainablewestchester.org
(914) 242-4725

Jenna Amundsen
Operations and Outreach Coordinator
jenna@sustainablewestchester.org
(914) 242-4725

Requests for Clarification

Respondents are required to submit any question about the RFP to the email addresses indicated above. The deadline for receipt of questions is 2:00pm EST on February 19, 2019. Respondents are requested to keep all questions concise. SW will email all questions and answers to all other Respondents.

Submission Deadline

This RFP was sent electronically on February 1, 2019 to ESCOs already vetted through a request for interest ("RFI") process. **All responses must be received in PDF format at the email addresses specified above by 11:00am EST on February 21, 2019. Responses must remain valid until 2:00pm EST on February 21, 2018.** Please specify the length of time the response will remain valid.

Proposal Evaluation

- It is the intent of Sustainable Westchester to select a single ESCO to serve all Participating Municipalities through the CCA Program.
- This is a non-binding RFP.
- The award decision will be made on the basis of best value.
- SW reserves the right to ask for a "Best & Final" bid prior to execution.
- Respondents' proposals, when submitted, become the property of SW. SW does not guarantee any award, whether partial or full, to any Respondent.
- SW reserves the right to disqualify from consideration any Respondent who does not comply with the conditions of this RFP.

Respondents' proposals will be evaluated for the best value to Participating Municipalities based upon the following criteria. The weight of each criterion in the final selection decision is indicated by the percentage value assigned to it.

Evaluation Weighting

The price offered by the Respondent for the 100% Renewable Clean Power Product	40%
The price offered by the Respondent for the Standard Product	20%

Submission of optional Day/Night rates for opt-in enrollment	15%
The Respondent's qualifications as related to the questions listed in Attachment 7	10%
The Respondent's credit worthiness, as verified by an independent accounting firm	5%
The Respondent's compliance with the RFP's instructions for preparing and submitting responses	5%
The Respondent's willingness to sign an ESA substantially in the form attached as Attachment 1	5%

Reservation of Rights

- This RFP is not an offer to purchase power supply and associated services.
- SW reserves the right to accept or reject any and all responses and also reserves the right to cancel or reissue this RFP at any time throughout the process.
- SW is not responsible for any costs incurred by other parties in the preparation of responses to this RFP.
- SW reserves the right to waive any RFP requirements that are not material.

Confidentiality and the New York State Freedom of Information Law

SW will treat all information provided by Respondents as public information following the conclusion of the selection process unless Respondent requests information to be treated as confidential at the time of bid submission. Any request for confidential treatment of information must be included in the cover letter of Respondent's response and must explain why disclosure of the information is not in the best interest of the public and must identify specific basis under the New York State Freedom of Information Law (Public Officers Law, Article 6, Sections 84-90) for the exemption from disclosure of such information. The cover letter must also contain the name, address and telephone number of the

individual authorized to respond to SW about the confidential nature of the information. If the Respondent designates any information in its proposal as confidential, the Respondent must also submit one (1) copy of the response from which confidential information has been redacted. The confidential material must be redacted in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the response as possible.

Respondents must also fill out, sign, and return the **Confidentiality Agreement (Attachment 5)**.

Attachments

Attachment 1 - Template ESA

Attachment 2 - CCA Framework Order

Attachment 3 - Signed Memorandum of Understandings from Participating Municipalities

Attachment 4 - Participating Municipality Consumption Data*

Attachment 5 - Confidentiality Agreement

Attachment 6 - Acknowledgement of Key Elements of the Electric Service Agreement

Attachment 7 - Supplier Qualifications

Attachment 8 - Pricing and Product Proposal

Attachment 9 – Financial Ability to Undertake

* To be provided only after Respondent returns an executed Confidentiality Agreement to SW.

Attachment 1 – Template ESA

Electric Service Agreement

Exhibit 1 to accompany the Memorandum of Understanding
on Community Choice Aggregation
between local government members of Sustainable Westchester
and Sustainable Westchester

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RECITALS

WHEREAS, Sustainable Westchester, Inc. sought approval of a demonstration community choice energy aggregation (“Community Choice”) program in Westchester County in 2014, which would allow local governments to participate in a Sustainable Westchester program to procure energy supply from an Energy Services Company for the residents of the municipalities;

WHEREAS, on February 26, 2015, the Public Service Commission of the State of New York approved implementation of the first Community Choice pilot program in New York State;

WHEREAS, the PSC subsequently issued the order “Authorizing Framework for Community Choice Aggregation Opt-out Program” on April 21, 2016 (the “CCA Order”) enabling Community Choice throughout New York State;

WHEREAS, the Westchester Community Choice Aggregation program (also known as Westchester Power) is intended to include residential and small non-residential customers, and to permit the aggregation of electric purchases by the communities which elect to participate;

WHEREAS, the City/Town/Village of _____ (“Municipality”) has adopted a Local Law to participate in the Sustainable Westchester Community Choice Program (“Program”) to aggregate consumers located within the Municipality and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the program allows Municipality to solicit competitive bids for the supply of electricity individually or as part of a buying group with other municipal aggregators;

WHEREAS, Sustainable Westchester, Inc. has been authorized by the Municipality to act as Program Manager for a Community Choice Program, pursuant to Local Law and Memorandum of Understanding 2019, issue a request for proposals to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, the Program executed the first electric service contracts in 2016 (the “2016 ESA”) with four municipalities in the Westchester New York State Electric and Gas (NYSEG) utility territory, and added one more municipality in 2018, and these contracts expire on April 30, 2019;

WHEREAS, _____, an entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) (“Competitive Supplier”), desires to provide Full- Requirements Power Supply to consumers located within the Municipality, pursuant to the terms and conditions of the Municipality's Program and this Electric Service Agreement (“ESA”);

WHEREAS, the Municipality desires that the Competitive Supplier provide Firm Full- Requirements Power Supply and Consolidated Billing as an alternative to Default Service for consumers within the Municipality;

WHEREAS, Competitive Supplier is willing to provide two distinct electric supply products and two corresponding pricing levels, (1) a Standard Product and price, and (2) a 100% Renewable Clean Power Product comprised of the Standard Product plus New York Voluntary Clean Power RECs and price as set out in Exhibit A herein;

WHEREAS, Municipality has chosen the Standard Product / 100% Renewable Clean Power Product [select one and initial] as the Default Product for its residents and small businesses;

[OPTIONAL

WHEREAS, Competitive Supplier is also making available Time Of Use product(s) as set out in Exhibit A herein to customers through the Program on an Opt-In basis;]

WHEREAS, Competitive Supplier agrees to pay a fee to Program Manager;

WHEREAS, Municipality prefers for Competitive Supplier to collect and remit the fees due the Program Manager;

WHEREAS, the local governments that participate in the Sustainable Westchester Community Choice Program, including this Municipality, intend that this Agreement be uniform in form and substance in each instance throughout the Program; and

NOW THEREFORE, IT IS AGREED THAT, Municipality, Program Manager, and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

ELECTRIC SERVICE AGREEMENT

ARTICLE 1 DEFINITIONS

Capitalized terms that are used but not defined in the body of this ESA, including the Exhibits hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

1.0 Associated Entities – Any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.

1.1 Bankruptcy - With respect to a Party, (i) such Party ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.2 CCA Orders – Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in 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” and, the “Authorizing Framework for Community Choice Aggregation Opt-out Program” issued on April 21, 2016 (the “CCA Order”) on CCA setting forth the requirements, terms, and conditions under which CCA programs can proceed through implementation.

1.3 100% Renewable Clean Power Product - Firm Full-Requirements Power Supply matched with New York Voluntary Clean Power RECs (hydropower, solar energy or wind energy) as defined in, and subject to the Attribute delivery rules set forth in, the New York Generation Tracking System (“NYGATS”) Operating Rules, supporting the Public Service Commission’s Environmental Disclosure Program, as further described and defined in Pricing Exhibit A-2

1.4 Commercially Reasonable - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices or without limitation in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party’s obligations under this ESA.

1.5 Community Choice – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Eligible Customers within the Municipality.

1.6 Competitive Supplier or Energy Services Company (ESCO)– An entity duly authorized to conduct business in the State of New York as an ESCO.

1.7 Consolidated Billing - A billing option that provides Participating Customers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.

1.8 Default Product – The product selected by the Municipality for supply to its eligible residents and small businesses upon enrollment, unless they take action to select a different product or opt out..

1.9 Default Service – Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier. Residential and small commercial consumers within the Municipality that receive Default Service, and have not opted out, will be enrolled in the Program as of the Effective Date.

1.10 Delivery Term - The period for which prices for Firm Full-Requirements Power Supply have been established, as set forth in Exhibit A.

1.11 Distribution Utility - Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.

1.12 Electronic Data Interchange (EDI) - The exchange of business data in a standardized format between business computer systems.

1.13 Effective Date - The day immediately following final day of the rescission period, which immediately follows the opt-out period, which occurs after notifications to Eligible Consumers, which occurs after this ESA has been executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

1.14 Eligible Consumers – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2016 ESA and have not opted-out, or “New Consumers” that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.

1.15 ESA - This Electric Service Agreement.

1.16 Environmental Disclosure Label – Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Labels in the State of New York.

1.17 Federal Energy Regulatory Commission (FERC)-The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.

1.18 Firm Full-Requirements Power Supply - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, Zero-emissions Credit obligations, and other such services or products necessary to provide firm power supply at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during the contract term to Participating Consumers at the Point of Sale.

1.19 Force Majeure - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.

1.20 General Communications - The type of communications described and defined in Article 5.7 herein.

1.21 Governmental Authority - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Municipality.

1.22 Governmental Rule - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

1.23 kWh, kW - Kilowatt-hour and kilowatt, respectively.

1.24 Local Law – A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice pilot program.

1.25 Memorandum of Understanding 2019 – Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.

1.26 New Consumers – Residential and small consumers of electricity that become Eligible Consumers after the Effective Date, including those that opt in or move into Municipality and those who complete or terminate other 3rd party supply contracts and have returned to Default Service, provided these consumers have not previously opted out of the Program..

1.27 New Taxes - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

1.28 NYISO - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.

1.29 Participating Consumers - Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or have been served by the Program under the 2016 ESA and have not opted out, or are New Consumers.

1.30 Parties - The Municipality, the Program Manager, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.

1.31 Point of Delivery - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.

1.32 Point of Sale - The electric meter for each Participating Consumer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

1.33 Program - Sustainable Westchester Community Choice Aggregation Program.

1.34 Program Manager – Sustainable Westchester, Inc., a not-for-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

1.35 PSC or DPS - The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.

1.36 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation. To meet the threshold of being a Qualifying Regulatory Event, the impact of the event must impact the majority of customers in the same rate class and must not be unique to Competitive Supplier's customers.

1.37 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.

1.38 Retail Price - As set forth in Exhibit A.

1.39 Service Commencement Date - The date of the Participating Consumers' first meter read date after the Effective Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

1.40 Term - As defined in Article 4.1.

1.41 Uniform Business Practices – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, issued by the New York State Public Service Commission (Case 98-M-1343).

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Firm Full-Requirements Power Supply to Participating Consumers pursuant to the terms of this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Firm Full-Requirements Power Supply only to Participating Consumers enrolled in the plan or plans managed by the Program Manager, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Default Service, until changes in law, regulation or policy may allow otherwise.

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out or have previously opted out of the Program. In the event the geographic boundaries of the Municipality change during the term of this ESA, Competitive Supplier shall only be obligated to supply Firm Full-Requirements Service to those Participating Consumers located within the Municipality as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Distribution Utility, and any arrangements which may be necessary with the NYISO so that Participating Consumers receive the electricity supplies to be delivered pursuant to this ESA.

The Municipality shall specifically authorize the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Distribution Utility. The Distribution Utility Fees for the provision of this data shall be paid for by the Supplier. Competitive Supplier shall request consumption data for individual Participating Consumers from the Distribution Utility via EDI. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Program Manager, on behalf of the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier or any of its Associated Entities makes in the provision of Firm Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the February Order and Local Law for Eligible Consumers to purchase electricity from the

Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

The Municipality represents that the Local Law has been duly adopted.

Competitive Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations, requirements, and orders of the FERC, NYISO, and PSC.

2.4 CONDITIONS PRECEDENT

The Municipality's obligations under this ESA shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

- a) maintain Competitive Supplier's license from PSC (as such term is defined in the Local Distribution Utility's Terms and Conditions for Competitive Suppliers);
- b) execute any appropriate NYISO applications and agreements;
- c) obtain authorization from the FERC to sell power at market-based rates;
- d) complete EDI testing with Distribution Utility;
- e) provide all other documentation required by the Distribution Utility; and
- f) satisfying all insurance requirements set forth in Article 16 or elsewhere in this ESA.

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the Municipality is strictly prohibited. Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables or enhancement of data exchange between the Parties), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set

forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CONSUMER CHOICE

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to February Order, Local Law, and the Program, to change their source of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of PSC, the Distribution Utility and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Not inconsistent with the above, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the PSC Orders, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose

a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the Competitive Supplier must rely upon information provided to it by the Distribution Utility for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with notification of Eligible Consumers only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

3.3 CONSUMER AWARENESS

Upon mutual agreement concerning the content and method, either the Competitive Supplier, Municipality, or Program Manager may conduct consumer awareness efforts at its sole expense.

3.4 ENROLLMENT

3.4.1 Participating Consumers –All Eligible Consumers as of the Effective Date will be enrolled in the Program, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the 30-day period specified in the PSC Orders. Participating Consumers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager who has agreed in writing to a non-disclosure agreement, a copy of which will be provided to the Municipality, a list of Participating Consumers as of the Effective Date, as well as such Participating Consumer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

3.4.2 New Consumers - If New Consumers elect not to opt-out of the Program as provided in Article 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the Program. These New Consumers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New Consumers. Competitive Supplier shall enroll such New Consumers in accordance with applicable PSC and Distribution Utility rules.

3.4.3 Eligible Consumers Opting Out - At any time during this ESA, Eligible Consumers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Consumers at a price as set forth in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

3.4.4 Consumers Served by Third-Parties - Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Consumers. New Consumers who opt-in as provided in this Article 3.4.4 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New Consumers.

3.4.5 Termination Fees. There shall be no termination fees for any residential, small commercial, or municipal Participating Consumers to disenroll from the Program.

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read determined by the Parties and delineated in Exhibit A, unless terminated earlier under Article 4.2 below ("Term"). Term shall not exceed 36 months.

4.2 TERMINATION

This ESA may be terminated at any time upon written notice:

- a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9), but excluding the failure to provide or arrange for Firm Full-Requirements Power Supply, which is addressed in Article 4.2(d)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Consumers; or
- d) by the Municipality, if a court, PSC or other lawful authority adjudicates contrary to Article 6; or
- e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other

relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or

f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

4.3 OBLIGATIONS UPON TERMINATION

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA and Competitive Supplier shall continue to have the right to collect all monies due for services rendered to that date.

Upon termination, Competitive Supplier shall have all Participating Consumers switched back to obtaining supply from the Distribution Utility by submitting all consumer drops via EDI to the Distribution Utility in a form acceptable to the Distribution Utility.

4.4 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A Extension. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

The Competitive Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good

practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available.

5.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Municipality, and the Distribution Utility. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M.- 5:00 P.M. Eastern Time, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Municipality will post program-related information on the Municipality's website which will be available to Participating Consumers for general information, comparative pricing, product, and service information, and other purposes.

5.3 RESPONDING TO REQUESTS FOR INFORMATION

To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the Municipality for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Consumers. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of PSC regarding customer service.

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Firm Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the

Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Consumers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential and small commercial) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier, subject to any provisions of law or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's Standard Credit Policy, to the extent permitted by law, as described in Exhibit A.

In any event, should either Program Manager or Municipality actively achieve and document (e.g. to the satisfaction of the New York State Public Service Commission and the Utility) reduction in capacity tag buying obligations, Competitive Supplier will pay or distribute benefits from these tag reductions to Participating Consumers at the NYISO strip clearing price for the appropriate zone (i.e., H, upper Westchester or I, lower Westchester), in which the capacity tag reduction is certified by appropriate party. Program Manager agrees it does not intend to pursue any actions that would increase the capacity tag obligation to Competitive Supplier.

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Manager for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Manager. The Municipality or Program Manager shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to

mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Manager fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) above shall require approval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Manager to include no less than three (3) inserts per year into such communications, provided that the Program Manager or Municipality, where appropriate pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the Municipality's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated. Competitive Supplier shall notify Program Manager at least two (2) weeks before a direct communication to Participating Consumers is to be mailed. Program Manager shall provide Program General Communications insert file within seven (7) calendar days of receiving such notice.

Competitive supplier agrees to allow and facilitate the Program Manager to utilize the supplier Messages area of the bill for Program communications.

5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Consumer lists in an electronic format, secure transfer mode, frequency and format as set out in Exhibit D, subject to non-disclosure agreement for customers who have not requested that their personal information be denied to Program Manager or to Municipality.

5.9 COMPLIANCE WITH LAWS

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

5.10 CONSENT

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Competitive Supplier requests the Municipality's assistance in obtaining such consent or approval and the Municipality anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine whether it will continue to request the Municipality's assistance, and if so, the Competitive Supplier shall reimburse the Municipality for all costs, up to the estimated dollar amount, reasonably incurred by the Municipality in connection with such efforts.

ARTICLE 6 ROLE OF THE MUNICIPALITY

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the PSC Orders and Local Law and may include negotiating the terms and conditions under which Firm Full-Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full-Requirements Power Supply to Participating Consumers. The Parties agree that, with regards to electricity, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of GML 360 and Article 4 of Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of 4.2 a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to the PSC Orders and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

Municipality shall conduct outreach to the community in addition to the initial program notification letter, **which will be delivered at the Competitive Supplier's expense, with a Business Reply Mail insert to allow Eligible Consumers to opt out without postage expense.** Municipality will report on their endeavors to Program Manager to inform residents on the Program and "non-demand charge" commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

ARTICLE 7 ROLE OF PROGRAM MANAGER

7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;
- c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the PSC Orders, including but not limited to the following:
 - "5. Sustainable Westchester, Inc., its municipal members, and any other municipal contractors receiving the personally identifiable information of utility customers shall agree to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.
 6. Sustainable Westchester, Inc. will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued."
- d. Sign the ESA in a timely fashion including the conditions that the Competitive Supplier is deemed credit worthy for the duration of the ESA by an independent review of a qualified organization, such as an accounting firm, and the Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed compliant with the terms and conditions set forth in the ESA;
- e. Provide the Municipality with timely communications content to effect customer notification requirements for approval, not to be unreasonably withheld, given the projected schedule of Program's implementation; and
- f. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities; and
- g. Fulfill any other responsibilities as set forth in this agreement herein.

7.2 PROGRAM MANAGER FEE

Competitive Supplier shall pay Program Manager \$0.001 for each kWh delivered, invoiced and paid for by Participating Consumers during the Term (“Program Manager Fee” or “Fee”). The Parties agree that Competitive Supplier will remit the Program Manager Fee to the Program Manager, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Sustainable Westchester, Inc. for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

7.3 PAYMENT OF FEE

Payment to Program Manager will be made monthly by Automated Clearing House (“ACH”) (an electronic network for financial transactions) to the account set forth in Exhibit C hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Consumers. The Program Manager Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

Program Manager shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact, financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

7.4 INDEPENDENT CONTRACTOR

The Parties agree that Program Manager is not an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Manager in connection with this ESA shall be borne wholly and completely by Program Manager. Program Manager shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Manager or any employees or agents of Program Manager.

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide Firm Full-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this ESA, which Exhibit is hereby incorporated by reference into this ESA.

8.2 OBLIGATION TO SERVE

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power

Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

8.3 METERING

The Distribution Utility will be responsible for any metering which may be required to bill Participating Consumers in accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers.

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers, the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Distribution Utility.

8.4.2 Billing and Payment

Unless otherwise specified in an Exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Consumers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Consumers on Default Service. If actual meter date is unavailable, the Competitive Supplier may cause the Distribution Utility to bill based on its good faith estimates of usage. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Utility under its distribution service tariff or local transmission costs as may be imposed by NYISO or individual electric utilities that have FERC transmission tariffs. The Competitive Supplier understands that these costs will be collected by the Distribution Utility. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are "pass through" costs as determined by the appropriate regulatory agencies.

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. For avoidance of doubt, it is understood that the Competitive Supplier shall include gross receipts tax in its preparation of Participating Consumers' bills. Participating Consumers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

ARTICLE 9 COMPLIANCE WITH THE PSC ORDERS

Competitive Supplier agrees that it, and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA, will comply with the applicable provisions of the PSC Orders and any regulations, orders or policies adopted pursuant thereto.

ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agrees to comply with any code of conduct or policies the PSC may adopt in accordance with the PSC Orders and to all related Orders of Case 14-M-0564 and 14-M-0224 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES

The Competitive Supplier shall, on or before the Effective Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the

dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

10.3 DISPUTE RESOLUTION

In accordance with the Uniform Business Practices, in the event of a dispute regarding an invoice or Competitive Supplier's service, whether directly or through its Associated Entities, under this ESA, a Participating Consumer may initiate a formal dispute resolution process by providing written notice to the PSC. The PSC will assist the Parties in reaching a mutually acceptable resolution. If no such resolution is reached within 40 calendar days of receipt of the formal written notice, any Party may request an initial decision from PSC. Parties may appeal this decision.

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Competitive Supplier agrees that it shall conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees, and will require all Associated Entities to do the same.

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Quarterly Report of Sales

Competitive Supplier shall provide the Municipality or its agent with a quarterly report of sales which will contain: (i) the actual aggregate kWh sales for each meter read of the reporting period and (ii) the number of Participating Consumer accounts active in each meter read of the reporting period. The quarterly report will be due to the Municipality or its agent within sixty (60) days following the close of each quarter (March 31, June 30, September 30, and December 31). The aggregate kWh sales and number of Participating Consumer accounts shall be listed in the report both by rate code and rate name as shown on Exhibit B attached hereto. This information shall be provided in electronic format.

12.1.2 Consumer-Related Data

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. A violation of this Article 12.1.2 shall be grounds for termination under Article 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the

Municipality's satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

12.1.3 Standard of Care

Competitive Supplier and its Associated Entities shall use all Commercially Reasonable efforts in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall provide corrections to such information or data to the Municipality or its agent within a Commercially Reasonable time.

12.2 POWER SUPPLY REPORT

Unless the Environmental Disclosure Label requirement is waived by PSC, within fifteen (15) days of the end of the quarter, Competitive Supplier shall present a copy of the current Environmental Disclosure Label required by PSC of all Competitive Suppliers to be disclosed to their Participating Consumers, which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

12.3 BOOKS AND RECORDS

Competitive Supplier shall keep their books and records in accordance with any applicable regulations or guidelines of PSC, FERC, and any other Governmental Authority. The Municipality will have electronic access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Municipality and at the Municipality's reasonable expense, Competitive Supplier or its Associated Entities shall provide reasonable back up for any charge under this ESA questioned by the Municipality.

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the State of New York without respect to conflicts-of-laws principles. Any litigation

arising hereunder shall be brought solely in the appropriate federal court in New York or appropriate state court sitting in the New York county in which the Municipality is located, to whose jurisdiction the Parties hereby assent, waiving all objections to venue or forum.

13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties may seek judicial enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA.

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, the Competitive Supplier shall indemnify, defend and hold harmless the Municipality and the Program Manager ("Indemnified Parties") and the Indemnified Parties' officials, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with (i) any material breach by Competitive Supplier or its Associated Entities of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality or its employees or agents, or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Municipality or Program Manager seeks indemnification pursuant to this Article 14, it shall notify Competitive Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim.

14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

14.4 DUTY TO MITIGATE

Each Party agrees that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of the other Party's performance or non-performance of this ESA.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the Municipality as of the Effective Date of this ESA as follows:

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- c) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- d) subject to the conditions set forth in Article 2.4, this ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations to the Municipality in conformance with the terms and conditions of this ESA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- e) no Bankruptcy is pending against it or to its knowledge threatened against it;
- f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- g) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

15.2 BY THE MUNICIPALITY

As a material inducement to entering into this ESA, the Municipality hereby represents and warrants to Competitive Supplier as of the Effective Date of this ESA as follows:

- a) this ESA constitutes the legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law;
- b) the execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- c) Municipality has all authorizations from local Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) no Bankruptcy is pending or threatened against the Municipality;

15.3 BY THE PROGRAM MANAGER

As a material inducement to entering into this ESA, the Program Manager hereby represents and warrants to Competitive Supplier and Municipality as of the Effective Date of this ESA as follows:

- a) this ESA constitutes the legal, valid and binding contract of Program Manager enforceable in accordance with its terms, subject to applicable law
- b) the execution, delivery and performance of this ESA are within Program Manager's powers, have been or will be duly authorized by all necessary action;
- c) Program Manager has all authorizations from any local or state Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) no Bankruptcy is pending or threatened against Program Manager.

ARTICLE 16 INSURANCE

16.1 In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Effective Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. A certificate that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before the Effective Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are “claims made” policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior “claims-made” policy. With respect to all “claims made” policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed “claims made” policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

16.3 Competitive Supplier, to the extent required by law, must provide worker’s compensation insurance meeting all applicable state and federal requirements.

ARTICLE 17 REGULATORY EVENT/NEW TAXES

17.1 REGULATORY EVENT

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If despite such best efforts, a Regulatory Event affects Competitive Supplier and Program Manager and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

17.2 QUALIFYING REGULATORY EVENT

If a Qualifying Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Qualifying Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

17.3 NEW TAXES

If any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Consumers through applicable monthly invoice(s).

ARTICLE 18 MISCELLANEOUS

18.1 NO ASSIGNMENT WITHOUT PERMISSION

Except in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all facets of this ESA reasonably acceptable to Municipality, Competitive Supplier or Program Manager shall not directly or indirectly assign

this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Manager in the ESA. Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least ninety (90) days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Manager and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.2 DIRECT MARKETING

Prior to the introduction of any new product or service which Competitive Supplier may wish to make available to Participating Consumers or other Eligible Consumers located within the Municipality, Competitive Supplier agrees to (i) give the Municipality written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Municipality the possible inclusion of such new product or service in this or another aggregation program undertaken by the Municipality.

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, in any direct marketing to any Participating Consumer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Consumers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer. Programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

18.3 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to:

If to Competitive Supplier:

If to Municipality:

and if to Program Manager:

Executive Director
Sustainable Westchester Inc
55 Maple Ave.
Mount Kisco, NY 10549

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this Article 18.3 by giving notice thereof in the manner required herein.

18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Municipality and the Program Manager in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier and the Program Manager in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the Program Manager changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in Article 18.3.

18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto, duly authorized to sign such instrument.

18.6 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer, any Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages. Additionally, Competitive Supplier shall submit all consumer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98-M-0667.

18.7 EXPENSES

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorney's fees and expenses.

18.8 NO JOINT VENTURE

Each Party will perform all obligations under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Municipality and the Competitive Supplier hereunder are individual and neither collective nor joint in nature.

18.9 JOINT WORK PRODUCT

This ESA shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.

18.10 COUNTERPARTS

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

18.11 WAIVER

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective with respect to an obligation to the waiving Party and shall only be effective if made in writing and signed by the Party who is making such waiver.

18.12 ADVERTISING LIMITATIONS

Competitive Supplier agrees not to use, whether directly or through any of its Associated Entities, the name of the Municipality, or make any reference to the Municipality in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Municipality expressly agrees to such usage. Any proposed use of the name of the Municipality must be submitted in writing for agreement and prior written approval which may be withdrawn through a notice in writing at any time. The Municipality acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

18.13 PRESS RELEASES

The Parties agree to cooperate in good faith prior to the issuance of any formal press release with respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

18.14 HEADINGS AND CAPTIONS

The headings and captions appearing in this ESA are intended for reference only, and are not to be considered in construing this ESA.

18.15 SURVIVAL OF OBLIGATION

Termination of this ESA for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

19 REMEDIES

19.1 GENERAL

Subject to the limitations set forth in Article 19.2 below and Article 4, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

19.2 LIMITATIONS

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.

Notwithstanding the foregoing, each Party acknowledges that the preceding sentence shall not limit the other Party's rights to seek direct damages or, under Article 14.1, to seek indemnification from Competitive Supplier for consequential, punitive, or incidental damages described in the preceding sentence or other such losses claimed by third- parties.

//Signatures Follow//

IN WITNESS WHEREOF, the Parties have caused this ESA to be executed by their duly authorized representatives, as required by the applicable laws of the city, town or municipality and the laws, rules and regulations of the State of New York, as of the respective dates set forth below

COMPETITIVE SUPPLIER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

MUNICIPALITY

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

PROGRAM MANAGER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

EXHIBIT A-Part 1
PRICES AND TERMS – STANDARD PRODUCT

Firm Full-Requirements Price by Rate Classification for all Participating Consumers located in **New York State Electric & Gas** territory commencing service on the first Consumer meter-read date after April 30, 2019.

Table 1:

Rate Class	Fixed Price per kWh	
Residential	\$0.0###	
Small Commercial	\$0.0###	

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on the first Consumer meter read date after April 30, 2019 and continue until the first Consumer meter read date after _____, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA. The Parties agree they may extend this Agreement up to ____ months upon mutual written agreement to amend the Term.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer's first meter read dates after April 30, 2019.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy and Renewable Energy Certificates in the Firm Full-Requirements Power Supply mix in an amount equal to New York State's Renewable Portfolio Standards in a manner designated by New York State.

Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Consumers to opt-out or terminate service.

Competitive Supplier's Standard Credit Policy: The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor will Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to Default Service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier intends to serve New Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above at the fixed price in Table 1 above, but reserves the right to add the adders in Table 2 below to those prices.

Table 2:

Rate Class	Adder per kWh
Residential	\$0.0###
Small Commercial	\$0.0###

EXHIBIT A-Part 2
PRICES AND TERMS- 100% RENEWABLE CLEAN POWER PRODUCT

Firm Full-Requirements Price for 100% Renewable Clean Power Product by Rate Classification for all Participating Consumers located in New York State Electric & Gas territory commencing service on the first Consumer meter-read date after April 30, 2019.

Table 3:

Rate Class	Fixed price per kWh
Residential	\$0.0####
Small Commercial	\$0.0####

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on the first Consumer meter read date after April 30, 2019 and continue until the first Consumer meter read date after _____, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of 100% Renewable Clean Power Product shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: 100% Renewable Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer's first meter read dates after April 30, 2019.

This Exhibit A-Part 2 includes a purchase of Renewable Energy Certificates sourced from hydropower, solar energy or wind energy generating facilities ("RECs") in an amount equal to 100% of the Participating Consumers' electricity usage, over and above any then-current renewable portfolio standard, clean energy standards or carbon reduction requirements applicable to alternative retail electric suppliers in New York. Each REC represents Attributes associated with one MWh of electricity generated by a renewable fuel type defined by the New York Generation Tracking System ("NYGATS") Operating Rules, dated May 18, 2018, but does not include any tax credits, depreciation allowances or third party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program

Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Consumers to opt-out or terminate service.

Competitive Supplier's Standard Credit Policy: The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor will Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to Default Service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier intends to serve New Consumers who enroll and are enrolled into the Program after the first consumer meter-read date referred to above at the price in Table 3, above, but reserves the right to add the adders in Table 2 below to those prices.

Table 4:

Rate Class	Adder per kWh
Residential	\$0.0###
Small Commercial	\$0.0###

EXHIBIT A-Part 3
PRICES AND TERMS- TIME OF USE PRODUCTS

[Bidders may provide an offer for one or more Time of Use products at their option. This product will be offered to Participating Customers on an Opt-In basis only. If selected supplier includes such options, price and terms for any such products accepted will be set out in this extension of Exhibit A]

EXHIBIT B
TEMPLATE KWH SALES AND CONSUMER ACCOUNTS DATA SUMMARY

Rate Code	Residential	Small Commercial
Standard Supply		
Municipality		
# of Default Accounts of Eligible Consumers		
	kWh	kWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Rate Code	Residential	Small Commercial
100% Renewable Supply		
Municipality		
# of Default Accounts of Eligible Consumers		
	kWh	kWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

**EXHIBIT C
PAYMENT**

PROGRAM MANAGER BANK INFORMATION FOR PAYMENTS BY ACH

Bank Name:

Bank Routing Number:

Bank Account Number:

Federal ID:

EXHIBIT D - DATA REQUIREMENTS

In order for program administrators and participants to have visibility into their participation with the program, certain data will need to be exchanged, in a regular format, with regular transmission methods and times.

The file format, timing of delivery, and mechanism for delivery of data are described here:

File Format: Fields required relate to Customer Records, Retailer Contract Account Records, Invoice Records, and Utility Account Records. If the records are compiled from a variety of tables, associative Primary Keys must be provided for ease of interacting with & communicating about data. File names will contain only alphanumeric characters.

Customer records will contain, among other fields, basic contact & billing information.

Retailer Contract Account records will define what Contract Type is active with the Customer, as well as what was applied to any given invoice. They will include, among other fields, the rate, start date, and expiry date of the contract.

Invoice Records will contain information relating to the billing period, charges billed, kWh billed for, and any additional fees put to the Customer.

Utility Account Records will contain information relating to the Utility Account, including Distribution Company, Account Number, Read Cycle, Service Address, Rate Class, and Meter Number.

A full list of fields will be provided with this document.

Timing: Files will be prepared & transmitted weekly on Mondays.

Mechanism: Files will be prepared in two comma-separated values (.csv) format. A secure FTP will be established between the Supplier and Westchester, or a party designated by Westchester.

File Name	File Description
AccountFileyyyyymmdd.csv *	A complete historical record of all participating accounts
InvoiceFileyyyyymmdd.csv *	Records including the last two months of invoices

* "yyyyymmdd" to refer to date of production of file

Outward Field Name	Field Description	Format
Customer Record Created Date	Date when Customer Record was Created	AccountFileyyyymmdd.csv
Customer Record Modified Date	Most Recent date of Modification to Customer Record	AccountFileyyyymmdd.csv
Account Record Created Date	Date when Account Record was Created	AccountFileyyyymmdd.csv
Account Record Modified Date	Most Recent date of Modification to Account Record	AccountFileyyyymmdd.csv
Customer Type	Field to hold "Residential", "Commercial" or "Public"	AccountFileyyyymmdd.csv
Company Name	Field to hold Company Name, if Customer Type is "Commercial"	AccountFileyyyymmdd.csv
Organization Name	Field to hold Organization Name, if Customer Type is "Public"	AccountFileyyyymmdd.csv
Contact Person First Name	Field to hold Person-of-Contact First Name for "Commercial" or "Public" Customers	AccountFileyyyymmdd.csv
Contact Person Last Name	Field to hold Person-of-Contact Last Name for "Commercial" or "Public" Customers	AccountFileyyyymmdd.csv
Customer/Contact Phone Number	Field to hold Customer/Contact Phone Number	AccountFileyyyymmdd.csv
Customer/Contact email address	Field to hold Customer/Contact phone number	AccountFileyyyymmdd.csv
Account Annual kWh Usage	Field to hold most recent Annual kWh consumption	AccountFileyyyymmdd.csv
Municipality	Field to hold Municipal Entity Account is Aggregated Under	AccountFileyyyymmdd.csv
AccountTurnOnDate	Field to hold Date where Utility Account was Activated	AccountFileyyyymmdd.csv
AccountTurnOffDate	Field to hold Date where Utility Account was Closed	AccountFileyyyymmdd.csv
Status of Account	Field to hold Active/Inactive, depending on whether or not the account is being actively serviced by Retailer	AccountFileyyyymmdd.csv
Contract Start Date	Field to hold beginning date for Retail Contract	AccountFileyyyymmdd.csv
Contract End Date	Field to hold End date for Retail Contract	AccountFileyyyymmdd.csv
Account ID	Field to hold Field Unique to Account, where an Account is defined as a single signed contract term	InvoiceFileyyyymmdd.csv ; AccountFileyyyymmdd.csv
First Name	Field to hold First Name for Residential Customers	InvoiceFileyyyymmdd.csv ; AccountFileyyyymmdd.csv

Outward Field Name	Field Description	Format
Last Name	Field to hold Last Name for Residential Customers	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
Billing Address 1	Field to hold Customer's first address line	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
Billing Address 2	Field To hold Customer's second address line	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
Billing City	Field To hold Customer's city address line	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
Billing State	Field To hold Customer's state address line	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
Billing Zip Code	Field To hold Customer's zip code address line	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
Invoice Record Created Date	Date when Invoice Record was Created	InvoiceFileyyyyymmdd.csv
Invoice Record Modified Date	Most Recent date of Modification to Invoice Record	InvoiceFileyyyyymmdd.csv
Invoice Number	Field to hold Unique Invoice Number for issued invoices	InvoiceFileyyyyymmdd.csv
Name of Subscriber Contract	Field to hold the Name of the Subscriber Contract	InvoiceFileyyyyymmdd.csv
Rate of Subscriber Contract	Field to hold the Rate of the Subscriber Contract	InvoiceFileyyyyymmdd.csv
Subscriber Utility Account Number	Field to hold Utility Account Number of Subscriber	InvoiceFileyyyyymmdd.csv
Subscriber Meter Number	Field to hold Utility Meter Number of Subscriber	InvoiceFileyyyyymmdd.csv
Subscriber Utility Company	Field to hold Name of Subscriber's Utility Company	InvoiceFileyyyyymmdd.csv
Subscriber Distribution Company	Field to hold Name of Subscriber's Distribution Company	InvoiceFileyyyyymmdd.csv
Account Load Zone	Field to hold Load Zone of Subscriber Account	InvoiceFileyyyyymmdd.csv
Account Rate Class	Field to hold Rate Class of Subscriber Account	InvoiceFileyyyyymmdd.csv
Nonresidential Name on Bill	Field to hold the name listed on "Commercial" or "Public" Utility Accounts	InvoiceFileyyyyymmdd.csv
Service First Name	Field to hold Residential Service First Name	InvoiceFileyyyyymmdd.csv
Service Last Name	Field to hold Residential Service Last Name	InvoiceFileyyyyymmdd.csv
Service Address 1	Field to hold Address of Service for Utility Account	InvoiceFileyyyyymmdd.csv
Service Address 2	Field to hold Address of Service for Utility Account	InvoiceFileyyyyymmdd.csv
Service City	Field to hold City of Service for Utility Account	InvoiceFileyyyyymmdd.csv
Service State	Field to hold State of Service for Utility Account	InvoiceFileyyyyymmdd.csv

Outward Field Name	Field Description	Format
Service Zip Code	Field to hold Zip Code of Service for Utility Account	InvoiceFileyyyymmdd.csv
Dual Billing	Field to hold Y/N if Customer receives two bills (one from utility, one from retailer)	InvoiceFileyyyymmdd.csv
Read Cycle	Field to hold Read Cycle numerical indicator	InvoiceFileyyyymmdd.csv
InvoicePeriodStartDate	Field to hold beginning date for Invoiced Usage	InvoiceFileyyyymmdd.csv
InvoicePeriodEndDate	Field to hold End date for Invoiced Usage	InvoiceFileyyyymmdd.csv
Amount Invoiced	Field to hold total amount invoiced during Invoice Period	InvoiceFileyyyymmdd.csv
kWh invoiced	Field to hold total kWh billed for in the invoice period	InvoiceFileyyyymmdd.csv
Rate per kWh	Field to hold rate charged per kWh during this invoice period	InvoiceFileyyyymmdd.csv
Tax on Invoice	Field to hold total amount charged to customer for taxes during invoice period (unit in \$)	InvoiceFileyyyymmdd.csv

Attachment 2 – CCA Framework Order

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 20, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, dissenting

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

ORDER AUTHORIZING FRAMEWORK FOR COMMUNITY CHOICE AGGREGATION
OPT-OUT PROGRAM

(Issued and Effective April 21, 2016)

BY THE COMMISSION:

INTRODUCTION

The Commission initiated consideration of Community Choice Aggregation (CCA) as part of both Governor Cuomo's Reforming the Energy Vision (REV) initiative and its continued review and revision of retail energy markets. The goals of both REV and retail energy market reform include, among other things, increasing the ability of individuals and communities to manage their energy usage and bills, facilitating wider market-based deployment of clean energy including energy efficiency, large-scale renewables and distributed energy resources (DER), and increasing the benefits of retail competition for residential

and small non-residential customers.¹ A well-designed Community Choice Aggregation (CCA) program will create these benefits for participating communities. The Commission also previously approved a petition by Sustainable Westchester, Inc. (SW) requesting authorization to run a CCA Pilot Program (the SW Pilot). The Commission will use the lessons learned from this experience in its review of future CCA applications.

CCA offers residential and small non-residential customers (mass-market customers) an opportunity to receive benefits that have not been readily available to them. At its February 23, 2016 Session, the Commission responded to the failure of energy service companies (ESCOs) to create benefits for most residential and small non-residential customers, as well as increasing customer complaints, by limiting the products that can be offered to those customers to products that create real customer value.² CCA programs can result in more attractive energy supply terms than can be obtained by individual customers through the bargaining power that aggregation provides, the expertise provided by municipal or consultant experts, and the competitive public process for choosing a supplier.

More importantly, the CCA construct provides substantial positive opportunity for meaningful and effective local and community engagement on critical energy issues and the development of innovative programs, products, and services that

¹ Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014); Case 12-M-0476 et al., Residential and Small Non-Residential Retail Energy Markets, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012).

² Case 15-M-0127, et al., In the Matter of Eligibility Criteria for Energy Services Companies. Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016) (February Reset Order).

promote and advance the achievement of the State's energy goals. Existing programs such as the NY Prize microgrid competition, Solarize New York, and community distributed generation have demonstrated that local governments are an effective and powerful resource for educating and engaging citizens to take action with regard to energy that is positive for the environment, the resiliency of our power grid, and their own pocketbooks. CCA programs can educate, encourage, and empower communities and individuals to take control of their energy future through engagement with existing REV and CEF opportunities and development of new DER and clean energy programs.

For these reasons, the Commission authorizes the establishment of CCA programs by municipalities statewide. This Order articulates the necessary program design principles and standards that municipalities must apply in developing and implementing CCA programs for their constituents. The process and requirements for developing a CCA Program in compliance with this Order are summarized in Appendix D.

As explained in the February Reset Order, the Commission is currently evaluating what products ESCOs should be permitted to offer to mass market customers. Decisions on those issues will be addressed separately from this Order and will control which products are eligible to be offered to mass market customers and aggregated CCA customers going forward.³

BACKGROUND

In December 2014, the Commission instituted a proceeding to consider establishing CCA programs in New York

³ Such decisions will not disrupt or require renegotiation of existing CCA contracts.

State and to evaluate potential structures and best practices for such programs.⁴ A Department of Public Service Staff (Staff) White Paper regarding CCA was attached to the Instituting Order (the White Paper). The White Paper posed 18 questions on various CCA program design and implementation issues for stakeholder comment. The Instituting Order and the White Paper contain extended discussion of the background for the authorization of CCA programs in New York, including the creation and oversight of retail energy markets, past and current uses of energy aggregation in New York, and the implementation of CCA in other states.

Shortly after the issuance of the Instituting Order, SW filed a petition requesting authorization to run a CCA Pilot Program. An order partially granting the petition was issued on February 26, 2015.⁵ Since that order was issued, at least 24 municipalities have joined the SW Pilot by conducting public outreach and passing local laws, SW has conducted a Request for Proposals (RFP) to select an energy supplier and negotiate a contract, and opt-out letters have been mailed to customers.⁶ Experiences related to the SW Pilot have and will continue to inform the requirements identified in this Order.

⁴ Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (issued December 15, 2014) (Instituting Order).

⁵ Case 14-M-0564, Sustainable Westchester, Order Granting Petition in Part (issued February 26, 2015).

⁶ See <http://sustainablewestchester.org/>.

Several other groups have also filed petitions requesting authorization to run CCA programs.⁷ In addition, municipalities, non-profits, and market participants have expressed interest in developing CCA programs in New York State.

In an effort to expand the record in this and other REV-related proceedings on issues regarding customer and aggregated data, Staff convened two on-the-record technical conferences⁸ that explored issues related to third party access to both individual and aggregated customer energy data in furtherance of REV and CCA objectives. Parties were also invited to submit written comments related to the topics of the conferences.

In its February Reset Order, the Commission explained that greater oversight was necessary in order to ensure that ESCOs created value for mass market customers. Specifically,

⁷ See 15-E-0449, Petition of Madison County Public Utility Service Regarding a Proposed Community Net Metering Program and a Proposed Community Choice Aggregation Program and For Certain Relief Related to Implementation of the Programs.

15-E-0585, Petition of Sullivan Alliance for Sustainable Development for the authorization by the Public Service Commission, as a demonstration project under REV, a community choice aggregation project known as Sullivan County Community Choice Aggregation.

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

In addition, Citizens for Local Power, while not filing a formal petition, have provided a proposal to Staff for consideration.

⁸ Cases 14-M-0101 et al., supra, Notice of Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued November 3, 2015); Notice of Second Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued December 23, 2015)(Data Technical Conferences).

the order restricted ESCOs from enrolling new, or renewing contracts with existing, individual mass-market customers unless each customer was provided with guaranteed savings compared with their default utility service provider, or, alternatively, that at least 30% of their supply was from renewable resources.⁹ Those restrictions are an interim measure while the Commission considers what further regulation or oversight should apply to ESCOs offering energy-related value-added services in general to mass market customers. The February Reset Order also enhanced enforcement provisions of the Uniform Business Practices (UBP). At this time, the portion of that order limiting the types of products that ESCOs can offer to mass market customers is stayed by an Order to Show Cause issued by the Supreme Court of Albany County.

Also relevant to this proceeding is the Commission's consideration of a Clean Energy Standard. The Staff White Paper on the Clean Energy Standard contemplates a program that involves procurement requirements on all load-serving entities, including ESCOs.¹⁰

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on December 31, 2014 [SAPA No. 14-M-0224SP1]. The time for submission of comments pursuant to the Notice expired on February 17, 2015.

⁹ The February ESCO Order noted that CCA programs presented different issues than the types of sales addressed by the Commission and provided an exemption to the SW Pilot.

¹⁰ Case 15-E-0302, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Staff White Paper on Clean Energy Standard (filed January 25, 2016).

Comments were submitted by a wide variety of stakeholders representing various sectors impacted by CCA and are grouped by topic and addressed below. Also, written comments were submitted in response to questions posed at the Data Technical Conferences. A list of commenters is provided in Appendix A.

In general, the majority of stakeholders support the authorization of CCA in New York. They agreed that CCA programs are consistent with the goals of REV and have the potential to reduce costs and create benefits for customers, as well as promote a cleaner and more economically dynamic and efficient energy system. As discussed in the Instituting Order, the Staff White Paper, and several comments, CCA programs are already creating these benefits in other states.

A number of commenters expressed support for some aspects of CCA while expressing reservations about others. In addition, relevant comments received at, or filed after, the Data Technical Conferences are addressed.

LEGAL AUTHORITY

The Commission has the necessary statutory authority to establish and regulate CCA programs. This authority 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 5(2) requires the Commission to "encourage all . . . corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their

public service responsibilities." Pursuant to Section 65(1), every gas corporation and electric corporation must safely and adequately "furnish and provide [gas and electric] service, instrumentalities, and facilities." Section 66(1) extends general supervision to gas corporations and electric corporations having authority to maintain infrastructure "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." Pursuant to Section 66(3) the Commission may prescribe "the efficiency of the electric supply system." Finally, pursuant to Section 66(5) the Commission is authorized to "examine all persons, corporations and municipalities under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business." 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.

In addition, CCA programs utilizing an opt-out method of customer enrollment are not possible without Commission authorization because, pursuant to the UBP adopted by the Commission, ESCOs cannot request customer data or enroll customers without individual customer authorization. Since such CCA programs depend on the ability of the municipality or ESCO to contact and enroll customers on an opt-out basis, Commission

action is necessary to authorize CCA programs. 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 ESCO to receive data and enroll customers on compliance with Commission directives.

ANALYSIS OF ISSUES

Eligible Municipal Governments

With respect to policies and legal matters over qualifying municipal entities, the Joint Utilities noted in their comments that there could be considerable overlap, or even layers, of municipal subdivision boundaries that could impact a given customer and that the Commission should clarify how such conflicts will be resolved.

Discussion

There are four types of municipalities under New York State law that the Commission has considered for eligibility: villages, towns, cities and counties.¹¹ Villages are formed within towns, and can overlap more than one town and even more than one county. A village can also be coterminous in its entirety with a town. Towns are formed within counties and do not overlap into other counties. Cities are formed within, and in some cases overlap, counties, but do not overlap either towns or villages.¹² The entire State is divided into counties.

Given those realities, the Commission will extend authority for municipal approval for a CCA to occur at the

¹¹ There are many special purpose entities that may technically be defined as "municipalities" under New York Law, but that due to their lack of general jurisdiction would not be appropriate entities to establish CCA programs.

¹² New York City overlaps five counties in their entirety.

lowest level of the village/town/city hierarchy of municipal government in an area.¹³ Therefore, a village board will establish a CCA in any village; a town board will establish a CCA in the area of any town outside of any villages; and a city council will establish a CCA in any city. Consistent with this, in most instances, the municipality that has awarded the franchise for the utility company to operate in the municipality is likewise the lowest municipality in such hierarchy of municipalities and already has a franchise relationship with the utility company.¹⁴ In addition, utility service territories often conflict with county boundaries, but do not generally conflict with village, town and city boundaries, such that this solution will likely eliminate additional boundary conflicts where more than one utility serves within a county. All eligible municipalities would also be able to combine with other eligible municipalities to operate joint programs pursuant to inter-municipal agreements.¹⁵ With this result, counties will not be eligible to set up a CCA, but county governments may certainly actively encourage and coordinate the municipalities within the county to form an inter-municipal CCA and even work to support that CCA as in an administrative role. However, the final decision to participate will be up to the individual

¹³ The authority extended includes most significantly the ability to request customer data from utilities and to contact and enroll customers on an opt-out basis. This does not preclude other, opt-in aggregation programs without such authority.

¹⁴ There may be some exceptions; primarily where a village was formed after a town had already awarded a gas or electric franchise to operate. In such instances, the public streets are generally transferred to the new village and any franchise renewal would have to be granted by the new village, which is consistent with the Commission's overall approach.

¹⁵ Such joint programs are not limited to one utility's service territory or by any other geographical rules.

eligible cities, towns and villages. Towns with multiple villages could also perform a similar coordination role.

Scope of CCA Programs

In response to the proposal to permit aggregation of both electric and gas supply, CLP agrees that CCAs should be allowed to aggregate gas customers and to support the development of DER such as renewable heating and energy efficiency measures. Several parties commented that the questions and White Paper do not address the potential for CCAs to develop DER and otherwise engage in a full range of energy planning and management activities, sometimes described as CCA 2.0.

Discussion

CCA programs will be permitted to aggregate electric supply, gas supply, or both. While other states permitting CCA have focused on electric aggregation, comments were generally supportive of permitting gas aggregation and there were no suggestions that gas aggregation would be infeasible or inappropriate. Customers in CCA programs where both gas and electric supply are offered shall have the option to opt-out of either aggregation, individually. For those customers that currently receive their supply of gas and/or electric from an ESCO, those customers will have an ability to opt-in to a municipal CCA program, subject to their existing ESCO contract terms and the terms of the CCA program.¹⁶

CCA programs should also be designed to aggregate or otherwise integrate into their programs energy efficiency and DER options. Since CCA programs are intended to promote greater

¹⁶ The municipality or CCA Administrator for a CCA that intends to accept opt-in customers is responsible for developing a process consistent with the UBP requirements for customer enrollment to accomplish this, and may work with the selected ESCO to do so.

consumer awareness and bill savings, they present a formidable opportunity to advance the State's clean energy objectives. In considering how to include a variety of products and energy planning and management activities within the CCA program, municipalities should be open to contracting with different ESCO and DER providers for services. CCA Administrators should also take advantage of programs developed under REV, the CEF, and related proceedings, including Community Distributed Generation. As further discussed below, CCA Administrators should work with NYSERDA and the local utilities, as well as ESCOs and DER providers, to determine how DER and energy efficiency can be integrated into their programs.

Customer Eligibility

The Instituting Order and Staff White Paper addressed customer eligibility and included the following questions for stakeholder response:

- Should non-residential customers who are not served by ESCOs be included in CCA programs on an opt-out basis? If not, should they be included on an opt-in basis? Should any inclusion of small non-residential customers be based on the UBP definition of that phrase, or should municipalities be able to include a differently-defined group of non-residential customers in CCA? (Q1)
- Should customers already served by an ESCO be included in CCA programs? If so, how can they best be offered that opportunity? Some customers may be month-to-month under contracts with no termination fee or their contracts may be about to expire, and find the CCA contract offered attractive. Others may be willing to pay the early termination fee to obtain CCA benefits. What are the benefits and costs of allowing program participation of customers served by ESCOs? (Q2)
- What provisions, if any, should be made to allow customers who move into the region served by a CCA after it has commenced, to participate in the CCA? Similarly, what provisions should be made to allow customers who are served by an ESCO at the time the CCA has commenced, to participate in the CCA at a later time, or to allow customers who initially opted out to later opt in? (Q4)

Comments

AEA, Energy Next, Local Power Inc., and many others commented that CCA programs should include non-residential customers not served by an ESCO on an opt-out basis. Constellation agreed with AEA, but suggested limiting those non-residential customers to those with a 50kW or less demand. UIU also agreed that non-residential customers should be included in CCA programs on an opt-out basis to ensure a greater likelihood of success for the CCA program. UIU noted that established CCA programs around the country have demonstrated that the larger the scale of customer participation, the greater the ability the municipality will have to negotiate lower energy rates and more favorable terms, as well as obtaining favorable financing options for locally-owned DER.

The Joint Utilities and MI agreed that residential and non-residential customers served by an ESCO should have the ability to opt-in to a CCA program. Constellation explained that customers already served by an ESCO should not be included in an opt-out CCA because it is essential to the competitive market that a customer's choice of ESCO be respected. RESA stated that customers served by an ESCO should not be included in CCA, data submitted to the CCA Administrator should exclude ESCO customers, and that ESCO customers should be scrubbed from any CCA mailing list.

CCP noted that in California, CCA programs are the default provider for any new customers in their territory. The Joint Utilities state that it should be the responsibility of each municipality to identify approaches that would recognize customers who move in or out of their area. The UIU stated that the CCA should be required to add customers as long as the additional load does not negatively impact the load forecast, which could drive up costs for the overall CCA program.

Discussion

All customers, including residential and non-residential, regardless of size, shall be eligible to participate in CCA programs. Based on experiences in other states and considering the above comments, CCA participation can be valuable for all customer rate classes and maximizing the number of customers included in CCA programs will maximize the overall benefits for CCA customer participants.

However, recognizing the complexity of certain classes of gas and electric service, a customer shall be enrolled on an opt-out basis, as further discussed below, only if that customer is a member of a service class listed, by utility, in Appendix C. Those service classes include all residential customers as well as service to multiple dwellings and, depending on the granularity available in utility tariffs, include at least all small commercial and industrial customers. Basing this determination on service class, rather than strict adherence to the definitions of small non-residential customers in the February Reset Order, is appropriate because it will reduce cost and complexity for utilities and CCA Administrators and because large non-residential customers, as sophisticated energy consumers, are at least as capable of deciding whether to opt-out as residential and small non-residential customers. Furthermore, the CCA Administrator shall consult with the utility or utilities providing service on whether customers taking service subject to riders or other special rate treatments should be included only on an opt-in basis. No customer should be included on an opt-out basis if that inclusion will interfere with a choice the customer has already made to take service pursuant to a special rate. Customers that are already taking service from an ESCO or have placed a freeze

or block on their account¹⁷ shall not be enrolled on an opt-out basis but may be included on an opt-in basis, subject to the conditions of their existing contracts.

While all customers are potentially eligible for CCA participation, municipalities may decide to develop CCA programs with more limited eligibility. Based on the difference in offering service to different types of customers, the varied options already available in the market, and varying regulatory requirements, a municipality may determine that it can create the most overall benefits by focusing its CCA program on one or more particular groups of customers. The municipality may therefore choose to apply opt-out treatment to a more limited class of customers, to only allow certain classes of customers to opt-in, or both.

The municipality may also determine whether eligible customers who move into a municipality which is participating in a CCA should be enrolled on an opt-in or opt-out basis. Once a CCA program has started providing service, the municipality may request a monthly list from the relevant utilities of new customers in the municipality. If the municipality chooses to enroll these customers on an opt-out basis, it must mail them an opt-out letter consistent with the discussion below providing an opt-out period of at least 30 days before the customer is enrolled. Such customers shall also be permitted to cancel and return to utility service or service by another ESCO with no cancellation fees or other charges any time before the end of the third billing cycle after their enrollment, consistent with the discussion below.

¹⁷ Customers who have made an express decision on their energy supply service, either by choosing a supplier or by specifically requesting an account freeze or block, which prevents their transfer to an alternate supplier, should not be transferred without express consent.

Low-Income Customer Participation

In REV and related proceedings, particular attention has been focused on ensuring that low-income customers have opportunities to participate in energy programs and are not disadvantaged by their participation. Comments on participation in CCA programs by low-income customers were received in response to the following:

- Should customers who participate in a low-income energy assistance program administered by a utility or receive Home Energy Assistance Program (HEAP) benefits be included in CCA on an opt-out basis? If not, should they be included on an opt-in basis? (Q3)

Comments

The majority of commenters stated that customers who participate in a low-income energy assistance program administered by a utility or receive HEAP benefits should be included in CCA on an opt-out basis. RESA and Direct Energy stated that low-income customers should be allowed to participate consistent with the eligibility of residential customers and the application of the various UBP requirements applicable to low-income customers.

The Joint Utilities proposed that individual municipalities should be required to work with their county's Department of Social Services to determine whether customers who are HEAP recipients or DSS direct voucher customers should be included on an opt-in or opt-out basis. Joint Utilities and NRG Retail also highlight the nexus between many issues associated with participation of low-income customers in CCA and issues now being addressed in Case 12-M-0476. Local Power Inc., noted that California Alternative Rates for Energy (CARE) customers, who receive subsidized rates for energy based upon their income, are protected equally when enrolled in a CCA program. They proposed that the CCA program should include all HEAP customers who do not opt-out of the program.

Discussion

The Commission, with the support of Staff and the input of stakeholders, is currently evaluating how to best ensure that customers participating in utility low-income assistance programs (Assistance Program Participants or APPs) can benefit from participation in energy markets.¹⁸ CCA programs may include APPs so long as those customers are enrolled in products that comply with requirements for ESCO service of APPs at the time of enrollment, but are not required to include APPs. Municipalities should consult with relevant local or state social services program administrators in considering whether to include APPs. Furthermore, for some low-income customers, a social services organization receives and pays the energy bill; in those cases, the social services organization, not the customers themselves, should make the decision regarding whether to opt-out.

Adoption of Opt-Out Aggregation for CCA Programs

A number of comments were received regarding whether CCA programs need the enrollment of mass-market customers on an opt-out basis to be effective. Comments on this topic were received in response to several questions, including:

- Are there any reasons CCA programs should not be adopted, including issues with opt-out aggregation generally? (Q16)
- Are there any reasons supporting implementation of CCA, including descriptions of positive experiences in other states? (Q17)

¹⁸ Case 12-M-0476 et al., supra, Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets at 24 (issued February 25, 2014); Case 12-M-0476 et al., supra, Order Granting and Denying Petitions for Rehearing in Part at 6 (issued February 6, 2015) (February 2015 Retail Access Order). In addition, the Report of the ESCO Low-Income Collaborative in Case 12-M-0476 was filed with the Secretary on November 5, 2015 and the February Reset Order included action consistent with recommendations in that report.

Comments

The overwhelming majority of commenters supported the opt-out provisions for CCA. Some commenters, however, questioned the need for Commission authorization of opt-out CCA programs since opt-in programs already exist. Joint Utilities assert that opt-in rather than opt-out more appropriately protects customers from unwanted switches by commodity suppliers. Joint Utilities also address some of the challenges non-residential electric customers who also have gas accounts may present when enrolled in a CCA, particularly if a customer wants to retain its existing relationship with an ESCO for one commodity but participate in the CCA for the other commodity. NFG does not oppose adoption of CCA programs but does not believe opt-out aggregation is an essential or necessary feature for the success of CCA programs. MI urges the Commission to refrain from authorizing CCA programs on an opt-out basis.

Discussion

Affirmative consent for participation in retail energy markets has always been deemed an important consumer protection. The Commission has previously declined to authorize the enrollment of customers into ESCO service on an opt-out basis based on concerns that transferring blocks of load to ESCOs through auctions would unduly interfere with the operation of markets by undermining efforts to educate customers regarding retail choice and that such an approach would be inconsistent with the UBP, which state that transfers of customers without their affirmative consent are impermissible slamming, and the Public Service Law, which guarantees customers, subject to limited exceptions, that the utilities will always be available

as a supplier.¹⁹ The Commission has required explicit customer consent prior to the transfer of data or initiation of ESCO service since the introduction of ESCOs into New York markets to protect customer choice, recognize the varying needs of different customers, and encourage voluntary participation in retail energy markets. Permitting the inclusion of customers in CCA on an opt-out basis rather than requiring explicit, affirmative consent represents a significant policy change.

As more thoroughly described in the White Paper, CCA programs in other states have only been successful where opt-out aggregation is permitted for mass-market customers, while opt-in requirements have limited the success of widespread mass-market customer aggregation in New York. Opt-in aggregation has proved valuable to certain larger customer groups, but opt-out aggregation appears necessary for CCA programs to achieve the scale that will enable ESCOs to create meaningful benefits for mass market customers. Opt-in aggregation for residential customers is limited by the same factors that limit retail market participation in general, including lack of the time, interest, or knowledge needed to consider aggregation offers, lack of awareness, and the difficulty of comparing competing offers. In order to leverage the negotiating power to draw offers from ESCOs that will benefit residents, municipalities must have a reasonable level of certainty that a critical mass of customers will be available for their programs, which is best provided through a well-designed opt-out CCA program.

¹⁹ Case 07-M-0458, Development of Competitive Retail Energy Markets, Order Determining Future of Retail Access Programs (issued October 27, 2008), p. 14; Case 00-M-0504, Provider of Last Resort Responsibilities, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets (issued August 25, 2004), pp. 23-28.

Furthermore, consumer engagement and protections designed into the CCA programs under consideration here should alleviate concerns that previously warranted the reluctance to proceed with opt-out aggregation. For instance, a new CCA program can only be established upon a decision reached by elected representatives after significant public outreach. In particular, the requirement that elected officials approve a CCA program before one is implemented represents a reasonable proxy for customer consent, when coupled with consumer education efforts and individual customer opt-out processes. These measures, consistent with Commission policy, will provide meaningful opportunities for customers to learn about retail energy markets and determine whether the product offered by the CCA program meets their needs. The customer engagement and opt-out processes, as described below, will also ensure that customers receive notice sufficient to make an informed choice and give them the opportunity to control the sharing of their data and the decision to enroll.

These characteristics of CCA programs will help ensure that customers served by ESCOs through these programs do not encounter high-pressure or deceptive sales tactics, as some other mass-market customers have experienced, because the ESCO will be chosen by the municipality through a competitive procurement process. In addition, the negotiating power resulting from the scale created by CCA programs and the ability of the municipality to compare multiple bids will allow mass-market customers served through a CCA to receive the same benefits from ESCO service that large commercial and industrial customers currently enjoy.

For these reasons, CCA programs will be permitted to enroll eligible customers on an opt-out basis. Approval of CCA as an opt-out program is specific to its context and to the

protections it provides, and should not be interpreted as an indication that the Commission intends to eliminate or modify the general requirement for explicit customer consent.

Customer Outreach and CCA Development Process

Comments on the process for establishing and implementing a CCA program, including necessary outreach to customers, were received in response to the following White Paper questions:

- Should municipalities considering CCA be required to conduct public forums or other public engagement at certain points during the process of establishing a CCA program? (Q12)
- Should municipalities be required or requested to provide to Staff for approval or review copies of communications that would be distributed to customers regarding the CCA program and the contract selected, in addition to Staff's continued review of ESCO communications to customers? (Q13)
- Should any specific modifications be made to the structure of CCA, as described above, that are not covered by the above questions? (Q15)

Comments

Constellation comments that public engagement is an important part of the CCA process and supported a requirement that municipalities be required to have a public forum or other engagement to ensure that customers are well informed about CCA and the means for opting out of the program. Joint Utilities also support public forums and additional public engagement. They remark that customers will need sufficient information to make an informed decision, especially if it involves an opt-out program.

UIU states that prior to implementing a CCA program, a municipality should develop and plan for a meaningful outreach process to give citizens an opportunity to review all aspects of the proposed CCA program and decide if the benefits associated with the program are worth the investment. UIU recommends that

this outreach plan be incorporated into an implementation plan that the municipality would be required to submit to the Commission for review and approval. ConEdison Solutions concurs that there should be a general requirement for the municipality to properly inform customers about the program and conduct an outreach and education plan, reflected in an implementation plan filed with the Commission, but that the Commission should also allow for flexibility and defer to the municipality on the specific methods, channels, and content of the customer education efforts.

Direct Energy recommends that communities seeking to implement a CCA program submit a plan to the Commission for approval and that such a plan include proposed communications to the community regarding the details of the program. They explained that a similar process is used in Massachusetts. Joint Utilities suggest a Staff-approved series of templates and recommended communication tools be provided setting forth critical/key messages that should be contained in municipal communications with constituents.

On the other hand, NYC asserts that the Commission should not intrude on municipalities' rights by developing a one-size-fits-all model for CCA programs. Rather, NYC states, the Commission should develop a set of parameters and guidelines that municipalities could use to establish their own programs. Local Power Inc. states that the Commission Staff should only review communications to confirm accuracy.

Discussion

The process of planning for a CCA program will vary with each municipality and program. In some cases, a non-profit, consultant, or other third party may develop a plan and solicit municipal members. In other cases, municipal officials, on their own initiative or based on requests from residents, may

develop their own plan for a CCA program and either implement it themselves or engage a third party to support them. While the discussion of process below refers to the responsibilities of a CCA Administrator, which may be the municipality itself or one or more third parties working with the municipality, the municipality will remain ultimately responsible for ensuring that the CCA program is operated in compliance with legal requirements, that it serves the interests of its residents, and that consumer information is appropriately protected.

To assist municipalities with their outreach efforts and CCA development, the New York State Energy Research and Development Authority (NYSERDA) shall be called upon to provide technical assistance in the form of advice regarding best practices for program design, model solicitations and contracts, and other resources. NYSERDA is well equipped to provide these services and should make their resources available, as part of CEF activities, at the earliest possible date. Furthermore, in consultation with Staff, NYSERDA shall develop a CCA toolkit describing best practices and including model documents such as customer outreach materials and contracts to be available to interested municipalities within 120 days of the date of this Order. The toolkit should provide municipalities with the capabilities to use the CCA construct to offer not only commodity but also energy efficiency and DER opportunities to advance energy affordability and clean energy. In addition, NYSERDA shall assist CCA Administrators in coordinating with utilities, ESCOs, and DER providers to develop innovative programs and products consistent with REV, the CEF, and the Clean Energy Standard.

It is important for municipalities to engage in robust outreach to properly inform and educate their residents on CCA so that they are able to make an informed decision about their

energy supply. Experience gained through the SW Pilot demonstrates the importance of engagement among municipalities, residents, advocates, and market participants in developing CCA programs. It is appropriate to require that all CCA Administrators develop and submit robust engagement plans. Therefore, the CCA Administrator shall file with the Secretary for Commission consideration and approval an Implementation Plan that includes a description of the program and its goals, plans for value-added services (e.g., installation of DER or other clean energy services) that will be included in an RFP, a public outreach plan, and drafts of written communications with its residents, including preliminary drafts of opt-out letters. The Implementation Plan must include multiple forms of outreach over a period of no less than two months. The Implementation Plan shall also include contact information for a CCA liaison to respond to questions or concerns by CCA customers and shall identify at least one local official or agency in each municipality that residents of that municipality may contact with questions or comments. The CCA Administrator shall file updates and supplements to the Implementation Plan as appropriate, including final versions of customer opt-out letters that provide details on program contracts.

The CCA Administrator must also file a Data Protection Plan with the Secretary for Commission consideration and approval. The Plan must describe how the CCA Administrator will ensure that each entity that has access to personally identifiable information as part of the CCA program, including the municipality, contractors, and selected suppliers, provides the same level of consumer protections as currently provided by utilities and ESCOs. This includes data security protocols and restrictions to prevent the sale of that data or its use for inappropriate purposes, such as advertising. The Data

Protection Plan will ensure that municipalities and the CCA Administrator protect data through their CCA plans and practices as is currently required of utilities and ESCOs. The applicable UBP requirements should be familiar to ESCOs and will apply here.

Utilities must also be provided with assurance that the data they provided will be protected and used appropriately. Based on the experiences in the implementation of the SW Pilot, it is clear that this can best be achieved through a standardized agreement between the CCA Administrator and the utility. Accordingly, to ensure this data from the utility can be transferred and protected consistent with utility security practices, the utilities affected by this Order,²⁰ in consultation with Staff, shall develop and file, within 45 days of the issuance of this Order, a proposed standard Data Security Agreement for Commission consideration. This Agreement shall be designed to be as consistent as possible among programs and utilities and shall indicate where terms may need to be modified to account for difference between utilities and between CCA programs. Data Protection Plans filed by CCA Administrators must be consistent with this agreement.

In addition, each municipality intending to implement a CCA program must exercise 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 and broker for the sale of energy and

²⁰ Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Gas East Corporation (KEDLI), The Brooklyn Union Gas Company (KEDNY), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E).

other services to residents. Any inter-municipal agreements may also require additional procedural steps imposed by the General Municipal Law or other applicable statutes. Once the requisite action has been taken, the CCA Administrator must file a certification that the CCA Program has received all necessary local authorizations.

In this early stage of the program, to ensure that each new CCA program reflects lessons learned and appropriately educates and protects consumers, the Commission shall review the Implementation Plan, Data Protection Plan, and certifications of local authorization filed by each CCA Administrator. Once all documents have been filed, the Commission will determine whether they comply with the requirements of this Order and, if they do, issue an approval. Once the Commission deems a filing compliant, updates to that document need not be subject to formal review, except as otherwise required by a Commission Order.

The Commission will continue to monitor the progress of the SW Pilot, as well as of new programs developed in compliance with this Order. The filing and compliance requirements set forth in this Order may be modified or expanded to incorporate lessons learned in those programs. In addition, those lessons will be communicated to new CCA Programs through the technical assistance provided by NYSERDA and Staff. As CCA Programs become a more common feature of New York's energy market, the Commission may eventually determine that individual review is no longer needed.

The Implementation and Data Protection Plans may be filed as soon as the municipality begins considering CCA, but they and the certifications must be filed, and approved by the Commission, before the CCA Administrator can request any data from the utilities. CCA Administrators are encouraged to file

Implementation and Data Protection Plans as soon as they are ready to facilitate Commission review.

The Implementation Plan must also be updated, and 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. If a new contract or contract extension is signed, CCA customers must be given the opportunity to opt-out prior to the beginning of the new contract or the extension period, consistent with the opt-out processes described below. CCA customers must also be permitted to cancel CCA service any time before the end of the third billing cycle of the new contract period without penalty or other charges, consistent with the practices described below. If a CCA program ends, each CCA customer must be returned to utility supply service, except for customers that affirmatively enter into a new, individual contract with an ESCO that complies with all relevant requirements for ESCO service to individual customers.

Customer Opt-Out Process

A well-designed opt-out process is necessary to ensure that customers receive the information and opportunity needed to make a well-informed and timely decision on whether to participate in a CCA program. Comments on this topic were received in response to the following questions:

- Is twenty days an adequate period within which a customer can opt-out to avoid automatic enrollment in CCA? If not, what is an adequate opt-out period? Are the opt-out provisions described above appropriate and sufficient? If not, what specific additional requirements are appropriate? Is one notification sufficient or should multiple notifications be required? (Q7)
- Should municipalities considering CCA be required to conduct public forums or other public engagement at certain points during the process of establishing a CCA program? (Q12)

Comments

MI asserted that 20 days constitutes adequate notice, particularly if a CCA program is being implemented on an opt-out basis and includes non-residential customers. Constellation and Energy Next, on the other hand, stated that 14 days is an adequate time period for customers to respond to the opt-out notice and that additional time would not provide additional value to them, citing the Illinois program approach in support. RESA supported the use of a 20 day opt-out period as reasonable. The UIU did not agree that a 20-day period is adequate, preferring 90 days, with two notifications to prospective enrollees describing the opt-out procedures. CLP and Local Power Inc. recommended a first opt-out notification 30 days prior to enrollment (one month) and a second opt-out notification 30 days following enrollment. Thus the entire opt-out window would consist of 60-90 days. The Joint Utilities stated that the most important factor in determining the length of time needed for customers to opt-out or opt-in is how well customers have been informed and educated about their options before receiving the notification.

Discussion

Municipalities shall provide information and education to potential CCA members over no less than a two month period. The mailing of an opt-out letter must also be preceded by the filing of compliant Implementation and Data Protection Plans and certifications of local authorization, as discussed above, as well as certification of the opt-out letter itself as compliant. In addition, the opt-out letter must include details about the selected ESCO and contract and therefore can only be finalized after the RFP and negotiation process has been completed. Municipalities must then provide at least one opt-out notification, on municipal letterhead, that sets an opt-out

period of at least 30 days. This period, especially when coupled with the consumer education period, is generally consistent with the recommendations by commenters.

The opt-out letter must include information on the CCA program and the contract signed with the selected ESCO including specific details on rates, services, contract term, cancellation fee, and methods for opting-out of the program. It must explain that customers that do not opt-out will be enrolled in ESCO service under the contract terms and that information on those customers, including energy usage data and APP status, will be provided to the ESCO. The letter shall be addressed as a letter from the municipality and use an envelope and letterhead that identify it as such. Further, all communications with customers must be provided in the individual customer's native language to the extent that such information is available from the utility or in municipal records.

The opt-out letter or letters must be filed at least 5 days before the CCA Administrator intends to mail them. Staff shall review the filings and respond within five days with a written acknowledgment that the filing is deemed compliant with this Order, an explanation of the filing's failure to comply with this Order, or a letter explaining that additional time is required.

In addition, customers must be permitted by the selected ESCO to opt-out and return to utility service any time before the end of the third billing cycle after enrollment without penalty. A grace period until the end of the third billing cycle allows customers to evaluate the impact of the CCA on bills without penalty and also allows customers who did not understand the opt-out process to remedy their inadvertent enrollment. Using billing cycles instead of days or months ensures that all customers receive at least two bills before

this window closes, regardless of when the CCA program is commenced. They could then opt-out up to the day of the meter reading at the end of the third billing cycle.

Municipal Contracts with ESCOs and Other Providers

The foundation of a CCA program is the contract between the municipality and one or more selected ESCOs. Comments related to the terms of this contract were received in response to several questions, including:

- What provisions, if any, should be made to allow customers who move into the region served by a CCA after it has commenced, to participate in the CCA? Similarly, what provisions should be made to allow customers who are served by an ESCO at the time the CCA has commenced, to participate in the CCA at a later time, or to allow customers who initially opted out to later opt-in? (Q4)
- Should the program include a requirement that the primary price contained in a CCA contract begin below a certain benchmark? What are the benefits and costs of such a requirement? If so, what benchmark is appropriate? For example, New Jersey sets a benchmark based on the distribution utility supply rate. (Q5)
- Should the Commission require that CCA contracts contain a fixed price for at least a certain minimum period? A fixed price for their entire term? If prices are permitted to vary during the contract period, should any benchmark apply to these prices? What are the benefits and costs of such requirements? (Q6)
- Should the Commission permit the presence in CCA contracts of cancellation fees for customers who do not opt-out during the opt-out period and later wish to leave the CCA program? If so, should these cancellation fees be subject to any additional requirements beyond the generally applicable rules, including the General Business Law? For example, customers might be permitted to leave CCA programs without charge for a certain period of time after the program starts or during a certain period each year. What are the benefits and costs of requirements of this nature? (Q8)

Comments

Most parties, including Joint Utilities, Direct Energy and RESA, stated that all pricing issues should be left to

negotiations between the municipality and any ESCOs bidding to serve the CCA program. Many commenters, including the AEA, also stated that the goals of a CCA should extend beyond price alone to social and environmental goals of the community. Only Helderberg Community Energy argued that CCA contracts should be benchmarked below the utility price, because, it opined, no one would want to join a CCA if the cost per kWh was higher than the average kWh rate currently being paid. All commenters opposed setting a fixed price requirement for any particular period.

Some commenters recommended that termination fees be prohibited so that customers can come and go as they choose. Others argued that termination fees should be the subject of negotiations over the contract between the municipality and the ESCO. CLP stated that termination fees should be permitted but only after an initial period of 90 days. Other parties argue that termination fees must be permitted, especially if fixed prices or other value added products are included in the contract. Most parties agreed that termination fees should be allowed to be negotiated between the municipalities and ESCOs, but if contained in the final contract, it should be clearly and prominently communicated to customers during the enrollment period. Some parties favored applying the General Business Law (GBL) to these fees, while others recommended that they be subject to the UBP.

The collection of any administrative fees was generally recognized as an appropriate component of the eventual ESCO service contract with the CCA provider. In addition, some municipalities have inquired about whether a fee to recover lost sales tax revenues that could result from CCA contracts may be collected.

NRG Retail commented that ESCOs participating in CCA should be provided the opportunity to establish a direct

relationship with participating customers. It asserted that the vision of CCA engaging customers in energy markets can only be realized when the supplier is able to communicate freely with customers in order to build a relationship.

Discussion

The terms of the contract between the municipality and the ESCO or ESCOs providing service must comply with generally applicable requirements for ESCO service at the time the contract is entered into, including the terms of the February Reset Order as applicable.²¹ We also expect that contracts will be procured through an open competitive process such as an RFP. These requirements will ensure that municipalities are entering into contracts that offer value to their residents through favorable pricing, significant clean energy in their energy supply portfolio, or another Commission-approved energy-related value-added product. Further guidance on contract requirements, including the approval of such products, will appear in future orders in proceedings relating to the February Reset Order.²²

CCA programs are not limited to contracting with only one ESCO and are encouraged to consider whether agreements with more than one ESCO offering different products or benefits, or with DER and energy efficiency providers in addition to one or more ESCOs, could support their development of holistic community energy initiatives. In developing such programs, CCA Administrators are encouraged to consult with NYSERDA and to consider how other Commission initiatives, such as Community

²¹ At this time, ordering clauses 1-3 of the February Reset Order, which required that each mass market ESCO customer receive either guaranteed savings or at least 30% renewable energy, have been stayed by the Supreme Court of Albany County. Those requirements shall only be applied to new CCA contracts after the lifting of the stay.

²² Cases 15-M-0126, 12-M-0476, and 98-M-1343.

Distributed Generation, could work together with the CCA program.

Cancellation fees are permitted subject to the grace period until the end of the third billing cycle after enrollment, during which any cancellation fee will be waived, as discussed above. Termination charges after the grace period will be subject to the contract between the municipality and the ESCO, and must be consistent with the then-effective UBP provisions, which at this time are a maximum of \$100 for a contract with less than 12 months remaining, \$200 for a contract with a remaining term of more than 12 months, or twice the estimated average monthly bill.²³ Termination fees shall not be charged to customers that cancel their CCA service as a result of moving out of the premises served. ESCOs are already familiar with these practices, which comply with the GBL strictures on termination charges. The CCA Administrator will be responsible for informing its CCA customers in its outreach and education process and opt-out letters of all terms of its proposed program, including any termination fees. Consistent with the UBP, selected ESCOs will also provide enrolled customers with a complete sales agreement as well as a disclosure statement outlining significant terms, including termination fees if applicable.

To ensure that CCA programs are consistent with the goals of REV, as well as the goals established in the State Energy Plan for reductions in energy usage, increased renewable generation, and increased energy efficiency, CCA contracts shall not include terms that would restrict the installation or use of

²³ In order to charge a cancellation fee based on the average monthly bill, an estimate of the average monthly bill and the amount of the termination fee that will be charged based on that bill must be provided in the opt-out letter, as required by the UBP.

DER or energy efficiency products by the municipality or CCA customers, or otherwise penalize the municipality or customers for reductions in energy usage or the installation of clean energy technologies. Even if such a term is coupled with lower energy prices during the contract period, preventing the use of energy efficiency and DER would inappropriately limit the acceleration of markets for new energy technology and undermine long-term savings.

As NRG Retail proposes, ESCOs will be permitted to establish a direct relationship with CCA customers subject to the details of their contract with the municipality. 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. Relationships developed through this process can promote state and local energy goals by encouraging energy efficiency and conservation, DER deployment, and more informed energy customers.

CCA Administrators will be permitted to collect funds, through the supply charge, to pay for administrative costs associated with running the CCA program. Because most CCA customers will receive a single bill from the utility, any CCA customer payments to the CCA Administrator will have to be negotiated as part of the contract and built into the per kWh rates. Therefore, the payments to the CCA Administrator for CCA administrative purposes will be processed and remitted by the ESCO.

Including a fee in these collections to cover lost sales tax revenues would be improper and inconsistent with the intent of the tax law, which permits municipalities to impose sales tax on the distribution of energy provided by utilities when a customer does not take commodity service from an ESCO.

For that reason, the municipality shall negotiate a fee with the ESCO based only on the administrative costs of the program. Information on the administrative fees collected and on the costs of the program shall be included in required annual reports, discussed below.

Clean Energy Integration, Funding, and Collections

CCA programs will require funding for their development and operation. Comments related to funding and collections were received in response to the following question:

- Should municipalities be required to allocate a portion of the CCA customer payments to a clean energy or public benefit fund? For what purposes should municipalities be permitted to use these funds? Examples from other states or proposed programs include municipal-owned renewable generation, as well as energy efficiency projects. (Q9)

Comments

The Joint Utilities and Constellation noted that all customers would contribute to NYSERDA renewable energy and energy efficiency programs through distribution rates. Constellation added that the municipality should be permitted to determine whether additional programs should be funded through the CCA. CCP proposed that municipalities be allowed to apply for the right to administer the distribution clean energy surcharges collected from its customers. Local Power Inc. stated that CCAs could be required to collect and set aside revenues for investment in renewable DER as a condition of operation. The AEA stated that CCAs should treat energy efficiency and renewable generation as part of their core mission. However, AEA explained, these objectives need not be reached through a public benefit fund but could be integrated into the general contract negotiations with ESCOs.

Discussion

We are encouraged by the interest that municipalities have raised in employing DER technology and participating in new markets, as well as the success that CCA programs in other states have had in deploying clean energy resources. Municipalities are encouraged to, through their solicitations of and negotiations with ESCOs, design CCA programs that include integration of DER and procurement of clean energy, both through direct procurement and through offering opt-in programs to customers. Such program designs should ensure that the costs of custom improvements for individual customers are not charged to other CCA participants. Municipalities also have other methods of procuring or deploying DER and clean energy technology under their own authority. However, municipalities will not be permitted or required to allocate a portion of the CCA customer payments to a clean energy or public benefit fund at this time. Permitting separate collections for a municipal clean energy fund would result in double collections from CCA customers, who will continue to pay the System Benefit Charge (SBC).²⁴

Staff, NYSERDA and distribution utilities should work with CCA petitioners to explore how CCA communities can accelerate the adoption of energy efficiency and DER in a manner that benefits their communities and individual customers. Many REV and CEF programs, including community distributed generation, Solarize New York, and REV demonstration projects, offer the potential of strong synergy with CCA programs. Utilities should work with CCA communities to identify services that they can supply to CCA Administrators that are of value to them and their customers and further evolve the utility business model and earnings opportunities as envisioned by REV.

²⁴ The SBC includes collections to support utility energy efficiency programs and NYSERDA's Clean Energy Fund Portfolio.

Furthermore, consistent with the discussion in the CEF Order, the Clean Energy Advisory Council (CEAC), under Staff's direction, shall include CCA programs in developing a plan for incentivizing investments in clean energy technology that help accelerate and increase achievement of the Clean Energy Standard and State Energy Plan goals. The Clean Energy Standard, if adopted, will also offer CCA programs opportunities to support clean energy goals through self-initiated power purchase agreements with renewable energy generators or deployment of renewable energy resources. The Clean Energy Standard as proposed would also impose compliance requirements on all LSEs, including ESCOs serving CCA programs.

Provision of Customer Data

In order for a CCA program to be effectuated, the CCA Administrator must receive information from the utility regarding the customers in the municipality. Two questions were noticed related to the provision of data by the utilities to the municipalities and their selected ESCOs:

- Is ten days an adequate period in which a distribution utility must transfer initial, aggregated customer data to municipalities after a request has been submitted by a municipality that has adopted a program? Is five days an adequate period in which a distribution utility should transfer customer data to municipalities to support the mailing of opt-out notices after a request has been submitted by a municipality that has entered into a CCA contract? What data should each transfer include? (Q10)
- Should municipalities receiving personally identifiable information be required to abide by the same policies for protecting and use of that information that are currently applicable to utilities and ESCOs? If not, why not? (Q11)

In addition, comments related to the provision of data for CCA programs were received at the Customer Data Technical Conferences and in filings following those conferences.

Comments

Most commentators, including Energy Next, Colonial Power Group, Inc., ConEdison Solutions, Direct Energy and RESA, agreed that, while exact requirements for a specific CCA may vary, the use of a ten day period following a request for the utility to respond with initial aggregated data and a five day response period for customer specific data appears reasonable and sufficient for a CCA to proceed with implementation. Helderberg Community Energy proposed a longer time period of 30 days as more reasonable. Constellation proposed that all of the details about data access and enrollment for CCA customers should be included in utility tariffs.

The Joint Utilities noted that the term "initial, aggregated customer data" requires more precise definition before they comment on or commit to a response timeframe. The Joint Utilities recommended that the initial transfer should contain:

- the number of customers,
- the aggregated peak demand (kW) (for electricity) by month for the past 12 months, and
- the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months.

The Joint Utilities proposed that this data should be provided separately for opt-in and opt-out customers within the boundaries of the CCA. RESA proposed that information about the availability of interval meter data and the preferred location for installation of distributed generation be added to the data provided by the utility.²⁵ Local Power Inc. also recommends locational information be provided, which could assist in determining where to locate DERs. ConEdison Solutions submitted

²⁵ RESA would also have the utility report gas usage in British Thermal Units (BTU).

its own preferred list of required data from the utility that included:

- A full, anonymized data-set for all customers eligible to be included in the opt-out aggregation program, including the data elements listed below. Data associated with customers already served by ESCOs would be excluded;
- 24 months of kWh consumption information;
- 24 months of kW demand information (if applicable);
- Capacity tag information used to determine NYISO capacity cost allocation;
- Service classification (rate class ID, etc.);
- Meter type, including smart meter tag or net meter tag if applicable;
- Load profile or strata indicator;
- Wholesale market capacity/load zone;
- Line loss factor; and,
- Budget billing indicator.

For the customer-specific data to be available in five days following the request from the municipality or its CCA Administrator, most commenters agreed that the aggregated customer data only need be supplemented by customer names, account numbers, service addresses and billing address. If the data is furnished directly to the ESCO serving the CCA, Joint Utilities propose to use the normal ESCO electronic data interchange (EDI) processes already in use.

While the White Paper did not explicitly address the issue of fees in the questions it posed, individual utilities have noted that undertaking certain data provision obligations related to CCA programs should be considered for treatment as value-added data services that would be provided for a fee, consistent with the REV goals and principles. The SW Order permitted utilities to charge for the provision of data for the SW Pilot.

In response to written questions posed as part of the Technical Conferences on customer and aggregated data,²⁶ AEEI, AEA, CPA, ETS, NEM, and others state that utilities should not charge qualified vendors for receiving customer usage data.

Mission:data stated that the Commission should clearly define the "basic" usage data available to consumers and service providers. National Grid commented that a standard or "base" set of data from an online web portal, the Electronic Data Interchange (EDI), or protocol such as Green Button Connect should be provided without additional charge to customers and qualified vendors. However, National Grid continued, when customers and vendors request data not conforming to standard or "base" specifications, in these situations, utilities should be permitted to charge a fee to customers and/or third parties requesting such data to cover costs incurred to accommodate their request. The MTA stated that "basic" level of energy consumption data available to large commercial consumers without a charge or fee should consist of near real-time data (up to a 15-minute lag), using advanced meters that report usage every five minutes. MTA argued that there should be no charge for authorized third party access to the data.

In regards to aggregated customer data, CAA noted that utilities have already provided demographic data free of charge through the Utility Energy Registry (UER) of New York. CAA support utilities charging for additional high-value derivative data products on a case-by-case basis.

²⁶ Cases 14-M-0101, et al., supra, Notice of Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued November 3, 2015); Notice Extending Deadline to File Comments (issued December 23, 2015); Notice of Second Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues (issued December 23, 2015).

Con Edison, O&R, Central Hudson, NFG, NYSEG, and RG&E, state that utilities should be permitted to charge for providing aggregated data. The aggregated information sought from them, they contend, provides significant value to third party market participants. The utility companies state that charging for this type of service is consistent with the general principle of a competitive marketplace, whereby the entities benefiting from the companies' value-added services should pay for such services and that the utility companies should be permitted to charge for these services. National Grid, filing separate comments, also states that customers and entities benefitting from CCA should bear the costs to compile and share the necessary data. Another factor that should be considered, National Grid contends, is the potential cost that is incurred to respond to specific data requests. National Grid notes that its affiliates are currently providing aggregated customer data to several municipalities in Massachusetts and that the process used to accommodate these requests is not automated, and has proven to be difficult and time consuming for utility personnel. It notes that to handle such data requests for its service territories in New York would require development of a more automated process to increase capacity and accommodate more frequent and complex data. As noted previously, National Grid believes appropriate fees and a fee structure should be addressed by interested stakeholders in the context of the Distributed System Implementation Plan and Track 2 REV proceedings.

MEGA, NYC, CLP and others oppose any utility fee charged to municipalities and other third parties for access to aggregated energy usage data for public purposes. MEGA encouraged the utilities to provide aggregate energy data voluntarily and without charge through the use of an existing UER database. NYC stated that aggregated energy usage data

should be provided to municipalities upon request, and at no cost. MEGA and NYC believe that free access to aggregated energy data is in the public interest.

AEA maintained that municipalities should have access to customer data since they are acting on behalf of the public. AEA stated that aggregated data should be provided on a periodic and automated basis for benchmarking and other energy management purposes. AEA stated that a fee may be appropriate to aggregate data from multiple sources.

Every party expressed concern about customer data security. The Joint Utilities noted that CCA providers should be required to offer the same level of consumer protections as currently provided by utilities and ESCOs pursuant to applicable laws, rules, regulations and Commission orders for residential and non-residential personally identifiable customer information. Local Power Inc. would implement that policy by requiring that the municipalities sign non-disclosure agreements and require any staff or consultants reviewing the data to also sign nondisclosure agreements. MI stated that it did not support the general release of specific customer information to any municipality or a selected ESCO as part of a CCA program without explicit customer consent. Colonial Power Group, Inc. suggested prohibiting the ESCO from using the information gained from the CCA program to cross-market other ESCO services to eligible or participating customers without the consent of the municipality. RESA noted that the UBP, already applicable to ESCOs, should be applicable to each municipality receiving personally identifiable customer information.

Discussion

Some elaboration of the proposed customer data provision protocols is needed. In order to effectuate CCA programs, CCA Administrators will require three types of data:

(a) aggregated customer and consumption (usage) data to support procurement; (b) customer contact information to send opt-out letters; and (c) detailed customer information for the purpose of enrolling and serving each customer. The municipality or its Administrator may commence requesting aggregated data once it has signed a Data Security Agreement with the relevant utilities and the Commission has approved its Implementation and Data Protection Plans and certifications of local authorization consistent with this Order. Customer-specific contact information can be requested for all eligible customers once the municipality or municipalities demonstrate to the utility that the requisite contracts with ESCOs have been entered into and executed. Finally, detailed customer information can be requested for eligible customers who did not opt-out once the initial opt-out period described above has closed. As discussed above, CCA Administrators will be required to submit Data Protection Plans and sign Data Security Agreements guaranteeing the same level of consumer protections as currently provided by utilities and ESCOs.

After Implementation and Data Protection Plans and certifications of local authorization have been approved by the Commission, the utility shall transfer the aggregated customer and usage data within twenty days of a request from the municipality or the CCA Administrator. As indicated by the comments above, this period of time should allow ample time for the utilities to comply. This aggregated data shall include all eligible for opt-out treatment based on the terms of this Order

and the CCA program design.²⁷ This aggregated data shall include the number of customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class. Utilities shall 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. At this time, utilities shall follow their current internal policies in addressing the anonymity issue for ensuring that aggregated data is sufficiently anonymous.

After each municipality has entered into a CCA contract with an ESCO, the utility shall transfer the customer-specific data to the municipality or CCA Administrator within five days of a request to support the mailing of opt-out notices. This data shall include all customers in the municipality eligible for opt-out treatment based on the terms of this Order and the CCA program design.²⁸ The data shall consist of the customer of record's name, mailing address, telephone number, account number, and primary language, if

²⁷ That is, it shall include all customers in service classes listed in Appendix C, except those customers currently served by an ESCO or subject to an account block or freeze or those customers on riders or other special rate treatment that render opt-out treatment inappropriate, unless the CCA program design contemplates an even narrower group of eligible customers. To the extent that a CCA program design bases eligibility on considerations other than service class, the CCA Administrator shall work with the utility to determine whether data can be limited to eligible customers without imposing substantially higher costs on the utility than a service-class-based method would require.

²⁸ See previous footnote.

available, and any customer-specific alternate billing name, address, and phone number. No other information, such as usage data or low-income status, shall be transferred at this time.²⁹

After the opt-out period has ended, the municipality or the ESCO may submit a request to the utility for further data on the customers who have not opted-out consistent with existing EDI protocols. The utility shall transfer customer data based on the general standards for transfers of data to ESCOs through EDI, including usage data and low-income status. The ESCO may also enroll customers who have not opted out at this time.

Developing and providing this data will impose some costs on utilities, at least until fully automated systems are developed. Requiring utilities to bear those costs would result in CCA programs raising rates, however slightly, for non-participant customers. To avoid this, utilities will be permitted to charge a fee for the data they provide to CCA programs. That fee should be entirely or mostly backloaded and dependent upon the signing of an agreement with an ESCO and the enrollment of customers, to avoid creating barriers for municipalities considering and developing CCA programs and to permit the funds to pay those fees to be provided by a selected supplier and recovered through the supply service. Utilities wishing to charge such fees shall file proposed tariffs within 45 days of the date of this Order for Commission consideration. Those tariffs shall be accompanied by an explanation of why those fees are reasonably related to the value of the data and the cost to the utility of producing the data. To the extent that any municipality is ready to request data before the Commission approves tariffs for these fees, that municipality

²⁹ The monthly list of newly eligible customers after the CCA program begins providing service, discussed above, should provide the same information.

may negotiate an individual agreement, including fee structure as appropriate, with the relevant utilities, and the utilities may provide data based on that agreement without specific Commission approval.

Reporting

None of the questions in the Staff White Paper directly addressed potential reporting requirements. Some commenters, however, included reporting proposals in their comments.

Comments

NFG recommended that municipalities that promote their CCAs as priced below utility rates or as a means to obtain fixed prices be required to provide annual comparison reports to their customers. CLP recommended that each municipality be required to create an annual report, provide it to CCA participants and the Commission, and conduct an annual public hearing to review that report. Pace concurred that all municipal CCA programs should file annual reports.

Discussion

Annual reporting to constituents and the Commission is an important part of a municipality's commitment to the CCA and its members. Annual reports shall be filed with the Secretary.³⁰ Reports must be filed by March 31 each year and cover the previous calendar year. Annual reports will include, at a minimum: number of customers served; number of customers cancelling during the year; number of complaints received by the CCA liaison; commodity prices paid; value-added services provided during the year (e.g. installation of DER or other clean energy services); and administrative costs collected. The first report shall also include the number of customers who

³⁰ A Matter Number will be created for this purpose separate from the Case Number of this proceeding.

opted-out in response to the initial opt-out letter or letters. If a CCA supply contract will expire less than one year following the filing of the annual report, the report must identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

Concerns, Questions, or Objections Related to CCA Adoption

Comments related to the application of the UBP, the allocation of CCA costs, the application of certain provisions of General Municipal Law, and the place of CCA in overall retail market policy were received in response to the following questions posed in the Staff White Paper:

- Are any revisions to the Uniform Business Practices necessary or helpful for CCA? (Q14)
- Are there matters, including concerns regarding policy and legal issues that need to be addressed? (Q18)

Comments

RESA urges that the Commission should continue to apply all the provisions of the UBP to CCA providers in a non-discriminatory manner. MI comments that all CCA program costs should be allocated to, and recovered exclusively from, participating customers, with the possible exception of certain costs that perhaps should be funded by the subject municipality and/or the ESCO serving the municipality. The Joint Utilities propose that individual municipalities should be able to be responsive to the energy needs and desires of their constituents as long as this does not increase utility administrative costs that must be borne by non-participating delivery customers.

NRG Retail, while supportive, stated that CCA should be considered as a temporary mechanism to transition New York's energy market to more robust retail competition. NRG Retail proposes that CCA programs sunset four years after a Commission Order enabling government aggregation programs. At the end of the four year transition period, NRG Retail recommends that

customers served under CCA choose to accept an offer from their aggregation program ESCO or switch to another ESCO and that default supply service from the distribution companies should no longer be an available option.

NYC comments that the ability of a municipality to establish a CCA program is established by Article 14-A of the New York General Municipal Law ("GML"), and not the Public Service Law. GML §360(7) provides that the rates and charges assessed for public utility services rendered by municipalities shall be determined by the legislative body of the municipal corporation.

Discussion

The UBP has been and will be applied to those entities subject to it, including ESCOs offering service through CCA programs, in an unbiased manner. CCA programs, as authorized in this Order, do not have the authority to and shall not impose any costs on the utility or non-participant ratepayers.

The long-term success of CCA programs in other states indicates that, contrary to NRG Retail's proposal, CCA should not be considered merely a transitional policy but instead should be viewed as a long-term addition to New York's retail energy markets. The Commission will monitor CCA progress and take action as appropriate in order to ensure that CCA programs benefit their customers and the overall market and that CCA continues to develop and expand to permit municipalities and individuals to have choices in meeting their energy needs and interacting with energy markets and systems within a protective regulatory framework. NRG Retail's broader proposals for modifying policies related to the retail energy market, including shifting away from the distribution utilities as the default service providers, are outside the scope of this proceeding.

NYC's assertions about Article 14-A of the GML are misplaced. Article 14-A grants municipalities the authority to establish and operate municipal utilities and involves situations where a municipality owns and operates electric plant and generates or purchases energy for resale to its residents. In exercising that power, municipalities are acting as the utility company. The statute is simply inapplicable to the circumstances presented in a CCA, where the municipality acts as an aggregator and broker for the sale of energy and other services to residents but does not take ownership of the energy itself or own or operate transmission or distribution facilities. Rather, given the lack of express municipal authority in the organic laws establishing the powers of municipalities (i.e., the County, General City, Town, Village and General Municipal Laws), the Commission is inviting municipalities to exercise their Municipal Home Rule Law authority to enact local laws giving themselves power to act as an aggregator and broker for the sale of energy and other services to residents.

CONCLUSION

Community Choice Aggregation, as a part of the REV proceeding, aligns with the Commission's vision for an energy system that is cleaner and more dynamic. It will increase the options available to mass-market customers and allow them to access benefits that were previously limited to large customers. It also enables communities to determine their own paths and goals and collaborate with individuals, ESCOs, utilities, and DER providers to meet those goals and enhance a rapidly changing energy system.

The Commission orders:

1. Municipalities (villages, towns, and cities), specifically the lowest level of municipal government with general authority in any area, are authorized to undertake Community Choice Aggregation programs consistent with the discussion in the body of this Order and the Appendices.

2. Uniform Business Practices Sections 4(B)(1)-(3), 5(B)(1), 5(D)(4), and 5(K) are suspended for municipalities participating in Community Choice Aggregation programs consistent with this Order and energy services companies (ESCOs) and utilities engaging with those municipalities, to permit: (a) transfers of aggregated and customer-specific information from utilities to municipalities, municipal contractors, and ESCOs under the terms described in the body of this Order; and, (b) the switching of customers currently receiving supply service from the utility to ESCO supply service without affirmative consent consistent with the discussion in the body of this Order.³¹

3. Central Hudson Gas & Electric Corporation (Central Hudson), Consolidated Edison Company of New York, Inc. (Con Edison), KeySpan Gas East Corporation (KEDLI), The Brooklyn Union Gas Company (KEDNY), National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation (RG&E) (collectively, the Affected Utilities) are directed to provide aggregated and

³¹ The referenced provisions require that an ESCO receive individual and explicit customer authorization before requesting information on a customer or enrolling a customer in ESCO service. To the extent that those provisions of the UBP are renumbered, this Ordering Clause shall be construed as referring to those provisions regardless of their numbers as well as to any provisions with substantially similar effect.

customer-specific data to municipalities, municipal contractors, and ESCOs under the terms and timeframes described in the body of this Order.

4. Each Affected Utility that intends to charge fees for the provision of the data described in Ordering Clause 3 shall file, within 45 days of the date of this Order, proposed tariffs for Commission consideration. Those tariffs shall be accompanied by an explanation of why those fees are reasonably related to the value of the data and the cost to the utility of producing the data. To the extent that any municipality is ready to request data before the Commission approves tariffs for these fees, that municipality may negotiate an individual agreement, including fee structure as appropriate, with the relevant utilities, and the utilities may provide data based on that agreement without specific Commission approval.

5. The Affected Utilities shall develop, in consultation with Department of Public Service Staff, and file a proposed standard Data Security Agreement within 45 days of the issuance of this Order for Commission consideration. This Agreement shall be designed to be as consistent as possible among programs and utilities and shall indicate where terms may need to be modified to account for difference between utilities and between CCA programs.

6. Municipalities or their designees (CCA Administrators) that plan to establish CCA programs shall file an Implementation Plan, Data Protection Plan, and a certification of local authorization consistent with the discussion in the body of this Order and the Appendices. CCA Administrators may not request data from the utilities pursuant to Ordering Clause 3 until they have received Commission approval of those filings.

7. Municipalities or CCA Administrators shall file any opt-out letter or letters at least 5 days before the CCA Administrator intends to mail them. Staff shall review the filings and respond within five days with a written acknowledgment that the filing is deemed compliant with this Order, an explanation of the filing's failure to comply with this Order, or a letter explaining that additional time is required.

8. Municipalities or CCA Administrators running CCA programs shall file annual reports including number of customers served, number of customers cancelling during the year, commodity prices paid and value-added services, if any, during the year, and administrative costs collected. Reports shall be filed by March 31 each year and cover the previous calendar year. The first report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters. If a CCA supply contract will expire less than one year following the filing of the annual report, the report shall identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

9. The New York State Research and Development Authority, in consultation with Staff, shall provide technical support and assistance to CCA Administrators and municipalities, including through the development of a CCA toolkit to be available to interested municipalities within 120 days of the date of this Order.

10. 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.

11. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

APPENDIX A

List of Commenters in Case 14-M-0224

AEA - Association for Energy Affordability

Ambit - Ambit New York, LLC

Bulman Elana

CCP - Community Choice Partners

City of Kingston

CLP - Citizens for Local Power

Colonial Power Group, Inc.

ConEdison Solutions - Consolidated Edison Solution

Constellation - Constellation NewEnergy, Inc.

Cooper Lela

DEC - New York State Department of Environmental Conservation

Direct Energy

Direct Energy Services LLC, Direct Energy Business LLC,
Direct Energy Business Marketing, and Direct Energy Solar

Energy Next

EOPNY - Elected Officials to Protect New York Steering Committee

Hartsfield Michaela

Helderberg Community Energy, LLC

Joint Utilities

Consolidated Edison Company Of New York, Inc., Orange And
Rockland Utilities, Inc., Central Hudson Gas & Electric
Corporation, National Fuel Gas Distribution Corporation,
The Brooklyn Union Gas Company D/B/A National Grid NY,
Keyspan Gas East D/B/A National Grid, And Niagara Mohawk
Power Corporation D/B/A National Grid, New York State
Electric & Gas Corporation And Rochester Gas And Electric
Corporation

Kittner, Cary

Local Power Inc.

Means, Amanda

MI - Multiple Intervenors

NEM - National Energy Marketers Association

NFG - National Fuel Gas Distribution Corporation

Noble Solutions - Noble Americas Energy Solutions LLC

NRG Retail - NRG Energy, Inc.¹

NYAPP - New York Association of Public Power

¹ NRG Retail companies operating in New York include Reliant Energy Northeast LLC d/b/a NRG Home, Green Mountain Energy Company, Energy Plus Holdings LLC and Energy Plus Natural Gas LLC

NYC - City of New York

Pace - Pace Energy and Climate Center

RESA - Retail Energy Supply Association

SASD - Sullivan Alliance for Sustainable Development

Tompkins County Legislature

UIU - New York State Department of State's Utility Intervention Unit

Walsh, Jeanne L: Rosendale Town Supervisor (Also included, Councilmen: John Hughes; Christopher Pryslopki; and Robert Ryan)

List of Commenters for the First and Second Technical Conference Regarding Customer and Aggregated Energy Data Provision and Related Issues

AEA - Association for Energy Affordability

AEEI - Advanced Energy Economy Institute

CAA - Climate Action Associates LLC

CDRPC - Capital District Regional Planning Commission

CLP - Citizens for Local Power

The Companies

Consolidated Edison Company of New York, Inc. Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation

CPA - Consumer Power Advocates

Direct Energy

Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, and Direct Energy Solar

ECP&G - East Coast Power & Gas, LLC

ETS - Energy Technology Savings

IGS - IGS Energy, IGS Generation, IGS Solar

Joint Utilities

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; Niagara Mohawk Power Corporation d/b/a/ National Grid; and National Fuel Gas Distribution Corporation

Local Power Inc.

MEGA - EnergyNext, Inc.: Represents the Municipal Electric and Gas Alliance

Mission:data - Mission Data Coalition

MTA - Metropolitan Transportation Authority

National Grid

The Brooklyn Union Gas Company (KEDNY) d/b/a National Grid
NY, KeySpan Gas East Corporation (KEDLI) d/b/a National
Grid, and Niagara Mohawk Corporation d/b/a National Grid

NEM - National Energy Marketers Association

NFG -National Fuel Gas Distribution Corporation

NRDC - Natural Resources Defense Council

NYC - City of New York

Otego - Otego Microgrid Ratepayers

Pace - Pace Energy and Climate Center

Renewable Highlands

SolarCity Corporation

Town of Philipstown

UIU - New York State Department of State's Utility Intervention
Unit

APPENDIX B

State Environmental Quality Review Act

FINDINGS STATEMENT

April 20, 2016

Prepared in accordance with Article 8 - State Environmental Quality Review Act (SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the New York State Public Service Commission (Commission), as Lead Agency, makes the following findings.

Name of Action: Reforming the Energy Vision (Case 14-M-0224 and 14-M-0564) Order Authorizing framework for Community Choice Aggregation Opt-Out Program

SEQRA Classification: Unlisted Action

Location: New York State/Statewide

Date of Final Generic Environmental Impact Statement: February 6, 2015.

FGEIS available at: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0101>

I. Purpose and Description of the Action

The regulatory initiative known as Reforming the Energy Vision (REV) aims to reorient both the electric industry and the ratemaking paradigm toward a consumer centered approach that harnesses technology and markets. Distributed energy resources will become integrated into the planning and operation of electric distribution systems, to achieve optimal system efficiencies, secure universal, affordable service, and enable the development of a resilient, climate-friendly energy system. The direction taken by the Commission in the REV initiative is

consistent with the terms of the 2015 State Energy Plan [The Energy to Lead, 2015 State Energy Plan, New York State Energy Planning Board, 2015] that calls for the use of markets and reformed regulatory techniques to achieve increased system efficiency, carbon reductions, and customer empowerment.

In the attached order, the Commission authorizes a framework for municipalities in New York State to develop and implement Community Choice Aggregation (CCA) programs. The framework includes, among other things: (1) identification of the levels of municipal government that are eligible to implement CCA programs; (2) the ability of municipalities to work cooperatively on joint programs pursuant to inter-municipal agreements; (3) adoption requirements that include outreach and education, public notice, public hearings, and local laws; (4) the ability to enroll certain mass market customers on an opt-out basis subject to specific consumer safeguards; (5) implementations plans; (6) certification requirements; (7) reporting requirements; (8) data protection plans; and (9) other program guidelines.

II. Facts and Conclusions in the EIS Relied Upon to Support the Decision

In developing this findings statement, the Commission has reviewed and considered the "Final Generic Environmental Impact Statement in Case 14-M-0101 - Reforming the Energy Vision and Case 14-M-0094 - Clean Energy Fund" issued on February 6, 2015 (FGEIS). The following findings are based on the facts and conclusions set forth in the FGEIS.

A. Public Needs and Benefits

The FGEIS indicates that REV is designed to rethink the regulatory structure of the electricity distribution system,

and establish an improved paradigm, supported by regulatory oversight, to accomplish the goals of active customer decision-making and involvement, increased distributed generation, deployment of real-time responsive technology and the use of distributed system platforms to reduce adverse air emissions and to increase system efficiency.

B. Potential Impacts

Chapter 5 of the FGEIS describes the expected environmental impacts of the action. The authorization of Community Choice Aggregation programs was not identified as an activity that itself would create any environmental impacts. Under the category of "Increased Customer Choice", the FGEIS identifies Community Choice Aggregation programs as offering the opportunity to vastly expand the number of customers receiving energy supply from energy service companies while also providing those customers with more stable fixed rates and the potential for development of community-owned distributed energy resources. It further notes that REV aims to facilitate adoption of a regulatory framework that removes market barriers for such competitive opportunities, while providing sufficient oversight and consumer protections to allow for consumers to engage the energy markets in a robust and effective manner. In those expansion aspects the creation of Community Choice Aggregation programs will induce growth [FGEIS 9-8].

C. Mitigation

Chapters 5 and 6 of the FGEIS identify mitigation measures that could address the potential adverse impacts of the action. The authorization of Community Choice Aggregation programs was not identified as an activity that would trigger the need for mitigation measures.

D. Cumulative Impacts and Climate Change

In aggregate, the clean energy technologies and resources promoted by REV create one common long-term, indirect effect: reducing the use of energy generated from fossil fuels. The environmental impact of a reduction in the use of fossil fuel based energy generation on the human environment is generally positive, but will occur over a long time horizon [FGEIS 5-48].

III. Conclusion

The REV program is anticipated to yield overall positive environmental impacts, primarily by reducing the State's use of, and dependence on, fossil fuels, among other benefits. In conjunction with other State and Federal policies and initiatives, REV is designed to reduce the adverse economic, social and environmental impacts of fossil fuel energy resources by increasing the use of clean energy resources and technologies [FGEIS ES-10].

CERTIFICATION TO APPROVE:

Having considered the Draft and Final Generic Environmental Impact Statement, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.11, this Statement of Findings certifies that:

1. The requirements of 6 NYCRR Part 617 have been met; and
2. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable; and
3. Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

Name of Lead Agency:

New York State Public Service Commission

Address of Lead Agency

3 Empire State Plaza
Albany, New York 12223

Contact Persons for Additional Information:

James Austin
Christina Palmero
New York State
Department of Public Service
3 Empire State Plaza
Albany, New York 12223
(518) 474-8702

APPENDIX C

LIST OF OPT-OUT ELIGIBLE SERVICE CLASSES BY UTILITY

Company	Electric Opt-Out Service Classes	Gas Opt-Out Service Classes
Central Hudson Gas & Electric Corporation	SC 1 Residential Service; and SC 2 General Service	SC 1 Residence Rate; and SC 2 Commercial and Industrial Rate
Consolidated Edison Company of New York, Inc.	SC 1 Residential and Religious; SC2 General - Small; SC 8 Multiple Dwellings - Redistribution; SC 12 Multiple Dwelling - Space Heating; and SC 13 Bulk Power - Housing Developments	SC 1 Residential and Religious Firm Sales Service; SC 2 General Firm Sales Service; and SC 3 Residential and Religious-Heating Firm Sales Service
KeySpan Gas East Corp. dba Brooklyn Union of L.I.	N/A	SC 1 Residential Service; SC 2 Non-Residential Service; and SC 3 Multiple Dwelling Service
National Fuel Gas Distribution Corporation	N/A	SC 1 Residential; and SC 3 General
New York State Electric & Gas Corporation	SC 1 Residential Service; and SC 6 General Service	SC 1 Residential Service; and SC 2 General Service
Niagara Mohawk Power Corporation	SC 1 Residential and Farm Service; and SC 2 Small General Service	SC 1 Residential Service; and SC 2 Small General Service

Orange and Rockland Utilities, Inc.	SC 1 Residential Service; and SC 2 General Secondary or Primary Service	SC 1 Residential and Space Heating; and SC 2 General Service
Rochester Gas and Electric Corporation	SC 1 Residential Service; and SC 2 General Service - Small Use	SC 1 General Service
The Brooklyn Union Gas Company	N/A	SC 1A Residential Non-Heating Service; SC 1B Residential Heating Service; SC 2 General Service; and SC 3 Heating and/or Water Heating Service (Multi-Family Buildings)

APPENDIX D
CCA RULES SUMMARY

Eligible Municipal Governments

1. The three types of municipalities under New York State law eligible to form a CCA are: villages, towns, and cities.
 - a. Counties will not be eligible to set up a CCA, but county governments may actively encourage and coordinate the municipalities within the county to form an inter-municipal CCA and even work to support that CCA as in an administrative role.
 - b. The Commission will require that a village board be the entity setting up a CCA in any village; that a town board be the entity setting up a CCA in the area of any town outside of any villages; and a city council be the entity setting up a CCA in any city.
2. Municipalities may work together, such as through inter-municipal agreements, to operate joint CCA programs. There are no geographic or service territory limits on joint programs, but municipalities should be aware that combining municipalities in multiple utility service territories could result in additional costs or complications.
3. A municipality or group of municipalities may work with a non-profit, retain a consultant, or otherwise designate a third party to act as a CCA Administrator and complete some or all of the tasks described below.
 - a. As used below, the term "CCA Administrator" refers to either the municipality acting on its own behalf or to a third party acting on behalf of the municipality.
 - b. The municipality remains ultimately responsible for compliance with the law and Commission Orders and must ensure, as further described below, that any third parties appropriately protect customer data.

Scope of CCA Programs

4. CCA programs will be permitted to aggregate electric supply, gas supply, or both. Customers in CCA programs where both gas and electric supply are offered shall have the option to opt-out of either aggregation. For those customers that currently receive their supply of gas and/or electric from an ESCO, those customers will have an ability to opt-in to a municipal CCA program, subject to their existing ESCO contract terms and the terms of the CCA program.
5. CCA programs may aggregate or otherwise integrate into their programs energy efficiency and distributed energy resources. In considering how to include a variety of products and energy planning and management activities within the CCA program, CCA Administrators should be open to contracting with different ESCO and DER providers for services.

Customer Eligibility

6. All customers, including residential and non-residential, regardless of size, shall be eligible to participate in CCA programs.
7. A customer shall be enrolled on an opt-out basis only if that customer is a member of a service classes listed, by utility, in Appendix C of this Order.
 - a. Those service classes include all residential customers as well as service to multiple dwellings and, depending on the granularity available in utility tariffs, include at least all small commercial and industrial customers.
 - b. The CCA Administrator shall consult with the utility or utilities providing service on whether customers

taking service subject to riders or other special rate treatments should be included on an opt-out basis. No customer should be included on an opt-out basis if that inclusion will interfere with a choice the customer has already made to take service pursuant to a special rate.

8. Customers that are already taking service from an ESCO or have placed a freeze or block on their account shall not be enrolled on an opt-out basis but may be included on an opt-in basis, subject to the conditions of their existing contracts.
 - a. The CCA Administrator for a CCA that intends to accept opt-in customers is responsible for developing a process consistent with the UBP requirements for customer enrollment to accomplish this, and may work with the selected ESCO to do so.
9. The CCA Administrator may choose to apply opt-out treatment to a more limited class of customers, to only allow certain classes of customers to opt in, or both.
10. The CCA Administrator may determine whether eligible customers who move into a municipality which is participating in a CCA should be enrolled on an opt-in or opt-out basis.
 - a. The CCA Administrator may request a monthly list from the relevant utilities of new eligible customers in the municipality. There may be a cost associated with this list.
 - b. If the CCA Administrator chooses to enroll these customers on an opt-out basis, it must mail them an opt-out letter consistent with the discussion below providing an opt-out period of at least 30 days before the customer is enrolled.

- c. Such customer shall be permitted to cancel and return to utility service or service by another ESCO with no cancellation fees or other charges any time before the end of the third billing cycle after their enrollment.

Low-Income Customer Participation

11. CCA programs may include Assistance Program Participants or APPs so long as those customers are enrolled in products that comply with requirements for ESCO service of APPs at the time of enrollment, but are not required to include APPs.
 - a. CCA Administrators should consult with relevant local or state social services program administrators in considering whether to include APPs.
 - b. For some low-income customers, a social services organization receives and pays the energy bill; in those cases, the social services organization, not the customers themselves, should make the decision regarding whether to opt out.

Customer Outreach and CCA Development Process

12. NYSEERDA shall be available as a technical consultant to assist municipalities and CCA Administrators, including through individual consultations and through a CCA toolkit describing best practices and including model documents such as customer outreach materials and contracts.
13. Before receiving data from the utility, soliciting proposals from energy services companies (ESCOs), or starting to operate as a CCA, the CCA Administrator must file and receive Commission approval of an Implementation Plan, Data Protection Plan, and certification of local authorization.

14. The Implementation Plan shall include a description of the program and its goals, plans for value-added services (e.g., installation of DER or other clean energy services) that will be included in an RFP, a public outreach plan, and drafts of written communications with its residents, including opt-out letters.
 - a. The Implementation Plan must include multiple forms of outreach over a period of no less than two months.
 - b. The Implementation Plan shall also include contact information for a CCA liaison to respond to questions or concerns by CCA customers and identify at least one local official or agency in each municipality that residents of that municipality may contact with questions or comments.
 - c. The CCA Administrator shall file updates and supplements to the Implementation Plan as appropriate, including final versions of customer opt-out letters that provide details on program contracts.
 - d. The Implementation Plan must also be updated, and 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. If a new contract or contract extension is signed, CCA customers must be given the opportunity to opt-out prior to the beginning of the new contract or the extension period.
15. The Data Protection Plan must describe how the CCA Administrator will ensure the same level of consumer protections as currently provided by utilities and ESCOs; including data security protocols and restrictions to

prevent the sale of that data or its use for inappropriate purposes, such as advertising.

16. The utilities affected by this Order, in consultation with Staff, shall develop and file, within 45 days of the issuance of this Order, a standard Data Security Agreement.

- a. This Agreement shall be designed to be as consistent as possible among programs and utilities and shall indicate where terms may need to be modified to account for difference between utilities and between CCA programs.

- b. Data Protection Plans filed by CCA Administrators must be consistent with this agreement.

17. Each municipality intending to implement a CCA program must exercise 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 and broker for the sale of energy and other services to residents.

- a. Any inter-municipal agreements may also require additional procedural steps imposed by the General Municipal Law or other applicable statutes.

- b. CCA Administrator must file a certification that the CCA Program has received all necessary local authorizations.

18. Once the Implementation Plan, Data Protection Plan, and certifications of local authorization have been filed, the Commission will determine whether they comply with the requirements of this Order and, if they do, issue an approval.

- a. Once the Commission deems a filing compliant, updates to that document need not be subject to formal review, except as otherwise required by a Commission Order.
19. The Implementation and Data Protection Plans may be filed as soon as the municipality begins considering CCA, but they and the certifications must be filed, and approved by the Commission, before the CCA Administrator can request any data from the utilities.
20. If a CCA program ends, each CCA customer must be returned to utility supply service, except for customers that affirmatively enter into a new, individual contract with the ESCO that complies with all relevant requirements for ESCO service to individual customers.

Customer Opt-Out Process

21. The CCA Administrator shall provide information and education to potential CCA members over no less than a two month period.
22. The mailing of an opt-out letter must be preceded by the filing of Implementation and Data Protection Plans and certifications of local authorization as well as certification of the opt-out letter itself as compliant.
 - a. The opt-out letter must include details about the selected ESCO and contract and therefore can only occur after the RFP and negotiation process has been completed.
 - b. The CCA Administrator must then provide at least one opt-out notification, on municipal letterhead, that sets an opt-out period of at least 30 days.
 - c. The opt-out letter must include information on the CCA program and the contract signed with the selected ESCO including specific details on rates, services,

contract term, cancellation fee, and methods for opting-out of the program.

- d. It must explain that customers that do not opt-out will be enrolled in ESCO service under the contract terms and that information on those customers, including energy usage data and APP status, will be provided to the ESCO.
 - e. The letter shall be addressed as a letter from the municipality and use an envelope and letterhead that identify it as such.
 - f. All communications with customers must be provided in the individual customer's native language to the extent that such information is available from the utility or in municipal records.
 - g. The opt-out letter or letters must be filed at least 5 days before the CCA Administrator intends to mail them. Staff shall review the filings and respond within five days with a written acknowledgment that the filing is deemed compliant with this Order, an explanation of the filing's failure to comply with this Order, or a letter explaining that additional time is required.
23. Customers must be permitted by the selected ESCO to opt-out and return to utility service any time before the end of the third billing cycle after enrollment without penalty.

Municipal Contracts with ESCOs and Other Providers

24. The terms of the contract between the municipality and the ESCO or ESCOs providing service must comply with generally applicable requirements for ESCO service at the time the contract is entered into, including the terms of the

February Reset Order once it comes into effect. Further guidance on contract requirements, including the approval of such products, will appear in future orders in proceedings relating to the February Reset Order.

25. CCA programs are not limited to contracting with only one ESCO and are encouraged to consider whether agreements with more than one ESCO offering different products or benefits, or with DER and energy efficiency providers in addition to one or more ESCOs, could support their development of holistic community energy initiatives.

- a. In developing such programs, CCA Administrators are encouraged to consult with NYSERDA and to consider how other Commission initiatives, such as Community Distributed Generation, could work together with the CCA program.

26. Termination charges after the grace period will be subject to the contract between the municipality and the ESCO, and must be consistent with the then-effective UBP provisions.

- a. Termination fees shall not be charged to customers that cancel their CCA service as a result of moving out of the premises served.

27. CCA contracts shall not include terms that would restrict the installation or use of DER or energy efficiency products by the municipality or CCA customers, or otherwise penalize the municipality or customers for reductions in energy usage or the installation of clean energy technologies.

28. CCA Administrators will be permitted to collect funds from customer payments to pay for administrative costs associated with running the CCA program.

- a. CCA customer payments to the CCA Administrator will have to be negotiated as part of the contract and built into the per kWh rates.
- b. Municipalities may not collect funds from customer payments to cover lost sales tax revenues.

Clean Energy Integration, Funding, and Collections

29. Municipalities will not be permitted to allocate a portion of the CCA customer payments to a clean energy or public benefit fund at this time.

Provision of Customer Data

30. The CCA Administrator may commence requesting aggregated data once the Commission has approved its filing of its Implementation and Data Protection Plans and certifications of local authorization consistent with this Order.
31. Customer-specific contact information can be requested for all eligible customers once the CCA Administrator demonstrates to the utility that the requisite contracts with ESCOs have been entered into and executed.
32. Detailed customer information can be requested for eligible customers who did not opt-out once the initial opt-out period has closed.
33. After Implementation and Data Protection Plans and certifications of local authorization have been approved by the Commission, the utility shall transfer the aggregated customer and usage data within twenty days of a request from the CCA Administrator.
 - a. This aggregated data shall include all customers eligible for opt-out treatment based on the terms of this Order and the CCA program design.

- i. This aggregated data shall include the number of customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class.
34. Utilities shall 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. At this time, utilities shall follow their current internal policies in addressing the anonymity issue for ensuring that aggregated data is sufficiently anonymous.
35. After the CCA Administrator has entered into a CCA contract with an ESCO, the utility shall transfer the customer-specific data to the CCA Administrator, within five days of a request, to support the mailing of opt-out notices.
 - a. This data shall include all customers in the municipality eligible for opt-out treatment based on the terms of this Order and the CCA program design.
 - i. The data shall consist of the customer of record's name, mailing address, telephone number, account number, and primary language, if available, and any customer-specific alternate billing name, address, and phone number.
36. After the opt-out period has ended, the CCA Administrator or the ESCO may submit a request to the utility for further data on the customers who have not opted-out consistent with existing EDI protocols. The utility shall

transfer customer data based on the general standards for transfers of data to ESCOs through EDI, including usage data and low-income status.

37. Utilities may file proposed tariffs for Commission approval within 45 days of this Order regarding fees for this data. To the extent that any CCA Administrator is ready to request data before the Commission approves tariffs for these fees, that CCA Administrator may negotiate an individual agreement, including fee structure as appropriate, with the relevant utilities, and the utilities may provide data based on that agreement without specific Commission approval.

Reporting

38. Annual reports shall be filed with the Secretary and filed by March 31 each year and cover the previous calendar year.
- a. Annual reports will include, at a minimum: number of customers served; number of customers cancelling during the year; number of complaints received by the CCA liaison; commodity prices paid; value-added services provided during the year (e.g. installation of DER or other clean energy services); and administrative costs collected. The first report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters.
 - b. If a CCA supply contract will expire less than one year following the filing of the annual report, the report must identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

CASE 14-M-0224

Commissioner Diane X. Burman dissenting:

As reflected in my comments made at the April 20, 2016 session, I dissent on this item.

Attachment 3 – Signed Memorandum of Understandings from Participating Municipalities

This Memorandum of Understanding is entered into by and between:

Sustainable Westchester, Inc, a New York not-for-profit corporation, and the Town Bedford (the "Municipality"), a local government member of Sustainable Westchester, Inc.

1. Background:

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: "The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order..."
- b. The PSC subsequently issued an Order for Case 14-M-0224 which authorized Community Choice Aggregation ("CCA") throughout New York State (the "PSC CCA Order") and November 15, 2018 issued the "Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program" reauthorizing the CCA program under a Master Implementation Plan.
- c. Sustainable Westchester's Pilot CCA Program ("Sustainable Westchester Pilot CCA Program") enrolled customers from an initial group of 20 participating municipalities in April 2016. Since then, five additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For municipalities in the NYSEG utility territory, the Sustainable Westchester Pilot CCA Program will conclude on April 30, 2019.
- e. In compliance with the PSC CCA Order, **The Municipality** has adopted local legislation to enable Community Choice Aggregation.
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester Pilot CCA program, the **Municipality** wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

2. Definitions:

- a. **Eligible Customers** – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2016 ESA and have not opted-out, or "New Consumers" that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.
- b. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the default Supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Order.

- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) that procures electric power for Eligible Customers in connection with this CCA Program.
 - d. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in this MOU and ESA. Compliant Bid price must be inclusive of fees owed to Program Manager and be less than:
 - i. Residential accounts: #.## cents/kwh;
 - ii. Small commercial accounts: #.## cents/kwh
 - e. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
 - f. **Electric Service Agreement (ESA):** An agreement that contains all the terms and conditions of the Program.
 - g. **2016 ESA:** The ESA which implemented the Sustainable Westchester Pilot CCA Program during the period from April 2016 to April 30, 2019.
 - h. **2019 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing May 1, 2019 for the NYSEG service territory. The 2019 ESA shall have substantially the same terms outlined in the attached 2019 ESA Template (Attached as Exhibit 1). The 2019 ESA Template tracks as closely as possible to the 2016 ESA in its content, with only minor changes to enable administrative streamlining, adoption of the NY State renewable energy definition, and the addition of an optional time-of-use product.
 - i. **February Order:** February 26, 2015 "Order Granting Petition in Part" issued by PSC in 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."
 - j. **Credit Review:** An assessment of the creditworthiness of the Competitive Supplier or adequate documentation of alternative credit arrangement that is at least as secure as a credit-worthy Competitive Supplier.
 - k. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester Inc., which has adopted the applicable local legislation for the Community Choice Aggregation Program.
 - l. **Program Manager:** Sustainable Westchester, Inc., a non-profit corporation of which the Participating Municipality is a member, authorized by the Public Service Commission per Order for Case 14-M-0564 "to undertake a Community Choice Aggregation demonstration project."
 - m. **Public Service Commission:** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission (PSC).
3. **Purpose:** The purpose of the Memorandum of Understanding is as follows:
- a. To establish participation by **The Municipality (hereafter, the "Participating Municipality")** in a Community Choice (Energy) Aggregation Program (hereafter, the "Program") that will be managed on its behalf by **Sustainable Westchester, Inc. (hereafter, the "Program Manager")** under the 2019 ESA.

- b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2019 ESA in the event they execute it.
- c. To affirm that the Participating Municipality and Program Manager agree to execute the 2019 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), outlined below.

4. Roles and responsibilities of the Program Manager: As Program Manager, Sustainable Westchester Inc. agrees to perform all duties outlined in the 2019 ESA and, prior to execution of that agreement, Program Manager agrees to:

- a. Provide the involved agencies and parties to the PSC CCA Order, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
- b. Manage the energy procurement bidding process including:
 - i. the identification and notification of potential firms seeking to be the Competitive Supplier,
 - ii. the Request for Proposals (“RFP”) process from preparation of the content to the publication of the RFP and management of firms responding to the RFP,
 - iii. the preparation of the 2019 ESA that will be included in the RFP,
 - iv. the acceptance and secure opening of the responses to the RFP, and
 - v. the organizing and procuring of the Credit Review and bid evaluation,all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
- c. Sign the 2019 ESA in a timely fashion subject to the conditions that:
 - i. the Competitive Supplier is deemed creditworthy for the duration of the 2019 ESA by the Credit Review, and
 - ii. such Competitive Supplier’s response to the energy procurement RFP is deemed a Compliant Bid as defined in Section 2 above.
- d. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager’s inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.

5. Roles and responsibilities of the Participating Municipality: As a Participating Municipality, the **Municipality** agrees to:


- a. Sign the 2019 ESA in a timely fashion and subject to the conditions that:
 - i. the Competitive Supplier is deemed creditworthy for the duration of the 2019 ESA by the Credit Review, and
 - ii. such Competitive Supplier’s response to the energy procurement RFP is deemed a Compliant Bid as defined in Section 2 above.

6. Term and Termination: This Memorandum of Understanding shall expire on the earlier of April 30, 2019 or the date on which the 2019 ESA is signed by all three counterparties to the 2019 ESA. The Participating Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the ESA attached hereto as Exhibit 1.

7. IN WITNESSETH WHEREOF, the parties hereto have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

Town of Bedford

Authorized Official Name and Title: Chris Burdick, Town Supervisor

Signature: 

Address: 321 Bedford Road, Bedford Hills, New York 10507

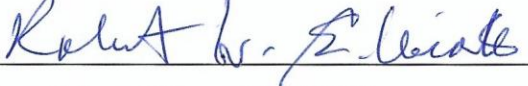
Telephone(s): (914) 666-6530

E-Mail Address: supervisor@bedfordny.gov

Address for Notices: 321 Bedford Road, Bedford Hills, New York 10507, Attn:
Town Supervisor

Sustainable Westchester Inc

Authorized Official Name and Title: Robert Elliott, Executive Director

Signature: 

Address: 55 Maple Ave., Mount Kisco, NY 10590

Telephone(s): (914) 242-4725

E-Mail Address: bellriott@sustainablewestchester.org

Address for Notices: 55 Maple Ave., Mount Kisco, NY 10549

Attachments: Exhibit 1, 2019 ESA Template

This Memorandum of Understanding is entered into by and between:

Sustainable Westchester, Inc, a New York not-for-profit corporation, and the Town of Lewisboro (The Municipality), a local government member of Sustainable Westchester, Inc.

1. Background:

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: "The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order..."
- b. The PSC subsequently issued an Order for Case 14-M-0224 which authorized Community Choice Aggregation ("CCA") throughout New York State (the "PSC CCA Order") and November 15, 2018 issued the "Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program" reauthorizing the CCA program under a Master Implementation Plan.
- c. Sustainable Westchester's Pilot CCA Program ("Sustainable Westchester Pilot CCA Program") enrolled customers from an initial group of 20 participating municipalities in April 2016. Since then, five additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For municipalities in the NYSEG utility territory, the Sustainable Westchester Pilot CCA Program will conclude on April 30, 2019.
- e. In compliance with the PSC CCA Order, **The Municipality** has adopted local legislation to enable Community Choice Aggregation").
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester Pilot CCA program, the **Municipality** wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

2. Definitions:

- a. **Eligible Customers** – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2016 ESA and have not opted-out, or "New Consumers" that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.
- b. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the default Supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Order.
- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) that procures electric power for Eligible Customers in connection with this CCA Program.

- d. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in this MOU and ESA. Compliant Bid price must be inclusive of fees owed to Program Manager and be less than:
 - i. Residential accounts: 7.38 cents/kwh;
 - ii. Small commercial accounts: 7.46 cents/kwh
 - e. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
 - f. **Electric Service Agreement (ESA):** An agreement that contains all the terms and conditions of the Program.
 - g. **2016 ESA:** The ESA which implemented the Sustainable Westchester Pilot CCA Program during the period from April 2016 to April 30, 2019.
 - h. **2019 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing May 1, 2019 for the NYSEG service territory. The 2019 ESA shall have substantially the same terms outlined in the attached 2019 ESA Template (Attached as Exhibit 1). The 2019 ESA Template tracks as closely as possible to the 2016 ESA in its content, with only minor changes to enable administrative streamlining, adoption of the NY State renewable energy definition, and the addition of an optional time-of-use product.
 - i. **February Order:** February 26, 2015 "Order Granting Petition in Part" issued by PSC in 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."
 - j. **Credit Review:** An assessment of the creditworthiness of the Competitive Supplier or adequate documentation of alternative credit arrangement that is at least as secure as a credit-worthy Competitive Supplier.
 - k. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester Inc, which has adopted the applicable local legislation for the Community Choice Aggregation Program.
 - l. **Program Manager:** Sustainable Westchester, Inc, a non-profit corporation of which the Participating Municipality is a member, authorized by the Public Service Commission per Order for Case 14-M-0564 "to undertake a Community Choice Aggregation demonstration project."
 - m. **Public Service Commission:** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission (PSC).
3. **Purpose:** The purpose of the Memorandum of Understanding is as follows:
- a. To establish participation by **The Municipality (hereafter, the "Participating Municipality")** in a Community Choice (Energy) Aggregation Program (hereafter, the "Program") that will be managed on its behalf by **Sustainable Westchester, Inc (hereafter, the "Program Manager")** under the 2019 ESA.
 - b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2019 ESA in the event they execute it.
 - c. To affirm that the Participating Municipality and Program Manager agree to execute the 2019 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), outlined below.

- 4. Roles and responsibilities of the Program Manager:** As Program Manager, Sustainable Westchester Inc agrees to perform all duties outlined in the 2019 ESA and, prior to execution of that agreement, Program Manager agrees to:
- Provide the involved agencies and parties to the PSC CCA Order, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
 - Manage the energy procurement bidding process including:
 - the identification and notification of potential firms seeking to be the Competitive Supplier,
 - the Request for Proposals ("RFP") process from preparation of the content to the publication of the RFP and management of firms responding to the RFP,
 - the preparation of the 2019 ESA that will be included in the RFP,
 - the acceptance and secure opening of the responses to the RFP, and
 - the organizing and procuring of the Credit Review and bid evaluation,all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
 - Sign the 2019 ESA in a timely fashion subject to the conditions that:
 - the Competitive Supplier is deemed creditworthy for the duration of the 2019 ESA by the Credit Review, and
 - such Competitive Supplier's response to the energy procurement RFP is deemed a Compliant Bid as defined in Section 2 above.
 - Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.
- 5. Roles and responsibilities of the Participating Municipality:** As a Participating Municipality, the **Municipality** agrees to:
- Sign the 2019 ESA in a timely fashion subject to the conditions that:
 - the Competitive Supplier is deemed creditworthy for the duration of the 2019 ESA by the Credit Review, and
 - such Competitive Supplier's response to the energy procurement RFP is deemed a Compliant Bid as defined in Section 2 above.
- 6. Term and Termination:** Memorandum of Understanding shall expire on the earlier of April 30, 2019 or the date on which the 2019 ESA is signed by all three counterparties to the 2019 ESA. Participating Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the ESA attached hereto as Exhibit 1.
- 7. IN WITNESSETH WHEREOF,** the parties hereto have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

City/Town/Village of Lewisboro

Authorized Official Name and Title: Peter Parsons, Town Supervisor

Signature: _____

Address: 11 Main Street, South Salem NY 10590

Telephone(s): 914-763-9035

E-Mail Address: supervisor@lewisborogov.com

Address for Notices:

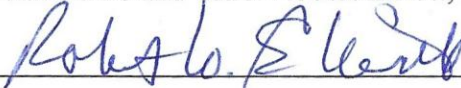
Town Clerk

11 Main Street

South Salem NY 10590

Sustainable Westchester Inc

Authorized Official Name and Title: Robert Elliott, Executive Director

Signature: 

Address: 55 Maple Ave., Mount Kisco, NY 10590

Telephone(s): (914) 242-4725

E-Mail Address: bellott@sustainablewestchester.org

Address for Notices: 55 Maple Ave., Mount Kisco, NY 10549

Attachments: Exhibit 1, 2019 ESA Template

This Memorandum of Understanding is entered into by and between:

Sustainable Westchester, Inc, a New York not-for-profit corporation, and the Town of North Salem (The Municipality), a local government member of Sustainable Westchester, Inc.

1. Background:

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: "The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order..."
- b. The PSC subsequently issued an Order for Case 14-M-0224 which authorized Community Choice Aggregation ("CCA") throughout New York State (the "PSC CCA Order") and November 15, 2018 issued the "Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program" reauthorizing the CCA program under a Master Implementation Plan.
- c. Sustainable Westchester's Pilot CCA Program ("Sustainable Westchester Pilot CCA Program") enrolled customers from an initial group of 20 participating municipalities in April 2016. Since then, five additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For municipalities in the NYSEG utility territory, the Sustainable Westchester Pilot CCA Program will conclude on April 30, 2019.
- e. In compliance with the PSC CCA Order, **The Municipality** has adopted local legislation to enable Community Choice Aggregation").
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester Pilot CCA program, the **Municipality** wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

2. Definitions:

- a. **Eligible Customers** – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2016 ESA and have not opted-out, or "New Consumers" that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.
- b. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the default Supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Order.
- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) that procures electric power for Eligible Customers in connection with this CCA Program.

- d. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in this MOU and ESA. Compliant Bid price must be inclusive of fees owed to Program Manager and be less than:
 - i. Residential accounts: 7.38 cents/kwh;
 - ii. Small commercial accounts: 7.46 cents/kwh
 - e. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
 - f. **Electric Service Agreement (ESA):** An agreement that contains all the terms and conditions of the Program.
 - g. **2016 ESA:** The ESA which implemented the Sustainable Westchester Pilot CCA Program during the period from April 2016 to April 30, 2019.
 - h. **2019 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing May 1, 2019 for the NYSEG service territory. The 2019 ESA shall have substantially the same terms outlined in the attached 2019 ESA Template (Attached as Exhibit 1). The 2019 ESA Template tracks as closely as possible to the 2016 ESA in its content, with only minor changes to enable administrative streamlining, adoption of the NY State renewable energy definition, and the addition of an optional time-of-use product.
 - i. **February Order:** February 26, 2015 "Order Granting Petition in Part" issued by PSC in 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."
 - j. **Credit Review:** An assessment of the creditworthiness of the Competitive Supplier or adequate documentation of alternative credit arrangement that is at least as secure as a credit-worthy Competitive Supplier.
 - k. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester Inc, which has adopted the applicable local legislation for the Community Choice Aggregation Program.
 - l. **Program Manager:** Sustainable Westchester, Inc, a non-profit corporation of which the Participating Municipality is a member, authorized by the Public Service Commission per Order for Case 14-M-0564 "to undertake a Community Choice Aggregation demonstration project."
 - m. **Public Service Commission:** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission (PSC).
3. **Purpose:** The purpose of the Memorandum of Understanding is as follows:
- a. To establish participation by **The Municipality (hereafter, the "Participating Municipality")** in a Community Choice (Energy) Aggregation Program (hereafter, the "Program") that will be managed on its behalf by **Sustainable Westchester, Inc (hereafter, the "Program Manager")** under the 2019 ESA.
 - b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2019 ESA in the event they execute it.
 - c. To affirm that the Participating Municipality and Program Manager agree to execute the 2019 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), outlined below.

4. **Roles and responsibilities of the Program Manager:** As Program Manager, Sustainable Westchester Inc agrees to perform all duties outlined in the 2019 ESA and, prior to execution of that agreement, Program Manager agrees to:
- a. Provide the involved agencies and parties to the PSC CCA Order, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
 - b. Manage the energy procurement bidding process including:
 - i. the identification and notification of potential firms seeking to be the Competitive Supplier,
 - ii. the Request for Proposals ("RFP") process from preparation of the content to the publication of the RFP and management of firms responding to the RFP,
 - iii. the preparation of the 2019 ESA that will be included in the RFP,
 - iv. the acceptance and secure opening of the responses to the RFP, and
 - v. the organizing and procuring of the Credit Review and bid evaluation,all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
 - c. Sign the 2019 ESA in a timely fashion subject to the conditions that:
 - i. the Competitive Supplier is deemed creditworthy for the duration of the 2019 ESA by the Credit Review, and
 - ii. such Competitive Supplier's response to the energy procurement RFP is deemed a Compliant Bid as defined in Section 2 above.
 - d. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.
5. **Roles and responsibilities of the Participating Municipality:** As a Participating Municipality, the **Municipality** agrees to:
- a. Sign the 2019 ESA in a timely fashion subject to the conditions that:
 - i. the Competitive Supplier is deemed creditworthy for the duration of the 2019 ESA by the Credit Review, and
 - ii. such Competitive Supplier's response to the energy procurement RFP is deemed a Compliant Bid as defined in Section 2 above.
6. **Term and Termination:** Memorandum of Understanding shall expire on the earlier of April 30, 2019 or the date on which the 2019 ESA is signed by all three counterparties to the 2019 ESA. Participating Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the ESA attached hereto as Exhibit 1.
7. IN WITNESSETH WHEREOF, the parties hereto have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

City/Town/Village of North Salem

Authorized Official Name and Title: Warren Lucas, Town Supervisor

Signature: _____

Address: 266 Titicus Road, North Salem, NY 10560

CCA MOU 2019

Telephone(s): 914-669-5110

E-Mail Address: wlucas@northsalemny.org

Address for Notices:

Town Clerk

266 Titicus Rd

North Salem, NY 10560

Sustainable Westchester Inc

Authorized Official Name and Title: Robert Elliott, Executive Director

Signature: Robert W. Elliott

Address: 55 Maple Ave., Mount Kisco, NY 10590

Telephone(s): (914) 242-4725

E-Mail Address: bellriott@sustainablewestchester.org

Address for Notices: 55 Maple Ave., Mount Kisco, NY 10549

Attachments: Exhibit 1, 2019 ESA Template

Attachment 4, Participating Municipality Consumption Data, is intentionally excluded. Once Competitive Supplier signs and returns the Confidentiality Agreement, Attachment 4 will be provided to them.

Attachment 5 - Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of _____ (the "Effective Date") between _____, an energy services company that is planning to submit a response ("Respondent") to Sustainable Westchester's Request for Proposals ("RFP") for energy services for a community choice aggregation program ("CCA Program") and Sustainable Westchester (each a "Party," and collectively, the "Parties").

WHEREAS, Respondent is interested in receiving certain aggregated and anonymized data concerning consumers to be served by the CCA Program ("Aggregated Data"), as provided for in the RFP, in order to prepare a proposal in response to the RFP;

WHEREAS, under the terms of the RFP, Respondent must execute this Agreement prior to receiving any of the Aggregated Data;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Respondent acknowledges the sensitive and confidential nature of the Aggregated Data;
2. Respondent shall keep the Aggregated Data strictly confidential and shall not disclose it to any other party without the prior written permission of Sustainable Westchester;
3. Respondent shall use the Aggregated Data for the sole and limited purpose of preparing a response to the RFP and not for any other purpose;
4. Respondent's authorization to use the Aggregated Data for any purpose expires on April 1, 2019 and Respondent must destroy the Aggregated Data after that date;
5. Respondent agrees that if it breaches this Agreement it shall be liable to Sustainable Westchester, except that Respondent shall not be liable if the Aggregated Data becomes known or available through no act or omission of Respondent or if disclosure is required by regulation or law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

RESPONDENT

Signature

Name of Signatory

Name of Company

SUSTAINABLE WESTCHESTER

Signature

Name of Signatory

Attachment 6 - Acknowledgement of Key Elements of the Electric Service Agreement

Upon completion of the RFP, the Selected ESCO will be expected to enter into an ESA substantially in the form provided in **Attachment 1**. Sustainable Westchester would like to highlight key features of that ESA here. Respondent should sign in the space provided at the end of this document to demonstrate that Respondent acknowledges these terms.

1. The Respondent must provide 100% of account electric requirements.
2. The Respondent chosen to be the Selected ESCO for the CCA Program will assist Sustainable Westchester in maintaining the CCA Program to include eligible residential and small commercial accounts located within the Participating Municipalities' boundaries receiving supply service from New York State Electric and Gas (NYSEG). The Selected ESCO must coordinate with Participating Municipalities' designated staff, Sustainable Westchester and its partners in order to deliver services required under the ESA.
3. The Selected ESCO will be responsible for the faithful performance of the contract and shall warrant that it has internal monitoring procedures and processes to ensure compliance.
4. The CCA Program will only affect pricing for power supply. NYSEG will continue to deliver power through its transmission and distribution systems. Responsibility for maintaining system reliability continues to rest with NYSEG. Selected ESCO shall notify Participating Consumers that if they have service reliability problems, they should contact the appropriate utility for repairs.
5. The Selected ESCO will arrange for a single consolidated utility bill to be sent to Participating Consumers by the appropriate utility.
6. Collection and credit procedures are to be the responsibility of NYSEG and the individual Participating Consumer. Participating Consumers will be required to remit and comply with the payment terms of NYSEG. Sustainable

Westchester and the Participating Municipalities will not be responsible for late or no payment on the part of any of its Participating Consumers, and will have no separate credit or deposit policy.

7. The Selected ESCO will assist Sustainable Westchester to develop performance reports to the New York State Public Service Commission providing tracking information related to price, service, quality and other factors deemed important. Reporting requirements are specified in the ESA.
8. The Selected ESCO must provide customer service for Participating Consumers comparable to that provided by utility customer representatives, including those requiring non-English verbal and written assistance. The Selected ESCO must provide customer service for hearing impaired Participating Consumers.
9. Sustainable Westchester will maintain a website with account management functionality (i.e. on boarding of opt-in, opt out, and "opt up" migration to 100% Renewable Clean Power Product). Sustainable Westchester will then report this activity to Selected ESCO, who must maintain a database to track account enrollment and billing data. The website will also provide basic information concerning the CCA Program and will facilitate customer inquiries by providing a platform for the submission of questions by email or text.
10. Sustainable Westchester and the Participating Municipalities retain the right to control the content of the Opt-Out Notices. The Opt-Out Notices will be mailed at the expense of the Selected ESCO.
11. The Selected ESCO will coordinate with Sustainable Westchester to establish the mailing list for the opt out notification letters. In order to allow time for the 30 day opt-out and mandated rescission period, the notification letters for the 2019 NYSEG ESA should be mailed out in March 2019.
12. The utility will charge a fee for the provision of aggregated consumption data and also for detailed customer data. The rates are set out in the December 14, 2017 *Order Establishing Community Choice Data Access Fees* as \$0.16 and \$0.64 respectively. In 2.1 of the ESA those fees are identified as the responsibility of the Selected ESCO.

13. After the execution of a confidentiality agreement covering this data, SW will provide the data for the mailings to the 5 communities that are already active in the CCA Program so there will no fee for either aggregated or detailed customer data for those.
14. SW requires certain data to be provided to SW by the Selected ESCO on a regular schedule for the purposes of stakeholder reporting and customer service. The requirements are detailed in Exhibit D of the ESA.
15. SW may pursue regulatory intervention from the Public Service Commission to create two classes of customers: those participating in the CCA Program, and those not participating. The capacity tag allocations of these two classes would be then be different. Should SW achieve demand reductions at the peak capacity hour, Selected ESCO would have excess capacity to sell in the market. Article 5.5 of the ESA requires that such excess capacity be sold for the benefit of CCA Program customers.

Respondent acknowledges the aforementioned elements of the Electric Service Agreement.

Signature

Name of Signatory

Name of Company

Please state any exceptions to these, or other elements of the ESA that you request, below:

Attachment 7 - Supplier Qualifications

Respondents should include in their proposal evidence of their qualifications related to the questions below.

1. Respondents must have the authority to sell electricity to applicable retail customers in New York and be properly licensed to supply customers in NYSEG service territory.
2. Respondents should identify the specific steps utilized to enroll accounts via EDI.
3. Respondents must have the materials, time and resources to support CCA Program marketing, outreach and education tasks. Documentation should include proof of an existing local or toll-free telephone number for customer service and complaints related to the CCA Program.
4. Respondents must maintain sufficient personnel, management expertise, and financial capacity to support CCA Program operations.

Attachment 8 - Pricing and Product Proposal

Pricing Requirements

Respondent's pricing should conform with the Compliant Bid Criteria and the following requirements as well as relevant terms of the ESA (**Attachment 1**):

1. Respondents must submit bids for 12, 24, and 36 month terms. Respondents may also optionally submit bids for other term lengths between 12 and 36 months if the Respondent deems optional term(s) to offer improved economic benefits.
2. Exhibit A-1 and A-2 of the ESA contain other key terms that Respondents should be familiar with, and these exhibits will be updated with the final price and terms before ESA execution.
3. Pricing offers must be sufficient to cover the full costs of the Respondent. Price quotes must include all costs to be charged at the point of entry into Zone G inclusive of: fuel, generation use/depreciation/maintenance or repairs, transmission (including congestion costs), location-based marginal pricing uplift charges, ICAP/UCAP capacity, billing, ISO ancillary services or other ISO charges and Zero-emission Credit (ZEC) obligations.
4. No fees will be assessed to any resident or small commercial retail customer for entering or leaving the CCA Program. Respondent will not impose any conditions, terms, fees, or charges on any Participating Consumer served by the CCA Program unless the fee is imposed by an authority to which the Respondent is subject (i.e., federal or state regulatory bodies).

5. Participating Consumers must be allowed to migrate from the Standard Product to the 100% Renewable Clean Power Product at any time with no fee or penalty (other than the rate differential).
6. Individual customers must be allowed to switch to NYSEG default utility service, should they elect to do so, at any time, without penalty of any kind.
7. Neither Sustainable Westchester nor Participating Consumers will be responsible for any costs not specifically identified in Respondent's proposal. Cost elements not known with certainty at the time of the proposal should be identified, and an estimate of the charges during the term of the ESA should be provided.
8. The Selected ESCO agrees to remit a Program Manager Fee to Sustainable Westchester of \$0.001 per kilowatt-hour sold to Participating Consumers in the CCA Program. Price quotes must be inclusive of this fee. Fee payment procedures and schedule are delineated in Article 7.3 of the ESA.
9. All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. See ESA Article 8.4.4.

Pricing For Fixed Price Standard and Renewable Supply Options

Please provide your compliant pricing offers in the following format:

Residential or Small Commercial	Standard or 100% Renewable Supply	Term in months	Price, \$/kWh
Residential	Standard	12	
Residential	Standard	24	
Residential	Standard	36	
Residential	100% Renewable	12	
Residential	100% Renewable	24	
Residential	100% Renewable	36	
Small Commercial	Standard	12	
Small Commercial	Standard	24	
Small Commercial	Standard	36	
Small Commercial	100% Renewable	12	
Small Commercial	100% Renewable	24	
Small Commercial	100% Renewable	36	

Please provide any additional product/term options in the same format (add rows as needed):

Residential or Small Commercial	Standard or 100% Renewable Supply	Term, in months	Price, \$/kWh

If Respondent anticipates the need for a price adjustment for customers who come in after the first meter-read date, they may optionally fill in this table:

Rate Class	Adder per kWh
Residential	
Small Commercial	

Day/Night Pricing (Optional)

Sustainable Westchester hopes to offer Day/Night time-of-use rates to service classification Residential Day/Night (SC 8) and General Service Day/Night (SC 9) accounts through the CCA as a voluntary opt-in option. Although it is not required for bid compliance, the submission of competitive Day/Night rates will enhance a Respondent's submission.

Fixed price offers or seasonal fixed rate sets will be favored, though respondents may provide any viable pricing format for our consideration. Each price set should include Standard and Renewable supply options consistent with the definitions in this RFP and the ESA.

Please provide your Day Night pricing offers in the following format (and add rows or modify as needed):

Residential Day Night (SC 8) or Small Commercial Day Night (SC 9)	Standard or 100% Renewable Supply	Day or Night	Term in months	Price, \$/kWh
Residential	Standard	Day		
Residential	Standard	Night		
Residential	100% Renewable	Day		
Residential	100% Renewable	Night		
Small Commercial	Standard	Day		
Small Commercial	Standard	Night		
Small Commercial	100% Renewable	Day		
Small Commercial	100% Renewable	Night		

Supply Product Requirements

Please provide a detailed description of the supply products being offered below:

Attachment 9 - Financial Ability to Undertake

The financial strength and stability of the potential supplier are key evaluation criteria, and SW will engage third party review. **Please submit this form by 11:00AM on February 14, 2019.**

1. Is your company a publicly-traded firm?

Yes____ No____

2. If not, provide three consecutive years of audited financial statements. (These will be treated with confidentiality and not released to any third party).

3. Has your company or its affiliates ever defaulted or threatened to default on a contract in the municipal aggregation space?

4. If an affiliate, do you have a Parental Guarantee from the parent company that is sufficient to cover the exposure of your portfolio with this buying group added?

Yes____ No____

5. Is your company's Debt considered investment grade by a major credit agency?

6. What is the rating of your company's or parent company's long-term unsecured debt?

____ Moody's____ Standard & Poor's ____

7. Has your company filed for bankruptcy in the past three years?

Yes____ No____