STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

ORDER MODIFYING OUTREACH AND EDUCATION REQUIREMENTS AND DIRECTING PROGRAM EVALUATION

Issued and Effective: November 19, 2024

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on November 14, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

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(Issued and Effective November 19, 2024)

BY THE COMMISSION:

INTRODUCTION

On January 19, 2023, the Public Service Commission (Commission) issued its Community Choice Aggregation (CCA) Modification Order, which, among other things, required Department of Public Service staff (Staff) to file proposed changes to the CCA program's outreach and education requirements.[1] On May 19, 2023, Staff, in compliance with that requirement, filed a proposal for modifying and enhancing the CCA program outreach and education requirements (Staff

[1] Case 14-M-0224, Order Modifying Community Choice Aggregation Programs and Establishing Further Process (issued January 19, 2023) (CCA Modification Order).

Proposal).[2] The Staff Proposal suggested these reforms to ensure that CCA Administrators are providing an appropriate level of outreach and education to municipalities and potential program participants prior to the mailing of opt-out notification letters.

In this Order, the Commission adopts, with modifications, the recommendations discussed within the Staff Proposal. Additionally, this Order identifies the need for the Commission to further examine CCA Program structure and operation, including an assessment of any benefits or drawbacks the program has provided, or is currently providing, to New York's participating CCA customers. Consequently, the Commission, by way of this Order, directs Staff to implement an evaluation of the CCA program to assess the benefits and effectiveness of the program's policies and goals.

BACKGROUND

One of the foundational principles of the State's CCA program is to ensure that potential CCA participants are properly informed and rightly aware of their municipality's CCA program. Due to the nature of the CCA program opt-out enrollment processes, the Commission recognized within its CCA Framework Order that proper customer engagement, including consumer protections, are imperative for a CCA program to confirm community awareness and customer engagement.[3] Customers need to fully understand the CCA enrollment processes, as well as the benefits of the program. Customer engagement provides

[2] Case 14-M-0224, Department of Public Service Staff Proposal for Modification to Outreach and Education Requirements (filed May 19, 2023).

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

meaningful opportunities for customers to learn about retail energy markets and determine whether their municipality's CCA program product offering meets their energy supply needs. Thus, the Commission authorized CCA programs with specific requirements to ensure potential CCA program participants are aware and informed of their municipality's CCA program prior to receiving their opt-out notification letter and, later, the commencement of the CCA program's enrollment period. The outreach and education requirements adopted as part of the CCA Framework Order, as well as clarifications and refinements to these requirements adopted in subsequent orders, are codified as part of the CCA Program Rules.[4] These CCA Program Rules support clarity and consistency amongst CCA Administrators representing participating municipalities, as well as other stakeholders, on which program requirements must be met during the implementation and operation of CCA programs.

Within the CCA Modification Order, the Commission found that "it is more important than ever to ensure that CCA Administrators are doing their due diligence in providing more than just adequate outreach and education to potential opt-out program participants,"[5] and directed Staff to file proposed changes to the outreach and education requirements including, but not limited to: (1) extending the outreach and education period; (2) increasing the number of necessary items and events, and; (3) requesting additional outreach and education when a CCA Administrator is unable to prove sufficient community awareness of opt-out enrollment or when there is a specific circumstance

[4] Case 14-M-0224, Order Modifying Community Choice Aggregation Programs and Establishing Further Process (issued January 19, 2023) (CCA Modification Order); Case 14-M-0224, CCA Program Rules (filed March 20, 2023).

[5] CCA Modification Order, p. 61.

that should require additional outreach and education events to be performed in a community.[6]

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) was published in the State Register on June 21, 2023 [SAPA No. 14-M-0224SP28]. The time for submission of comments pursuant to the Notice expired on August 21, 2023. There were four comments received in response to the SAPA notice which are discussed below under the relevant topic areas.

LEGAL AUTHORITY

The Commission's authority stems from the Commission's jurisdiction over gas and electric corporations, including the utilities and Energy Service Companies (ESCOs), the provision of gas and electric service, and the sale of gas and electricity. 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 for the "purpose of furnishing or distributing gas or of furnishing or

[6] CCA Modification Order, pp. 60–61.

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." Further, pursuant to Section 66(5), the Commission is authorized to "[e]xamine 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 requisite 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 Uniform Business Practices (UBPs) 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 in compliance with Commission directives.

DISCUSSION

The following requirements, discussed in and adopted by this Order, are intended to provide the Commission, Staff, participating CCA municipalities, and potential program participants certainty that an appropriate and effective level of outreach and education was conducted within a CCA municipality prior to the start of the municipality's out-opt CCA program. This Order discusses the modifications necessary to strengthen and improve the existing minimum outreach and education requirements and the need to incorporate additional outreach and education requirements into the CCA Program Rules.

This Order also elucidates the rules relating to the exchange of CCA-required data and clarifies the appropriate data governance practices for when customers participating in a CCA program voluntarily elect, or consent to, additional non-supply energy related products and services. Additionally, this Order addresses municipalities' legal and program requirements, along with its responsibilities and rights.

Evaluation of CCA Program

In addition to addressing the recommendations set forth in the Staff Proposal, the Commission finds it necessary to discuss concerns raised about the goals of the CCA Program, the recurring issues to-date, the lack of supply savings for CCA participants, and the absence of additional opt-in products and service. The State's CCA Program, which initially provided customers with supply savings and/or access to Renewable Energy Certificate (REC) compliant supply products, reported minimal savings on standard product offerings, if any.[7] In addition, 100% renewable product supply prices surpassed the utility 12-

[7] New York State's RECs represent the environmental attributes of one megawatt hour (MWh) of electricity generated from renewable sources.

month trailing average in nearly all municipal cases reported within CCA Administrator’s 2023 Annual Reports.[8] In turn, program participants are often no longer receiving the cost savings they once received and are paying a much higher premium for a REC-compliant product when compared to previous CCA contracts, as well as recent utility default rates.

The Commission’s adoption of the CCA opt-out enrollment process was initially granted based on the understanding that CCA programs would result in more attractive energy supply terms through the bargaining power that aggregation provides, the expertise provided by municipal or consultant experts, and the competitive public process for choosing an ESCO supplier. More importantly, the CCA construct provides substantial positive opportunities for meaningful and effective local and community engagement on critical energy issues and the development of innovative programs, products, and services that promote and advance the achievement of State energy goals.[9]

In parallel with the raised concerns surrounding contract terms and lack of program benefits, the Commission is also concerned about the frequency and magnitude of enrollment and billing issues that have occurred since the adoption of the CCA Modification Order.[10] During the period between January 2023

[8] See Matter No. 17-00974 - In the Matter of Financial Reports for Community Choice Aggregation Programs.

[9] 14-M-0224, CCA Framework Order, pp. 2-3.

[10] CCA Modification Order, p. 23. Upon awareness of a billing issue that impacts 50 or more participants, the CCA Administrator, ESCO, and utility must notify each other and Staff by furnishing the required reporting template of the suspected billing issue within 48-hours of awareness. Upon resolution, notification of when and how the issue was resolved must be filed in Matter No. 23-00028 - In the Matter of Community Choice Aggregation Issue Resolution.

and October 2024, 21 filings were reported to the Secretary of the Commission (Secretary) indicating that approximately 235,000 customers experienced a CCA related billing issue.[11] To put the number of impacted customers into perspective - at the end of 2023, there were 252,970 CCA participants reported statewide. The Commission is unaware if some of the 235,000 impacted customers experienced multiple billing issues since the time the Commission first required public facing reporting about CCA billing concerns in January 2023. Therefore, it is infeasible to determine the frequency of billing issues on an individual participant level to assess if one given customer experienced a given number of issues. Nevertheless, in consideration that the Commission required the reporting of these instances a mere 20 months ago, the Commission finds the rate of billing issue occurrences disconcerting. Notably, these numbers do not include billing issues that occurred prior to 2023, nor any issues since then that impacted fewer than 50 customers.

Recently, there was an issue where one customer disputed their CCA enrollment numerous times with the CCA Administrator and supplying ESCO, continuously requesting reimbursement for rate differences between the CCA contract rate and the utility’s default rate. After the given customer’s disputed enrollment complaint was dismissed repeatedly by both the CCA Administrator and the ESCO, the customer contacted the Department of Public Service (Department) Office of Consumer Services (OCS). The ESCO initially offered the customer a $400 courtesy credit yet continued to assert that the customer was properly enrolled in the CCA program. Upon investigation, Staff found that the customer was in fact erroneously enrolled in the municipality’s CCA program. After Staff worked with the CCA

[11] See Matter No. 23-00028 - In the Matter of Community Choice Aggregation Issue Resolution.

Administrator, the customer was eventually rerated and refunded over $1,300. Put differently, this given customer - like similar CCA participants on the same CCA contract residing in the same utility's service class and territory - paid over $1,300 more over a period of 11 months than what they would have paid for supply if they were to continue to receive their utility's default rate.

Further, in relation to the same issue, Staff questioned the involved CCA Administrator, requesting an update on the erroneous enrollment issue and resolution. It was then confirmed by the involved CCA Administrator that many more customer accounts had been inaccurately enrolled, determining ` that the issue impacted almost 1,600 customers.[12] Thus, it has become apparent through the Commission's reporting process that a significant number of billing issues remain, and without involvement by Staff, many of these issues would ultimately remain unresolved. Through improper implementation and faulty customer service, these CCA enrollment and billing issues incur a cost to those same customers the CCA program is intended to benefit.

For the reasons discussed above, the Commission is initiating a review process for a complete evaluation of New York State's opt-out CCA program. We direct an evaluation of the CCA program's anticipated goals and policy objectives, including, but not limited to, the effectiveness of the opt-out CCA program contributing to the achievement of the targets codified in the Climate Leadership and Community Protection Act (CLCPA) targets. This evaluation shall also include recommendations intended to: a) improve program benefits; b)

[12] See Matter No. 23-00028: Bill Issue Reporting submitted by Sustainable Westchester on September 5, 2024. Available at: https://dmm.dps.ny.gov/DMM/MatterManagement/CaseMaster.aspx#

discontinue the program; or c) propose further program paths that are within the public interest. With the issuance of this Order, the Commission directs Staff to work with the New York State Energy Research and Development Authority to develop a Request for Proposal (RFP) solicitation to obtain a third-party consultant which shall conduct an extensive program evaluation, to be completed within 6-months of the RFP award and to culminate with the filing of the CCA Program Evaluation Report.

Modifications to Outreach and Education Requirements

As detailed in the Proposal, the Commission finds that modifications to the existing CCA program outreach and education requirements, discussed further in this Order, as well as the addition of new outreach and education requirements, are essential to improve community awareness by confirming that CCA Administrators are providing an appropriate level of outreach and education within each of their CCA-participating municipalities.

Outreach and Education Period

Staff proposed that the minimum outreach and education period be extended from no less than 60 days to no less than 90 days. The period would begin when the first publicly held outreach and education meeting is conducted in the municipality by the CCA Administrator, after the passing of the municipality's Local Law.

Comments

The Community Choice Aggregation Administrators of New York (CCAANY) agree that the outreach and education period should begin with the first publicly held meeting but suggests splitting the 90-day period into a 60-day outreach and education period to be completed before contracting and the remaining 30 days to be completed after contracting.[13] CCAANY asserts that most customer engagement occurs after the contract terms, including rates, are known.

Mid-Hudson Energy Transition, Inc. (MHET) questions whether extending the outreach and education period would increase the effectiveness of outreach and education programs or would instead have a detrimental effect, arguing that, while time spent is a factor of successful community engagement, it does not directly cause an increase in the quality of the outreach and education performed.

NRG Energy, Inc. (NRG) expresses concern over increasing the outreach and education period from 60-days to 90-days, potentially causing ESCO pricing to fall out of compliance, diminishing the municipalities’ ability to be opportunistic about current market situations and disrupting their ability to take advantage of current market trends, thereby harming consumers. Thus, they recommend retaining a 60-day outreach and education period.[14]

Determination

The Commission agrees with Staff that the outreach and education period should be lengthened to ensure appropriate customer knowledge of the program. The time in which outreach and education is conducted in the pre-contract period, formally known as the initial outreach and education period, shall commence with the first publicly held outreach and education

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[13] CCAANY is a collaboration between Joule Assets, Inc. and Sustainable Westchester.

[14] NRG and NRG Retail Companies operating in New York include Reliant Energy Northeast LLC d/b/a NRG Home and d/b/a NRG Business Solutions; Green Mountain Energy Company; Energy Plus Holdings, LLC; Energy Plus Natural Gas, LLC; Independence Energy Group, LLC d/b/a Cirro Energy; XOOM Energy New York, LLC; Direct Energy Services, LLC; and Gateway Energy Services Company.

meeting conducted in the municipality by the CCA Administrator, after the passing of the municipality's Local Law adopting CCA programs. This initial outreach and education period shall last a minimum of 60 days. This period is intended to ensure robust community engagement before any contractual obligations are entered. Meaning, at a minimum, 60 days of outreach and education must be conducted within a municipality during the initial, or pre-contractual, outreach and education period to ensure proper community engagement is conducted and to also gain a better understanding if the eligible constituents are in fact interested in an opt-out supply product offering.

If a municipality is interested in moving forward with a supply contract after the 60 day minimum pre-contract outreach and education period is completed, the municipality is permitted to execute an Energy Service Agreement (ESA). Once the ESA is in place, an additional 30 days of outreach and education shall be conducted during this post-contract, formally known as the post-award, period. The post-contract period will focus on providing residents with detailed information regarding the terms of the contract, including rates and other critical details, ensuring they have ample opportunities to understand the agreement before the opt-out period begins.

For new CCA programs, an extension of the length of period requires outreach and education, including both pre- and post-contract periods, to last, at a minimum, 90 days, in the manner described above. After outreach and education requirements are complied with, Administrators are required to submit a Municipality Filing for Staff approval.[15] Once the Municipality Filing is approved, the Administrator is authorized to mail out the opt-out letter approved in the Municipality Filing, commencing the required 30 day minimum opt-out period concurrent with an additional 30 days of outreach and education. Thus, for new CCA programs, a minimum of 120 days of outreach and education will occur with 90 days for the pre- and post-contract outreach and education and an additional 30 days of outreach and education occurring simultaneously with the opt-out period.

For CCA programs with contract renewals, 30 days of outreach and education shall be conducted in the post-contract period before an Administrator is required to submit a Municipality Filing for Staff approval. Thus, for CCA contract renewal scenarios, a minimum of 60 days of outreach and education will occur, with 30 days for post-contract outreach and education and an additional 30 days of outreach and education occurring simultaneously with the opt-out period.

Regarding NRG's concerns pertaining to ESCO pricing falling out of compliance due to the increase of the outreach and education period, the Commission explains that the compliance verification of CCA Program Rule 71 will occur at the time of ESA contract signing.[16] Meaning, fixed-rate standard

[15] CCA Modification Order, p. 12. Requires a CCA Administrator, prior to adding a new municipality to its program, to submit the Municipality Filing template that includes the local law filing, completed outreach and education plan with required verification, a copy of the RFP and ESA, and a final template opt-out letter(s) for Staff approval.

[16] CCA Program Rule 71 states that fixed-rate products shall be limited to a price no greater than 5% above the trailing 12-month average utility supply rate, and variable-rate products must guarantee a savings compared to what the customer would pay as a full-service utility customer.

product pricing shall be limited to a price no greater than 5% above the trailing 12-month average utility supply rate from the ESE's execution date.

Outreach and Education Forms

Staff proposed additional requirements related to the outreach and education forms to ensure sufficient customer education and awareness of their opt-out enrollment in the CCA program. The proposed new requirements included:

- Holding no fewer than two public meetings during the 90 day outreach and education period, and a minimum of two post-award meetings.
  - A postcard must be mailed to eligible participants, after the signing of the ESA, advising them of the contract terms/conditions and include notification of at least one of the post-award meetings.
- In addition to these public meetings, at least two supplemental forms of outreach and education must be conducted. This can be:
  - Tabling events within the municipality to promote the program.
  - Media such as: Local radio and television advertisements about the program (advertising of upcoming meetings/events does not count).
  - Newspaper advertisements about the CCA program (advertising of upcoming meetings/events does not count).
  - Posters or other print media placed in community public locations such as local government offices, community centers, etc.
- Public Meeting Requirements:

- Each public meeting must be held in person and be open to municipal residents. A webinar may be offered in conjunction with the public meeting if it allows for the ability for participants to ask questions.
- The meetings must be recorded and placed on the Administrator's website, in the outreach and education section, for review by any interested entity.
- Meetings must be advertised via multiple formats including, but not limited to, newspapers, flyers, radio announcements, etc. Proof of such advertisement is required for verification. While encouraged as an additional option, stand-alone social media posts do not count as verifiable advertisements as the success of such postings hinges on not only community awareness of the social media page (which could be for the municipality, program, or Administrator) but on the customers' access to the internet and utilization of social media.
- Advertising of the event must occur at least 15 days prior to the date of the event.
- A record of attendance numbers must be kept and should not include attendees representing the CCA Administrator, the Energy Service Entity (ESE), or the municipality.
- For post-award meetings held after the approval of the Municipality Filing, meeting information should be placed on the CCA Administrators municipality-specific CCA program webpage in the outreach and education section, that should

include all outreach and education actions performed.

Comments

CCAANY agrees with Staff there is a need for sufficient customer education and awareness but disagrees on what the most effective means are to do so. They provide three ways to ensure this happens: 1) establish different requirements based on the municipality size, 2) ensure there are options that match the character of the community, and 3) to allow for a broader range of outreach and education actions. To support its recommendations, CCAANY filed a matrix that they assert includes a framework for applying the appropriate outreach strategy, sets the minimum outreach and education requirements based upon municipality size, and considers the need for a variety of outreach and education forms to maximize the effectiveness of the outreach and education events.

CCAANY comments that it's unfortunate that they have been discouraged from utilizing some of the most effective outreach and education methods and further asserting that doing more outreach is only useful when it reaches more people. They affirm that CCA Administrators have repeatedly asked Staff to directly engage with municipalities so that Staff may get a realistic perspective on what municipal participation levels constitute an engaged population and how that is best achieved. Of the proposed outreach and education forms, CCAANY provides the following comments:

1. CCA is a municipal program and the municipality's actions to support outreach and education should count towards program requirements as existing municipal channels are often the most effective way to reach constituents, even if these communications may not be received by all eligible CCA program participants.

They point out that currently acceptable outreach and education actions, such as newspapers and tabling events, cover multiple municipalities and reach many customers that are not eligible for CCA program participation in the same way a municipal social media posting would. Social media channels as municipal products should be acceptable forms of outreach and education.

2. Requiring more in-person meetings, advertised further in advance, is not likely to increase participation, especially before contracting, and does not provide any additional benefit. Potential program participants may have busy schedules that do not allow for attendance of an in-person meeting and desire a virtual option.
3. Notice for outreach and education meetings should be provided at least 7 days in advance of the meeting date. This notice should be made available through the existing approved program channels as well as municipal newsletters, e-blasts, and social media.
4. The number of actual participants in outreach and education meetings can be provided but cannot include a list of names of attendees, as has been requested in the past.
5. The requirement to send a postcard to all eligible participants after signing of the ESA does not work operationally with the current program rules that require DPS Staff approval in advance of requesting customer contact information and does not guarantee increased understanding of the CCA program. There is just enough time for data cleaning, printing, and mailing of opt-out letters in advance of the opt-out

period; there is no additional time for another mailing. The incumbent utility should instead engage customers with call blasts; at least one utility already engages in a similar practice.

6. CCAANY requests clarification that tabling events will count as acceptable outreach and education whether or not it is part of another community event such as a Farmers' Market of cultural fair and items such as office hours at the municipal building where people can get help.

MHET comments in support of outreach and education requirements to hold at least two public meetings in both the initial and post-award outreach and education periods but assert that the meetings should not be overly prescriptive, and that the municipality should be able to choose the variety and type of outreach and education that works for their municipality. MHET suggests that the Commission consider the times meetings are held, asserting that if meetings are only held in the evenings, then everyone is being excluded except for a specific part of the municipal population.

NRG comments that the addition of a postcard mailing is unnecessary, does not provide any additional information that is not already provided in the opt-out letter, will result in higher rates for customers, and could lead to a delay in the customer enrollment schedule.

Determination

The Commission agrees with CCAANY that establishing minimum outreach and education activity requirements based upon community size is just and valid, providing a logical basis for determining the number of events that should be performed in a municipality before receiving approval to move forward with the opt-out CCA program. Additionally, while the Commission does not agree that CCA Administrators have been discouraged from performing any type of outreach and education, the Commission clarifies what countable outreach and education forms entail. Thus, the Commission adopts the following municipal outreach and education minimum requirements to be completed by the CCA Administrator:

Municipality Size	**Minimum 60 day Initial Period Requirements**	**Minimum 30 day Post-Award Period Requirements**	**Minimum 30 day Opt-Out Period Requirements**
<10,000 Residents	2 Public Meetings 1 Information Session 4 Supplemental: 2 Electronic & 2 Physical	2 Public Meetings 1 Information Session 4 Supplemental: 2 Electronic & 2 Physical	1 Public Meeting 1 Information Session 4 Supplemental: 2 Electronic & 2 Physical
>10,000 Residents	2 Public Meetings 2 Information Sessions 8 Supplemental: 4 Electronic & 4 Physical	2 Public Meetings 2 Information Sessions 8 Supplemental: 4 Electronic & 4 Physical	1 Public Meeting 2 Information Sessions 8 Supplemental: 4 Electronic & 4 Physical

In addition to the minimum information required, Supplemental Items during opt-out periods are to include information for how customers can opt-out of the program and the opt-out date.

Further, the Commission adopts the following countable outreach and education forms, with their associated requirements, to be completed by the CCA Administrator.

Meeting Types:

1. Public Meeting: Hybrid (virtual and in-person) must be a live event that allows for a question-and-answer period, be recorded and placed on the program website, be properly noticed, provide all required information, and include a participant count.

   Information Session: Virtual only is allowed, it must be a live event that allows for a question-and-answer period, be recorded and placed on the program website, be properly noticed, provide all required information, and include a participant count.

Meeting Requirements:

1. Meeting notices must be provided in both physical and electronic formats, with multiple forms of each format, including, but not limited to, available municipality communications,[17] the CCA Administrators' municipality-specific CCA program webpage, newspapers, flyers, and radio announcements. Proof of such advertisement is required for verification. While encouraged as an additional option, CCA Administrator social media posts do not count as verifiable advertisements as the success of such postings hinges on community awareness of the CCA Administrator's social media page.
2. Advertising of the event must occur at least 10 days prior to the date of the event.

[17] Municipal Communications may include emails, digital newsletter, social media, and other channels that can reach all constituents; these municipality channels must already exist and not be created for the purpose of CCA outreach and education.

3. A record of attendance numbers must be kept and should not include attendees representing the CCA Administrator, the ESE, or the municipality.

   For all opt-out period informational meetings held after the approval of the Municipality Filing, details pertaining to the meetings, or a link to the municipality CCA program webpage that includes those details, should continue to be advertised on the opt-out notification letter.

Compliant supplemental types of outreach and education must include all the required minimum program information items occurring during opt-out periods, and will also need to include information for how customers can opt-out of the program and the opt-out date. Supplemental Types include:

1. Electronic:
   a. Digital Advertisements
   b. Television or Radio Coverage
   c. Municipal Communications such as emails, digital newsletter, social media, and other channels that can reach all constituents. Unlike CCA Program Rule 40, these municipality channels must already exist and allow for a cost-effective method for CCA Administrators to leverage existing municipal electronic outlets for information sharing.[18]

[18] CCA Program Rule 40 states that municipalities have the ability to inform and educate their constituents and can create their own materials to share with their constituents. These materials are not part of the opt-out program requirements, and the municipality is free to customize them however they would like. These items should not be paid for by the CCA program participants or somehow built into the administrative fee pricing related to the program. Any action the municipality chooses to take should not be tied to the CCA Administrator or the program for funding.

2. Physical:
    a. Posters/Flyers
    b. Newspaper Print Advertisements
    c. Municipal Communications such as printed newsletter[19]
    d. Additional mailing such as post card
    e. Insert in municipal tax or water bill
    f. Tabling event with flyer performed in the CCA municipality

In response to CCANNY's request, the Commission clarifies that while having office hours where a municipal resident can stop in and talk to someone about the program is encouraged, it is not outreach and education. It is not providing an action that is intended to reach a large number of municipal residents, such as an information session or newspaper advertisement.

The Commission has continuously emphasized the requirement that appropriate and effective outreach and education must be performed before customers are enrolled on an opt-out basis into a CCA program. In support of this, the Commission previously established minimum requirements, guidelines, templates, and CCA Program Rules to help facilitate program awareness and Administrator compliance. Accordingly, it is important to note that, to-date, municipalities have executed fixed-rate CCA contracts. The Commission determined within the CCA Modification Order that, in line with existing retail access rules, variable-rate products must offer guaranteed savings over

[19] Like available municipal electronic communications, printed municipal communications must already exist and allow for a cost-effective method for CCA Administrators to leverage existing municipal printed communications to share information about the CCA program.

the utility rate.[20] Although these types of contracts have historically not been executed with CCA programs, the Commission sees value in clarifying that if an ESCO is seeking to offer a variable rate product to a CCA program, that product would be subject to the guaranteed savings requirements identified in the UBPs.[21]

Accordingly, the Commission finds that an increase to the minimum outreach and education requirements is reasonable in order to ensure effective customer awareness. Notably, the minimum requirements discussed above are just that, the absolute minimum a CCA Administrator must demonstrate completing before seeking approval to move forward with opt-out enrollment.

The Commission cautions CCA Administrators from conducting only the minimum level of outreach and education and expects CCA Administrators will conduct what is best for the municipality, going beyond these minimum requirements to provide as many potential paths as possible to guarantee consumers are aware of their municipal CCA program. In essence, if a CCA Administrator believes a certain type of outreach is best for a given municipality, even if that type of outreach is not considered a countable item toward program compliance, a CCA Administrator is encouraged to perform these actions or items.

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[20] CCA Modification Order, p. 51.

[21] On March 26, 2024, Staff filed a proposal in Case 98-M-1343 to update the UBP in light of changes to General Business Law §349-d that change the requirements related to renewal of both variable and fixed rate contracts. Unless the Commission specifically excludes CCA programs from modification to the UBPs related to this, or any other UBP requirement, the changes would also apply to ESCOs serving CCA programs; see Case 98-M-1343, Retail Access Business Rules, Staff Proposal for Implementing Stronger Price Transparency for Customers (filed March 26, 2024).

Outreach and Education Material

The Staff Proposal recommended an expansion of the minimum information required to be included in the outreach and education material informing a customer how to read and comprehend their energy bill, to now include an example of bill impacts using the CCA contract pricing, including all pricing levels, in the post-award meetings. Additionally, this modification would only be required in instances where a verbal presentation is made, such as in-person meetings.

Comments

CCAANY appreciates Staff's recognition that billing information is best conveyed verbally in their comments but suggests that the customers need to have a monthly utility rate in order to compare the utility and CCA program rates. Since the CCA Modification Order disallowed use of the Power to Choose website, there is, currently, no third-party source to direct customers to see the current monthly utility rate. CCAANY asserts that the 2019 Retail Access Order would allow Staff to ask the utility to post monthly rates based upon the directive for maximizing the dissemination useful price-comparison information for customers, including but not limited to on-bill price comparisons of utility and ESCO price information.[22]

MHET agrees with this recommendation but points out that a discussion of the cost of renewable energy is not complete without a discussion about the economic cost of climate change, and that omitting this context would misinform the potential program participants.

[22] See Case 15-M-0127, In the Matter of Eligibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing (issued December 12, 2019).

Determination

The Commission recognizes that to conduct a month-to-month comparison between a CCA contracts' supply rate with the most current utility monthly rate, utilities would need to publicly post to their websites the default rates each month. Prior to further direction from the Commission requiring utilities to do such, the Commission declines to implement this recommendation. That said, the CCA Program Evaluation shall include the feasibility and cost effectiveness of requiring utilities to make such postings for the purpose of CCA programs. As to MHETs comment that CCA participants should be made aware of the economic costs of climate change, Administrators are certainly able to include such details in their outreach and education materials as information above and beyond the minimum requirements required by CCA Program Rules.

In recognition that bill information is best conveyed verbally, the Commission finds that the minimum information pertaining to how to read a bill shall only be required in instances where a verbal presentation is made, such as in-person meetings and information sessions.

Outreach and Education Gap

The Staff Proposal recommended that, in the instance when there has been a 6-month or more gap between the last verified outreach and education action and the time of the Municipality Filing, the CCA Administrator will be required to complete another full 90 day outreach and education period before the program will be eligible to go forward. This modification would replace the existing requirement that, in the instance when outreach and education was completed more than 6 months before the opt-out enrollment request, a new 60 day outreach and education period will be necessary before being approved to move forward.

Comments

CCAANY comments its appreciation of the clarified outreach and education requirement when there has been a six-month gap in outreach and education efforts but reiterates its belief that the 90 day outreach and education period should be split into a 60 day pre-contract award and a 30 day post-contract award.

MHET supports the requirement for a second outreach and education period if there has been a six-month gap but reiterates their belief that 60 days is a sufficient outreach and education period. Additionally, MHET recommends that the Commission investigate requirements related to the frequency of major outreach and education events, stating that an increase in the rate of outreach and education could increase community awareness and consent. Further, NRG asserts that the amount of time spent on outreach and education is not as important as the quality of the outreach and education provided and comments that by expanding the outreach and education period, customers are likely to forget the information they were provided about the program, therefore creating customer confusion around enrollment.

Determination

The Commission agrees with Staff and finds that a six-month gap is a lengthy period to pass without performance of community outreach and education. The Commission agrees with MHET that the rate and frequency of outreach and education events should increase community awareness, and as NRG commented, letting too much time pass between events could create customer confusion around enrollment. Thus, any program that has more than a 60 day gap between outreach and education events, beginning with the first publicly held outreach and education meeting, will be required to perform the full outreach and education period again. This requirement is for the full 90 day outreach and education period before submitting the Municipality Filing for approval. This will provide clarity to the CCA Administrators and stakeholders as to what is necessary to move the program forward during times where there has been a gap in outreach and education actions. This clarification will also address MHET's, NRG's, and Staff's concerns related to nonrecently performed outreach and education and, consequently, not providing the necessary level of community awareness that should exist before the program is allowed to move forward with opt-out enrollment.

Performance of Outreach and Education Actions

Staff proposed to modify the existing requirement that outreach and education actions must be performed by the CCA Administrator authorized in the Master Implementation Plan (MIP) with the new requirement that outreach and education actions must be performed by the CCA Administrator authorized in the MIP or their representative if the representative clearly identifies themselves as the CCA Administrator.

Comments

Commentors generally did not speak to this proposal; however, MHET voices support for the requirement that representatives must identify themselves as acting on behalf of the CCA Administrator.

Determination

The Commission understands that CCA Administrators may wish to employ outside companies to assist with its outreach and education; however, all CCA program materials and announcements, regardless of form, are required to clearly identify and state the municipality's CCA Administrator name and contact information. Program materials or presentations that include information about outside or affiliated parties may increase the potential for customer confusion around the CCA program, including who the CCA Administrator is. As such, the Commission modifies the requirement that outreach and education actions be performed by the CCA Administrator to allow for these actions to be performed by the CCA Administrator, or their representative, if and only if that company/consultant identifies themselves to customers and in any relevant materials as the CCA Administrator. The CCA Administrator, on behalf of their municipality, will remain the party responsible for ensuring that all outreach and education performed, whether by themselves or their representative, meets the minimum outreach and education requirements and the CCA Program Rules. In the event a CCA Administrator includes outreach and education in the Municipality Filing that indicates it was performed by a company/consultant other than the municipality's CCA Administrator, it will not be counted towards the CCA Administrator's required outreach and education actions.

<u>Outreach and Education Locations</u>

Currently, outreach and education must be conducted within the municipality that the program serves in order to comply with applicable CCA program requirements. Staff proposed allowing some flexibility to this rule for those unique occasions when public meetings are not able to be held within the municipality, such as when the municipality simply does not have a building where the public meeting could be held (<u>e.g.</u>, library, fire station, or municipal building). As proposed, CCA Administrators will be required to explain in detail, as part of their Municipality Filing, why they were unable to conduct meetings within the municipality. The Municipal Official will be responsible for acknowledging the notification as part of the Municipality Filing.[23]

Comments

CCAANY asserts this proposal is unnecessary oversight as Municipal Officials are involved in the scheduling of outreach and education events, and they would not agree to host events in locations inconsistent to their constituents. CCAANY's comments further argue that the municipality's available resources may not meet Staff's "unnecessarily strict locational requirements" and that a location requirement has no relationship to improved outreach and education.[24] CCAANY sites the CCA Modification Order as already clarifying that each municipality must have its own meetings.

MHET's comments support outreach and education actions to be conducted within the CCA program municipality and suggests that requiring these meetings to be held within a certain distance of the participating municipality's boundaries would accomplish the Commission's intent, as well as allow for exceptional situations where a municipal boundary may not represent the boundary of the community. MHET expresses concern about inefficiencies that may happen if multiple municipality meetings cannot satisfy municipal outreach and education requirements.

Determination

The Commission finds it concerning that there appears to be some opposition to either ensuring that potential participants of an opt-out program are provided local access to a meeting, or in the event a location within the municipality is

[23] Typically, the Municipal Official is the Mayor, Supervisor, or other official authorized to sign the opt-out letter and assume responsibility for CCA program contract pricing.

[24] CCAANY comments on Staff Proposal on pg. 4.

unavailable, that the CCA Administrator provide the Department with this information within the Municipality Filing with the Municipal Official's acknowledgment. Requiring the CCA Administrators to provide information as to why the locational requirement was not possible, as well as information pertaining to the alternative location, is a simple, straightforward request that provides the Department, and the public, with transparent information. Requiring the municipality, which is ultimately responsible for CCA program compliance with Commission requirements, to acknowledge the reason as to why the locational requirement cannot be met serves to integrate the municipality's knowledge and acceptance of such into CCA Program Rules compliance.

As for CCAANY's comment that the CCA Modification Order already clarified that each municipality must have its own meetings, the Commission agrees. Accordingly, the Commission restates that the context of this clarified rule was in relation to CCA Administrators having one outreach and educational event that included multiple municipalities, not in relation to allowing an outreach and education meeting be held outside of the municipal boundaries. Therefore, the Commission adopts the modified requirement that allows an outreach and education meeting to be held outside of the municipality, in the event the municipality does not have a building where the public meeting could be held. CCA Administrators will be required to provide the details of such in the Municipality Filing and include an acknowledgement from the Municipal Official.

CCA Administrator Websites

The Staff Proposal recommended that CCA Administrator website requirements be modified to mandate an outreach and education section on the program website.

Comments

MHET comments its willingness to comply with CCA Administrator website requirements but, apart from outreach and education recordings, they are unclear of the public benefit of including the other outreach and education items. While acknowledging the review burden for DPS Staff, MHET argues the primary role of the website is to inform the public of upcoming information, not to document the CCA program's history.

Determination

The adoption of the website requirement to include an outreach and education section on an Administrator's program website – for each municipality conducting outreach and education - will serve two primary purposes. First, it will allow the public to easily find scheduled outreach and education events and information for events that have been conducted within their community. Second, it will streamline the filing and review processes for both CCA Administrator's and Staff.

The Commission finds MHET's response questioning the public benefit of including all outreach and education on the website to be alarming. If a participating or potential customer cannot simply access valuable information pertaining to their municipality's program on the CCA Administrator's website, the Commission questions the public benefit the municipal program is offering its constituents. Without transparent information and program awareness, including an account of what is planned within the community and what has occurred to date within the community, the Administrator is missing one of the foundational principles of the State's CCA program - customer education and engagement. For that reason, the Commission is requiring CCA Administrators to include an outreach and education section on program websites. After the outreach and education event has occurred, the website shall be updated to include all CCA Administrator's outreach and education actions for each participating municipality, including those required for necessary minimum compliance as well as any additional actions, with verification of such reported in the Municipality Filing. Lastly, to ensure the website's information is in fact benefitting the public, such website shall be easy to find.

NYS Environmental Disclosure Program

The Staff Proposal suggested that the requirement for ESCOs to disclose the premium the customers would be charged to purchase a renewable product could be satisfied by the existing disclosure requirements for the comparison of the utility posted 12-month trailing average.[25] Additionally, the Staff Proposal offered that disclosure requirements for renewable product offerings could be satisfied through the disclosure that the customer would be paying a premium for the renewable product offering.

Comments

MHET supports the proposal and is appreciative of the desire to reduce customer confusion.

Determination

The Commission directs that the ESCO requirement to disclose the premium for renewable product offerings shall be satisfied with the comparison of the CCA product's rate to the utility posted 12-month trailing average and the disclosure that the customer would be paying a premium for the renewable product offering.

[25] See existing disclosure requirements here: Case 14-M-0224, Order Approving Joule Assets' Community Choice Aggregation Program with Modifications (issued March 16, 2018), p. 20; Case 14-M-0224, Order Approving Renewal of Sustainable Westchester Community Choice Aggregation Program (issued November 15, 2018), pp. 11 – 12.

Newly Eligible Opt-Out Letters

Staff proposed that the newly eligible opt-out letter continue to be approved as part of the Municipality Filing but that the Price to Compare information be updated prior to the mailing of the letters each month, such that the potential participant is furnished with the most up-to-date price comparison information at the time of enrollment. The CCA Administrators would need to e-file a copy of each Newly Eligible letter with the updated price to compare; this filing would not need approval.

Comments

MHET supports this proposal noting that the updated information is dependent on the availability of the historical utility information. NRG opposes this proposal stating that updating the letters with latest utility price to compare information would be challenging and require programming which will cost money. Additionally, NRG argues that if there are drastic rate changes the program can choose not to send newly eligible letters at that time.

Determination

The Commission agrees with the proposal that Newly Eligible opt-out letters should use the most recent 12-month trailing average Price to Compare, as posted on utility websites, and further clarifies that all opt-out letters, including the initial letter, should be updated with the most recent 12-month trailing average. This update will guarantee that customers receive current pricing information, thereby enabling them to make well-informed decisions regarding their participation in the CCA program. The Commission recognizes that updating the Price to Compare information prior to the mailing of the Newly Eligible letters each month is essential to maintaining transparency and consistency in the program's communication with potential participants.

In response to NRG's comments, the utility companies are already required to provide this information on their websites, and thus it would not be unduly burdensome for the Administrators to use the most up-to-date information.[26] Therefore, the Commission determines that all opt-out letters shall include the most recent 12-month trailing average Price to Compare, as posted on utility websites. The CCA Administrator will not need prior approval before mailing the updated Newly Eligible opt-out letters as they are approved as part of the Municipality Filing but a copy of the updated letter showing the current Price to Compare information, is required to be filed in Case 14-M-0224, prior to mailing.

Program/Contract Expiration

When a CCA program/contract is ending, the Staff Proposal recommends that, at a minimum, the CCA Administrator must mail one letter at least 30 days prior to the anticipated end date of the program/contract to the municipality and program participants. This notification must include:

- Notification that the contract/program is ending and the reason why.
- Plans for any future actions, if known, such as restarting the program at a later time or efforts to seek better pricing.
- Advisement that the participant will be returned to the utility for supply services after a specific date.
- Contact information for questions.

[26] See Case 15-M-0127, et al., ESCO Eligibility, Order adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019), pp. 67-68 and 110.

Comments

CCAANY disagrees with this requirement arguing that customers already receive a letter from the utility when they are returned to utility service and that this letter, based upon the CCA Modification Order, is specific to CCA. Also, CCAANY argues that there would be a cost associated with a letter that may not need to go out but would need to be included in the rate, therefore raising the rate for an administrative cost that may not be necessary.

MHET's comments support the proposed requirement for communication of program end dates, timelines, and future actions, stating that these program benchmarks are essential for program or contract transitions to be handled carefully. Additionally, they add that participating communities should be educated about this program/contract end letter during the initial outreach and education period and should not be only hearing about it at the end of a contract period.

NRG comments that this requirement is unnecessary, confusing, and costly. NRG argues that there is a possibility that a program is not expiring but instead renewing, and thus there would be a cost for the ESCO to have to send out such letters, even though the customers will already be receiving a switch letter from the utility. They assert that the program information is already spelled out for customers on the CCA website.

Determination

The Commission agrees with CCAANY that there is a CCA program specific customer letter that goes out to customers from the utility. However, that letter is to notify customers of their "switch" to the ESCO serving the CCA program, it is not a letter when a customer is being returned to the utility. While the CCA Framework Order waived the UBP requirements related to individual consent for enrollment of eligible CCA program participants,[27] the ESCOs are still required to comply with the requirements for when customers are being dropped by an ESCO. In the case of CCA, the municipality's ESA contract expires, and customers are returned to their utility - marking an end to the CCA program. In other CCA-related occurrences, a municipality's ESA contract can expire and a new contract with a different supplier begins. These requirements include notification about associated timeframes via letters that are required to be sent to ESCO customers being dropped, including those no longer participating in a CCA program.[28]

The Commission does not agree with CCAANY and NRG that providing this letter would increase program costs and therefore increase the program rate. As this notification is already a UBP requirement for ESCOs providing service, there is no reason why continuing to provide something that is already a requirement should impact the CCA program pricing. Regardless of whether the CCA program or contract is ending, and even when engaged in contract renewal with a different supplier, the customer must still be sent the UBP required notification. Any potential confusion should be dealt with, as indicated by MHET, by providing sufficient information during outreach and education events. The program participants should be aware of these letters before they receive them, especially if the municipality is going through a contract renewal as the CCA Administrators should be actively performing outreach and education before these letters are sent.

ESCOs serving CCA programs are still subject to UBP requirements, except for those requirements the Commission

[27] See Uniform Business Practices Sections 4(B)(1)-(3), 5(B)(1), 5(D)(4), and 5(K).

[28] UBP Section 5(H) (3-4), pg. 31.

exempted compliance with in its CCA Framework Order, specifically UBP Sections 4(B)(1)-(3), 5(B)(1), 5(D)(4), and 5(K).[29] The Commission has needed to provide clarification on UBP requirements as they apply to CCA programs, such as ESCO CCA product offerings having to comply with retail access market requirements for pricing and disclosures. Now, the Commission further clarifies that ESCOs serving CCA customers are not required to mail CCA customers' sales contracts or an ESCO Bill of Rights, as the ESCO customer is the municipality, not its constituents.

Within the CCA Modification Order, the Commission discussed that when a contract is 120 days from the date of expiration, the CCA Administrator shall file a letter with the Secretary advising of the intent of the municipalities that are part of the ESA.[30] This letter should list the names of the municipalities and include the plans for either seeking another contract, renewing the existing contract, or discontinuing in the program. This filing is meant to be a notification of intent and does not require approval. The Commission reminds Administrators that, in instances when a municipality's plan changes, an updated notification of intent is required to be filed with the Secretary to ensure full program transparency.

CCA Data Rules and Additional Opt-in Product Offerings

It continues to be the Commission's intention that when customers become actively engaged in their community's CCA program, their awareness of energy usage and clean energy opportunities could lead them to voluntarily elect to sign up for additional energy-related products and services that assist the State in meeting its clean energy goals. Once a CCA is

[29] CCA Framework Order, Ordering Clause 2, p. 50.

[30] CCA Modification Order, pp. 26-27.

formed after the opt-out process, a municipality interested in offering CCA participants other energy-related value-added services may do so through the ESCOs providing supply, through other Distributed Energy Resource (DER) providers, or both.[31] The Commission has continuously encouraged municipalities to design CCA programs that include the integration of DERs through the offer of opt-in programs, products, and services for CCA participants.

To date, there has been a limited number of value-added services reported to the Department since the Commission's adoption of the CCA program. In fact, there appears to be some confusion around the topic. To be clear, CCA contracts are not allowed to include terms that would restrict the installation or use of DERs or energy efficiency products by the municipality or CCA customers, and doing so violates CCA Program Rules and is a disservice to New Yorkers.[32] Consequently, the CCA Program Evaluation efforts shall investigate the barriers and reasons why CCA participants are not electing additional offerings.

The following section will lay out the data rules for the opt-out CCA supply program and will differentiate the regulation and oversight requirements for offerings outside the scope of the CCA supply program. These additional product offerings could include, but are not limited to, ESCO opt-in products,[33] CDG service, or services and/or customer contracts for on-site distributed generation, which are regulated by the UBP and the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS). These regulations, which include, but are not limited to, registration requirements,

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[31] CCA Framework Order, p. 34.

[32] CCA Framework Order, Appendix D, p. 9.

[33] These include products, services, or programs unrelated to commodity.

compliance filings, marketing standards, and customer disclosures, fall outside the scope of the CCA Program Rules. Still, the Commission sees value in clarifying the applicability of existing Commission requirements that would apply outside the administration of a CCA program, specifically the distinction between opt-out CCA supply and opt-in additional offerings. The Commission affirms that Administrators that offer opt-in products and services to CCA participants must comply with applicable UBP and UBP-DERS rules that govern the products and services the customer is electing to receive.

CCA Data Rules

There are three types of data sets required from the utilities in order to form a CCA program: (i) aggregated customer number and consumption (e.g., usage) data to support procurement by an ESCO; (ii) customer contact information to send opt-out letters; and (iii) detailed customer information for the purpose of enrolling each eligible customer who has not opted out of the program with the ESCO that was selected through a competitive procurement process. Hence, the Commission emphasizes that it is the utilities' responsibility to transfer this data, with the first two data sets (i and ii) to be sent directly to the Administrator and the third data set (iii) to be sent directly to the ESCO.[34]

Further, it was recently brought to the Department's attention that it has become a customary practice for CCA programs to hand over CCA participant data from the previous contract's ESCO supplier to the new ESCO supplier. In this scenario, when a new supplier wins the CCA contract bid, the data is sent from the previous supplier to the CCA Administrator, who then sends it to the new supplier for the purpose of mailing opt-out letters. After the completion of the 30 day opt-out period, the previous supplier sends customer identification numbers to the CCA Administrator, who then sends them to the new supplier for enrollment purposes. If this is in fact true, this practice is in direct violation of CCA Program Rules 42, 48, and 54.

Due to the scale of reported enrollment and billing issues previously discussed in this Order, as well as the customary practice of the handling of data described above, the Commission directs the CCA Program Evaluation to investigate the data quality, accuracy, and integrity of required CCA program

[34] CCA Program Rule 42 states that the utility shall transfer the aggregated customer and usage data within twenty days of a request from the CCA Administrator. CCA Program Rule 48 states that 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. CCA Program Rule 54 states that after the opt-out period has ended, the CCA Administrator or ESCO may submit a request to the utility for further data on the customers who have not opted-out consistent with existing Electronic Data Interchange (EDI) protocols. The utility shall transfer customer data based on the general standards for transfers of data to ESCOs through EDI, including usage and low-income status.

data, which is being transferred from the utility and, additionally, the exchange of data in accordance with CCA Program Rules.

Opt-Out Letter

In recognition of customers' data rights, the Staff Proposal suggested enhancing the notice about customer data sharing that is currently included in the opt-out letters to include notification that customer contact information may be used for the marketing of additional opt-in product offering options. Staff proposed that Administrators develop a website where customers can find additional information about customer data sharing and include options for any customer to opt-out of data sharing for marketing purposes. This modification would also require CCA Administrators to create a Data Privacy Rights process, consistent with current standards, that includes full disclosure to the customer of what data would be shared, for what purpose, for what length of time, and includes a means by which a customer can opt-out of their data being shared for these additional purposes and can additionally request the return/destruction of any data previously shared.

Comments

CCAANY supports the proposal, acknowledging that it obtains customer consent before using customer contact information for opt-in offerings, and requests an adequate amount of time to include this functionality within their systems. The Joint Utilities[35] comment that there should be

[35] The Joint Utilities include Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation.

clarification and specificity with respect to what the term "opt-out" refers to, as they believe it may create confusion for customers when applied in the context of data sharing and request that it only be used in relation to CCA program participation only. Further, the Joint Utilities request that the CCA Administrators and the ESCO be required to inform customers of what an opt-out letter will and will not accomplish and recommend that the term "opt-out" be replaced with alternative language such as "choose not to participate in data sharing for additional CCA program options" to prevent customer confusion.

MHET supports the customers right to opt-out of data sharing in an easy manner but are concerned about the proposal recommendation because it does not provide sufficient scope or background information for understanding and could confuse and discourage potential program participants. MHET instead recommends that the data sharing and permissions be included as part of the CCA Administrator website disclosures, asserting that this is the best place for all data privacy and rights information. Additionally, MHET recommends that CCA Administrators proactively discuss these issues during outreach and education events where there is an opportunity for questions and answers from the public. MHET also suggests that CCA Administrators make clear that customer data will never be shared with businesses or government entities, except as required by law.

Determination

The Commission agrees with the proposal to include a notification in the opt-out letters that customer contact information may be used for additional opt-in product offerings. This notice should inform customers about the procedural steps necessary to remove their contact information from the CCA participant list if they so choose to not receive additional opt-in product offering communications for marketing purposes. The Commission expects that this additional transparency will empower customers to make informed decisions about their participation in the program and the use of their contact information. To ensure the right balance between customer data rights and the opportunity for additional opt-in offerings, the Commission finds it important that the CCA Administrator, the municipality, or the supplying ESCO effectively communicates with program participants throughout the span of the CCA program, especially when offering additional opt-in services. To provide an additional level of CCA participant awareness moving forward, all communications to CCA participants should disclose the reason why the CCA participant is receiving communication of an additional opt-in product for marketing purposes. Specifically, CCA participant communications should clearly state the fact that the customer is receiving such communication because they are currently participation in their municipal opt-out CCA supply program.

In response to CCAANY's comments, the Commission acknowledges the importance of providing sufficient time for CCA Administrators to implement the necessary system changes to accommodate this new functionality. The Commission has considered the concerns raised by the Joint Utilities regarding the potential confusion surrounding the term “opt-out” when applied to data sharing and agrees that clarity is essential to avoid customer confusion. Therefore, the term “opt-out” in the context of data sharing should be replaced with more specific language, such as “choose not to receive communications for the marketing of additional products and services.” This change will help ensure that customers clearly understand their options and the implications of their choices. The Commission also agrees with MHET’s position that data sharing and permissions should be clearly disclosed on the CCA Administrator's website, where customers can easily access and review this information.

In addition, the Commission encourages CCA Administrators to proactively discuss data rights during outreach and education events where there is an opportunity for questions and answers from the public. Therefore, the Commission directs Staff to modify the opt-out letter template to account for the changes described above. Additionally, CCA Administrators are required to create a Data Privacy Rights process within 60 days of the effective date of this Order that includes full disclosure of what data will be shared, for what purpose, for what length of time, and provides a means for customers to opt-out of data sharing for these additional purposes. This process must also include an option for customers to request the return or destruction of any previously consented data shared that is not necessary for CCA supply program administration. The Commission implements these measures to enhance customer trust and ensure that data sharing within the CCA program is conducted transparently and responsibly.

Utility Account Numbers

The Staff Proposal clarified the existing requirement prohibiting utilities from providing CCA Administrators with customer utility account numbers, and also, that such account numbers should not be utilized for facilitation of a CCA program, nor for any CCA purpose. Accordingly, utility account numbers would not be required for any CCA program supply product offering enrollment, consistent with the existing requirement for the customer contact information data sets for opt-out enrollment. This would also apply to customers affirmatively opting into a value-added offering. Stakeholder feedback was also sought on how these opt-in enrollments could best be effectuated.

Comments

CCAANY argues that there is no order prohibiting CCA Administrators from having customer account numbers, instead stating the CCA Data Security Agreement (DSA) allows CCA Administrators to have customer account numbers and asserting they spend tens of thousands of dollars each year to meet the requirements of the DSA. CCAANY further alleges that Staff appears to be misinterpreting the Municipal Electric and Gas Alliance (MEGA) Order and CCA DSA.[36] CCAANY suggests that the Commission should be requiring Administrators to request account numbers from CCA program participants who may be calling to change product offerings, specifically to those with higher rates.

The Joint Utilities support this proposal but seek clarification that account numbers should continue to be used for some CCA opt-in program enrollments such as CDG and that such data should be shared only with CDG hosts, developers, and relevant ESCOs in a manner consistent with how CDG enrollment data are currently shared today. The Joint Utilities comment their understanding of how a CCA Administrator may serve to facilitate customer acquisition for CDG, yet they affirm the CDG enrollment process should remain unchanged.

MHET believes the question of access to utility account numbers is beyond the scope of CCA Administration but recognizes the need to facilitate efficient means of sharing customer information. MHET supports the assignment and use of

[36] See Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Program, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017).

Proxy IDs and suggest they are used for more than CCA programs, recommending they stay with that customer even when they move residences within New York State.

NRG comments that the Commission should revisit its view on sharing the utility customer account numbers as New York is the only state that prohibits the sharing of this information until after the CCA Administrator receives Staff approval and recommends the account number be provided with the initial data set. NRG asserts that waiting on Staff approval, which has no specified timeframe for review, has led to past programs almost missing mailing deadlines. Further, NRG states that by providing the details for each customer in advance, ESCOs would have the clarity needed for providing more accurate pricing at the time of the RFP. NRG requests that either the utility customer account numbers be shared with the first data set or that Staff be required to review and approve filings within 15 days.

Determination

The Commission agrees with Staff's interpretation regarding the existing requirement prohibiting utilities from providing CCA Administrators with customer utility account numbers for the purposes of mailing opt-out notification letters. However, the Commission continues to recognize the need for account numbers to facilitate the enrollment processes. As such, after the opt-out period has ended, the CCA Administrator or 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 then transfer customer data based on the general standards for transfers of data to ESCOs through EDI.[37] Accordingly, the supplying ESCO

[37] CCA Framework Order, Appendix D, p. 12.

shall not transfer customer account numbers back to the CCA Administrator without proof of explicit customer consent that the individual account holder has agreed to have their account number shared with the CCA Administrator by the ESCO and for what purposes. To clarify, customers have the right to affirmatively share their account number with CCA Administrators for the purposes of opting into additional opt-in services, switching commodity offerings and/or opting out of the program, in accordance with the provisions discussed within the CCA DSA, UBP and/or UBP-DERS.

In response to NRG's request that the Commission revisit its view on sharing customer account numbers earlier in the process for the purpose of more accurate pricing at the time of the RFP, the Commission reminds NRG that the accuracy needed for RFP pricing depends on the completion of the opt-out process. Until customers have had the opportunity to opt-out of the program, account numbers will remain with the utility until those customers become program participants.

To address NRG's concern tied to almost missing mailing deadlines as Staff's review timeframe is not specified, the Commission recognizes the need for certainty as it relates to the timing of program rollout and ESA contract start dates. Thus, a Staff letter shall be filed in the Document Matter Management (DMM) system either approving or rejecting the Municipality Filing, based on whether the filing complies with Commission requirements, within 15 business days from the Municipality Filing's submission date. Each Administrator is permitted to file up to three Municipality Filings per day.

Municipality Requirements

The CCA Framework Order articulated the necessary program design principles and standards that municipalities must apply in developing and implementing CCA programs for their constituents.[38] While the CCA implementation process 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 remains 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.[39] The following sections discuss the acknowledgment and attestation of program requirements that must occur between the CCA Administrator, the participating municipality, and the Department. These attestations will serve the purpose for ensuring that municipalities - who decide to move forward with an opt-out CCA supply product – are fully aware of their legal and program requirements.

Product Pricing

When there is a product offering with pricing higher than the utility posted 12-month trailing average, Staff proposed that the municipality will need to affirmatively acknowledge, in the Municipality Filing, the pricing differences between the CCA program and the distribution utility, as well as indicating their understanding of the potential bill impacts that would be experienced as CCA program participants. The Staff Proposal also sought comments on the feasibility of a notification from the municipality disclosing the pricing disparity, and what form it could take.

Comments

CCAANY asserts that it is condescending for DPS to request that municipalities affirm and acknowledge the contract pricing differences as this suggests municipalities are signing

[38] CCA Framework Order, p. 3.

[39] CCA Framework Order, p. 23.

CCA contracts without understanding what they mean. CCAANY requests data to support the need for the adoption of what is, in its opinion, a patronizing requirement. Requiring municipal officials to sign this appears to create a legal liability on the part of the municipality and sends a message that DPS does not support municipal leadership, CCAANY comments. CCAANY also strongly disagrees with a municipality letter advising of the pricing differences because of the taxpayer cost to do so and questions the relevance of the 12-month trailing average as they do not believe it is valuable or helpful metric for consumer understanding.

While MHET supports the proposal for municipality pricing acknowledgement through the Municipality Filing, they do not support separate communication forms and instead recommend continuing with the existing framework of opt-out letters and Administrator websites.

NRG asserts that neither the CCA Administrators nor the municipalities have the technical means and appetite to do mass customer mailings and that the ESCO, in most instances, is the one managing these mailings. NRG comments that any additional mailing materials required will increase the price customers pay, is duplicative to the opt-out letter, and provides little to no value.

Determination

CCAANY’s comments incorrectly assume the concern is with municipalities instead of with the need to ensure that municipal officials thoroughly understand their roles and options. Ultimately, the CCA Program Rules hold the municipality responsible for the compliance of legal and program requirements, and as such it is correct in practice that municipalities affirm their understanding that the pricing is what it is and, further, confirm that their constituents have been properly informed before receiving an opt-out notification letter. It is concerning that CCAANY seems to be more troubled about a municipality signaling its understanding of, and agreement to, the CCA program pricing differences than it seems to be of the potential program participants being properly educated about how their billing will most likely be higher than if they remain a utility customer, at least based upon recent contract rates. Customer awareness is the foundation of CCA programs, and the Commission finds municipal awareness and agreement surrounding CCA program pricing to be supportive of that goal.

Hence, The Commission directs Staff to update the Municipality Filing template to include municipal attestation to affirmatively acknowledge ESA contract rates when those rates are higher than the utility 12-month trailing average. As previously discussed, the template update is required to identify what the 12-month trailing average was at the time of ESA execution for the purposes of complying with CCA Program Rule 71.[40] The attestation shall include both the 12-month trailing average at the time of ESA signing, as well as the 12-month trailing average at the time of Municipality Filing submission.

Municipality Bill of Rights

The Staff Proposal advised the adoption of a uniform Municipality Bill of Rights to ensure that the municipality is aware of the rights and responsibilities of all parties. It would be included in the Municipality Filing and the

[40] As CCA Program Rule 71 states, fixed-rate products shall be limited to a price no greater than 5% above the trailing 12-month average utility supply rate, and variable-rate products must guarantee a savings compared to what the customer would pay as a full-service utility customer.

municipality would be required to sign the document confirming its understanding.

Comments

CCAANY comments that this proposal is why the Department needs to directly engage with municipalities as they assert requiring a Municipal Bill of Rights is patronizing and creates ambiguity and conflict between itself and other contracts signed by the municipality. CCAANY further argues that when beginning a CCA program the municipalities may be entitled to certain rights enumerated in the Bill of Rights, but that they may lose these rights over time due to other contracts. CCAANY offers the following examples: the municipal contract may prohibit the municipality from signing with another CCA Administrator for a certain timeframe and that the municipality Memorandum of Understanding (MOU) may include a requirement for the municipality to sign the ESA if the price is below the price not to exceed, therefore the municipality cannot decline to enter into the ESA.

MHET comments that the Bill of Rights does no harm and may help ensure some municipalities, especially small communities, are made aware of the minimum requirements. MHET also recommends that the Bill of Rights include the benefits and potential role of CCAs in assisting municipalities to apply for state grants and improve their constituent’s energy affordability and their capacity to take responsible action in response to climate change.

Determination

After considering the proposal and comments received, the Commission directs Staff to revise the proposed "Municipality Bill of Rights" and rename it the "Municipal Attestation of Program Requirements." This document will serve as a resource to inform municipalities about their legal CCA program requirements and ensure, through an attestation, that municipalities are aware of their legal requirements and program rights. In accordance, the Municipal Attestation will include provisions which are intended to remind the municipality that they are 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.[41]

Further, the Municipal Attestation will include actions that municipalities are encouraged to take to strengthen their energy independence and support the State’s clean energy goals.[42] Concerningly, CCAANY’s comments seem to indicate that there may be contracts that prohibit a municipality from signing with other CCA Administrators and that they cannot decline to enter an ESA if it meets the initially agreed upon terms. The Commission finds these types of provisions very concerning; the CCA Framework Order was clear that CCA contracts shall not include terms that would restrict the installation or use of DERs or energy efficiency products by the municipality or CCA customers, or otherwise penalize the municipality or customers for reductions in energy usage.[43] Further, CCA programs are not limited to contracting with only one ESCO, and municipalities are encouraged to consider whether agreements with more than one ESCO offering different products or benefits, or with DERs and energy efficiency providers in addition to one or more ESCOs, could support their development of a holistic community energy initiative.

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[41] CCA Framework Order, p. 23.

[42] Case 14-M-0224, CCA Program Rules (filed March 20, 2023), pp. 65-68.

[43] CCA Framework Order, p. 34.

The Commission finds that restricting the ability for a municipality to use another Administrator or third party directly limits the Commission's intended vision of CCA. Therefore, the CCA Program Evaluation shall investigate the terms and provisions of ESAs and, further, the evaluation process is required to seek input and feedback from both previous and current participating CCA municipalities. Until the evaluation efforts are conducted and the CCA Evaluation Report is filed, the Municipal Attestation of Program Requirements will serve as a resource to ensure municipalities fully understand their legal and program requirements and their options to support the State's clean energy goals. The items listed within Staff's proposed Municipality Bill of Rights shall be included as part of the Municipality Filing. Staff is also required to expand upon these items and include existing CCA Programs Rules intended to benefit communities, such as, but not limited to, a rule establishing that CCA contracts shall not include terms that would restrict the installation or use of DERs or energy efficiency products by the municipality or CCA customers.

CONCLUSION

The Commission is committed to ensuring that the opt-out CCA program serves the public interest of mass market customers in New York State. Considering the volatility in the State's energy market, particularly concerning the current prices of RECs, the Commission is requiring a thorough and comprehensive evaluation of the CCA program. This evaluation aims to assess the benefits and effectiveness of the program's policies and objectives. The CCA Program Evaluation will involve an in-depth analysis of the program's costs and benefits, including the effectiveness of the program in contributing toward achievement of the State's renewable energy targets as outlined in the CLCPA. Additionally, the evaluation will explore the reasons behind the lack of participation in additional opt-in offerings, as well as the quality, accuracy, integrity, and exchange of necessary CCA program data. Moreover, the evaluation will examine the terms and conditions of ESAs and will collaborate closely with municipalities to gather insights from their CCA experiences thus far. The final report will present recommendations aimed at enhancing program benefits, potentially discontinuing the program, or suggesting new directions that align with the public interest.

In the short term, the enhanced outreach and educational requirements established by this Order are expected to raise awareness and transparency regarding the opt-out program for municipalities and potential participants, prior to the CCA opt-out enrollment process. Ultimately, the conclusions drawn from the CCA Program Evaluation Report will provide the Commission with recommendations to address the future trajectory of CCA programs in New York. The Commission remains attentive in monitoring the program and its marketing efforts, emphasizing that Administrators are responsible to represent the program accurately.

The Commission orders:

1. Department of Public Service Staff is directed to update the applicable templates and Community Choice Aggregation Program Rules, consistent with the discussion in the body of this Order, within 30 days of the effective date of this Order.

2. The Commission directs Department of Public Service Staff to work with the New York State Energy Research and Development Authority to develop a Request for Proposal solicitation to obtain a third-party consultant which shall

conduct an extensive program evaluation consistent with the discussion in the body of this Order.

3. Community Choice Aggregation Administrators shall, within 60 days of the effective date of this Order, create a Data Privacy Rights process, consistent with the discussion in the body of this Order, and shall submit a letter to the Secretary confirming completion.

4. 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 three days prior to the affected deadline.

5. This proceeding is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary