

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 15, 2018

COMMISSIONERS PRESENT:

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

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

CASE 14-M-0564 - Petition of Sustainable Westchester for  
Expedited Approval for the Implementation of a  
Pilot Community Choice Aggregation Program  
within the County of Westchester.

ORDER APPROVING RENEWAL OF SUSTAINABLE WESTCHESTER  
COMMUNITY CHOICE AGGREGATION PROGRAM

(Issued and Effective November 15, 2018)

BY THE COMMISSION:

INTRODUCTION

On December 15, 2014, the Public Service Commission (Commission) opened a proceeding to consider the authorization of Community Choice Aggregation (CCA) in New York.<sup>1</sup> CCA programs support the Reforming the Energy Vision (REV) initiative and aim to increase consumer choice and engagement in local energy planning and deployment of Distributed Energy Resources (DERs). In a CCA program, one or more municipalities aggregate the load

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<sup>1</sup> Case 14-M-0224, Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (issued December 15, 2014) (CCA Initiation Order).

of their residents and small businesses on an opt-out basis and procure energy, and potentially DER services, on their behalf.

On February 26, 2015, the Commission approved, in part, a petition by Sustainable Westchester, Inc. (SW) to implement a pilot Community Choice Aggregation (CCA) program within Westchester County.<sup>2</sup> The SW Pilot Order includes requirements for the establishment of the pilot and also states that any generic decisions made in the CCA proceeding would be extended to the pilot.

On April 21, 2016, the Commission authorized the establishment of generic municipal CCA programs statewide and set forth the framework for those programs.<sup>3</sup> The CCA Framework Order instructed interested municipalities, on their own or through their selected CCA Administrator, to file Implementation Plans and related documents for Commission approval to initiate a CCA program.

The pilot program approved in the SW Pilot Order, also known as Westchester Power, was officially launched in April 2016. SW responded to the CCA Framework Order by taking the necessary steps to meet the expanded requirements outlined in that Order.<sup>4</sup> Since that time, SW has filed certifications of municipal authorization and proof of education and outreach for each municipality that participates in Westchester Power.

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<sup>2</sup> Case 14-M-0564, Sustainable Westchester - Community Choice Aggregation, Order Granting Petition in Part (issued February 26, 2015) (SW Pilot Order).

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

<sup>4</sup> Appendix D to the CCA Framework Order provides a summary of the CCA Rules required to establish and implement a CCA program.

With the pilot program contracts nearing expiration, and as required under the governing CCA Rules, SW filed a petition on August 1, 2018 to reauthorize the CCA program under a Master Implementation Plan, which includes updates to the pilot program and plans for soliciting new supply contracts for both Consolidated Edison Company of New York, Inc. (Con Edison) and New York State Electric & Gas Corporation (NYSEG) territories, as well as a generic Data Protection Plan (the Petition). This Order approves SW's Westchester Power CCA Program Master Implementation Plan and approves the Data Protection Plan, consistent with the requirements for CCA Data Security Agreements (DSA) established in the MEGA Order.<sup>5</sup>

#### BACKGROUND

CCA programs provide municipalities with the opportunity to aggregate electric and/or gas supply on behalf of their residents and small businesses on an opt-out basis. In the CCA Framework Order, the Commission recognized that CCA offers residential and small non-residential customers an opportunity to receive more favorable energy supply terms through the bargaining power that aggregation provides, the expertise provided by municipal or consultant experts, and the competitive public process for choosing a supplier.<sup>6</sup>

The CCA Framework Order requires that one or more municipalities, or their designee, in the role of a CCA Administrator, file an Implementation Plan and data protection plan for Commission approval, and submit certifications of local

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<sup>5</sup> Case 16-M-0015, et al., Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation Pilot Program, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017) (MEGA Order).

<sup>6</sup> CCA Framework Order, pp. 1-2.

authorization, before requesting data from a utility, soliciting proposals from ESCOs, or beginning operation of a CCA program.<sup>7</sup>

The CCA Framework Order requires that the Implementation Plan include: (a) a description of the program and its goals, including plans for value-added services; (b) a public outreach plan, including multiple forms of outreach and engagement over a period of no less than two months; (c) drafts of written communications with its residents, including opt-out letters; (d) contact information for a CCA liaison to respond to questions or concerns by potential CCA customers; and, (e) identification of at least one local official or agency in each municipality that residents of that municipality may contact with questions or comments. The CCA Administrator is also required to file updates and supplements to the Implementation Plan as appropriate, including final versions of customer opt-out letters that provide details on program contracts. Furthermore, an updated Implementation Plan must be submitted for Commission consideration at least 120 days prior to the expiration of any CCA supply contract, in order to identify plans for soliciting a new contract, negotiating an extension, or ending the CCA program.<sup>8</sup>

A CCA Administrator is also required to file a Data Protection Plan that ensures CCA customers will receive at least the same level of consumer protections as currently provided by utilities and ESCOs. The Data Protection Plan must specifically detail data security protocols and restrictions to prevent the sale of data or use of data for inappropriate purposes.<sup>9</sup>

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<sup>7</sup> CCA Framework Order, p. 51 and Appendix D, p. 5.

<sup>8</sup> CCA Framework Order, Appendix D, p. 5.

<sup>9</sup> CCA Framework Order, p. 51 and Appendix D, pp. 5-6.

In addition, certifications of municipal authorization must be filed to demonstrate that each municipality in the CCA has exercised its Municipal Home Rule Law authority by enacting a local law, after holding a public hearing on notice, giving itself the requisite legal authority to act as an aggregator or broker for the sale of energy and other services to residents.<sup>10</sup> Once these filings are approved by the Commission, the CCA Framework Order requires each utility serving customers in a municipality joining the CCA Program to provide aggregated and customer-specific data to municipalities, municipal contractors, including CCA Administrators, and ESCOs, under the terms and timeframes described in the CCA Framework Order.<sup>11</sup>

#### THE PETITION

SW explains that it is a collaboration of Westchester County local governments that empowers municipal leaders, concerned citizens, businesses, and local organizations to partner in the development of sustainability initiatives and share tools, resources, and incentives for healthy, vibrant, and attractive communities now and in the future. SW focuses on five primary areas, including: energy; transportation and land use; waste management and materials; food; and, water. Its energy initiative includes programs such as the Westchester Power CCA Program (Westchester Power or the Program).<sup>12</sup> SW reports that, as of July 2018, the Program has approximately 100,000 participants, 70,000 of which are in its Green Supply option, in 21 municipalities. SW explains that the objectives of the Program include: the reduction of greenhouse gas

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<sup>10</sup> CCA Framework Order, p. 43 and Appendix D, p. 6.

<sup>11</sup> CCA Framework Order, pp. 42-44 and Appendix D, pp. 10-11.

<sup>12</sup> <https://sustainablewestchester.org/#>

emissions; a decline in energy usage in buildings; increase in electricity sourcing from renewable resources; promotion of DERs; and, the provision of safe and convenient energy choices and increased access to and participation in enhanced DER and efficiency opportunities. SW also states it has achieved Certified Green Business status under the Green Business Partnership, and as such, all SW program operations must adhere to comprehensive environmental policies that are designed to minimize the environmental impact of the organization.

Accompanying its request for Commission authorization to continue the CCA program once the current contracts expire, SW filed an updated Master Implementation Plan (Plan), as well as a supplemental appendix containing updated supply contract information, detailed outreach and education specific to each participating municipality, and a generic opt-out letter, as well as a Data Protection Plan (DPP). The DPP describes how SW and Westchester Power will ensure protection of data received in the course of the CCA program, including data security protocols and restrictions to the sale or other inappropriate use of that data.

#### The Plan

SW's Plan, filed on August 1, 2018, and updated and supplemented with Appendix A on October 31, 2018, provides an overview of the program, including details of its goals and value-added services; planned education and public outreach, as well as education and outreach that has already been completed; examples of the opt-out letters and frequently asked questions (FAQs); and, information specific to the Con Edison territory contract renewal. The Program has been organized around three core ideals, specifically: advancing REV goals; achieving and/or increasing cost savings; and, increasing access to and participation in energy sourcing decision-making. SW states

that the structure of CCA programs serves as an excellent vehicle for achieving its goals and that it intends to expand positive environmental and economic impacts through its core ideals.

Westchester Power gives participating municipalities the option of choosing either a Basic Supply or Green Supply default option, with the individual Program customers having the ability to choose either supply option, regardless of what the municipality chose as its default product.

The Plan explains that a community solar option is available to Program participants, though not part of the Program, is available as an opt-up<sup>13</sup> option. SW notes that before adding an opt-out community solar component, it will file an updated Implementation Plan for Commission approval. SW also states that it will continue to explore demand response opt-in enhancements for Program participants and that it recently had a solar and battery storage project approved by NYSERDA, which could provide a model for incorporation into future opt-up offerings. SW also discusses the opportunities for advancing sustainability goals that have been created between the Program and other SW offerings such as electric vehicle discounts, Heat Smart Westchester, and Solarize Westchester.

SW's Plan also includes operational details of the Program and SW's roles and responsibilities as the CCA Administrator, Program Organizer, and CCA Liaison. These operational details include staff and operations; data security and technology infrastructure; timelines; and education and outreach. SW will be supplementing its Plan with a new appendix for each CCA program created. Appendix A (Con Ed Territory) has

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<sup>13</sup> The Plan describes opt-in programs available to Westchester Power participants that allow those participants to receive additional clean energy or DERs as "opt-up."

been submitted; SW states that Appendix B (NYSEG Territory) will be filed at least 120 days prior to the April 30, 2019 contract expiration. These appendices are intended to be dynamic documents that will be updated and filed with the as new municipalities join the CCA Program and are added to an existing or new CCA Program.

Appendix A

Appendix A, filed on October 31, 2018, includes contract renewal information; a listing of participating municipalities; outreach and education performed in each municipality; municipal contact information; and generic opt-out letters and FAQs in English and Spanish.

Data Protection Plan

SW's updated DPP, filed on August 30, 2018, states that as the CCA Administrator it will ensure that CCA Program Data,<sup>14</sup> as well as all personally identifiable information, regardless of source, will be treated with the same level of protection as currently provided by utilities and ESCOs. It states that aggregated anonymized data will be shared with municipalities and prospective suppliers, and that customer contact information for mailing of opt-out notices and enrollment data will be used by the CCA administrator. SW asserts that all transfers of files among or between itself and/or CCA Program Stakeholders<sup>15</sup> will be performed by secure file transfer protocol (FTP), secure download portal, or via file encryption.

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<sup>14</sup> CCA Program Data is defined by SW as anonymized and customer-specific data. DPP, p.3.

<sup>15</sup> CCA Program Stakeholders are defined by SW as participating municipalities and the CCA supplier. DPP, p.5.



Municipal Authorizations

For each municipality participating in Westchester Power, a copy of the signed local law authorizing establishment of the CCA program was submitted as each municipality was added to the Program. The public outreach plan that ensued in each municipality prior to enactment of the local law was also provided.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on August 22, 2018 [SAPA No. 14-M-0224SP17]. The time for submission of comments pursuant to the Notice expired on October 22, 2018. No comments were submitted in response to the Notice.

LEGAL AUTHORITY

As explained in the CCA Framework Order, the Commission's legal authority to authorize and regulate CCA programs stems from the Commission's jurisdiction over gas and electric corporations, including both the utilities and ESCOs; the provision of gas and electric service; and the sale of gas and electricity.

Section 5(1) of the PSL grants the Commission jurisdiction and supervision over the sale or distribution of gas and electricity. Section 66(1) extends general supervision to gas corporations and electric corporations having authority to maintain infrastructure for the "purpose of furnishing or distributing gas or of furnishing or transmitting electricity" such that the Commission may direct terms under which ESCOs will be provided retail access to distribution systems and to customer data. Pursuant to PSL Section 66(2), the Commission

may "examine or investigate the methods employed by . . . corporations . . . in manufacturing, distributing, and supplying gas or electricity," as well as "order such reasonable improvements as will best promote the public interest . . . and protect those using gas or electricity."

Accordingly, the Commission has the jurisdiction over the gas utilities, electric utilities, and ESCOs affected by this Order to require them to comply with the requirements outlined herein. Furthermore, the Commission can exercise oversight of CCA programs, including setting practices for the establishment and operation of those programs, by conditioning the ability of the CCA Administrator and the ESCO to receive data and enroll customers on compliance with Commission directives.

#### DISCUSSION AND CONCLUSION

The CCA Framework Order provided the model framework to guide the creation and operation of CCA programs in New York. As each new CCA program has been reviewed by the Commission, the framework has been clarified and refined. SW's Plan and DPP are consistent with the framework, as refined by subsequent orders, and are therefore approved. SW may add additional municipalities or additional CCA programs based on the Plan by submitting revised or additional program appendices.

#### Opt-Out Community Solar

The CCA Framework Order encouraged the development of CCA programs that included integration of DERs, procurement of clean energy, provided value to the customers, and further evolved the utility business model and earnings opportunities as envisioned by REV. The integration of an opt-out community solar program has the potential to create meaningful benefits to mass market customers, as well as support local and State clean

energy goals. Though SW is not creating such a program currently, if it chooses to add an opt-out community solar component to the Program in the future, it must file an Implementation Plan consistent with the requirements outlined in the Joule Order,<sup>16</sup> as well as any other applicable orders, for Commission review and approval.

Additional Outreach for Contract Renewal

SW is approaching the beginning of a new supply contract and a new opt-out period. Ensuring that residents have an opportunity to seek additional information and become well-informed regarding the details of the program's rate before deciding whether to opt-out is just as important at the renewal period as it is during the initial enrollment. Therefore, at least one additional meeting must be held in each municipality after an ESCO is selected and prior to opt-out letters being mailed to residents. SW must also submit documentation of these meetings as a compliance filing.

Green Energy

The Program supply contracts, both current and upcoming, include a Green supply option, which can help achieve New York State's clean energy goals. When the current contracts were entered, the Commission had not yet provided requirements for offering a green energy product in the context of CCA. However, such requirements were established in the Joule Order.

In the Joule Order, the Commission specified that green energy must be generated by biomass, biogas, hydropower, solar energy, or wind energy and deliver in New York State, as defined and subject to the environmental attributes and delivery rules of the Commission's Environmental Disclosure Program. In

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<sup>16</sup> Case 14-M-0224, et al., Community Choice Aggregation, Order Approving Joule Assets' Community Choice Aggregation Program with Modifications (issued March 16, 2018) (Joule Order).

addition, ESCOs selling green products are required to disclose to customers the premium the customer will be charged for the purchase of the green product separate from the underlying commodity charge, and ESCOs providing green energy in the context of CCA must maintain auditable New-York-specific records to demonstrate that such customers are receiving green energy compliant with the environmental attributes and delivery rules of the Commission's Environmental Disclosure Program. The Commission also cautioned that failure to maintain such auditable New York specific records or to allow access to such records by Department of Public Service Staff or its designee would be grounds for disqualifying the ESCO or its affiliates from using the utility distribution systems to provide any services to any customers in New York State.<sup>17</sup> SW will need to ensure that the Green supply option in its Program is in compliance with the requirements that have been established.

The Commission orders:

1. Sustainable Westchester, Inc. is authorized to continue its Community Choice Aggregation Program, consistent with the discussion in the body of this Order, and the terms and conditions contained herein.

2. Sustainable Westchester, Inc. must hold at least one additional public outreach meeting in each municipality after selecting an Energy Service Company and prior to opt-out letters being mailed to residents and must make a compliance filing or filings prior to mailing the opt-out letters demonstrating that such meetings were held.

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<sup>17</sup> Joule Order, pp. 20-21.

3. Sustainable Westchester, Inc. shall be permitted to add municipalities to its existing Community Choice Aggregation program or create new programs, provided it files certifications of each local authorization for Community Choice Aggregation formation from each municipality and supplements to the existing Plan appendices, or submits a new appendix, demonstrating that outreach and education consistent with the Master Implementation Plan and applicable Commission Orders, including but not limited to, the Community Choice Aggregation Framework Order, the MEGA Order, the Order Approving Community Choice Aggregation Programs with Modifications issued January 18, 2018 in Case 14-m-0224 (Good Energy) Order, the Joule Order, and this Order was conducted in each municipality.

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 one day prior to the affected deadline.

5. These proceedings shall be continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary