**STATE OF NEW YORK**
**PUBLIC SERVICE COMMISSION**

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| **Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs** | ) | **Case 14-M-0224** |

**REQUEST FOR REHEARING**
**OF NRG ENERGY, INC.**

NRG Energy, Inc., on behalf of itself and its affiliates doing business as Energy Service Companies ("ESCOs") in New York State (collectively, NRG")[1] respectfully submits this Request for Rehearing and stay of the Commission's Order Modifying Outreach and Education Requirements and Directing Program Evaluation issued in this proceeding on November 19, 2024 (the "Order") pursuant to Rules 3.6 and 3.7 of the Commission's Procedural Rules, 16 NYCRR §§ 3.6 and 3.7.

## INTRODUCTION AND SUMMARY OF POSITION

NRG supports the Commission's continued efforts to expand access to the Community Choice Aggregation ("CCA") program and generally supports both the goals and the general outcome of the Order. NRG has been a vocal supporter of, and active participant in, New York's CCA programs and continues to advocate that any changes made to the CCA program should benefit New York's consumers.[2] NRG is concerned that directives in the Order related to the

[1] The 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, Stream Energy New York, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, and Gateway Energy Services Company.

[2] Direct Energy Services, LLC has participated in CCA programs since 2018, serving over 62 aggregations across six

exchange of consumer information are contrary to current practices and existing electricity supply agreements ("ESAs") established between ESCOs, CCA Administrators, and municipalities, and implementation of the Order will have unintended consequences and create confusion for the very consumers that the CCA program seeks to benefit.

Of specific concern to NRG, the Order prohibits an ESCO from transferring a customer account number to the CCA Administrator after the opt-out period has ended, unless the customer provides affirmative consent and "opts-in" to additional services. While NRG is highly sensitive to the concerns around consumer data privacy, particularly data as sensitive as consumer utility account information, this prohibition is contrary to the terms and conditions of existing ESAs, which require ESCOs to share information with the CCA Administrator on a weekly basis, including participating customers' utility account numbers. The prohibition is also confusing, as affirmative consent should not be required for the ESCO and the CCA Administrator to share information and data required for the purpose of administering a Commission-approved CCA program. The Order also ignores the existing Data Security Agreements ("DSAs") executed by ESCOs and CCA Administrators with the local distribution utilities, which explicitly allow this information to be shared and ensure additional protection against the unauthorized use of consumer account information.

NRG respectfully requests a stay and rehearing of the Order with respect to (1) the prohibition on sharing consumer account numbers between the ESCO and CCA Administrators after the opt-out period has concluded; and (2) the requirement to obtain affirmative customer

states (New York, New Jersey, Ohio, Massachusetts, Illinois, and New Hampshire), and has served over 820,000 aggregation customers on a variety of products including fixed rate and renewables.

consent each time such information is sent by the ESCO to the CCA Administrator pursuant to the terms and conditions of the ESA executed by the municipality, ESCO, and CCA Administrator.

## ANALYSIS

### I. THE COMMISSION ERRED IN PROHIBITING ESCOS FROM SHARING CUSTOMER ACCOUNT NUMBERS WITH CCA ADMINISTRATORS AFTER THE OPT-OUT PERIOD ENDS WITHOUT EXPLICIT CUSTOMER CONSENT

The Order discusses a "clarification" made by Staff regarding the "existing requirement prohibiting utilities from providing CCA Administrators with customer utility account numbers," which some commenters noted was not actually an existing requirement.[3] The Order provides that utilities are prohibited from sharing customer utility account numbers with CCA Administrators "for the purposes of mailing opt-out notification letters."[4] The Order goes on to explain that after the opt-out period has ended, the CCA Administrator or the ESCO may follow existing electronic data interchange ("EDI") protocols for obtaining customer information, and the utility will transfer the customer data following EDI protocol. However, the Order then prohibits ESCOs from sharing customer account information with CCA Administrators thereafter:

> Accordingly, the supplying ESCO 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.[5]

[3] 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) (the "Order"), pp. 44-45.

[4] Order, p. 46.

[5] Order, pp. 46-47 (emphasis added).

While the clarification is helpful, it does not address the use of customer account numbers as part of the ongoing administration of the CCA program.

The Order's prohibition on an ESCO sharing customer account numbers with CCA Administrators (who already received this account information from the utility)[6] would put ESCOs in the position of violating their ESAs, which require the ESCO to provide a weekly report, including utility account numbers, to the CCA Administrator. The ESAs also require the ESCO to maintain certain consumer-related data, including utility account numbers, and provide this information on request to the CCA Administrator. Failure of the ESCO to comply with this requirement is grounds for termination of the ESA. In other words, enforcement of the Order prohibiting an ESCO from sharing utility account numbers would force ESCOs to violate their contractual obligations under the ESA to the CCA Administrator and the participating municipality.

NRG notes that while these important concerns are rooted in ensuring customers consent to any additional products and services, administration of the CCA program is not the type of product or service requiring such affirmative consent and is contradictory to the intent of the CCA programs. The Commission has previously ruled that "with the requirement for a DSA to be in place before any data can be shared . . . the customer consent has been replaced by municipal consent and the DSA ensures the appropriate handling and system protections of such data."[7] While the Commission was addressing consumer data sharing prior to the opt-out period in this

[6] By way of further explanation, typically, after the opt-out period has concluded, the ESCO sends a list of customers with a dummy or fake account number and other information, indicating whether the customer has opted out or not, to the CCA Administrator, who provides this list to the utility. The utility then populates the information for the customers who are participating in the CCA program, including the utility account numbers of the participating customers, back to the CCA Administrator.

[7] Case 14-M-0224, *Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs*, Order Modifying Community Choice Aggregation Programs and Establishing Further Process (issued and effective January 19, 2023) (the "January 2023 Order"), p. 34.

particular instance, once the CCA program has been established and the CCA Administrator has *already* obtained customer account information, it makes little sense to then prohibit the ESCO from sharing this information back with the CCA Administrator, and creates unnecessary administrative inefficiencies. As discussed below, the CCA Administrator and the ESCO have to execute DSAs, ensuring consumer data is more than adequately protected. Moreover, the data is shared as part of an ongoing contractual obligation agreed to by the municipality on behalf of the customers and is for the continued purpose of CCA program administration.

Implementation of this rule also has downsides for CCA customers and will introduce new and unnecessary levels of confusion and frustration into this process. ESCOs should not have to seek customer consent on a weekly basis to comply with the existing terms of their contracts to share information with CCA Administrators – but that is exactly what this new rule requires. NRG certainly shares the Commission's concerns with ensuring that customers are informed and aware of the details of their CCA program but is also concerned that overcommunication in this manner would instead create a negative experience for customers. NRG believes most consumers in New York would not appreciate a weekly (or even monthly) request from the ESCO servicing their municipal CCA program to share their utility account information with the CCA Administrator (particularly when the CCA Administrator already has this information on hand).

The concern regarding administration of existing contracts under the Order was highlighted in the recent petition filed by Joule Assets, Inc. ("Joule") regarding five recently-executed ESAs for renewable energy, which will be supplied by Direct Energy, Inc. ("Direct") (an NRG retail

company).[8] As explained by Joule, implementation of the Order and associated new CCA rules[9] leaves Joule unable to comply with its previously-existing contractual requirements. Compliance with the Order and new CCA rules will also be confusing for the municipalities and the residents of those municipalities and at a minimum, will delay the implementation of any CCA program in those municipalities, or could result in the cancellation of the CCA program all together. If the CCA program is delayed or canceled, not only will this deprive five municipalities of the opportunity to participate in a CCA program, Direct will also likely suffer financial consequences as it already took action to procure energy for these aggregations in reliance on the executed ESAs. As the ESAs in question were executed within a week of the Order, granting Joule's request for a declaratory judgment would promote administrative efficiency and provide a reasonable and orderly outcome for everyone involved.

NRG respectfully requests the Commission grant rehearing with respect to the prohibition on sharing utility account information with the CCA Administrator after the opt-out period has ended, and further requests the Commission grant rehearing on the requirement to obtain affirmative customer consent to exchange information required for the administration of the CCA program. In the alternative, NRG requests clarification on its existing (and future) ESAs, which require NRG to share information with the CCA Administrator as part of the CCA program, including customer account information, which is information the CCA Administrator has already obtained.

[8] Case 14-M-0244, *Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs*, Petition for Declaratory Ruling and Waiver from New Pre-Contract Outreach and Education Requirements for Five Municipalities (filed November 27, 2024).

[9] New CCA Program rules were made available on December 12, 2024.

## II. THE COMMISSION ERRED IN ADOPTING INCONSISTENT REQUIREMENTS FOR SHARING CUSTOMER INFORMATION WITH EXISTING DATA SECURITY REQUIREMENTS

The order ignores the obligations of ESCOs and CCA Administrators under the existing DSAs executed with the utilities. Prior to the establishment of the DSA for ESCOs and other energy service entities, CCA Administrators were subject to the DSA adopted as part of the implementation of a CCA pilot program.[10] Notably, this DSA explicitly allows CCA Administrators to have customer information, including utility account numbers, for one explicit reason:

> . . . the [CCA DSA] Order directs Utility to provide to Aggregator certain aggregated and anonymized information of Utility's residential and small commercial customers . . . as well as certain Customer-Specific Information applicable to such customers, including, without limitation, all customer specific information such as, but not limited to, name, address and utility account number (or Point of Delivery Identifier) for the sole and limited purpose of facilitating the CCA Program . . .[11]

Given the clear and unambiguous terms of the DSA for CCA Administrators, it makes little sense to suddenly prohibit the exchange of this information between ESCOs and CCA Administrators years later.

ESCOs such as NRG are signatories to the DSAs required by the State's utilities for participation in the retail electric and gas markets and use of the utilities' EDI systems. The Commission established minimum cybersecurity and data protection requirements, which, if met, allow an ESCO to receive information from the utility, including account numbers, to allow access to consumer data while protecting from its unauthorized release.[12] Moreover, as acknowledged in

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[10] 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 and effective October 19, 2017) (the "CCA DSA Order").

[11] Case 16-M-0015 *et al*, Revised Utility Data Security Agreement (filed January 18, 2018), p. 1.

[12] Case 18-M-0376, *Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place*, Order Establishing Minimum Cybersecurity and Privacy Protections and Making Other

the January 2023 Order, CCA Administrators and utilities have agreed to use the DSA with an addendum addressing concerns around community distributed generation ("CDG") programs, and the Commission approved the continued use of this voluntary option.[13]

NRG is required to uphold certain cybersecurity standards, pursuant to the DSAs it has executed with the State's utilities, as do CCA Administrators. CCA Administrators receive customer information, including utility account numbers, and have to share this information with a specific ESCO in order to effectuate and administer the CCA program. It is arbitrary and contrary to existing practice to prohibit the ESCO from sharing this information back with the CCA Administrator, if done as part of and in furtherance of the CCA program.

## CONCLUSION

**WHEREFORE**, for the above-stated reasons, NRG respectfully requests that the Commission stay implementation and grant rehearing of its Order Modifying Outreach and Education Requirements and Directing Program Evaluation issued in this proceeding on November 19, 2024, remove the requirement for ESCOs to obtain customer consent to share information with the CCA Administrator, and reverse its prohibition on ESCOs sharing utility account numbers with CCA Administrators after the opt-out period has ended.

Respectfully submitted,

/s/

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Findings (issued and effective October 17, 2019).

[13] January 2023 Order, p. 32.