

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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

DEPARTMENT OF PUBLIC SERVICE STAFF PROPOSAL
REGARDING COMMUNITY CHOICE AGGREGATION PROGRAM
REQUESTS FOR PROPOSALS AND ENERGY SERVICE AGREEMENTS

Dated: May 19, 2023

INTRODUCTION AND BACKGROUND

On April 14, 2021, Department of Public Service Staff (Staff) filed the Community Choice Aggregation (CCA) Whitepaper, which described the then-current status of New York’s CCA programs, detailed the successes and challenges faced since the initiation of these programs, and presented recommendations to improve the oversight and implementation of CCA programs.¹ In response to the CCA Whitepaper, on January 19, 2023, the Commission issued its CCA Modification Order which, among other things, adopted the use of standardized templates and specific guidelines for CCA Administrator compliance filings.² The Commission in the CCA Modification Order also expressed concern with the competitiveness of the CCA market. A CCA Administrator seeking to establish a CCA program in a municipality will contract with an energy service company (ESCO) that will provide the commodity service in that municipality. CCA Administrators select which ESCO will serve the program through a competitive solicitation effectuated through a request for proposals (RFP). ESCOs will then submit bids that include the price for commodity service, with the CCA Administrator selecting the most advantageous bid.

Based on experience with CCA programs to date as well as comments received on the CCA Whitepaper, the Commission in the CCA Modification Order recognized that in some instances, there had been a lack of competitive solicitations and/or bids and that there have been occurrences where only one bid was received in response to an RFP which was ultimately accepted by the CCA Administrator, allowing that one ESCO that responded to the RFP to establish the commodity price for the program. To address these concerns, the Commission directed Staff to file “proposed standards related to requests for proposals and energy service agreements, including but not limited to, standards for what constitutes a competitive solicitation, ways to promote the competition in CCA solicitations, pricing and education, and customer benefits.”³ Staff submits this proposal in compliance with that directive.

¹ Case 14-M-0224, Department of Public Service Staff Whitepaper on Community Choice Aggregation Programs (filed April 14, 2021) (CCA Whitepaper).

² Case 14-M-0224, Order Modifying Community Choice Aggregation Programs and Establishing Further Process (issued January 19, 2023) (CCA Modification Order).

³ CCA Modification Order, pp. 46-47.

STAFF PROPOSAL

Since the issuance of the CCA Framework Order, Staff has worked closely with the State's CCA Administrators to ensure that these companies comply with Commission rules and that CCA programs are providing benefits to customers as intended. Staff typically receives numerous filings from a CCA Administrator looking to establish a CCA program in a new municipality, including but not limited to, a copy of the RFP and the energy service agreement (ESA) between the ESCO and the CCA Administrator and/or the municipality. Currently, the Commission does not place any requirements on the substance of RFPs, and imposes only limited requirements on the ESA, instead leaving their development/negotiation to the CCA Administrator, ESCO, and municipality involved. The Commission requires that copies of the RFP and ESA be filed as part of the Municipal Filing to initiate a CCA program in a municipality.

In reviewing those submissions, Staff has identified concerns, particularly with the RFP process and the limited ESCO responses that CCA Administrators were receiving. As the Commission recognized, there have been instances where a CCA Administrator issues an RFP that is open for one day and only gets one response. In those instances, the price that customers participating in the CCA program pay for commodity is established by the price that ESCO submits. In other instances, only 2-3 bids were received. Staff has grown increasingly concerned with the limited competition – or apparent lack thereof – in these solicitations. The intention of conducting competitive solicitations is to rely on competition to put downward pressure on prices and encourage bidding ESCOs to work toward providing the highest level of benefits to customers as possible. The limited number of bids that are being submitted in response to these CCA RFPs leads Staff to believe that more needs to be done to ensure robust industry responses to these solicitations. Staff finds the lack of robust ESCO responses to these solicitations somewhat surprising given the cost savings and economy of scale that can be achieved with a large opt-out enrollment. Thus, Staff seeks to address potential barriers that may be hampering ESCO participation in CCA programs, but also seeks feedback from the industry regarding ways to promote more participation. In order to promote more robust solicitations and responses, Staff provides the following recommendations regarding requirements on the location the RFP is posted and the length of time a solicitation is held open, notification to the industry, and the number of bid responses.

Regarding the posting of solicitations and the length of time the solicitation is held open, Staff makes the following recommendations intended to promote ESCO industry awareness of the solicitation's existence and ensure sufficient time to provide meaningful bids in response. First, Staff proposes publicly posting all RFPs on the CCA Administrator's website. It is Staff's understanding that most Administrators do not post these solicitations anywhere public and instead directly send the solicitation to a limited number of ESCOs, sometimes as few as three ESCOs. Staff makes this proposal in order to ensure consistency and transparency typical of RFP process applicable to State and Municipal entities, and provide some expectations as to where interested stakeholders would be able to find information on solicitations conducted by each CCA Administrator. Staff understands that some CCA Administrators use a pre-qualification process to develop a list of eligible bidders to which the RFP is sent. In addition to, or potentially as an alternative to, the recommendation to post the RFP publicly on the Administrator's website, Staff proposes that the qualification process be publicly posted on the Administrator's website. Staff also proposes that the municipality highlight these solicitations on their websites and seeks stakeholder feedback on the best ways for the participating municipality to communicate this information.

Staff further proposes that any CCA solicitation for energy supply be held open for a period of at least two weeks, or 14 days, running from the date the RFP is posted on the CCA Administrator's website. Staff makes this recommendation in order to give potentially interested ESCOs increased opportunity to become aware of the solicitation and to prepare a responsive bid. Staff understands that this timing may be inconsistent with some of the processes already utilized by CCA Administrators and seeks comment on ways to either merge these processes or alternatives designed to achieve the same goal of increased ESCO awareness of solicitations. Towards achieving those same ends, Staff also proposes that CCA Administrators be required to notify the ESCO industry at the time a new solicitation or pre-qualification process is posted. Staff seeks stakeholder feedback on the most efficient and effective way to provide such notification but offers that a simple email distribution to industry participants may achieve the desired result.

Regarding the number of bids received in response to an RFP, Staff recommends the adoption of a minimum requirement for the number of bids received for the solicitation to be in compliance with the CCA Rules. Staff seeks stakeholder feedback on the threshold that should

be adopted. Staff seeks to strike a balance between requiring a minimum number of responses to ensure sufficient market participation and not imposing an undue burden on CCA Administrators conducting the solicitation, who have little control over whether any particular ESCO submits a bid in response to an RFP.

Turning to the ESA, the Commission places some limited requirements on those agreements, generally stating that the “terms of the contract between the municipality and the ESCO or ESCOs providing service must comply with generally applicable requirements for ESCO service at the time the contract is entered into. . .”⁴ Additionally, the Commission requires that:

- ESA should be procured through an open competitive process such as an RFP.
- ESAs shall not include terms that would restrict the installation or use of distributed energy resource (DER) or energy efficiency products by the municipality or CCA customers, or otherwise penalize the municipality or customers for reductions in energy usage or the installation of clean energy technologies.
- ESCOs are permitted to establish a direct relationship with CCA customers subject to the details of their contract with the municipality.
- CCA Administrators are permitted to collect funds, through the supply charge, to pay for administrative costs associated with running the CCA program. Any CCA customer payments to the CCA Administrator will have to be negotiated as part of the contract and built into the per kWh rates. Payments to the CCA Administrator for CCA administrative purposes will be processed and remitted by the ESCO.
- All CCA program participants on the same product receive the same product pricing, regardless of when they were enrolled.
- The price to compare is the 12-month trailing average consisting of the utility rate + Merchant Function Charge (MFC) + any other defined adder that applies to utility supply customers but not ESCO customers.
- Fixed-rate products are limited to a price no greater than the trailing 12-month average utility supply rate plus a premium of no more than 5% and variable-rate products must be a guaranteed savings compared to what the customer would pay as a full-service utility

⁴ CCA Framework Order, Appendix D, p. 8.

customer. While renewable product offerings do not have a price cap, the Commission has encouraged CCA Administrators to seek out the most advantageous pricing for customers.

- Cancellation fees are permitted subject to the grace period until the end of the third billing cycle after enrollment. Termination charges after the grace period will be subject to the contract between the municipality and the ESCO and must be consistent with the then-effective Uniform Business Practices (UBP) provisions. Termination fees shall not be charged to customers that cancel their CCA service due to moving out of the premises served.
- ESCOs shall provide enrolled customers with a complete sales agreement as well as a disclosure statement outlining significant terms, including termination fees if applicable.
- 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.
- ESCO are responsible for billing issue awareness and reporting.

In addition to these rules, Staff proposes three additional requirements regarding ESAs. First, Staff proposes that CCA Administrators file an executed copy of the ESA as part of the Municipality Filing. Currently, CCA Administrators are required to file a copy of the ESA, but it does not have to be executed. Obtaining an executed agreement will ensure that the contract that Staff has on file is the final agreement between the parties, with their respective signatures representing their consent to the terms therein. Staff also does not anticipate that this will result in any undue burden on CCA Administrators.

Second, Staff proposes that any ESA for service beyond basic commodity clearly identify the price premium associated with that additional product or service. For example, many CCA Administrators seek to offer renewably sourced commodity to program participants. In this instance, the ESA would have to clearly identify the price premium associated with renewable energy. For clarity, Staff uses the term “price premium” to refer to the monetary amount associated with the additional product or service that is incremental to the cost of providing

commodity supply service. Ensuring that this pricing information is disclosed in the ESA will ensure that all parties to the agreement, and particularly the municipality, understand not just the overall price that customers will pay for commodity service under the CCA program, but specifically the premium that will be paid for renewable energy or some other additional value-added product. This will also assist the municipality in making an informed decision regarding whether or not to execute a proposed ESA.

Third, Staff proposes that the ESA clearly identify how customer data will be handled by the ESCO. This information is required on ESCO contracts with customers in order to inform the customer what data the ESCO will access, for what purposes the data will be used, and with whom the data will be shared. Similar representations should be included in CCA ESAs so that the municipality is apprised of how the selected ESCO will be using participating customers' data.

CONCLUSION

Ensuring robust competition in CCA supply solicitations is expected to put downward pressure on rates and result in more favorable price terms for participating customers. The CCA Framework Order established this policy goal and Staff provides the above recommendations to help ensure that this goal is realized. Staff recognizes that individual CCA Administrators have different processes and practices when it comes to conducting these solicitations and welcomes feedback from the industry regarding how these proposals could be implemented into current practices, as well as additional or alternative measures that could be implemented to ensure that CCA supply solicitations receive robust responses. Moreover, the proposed changes to the ESA should help promote transparency and awareness of program details, particularly price. Staff welcomes stakeholder feedback on the recommendations and issues raised in this proposal, and further seeks any additional recommendations designed to promote competition in CCA solicitations.