

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 11, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman, abstained

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

ORDER INSTITUTING PROCEEDING AND SOLICITING COMMENTS

(Issued and Effective December 15, 2014)

BY THE COMMISSION:

INTRODUCTION

The Commission has instituted several proceedings to reform New York State's energy industry and regulatory practices to, among other things, promote deeper penetration of renewable energy resources such as wind and solar and wider deployment of distributed energy resources as well as to examine the retail energy markets and increase participation of and benefits for residential and small non-residential customers in those markets.<sup>1</sup> In those proceedings, Department of Public Service (the Department) Staff (Staff) has gathered substantial information on policies and models used in other jurisdictions and presented this information to the Commission. One model

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

that may offer benefits in New York is Community Choice Aggregation (CCA).<sup>2</sup>

Given the above stated Commission initiatives and the possible benefits that CCA may afford customers, a proceeding is instituted to examine implementation of CCA in New York. Through this proceeding, comments will be solicited to supplement the information already gathered in the on-going Reforming the Energy Vision (REV) and Retail Markets proceedings. Moreover, to provide commenters with sufficient background to provide specific and useful comments, an attached Staff White Paper on Community Choice Aggregation (Staff White Paper or White Paper) presents information about CCA and provides a context for a potential authorization of CCA programs in New York. The White Paper also includes a list of questions on which stakeholder comments would be particularly useful.

#### BACKGROUND

As more fully described in the attached Staff White Paper, since the restructuring of markets in New York in the late 1990s, the Commission has sought to ensure that residential and small non-residential customers have the opportunity to participate in and benefit from retail energy markets, where energy services companies (ESCOs) sell energy to customers. Both the REV proceeding and the Retail Markets proceedings have recognized that while large commercial and industrial customers have achieved substantial benefits through retail energy markets, residential customers and some small non-residential

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<sup>2</sup> Community Choice Aggregation is sometimes referred to as Municipal Energy Aggregation or Government Energy Aggregation.

customers have seen more mixed results.<sup>3</sup> These proceedings have sought innovative methods to increase the benefits that retail energy markets provide to these consumer groups.

CCA is an energy procurement model presented to the Commission as part of the REV proceeding that has potential to support these goals.<sup>4</sup> CCA, which has been implemented in at least six other states, involves local governments procuring energy supply service for their residents on an opt-out basis. As part of a CCA program, local governments can also develop distributed energy resources or otherwise engage in energy planning. Further background on CCA is provided in the attached Staff White Paper.

#### DISCUSSION

The potential for enabling CCA in New York is evaluated below, including a discussion of legal issues and necessary changes to the Uniform Business Practices (UBP) and potential benefits and risks of CCA. Further information on benefits, risks, and consumer protections possible in CCA appears in the attached Staff White Paper, as does a potential structure for bringing CCA to New York. This discussion is not intended as a final determination. Based on comments received in this proceeding, as well as further research and engagement with stakeholders, the Commission may permit CCA programs under

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<sup>3</sup> Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014); Case 12-M-0476 et al., Residential and Small Non-Residential Retail Energy Markets, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012).

<sup>4</sup> Case 14-M-0101, supra, WG 1 Customer Engagement - Final Report and Attachments (filed July 8, 2014); Technical Conference (held July 10, 2014), available at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/388452EA6857214B85257D2300543AF5?OpenDocument>.

standards similar to those described in this Order and the White Paper; permit CCA programs with wholly different standards; or, take other appropriate action.

Potential Benefits of CCA in New York

CCA programs provide a number of potential benefits to residents of the municipalities that adopt them. However, they also create some risks for customers. CCA programs should be enabled in New York only to the extent that the benefits outweigh the risks and appropriate consumer protections are applied.

CCA programs can result in lower prices, more stable prices, and more attractive terms for customers due to the bargaining power that aggregation provides and the municipal or consultant experts who solicit offers and negotiate agreements. CCA programs also allow municipalities to set their own energy goals based on local input. A municipality might focus on price stability, increased clean energy generation, support of local generation, or inclusion of distributed energy resources. Through this sort of local energy planning, municipalities and residents can seek the benefits important to them and participate in the opportunities that REV will offer, while also providing the public policy benefits sought in the REV proceeding. The process of gaining local approval for and implementing CCA programs can also lead to customer education and engagement on energy issues facing New York.

CCA programs do create some risks and require changes to existing Commission policy, including the individual affirmative consent requirement for supply service changes. The protections that can be included in CCA programs may render affirmative consent unnecessary, but such a change in policy requires careful consideration. In addition, while other states have seen positive results from CCA in the form of fixed

commodity prices that are lower than for the utility's default product, as described in the White Paper, none of the states that permit them structure their utility supply charges to fluctuate on a monthly basis in response to market conditions. In New York, a fixed-price contract offered by a CCA can provide pricing certainty as compared to the variable supply charges from the utility. In addition, the scale and reduced marketing costs provided by aggregation may place downward pressure on commodity prices and provide retail customers with the opportunity to enjoy the same lower supply costs obtained by commercial customers. Depending on the circumstances, a fixed price offered by a CCA might result in higher or lower overall costs to customers.

Because CCA has the potential to bring benefits to New York State and supplement the Commission's work in the Retail Access and REV proceedings, serious consideration of CCA is warranted. Through this proceeding, the Commission will gather information from stakeholders and interested parties to develop a thorough understanding of all benefits, costs, and necessary protections. Some further information on those topics appears in the Staff White Paper.

#### Legal Status of CCA in New York

Enabling CCA programs in New York requires the resolution of several legal and regulatory issues. First, municipalities<sup>5</sup> need to have the authority under state law to

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<sup>5</sup> Except as otherwise specified, references in this Order to municipalities include (a) municipalities as defined in the General Municipal Law §2 and (b) groups of municipalities. In addition, many of the functions discussed could be performed by consultants acting on behalf of municipalities or groups of municipalities.

aggregate their residents;<sup>6</sup> solicit bids and negotiate with ESCOs on behalf of their residents; sign a contract that will apply to residents who do not opt out; and, if desired, assign a portion of customer payments to the funding of the construction and operation of distributed energy resources. Second, the Commission would instruct utilities to transfer customer data to municipalities and selected ESCOs as appropriate and to accept enrollment by the selected ESCO of customers who do not opt out. Third, ESCOs would be permitted to enroll customers who have not explicitly affirmed their consent but instead have declined to exercise an opportunity to opt out.

There would be no purpose to enabling CCA programs if municipalities could not legally participate in those programs. Municipalities may find authority to participate in CCA programs in Article 14-A of the General Municipal Law (GML).<sup>7</sup> This Article permits municipal involvement in the provision of gas and electric service to residents. It has been used by municipalities seeking to operate as municipal utilities and by municipalities seeking to provide service to themselves, their residents, or other municipalities by acting as ESCOs. However, nothing in the Article requires that a municipality become a utility or an ESCO to avail itself of the provisions.

Pursuant to GML §360(2), a municipality may "purchase gas or electrical energy from the state, or from any state agency, or other municipal corporation, or from any private or public corporation" for purposes including "furnishing to itself or for compensation to its inhabitants[ ] any service similar to

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<sup>6</sup> In general, the terms "residents" and "customers," when used in this Order, refer to residential customers purchasing energy services; small non-residential customers could be treated in a similar manner.

<sup>7</sup> GML §§360-66.

that furnished by any public utility company specified in article four of the public service law." Before doing so, the municipality must pass a resolution or ordinance and hold a referendum as described in GML §360(3)-(7). Municipal corporations may also enter into agreements with each other to make such purchases and provide such service jointly.<sup>8</sup>

While CCA differs in some respects from activities that municipalities have previously engaged in under this Article, these statutory provisions appear to provide municipalities with all the authority necessary to establish and run CCA programs. This analysis provides only an example of how municipalities could engage in CCA, and is not intended to restrict municipalities from developing CCA programs under different grants of authority.

#### Proposed Revisions to the Uniform Business Practices

Since their inception, the Commission has supervised retail markets and the participants in them. ESCOs must be deemed eligible by the Department as a condition of market participation and can only provide energy service as permitted by Commission orders and policies, as implemented most prominently through the UBP.<sup>9</sup> The Commission's responsibilities include determining when and on what terms customers may be enrolled with an ESCO.

Enabling CCA will require revisions to several provisions of the UBP. To the extent possible, these revisions should only apply to ESCOs and municipalities engaging in CCA programs. In particular, the following changes will be necessary to enable CCA programs: terms like municipality, aggregator, municipal contractor, and CCA program would be

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<sup>8</sup> GML §361(2).

<sup>9</sup> Case 98-M-1343, In the Matter of Retail Access Business Rules, Uniform Business Practices.

defined; UBP Section 4 would be expanded to permit transfer of customer data as necessary and appropriate for CCA programs and with appropriate protections; and, provisions would be added to Section 5 to permit enrollment of customers with an ESCO pursuant to a CCA program. In addition, requirements imposed on CCA programs, including with respect to opt-out rules, may be included in the UBP if appropriate.

The Commission orders:

1. A proceeding is instituted to consider enabling Community Choice Aggregation programs in New York. Interested parties are invited to submit comments in conformance with the questions presented and format described in the attached Staff White Paper by February 17, 2015.

2. The Secretary may, in her sole discretion, extend the deadlines set forth in this Order. 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.

3. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary



## Appendix A

### Staff White Paper on Community Choice Aggregation

Department of Public Service Staff (Staff) has developed a substantial amount of information regarding Community Choice Aggregation (CCA) through the Reforming the Energy Vision (REV) working group and comment processes, other stakeholder engagement, and research. This White Paper presents that information so that stakeholders have a sufficient basis to comment on the possibility of enabling CCA in New York State.

#### BACKGROUND

##### New York Retail Markets

Since the restructuring of markets in New York in the late 1990s, energy customers have been able to choose a supplier through the retail market, where energy services companies (ESCOs) sell energy to customers. ESCOs may offer electric supply service, gas supply service, or both. Customers are only transferred to ESCO supply service with their affirmative consent. Distribution utilities continue to provide delivery service to ESCO customers and generally bill customers both for delivery service and on behalf of the ESCO for supply service. ESCOs must qualify to be eligible pursuant to criteria set forth in Commission rules, including the Uniform Business Practices (UBP).

While large commercial and industrial customers have achieved substantial benefits through retail energy markets, residential customers<sup>1</sup> and some small non-residential customers have seen more mixed results. Participation rates are low and while some participating customers do benefit, others pay higher prices than utilities charge for few or no benefits. Barriers to residential consumer participation include a lack of time,

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<sup>1</sup> In general, the terms "residents" and "customers," when used in this White Paper, refer to residential customers purchasing energy services; small non-residential customers could be treated in a similar manner.

interest, or expertise on the part of the customers in evaluating and selecting an ESCO offer and lack of negotiating power.

In 2012, a proceeding was initiated to consider concerns related to the retail energy market, in particular residential and small non-residential participation in the market, and seek solutions.<sup>2</sup> Subsequently, the February 2014 Order made some changes to retail market rules, though some features initially adopted there were stayed pending the results of rehearing.<sup>3</sup>

Increased customer engagement and benefit in New York's power system, including the retail energy market, are also key goals of the Commission's proceeding on REV.<sup>4</sup> Within the REV proceeding, a stakeholder working group on Consumer Engagement met regularly in May and June 2014 and discussed a number of issues, including CCA.<sup>5</sup> Information on CCA was also

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<sup>2</sup> Case 12-M-0476 et al., Residential and Small Non-Residential Retail Energy Markets, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012).

<sup>3</sup> Case 12-M-0476 et al., supra, Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (issued February 25, 2014); Order Granting Requests for Rehearing and Issuing a Stay (issued April 25, 2014).

<sup>4</sup> Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014); DPS Staff Report and Proposal (filed April 25, 2014); Developing the REV Market in New York: DPS Staff Straw Proposal on Track One Issues (filed August 22, 2014).

<sup>5</sup> Case 14-M-0101, supra, WG 1 Customer Engagement - Final Report and Attachments (filed July 8, 2014).

presented to the Commission at the July 10, 2014 REV Technical Conference.<sup>6</sup>

#### Aggregation in New York

Historically, opt-in aggregation has been encouraged in New York as a means for widening participation in retail markets. A number of aggregators active in New York already exist, but most of their energy aggregation programs target businesses or the owners of large multi-family residential or commercial buildings. These enable smaller customers to receive the benefits of expertise and scale while sharing costs.

There are also some aggregation programs targeting other customer groups. One example is the Municipal Electric and Gas Alliance (MEGA), a non-profit local development corporation founded in 2000.<sup>7</sup> MEGA aggregates, on an opt-in basis, the purchases of electricity and gas used in municipal buildings of 29 counties and a number of towns, villages, cities, school districts, and other municipal organizations. MEGA also welcomes membership from any individual, business, or non-profit organization within its service area, though it does not actively seek out non-municipal members. As the representative of municipalities, MEGA conforms to state bidding and procurement requirements. Like many CCA programs, MEGA offers a renewable energy option to all participants.

Another example is the Public Assistance Cooperative for Energy (PACE) program in Western New York. Aggregation of low income gas customers, whose utility bills are paid by their county, began in National Fuel Gas Distribution's service

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<sup>6</sup> Case 14-M-0101, supra, Technical Conference (held July 10, 2014), available at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/388452EA6857214B85257D2300543AF5?OpenDocument>.

<sup>7</sup> Information about MEGA is available on its website, <http://www.megaenergy.org/>.

territory many years ago and is in effect today. In this program, the counties aggregate the load of county facilities and direct-vouchered customers and issue a request for proposal (RFP) to select a supplier. Because the counties are the customer of record and are directly responsible for payment of bills, the individual customers are not asked to make a choice of provider.

However, due to some of the same barriers described above, few residential customers have taken advantage of aggregation. Opt-in aggregation requires a customer take an action in a complex marketplace. Without a guarantee of sufficient scale of participation, aggregators may not be able to negotiate prices or terms that are substantially better than offers available to individual customers. Uncertainty of scale, and a concomitant effect on the realization of savings, also can pose difficulties for an aggregator seeking to recoup its own costs. The only New York program that aggregates the energy needs of a substantial number of residential customers is PACE, which, as described above, involves no choice at all by individual customers. Overall, opt-in aggregation has not yielded meaningful increases in residential customer engagement or participation in retail markets.

#### Community Choice Aggregation

CCA is an alternative model that has been developed and implemented in at least six states. In a CCA program, a local government, or a group of local governments, passes an ordinance establishing that it plans to aggregate the energy supply needs of its residents. Some states also require that the plan to engage in CCA receive majority support in a

referendum. The municipality<sup>8</sup> then negotiates with ESCOs either on its own behalf or through a contractor, generally through a bid solicitation process, and ultimately signs a contract with the ESCO which best meets the needs of the municipality. Customers served by the distribution utility are notified of the contract details, including price, environmental benefits, and other program benefits, and provided with an opportunity to opt out from participation in the program. Those who opt out will continue to receive energy supply service from their current supplier, either an ESCO or the distribution utility. Customers who do not opt out are automatically transferred to service by the selected ESCO at the prices and terms specified in the CCA contract.

Local governments generally employ expert contractors to assist them in this process. Because those contractors can be paid through an adder on the price charged to CCA customers, the programs can avoid using tax dollars for start-up or operation costs.

CCA involves minimal changes for customers because the distribution utility continues to provide delivery service, conduct billing, and act as the point of first contact for individuals with energy-related problems. Except for the opt-out policy and other such aspects of the CCA program itself, CCA customers have all the same protections as other ESCO customers, including protections afforded by the Home Energy Fair Practices Act and access to the Commission's complaint process.

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<sup>8</sup> Except as otherwise specified, references in this White Paper to municipalities include (a) municipalities as defined in the General Municipal Law §2 and (b) groups of municipalities. In addition, many of the functions discussed could be performed by consultants acting on behalf of municipalities or groups of municipalities.

Some CCA programs also involve clean energy components. This can be through a provision in the contract that a fixed percentage of the electricity supplied, up to 100%, will be from renewable or other specified sources; through the offering of an additional opt-in option to residents under which a percentage of electricity supply is from renewable sources; or through the collection by the municipality of a portion of customer payments for the creation of a fund that can be used to finance building or installation of renewable generation, energy efficiency projects, or other clean energy measures.

The potential benefits of CCA programs include price stability for a fixed contract term, the potential for lower prices and more favorable terms, and the ability to design a program that reflects local preferences and needs, including a preference for cleaner power sources. CCA programs also have the potential to enable ESCOs to secure a large number of customers at relatively low marketing costs, thereby creating the scale to accelerate deployment of value-added services such as home energy management.

While CCA programs pose some risks, consumer protections inherent in CCA or added through program design can mitigate these risks. The benefits and risks of CCA as well as possible consumer protections are more fully discussed below.

#### Programs in Other States<sup>9</sup>

Examining in other states may provide insight on what features of CCA should be included or avoided in any program enabled in New York. Unless otherwise specified, all programs described are opt-out programs.

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<sup>9</sup> Sources of information for this section include LEAN Energy US (<http://www.leanenergyus.org/>), a non-profit organization that supports CCA, regulatory bodies in other states, aggregation consultants, municipalities, and stakeholders engaged through REV.

Massachusetts

Massachusetts has one large and long-running CCA program, the Cape Light Compact, which has existed since 1997, as well as a number of smaller CCA programs. The Cape Light Compact offers substantial savings to its customers while also developing renewable generation through a partnership with the Cape and Vineyard Electric Cooperative.

While many of the smaller programs in Massachusetts have also seen cost savings, not all programs have been successful. In some towns, aggregation consultants have been unable to negotiate a price better than the utility default rate, which is fixed for six month periods, resulting in the shutdown of the program by the municipality. While this demonstrates that CCA programs are not universally successful, it also shows that municipalities can exercise their discretion to avoid or shutter CCA programs that will not provide sufficient benefits.

Ohio

Ohio has had CCA since 1999 and includes the largest program in the country, the Northeast Ohio Public Energy Council (NOPEC), a grouping of ten counties. There are also a number of smaller programs. Many of these programs offer substantial cost savings as well as other public benefits, including Cincinnati's 100% renewable energy credit supply and NOPEC's "Powering Our Communities" Fund, which is derived from ratepayer collections and has funded a variety of energy projects.

Rhode Island

While Rhode Island permits CCA, there are no current CCA programs involving residential or small business customers. The opt-in Rhode Island Energy Aggregation Program aggregates the municipal energy needs of most of Rhode Island's municipalities and several school districts, and has achieved

substantial savings. One barrier to residential aggregation in Rhode Island is a mandate that substantial public notice be provided of rates and terms in advance of finalizing an agreement, which compels an ESCO to hold an offer open while that notice is given.

#### California

Municipalities in California's CCA programs have focused on clean energy options and the development of local renewable energy projects, as well as integration of distributed energy resources. These programs have resulted in customer savings, as well as more than 50 MW of solar generation under development. Because residential customers in California can generally obtain their electricity supply only from the utility, California CCA programs are substantially more complex than those in other states.

#### New Jersey

Municipal aggregation of residential energy needs was initially authorized in New Jersey in 1999, but only opt-in aggregation was permitted. No municipal aggregation programs were successfully developed under this model. A law passed in 2003 permitted opt-out CCA for residential customers, with an opt-in option available for non-residential customers. New Jersey's law requires that rates in bids be lower than the utility default rate unless the program includes a higher-than-required percentage of green energy. Several New Jersey towns have adopted opt-out CCA in recent years and residents have seen rate savings.

#### Illinois

While Illinois is the most recent state to enable CCA, adoption of programs and implementation has been quick. Despite strict referendum and public hearing requirements, more than 600 Illinois municipalities have adopted aggregation programs since



they were enabled in 2009. While most Illinois municipalities have focused on rate savings, several, including Chicago and Oak Park, have solicited cleaner energy. Oak Park's contract provides its residents with 100% green power while still offering a rate 25% lower than the utility default rate, and Chicago is working with its supplier on the development of a large solar project.

#### ENABLING CCA IN NEW YORK STATE

##### Potential Structure of CCA in New York

An overview is presented below outlining how a CCA program in New York might operate in practice after a Commission order enabling such programs. This is being provided for the purpose of informing stakeholders of how CCA programs in New York might operate so as to assist parties in formulating specific and detailed comments. The overview is not a determination that CCA should be permitted in New York or that the specific features described below are appropriate for any New York CCA program. Because the overview is merely an example, it may not describe all features that a CCA program or contract would contain.

The development of a CCA program would begin by the officials in a municipality deciding, either on their own, in response to requests by residents and businesses, or after encouragement from non-profits and interest groups, to consider CCA. Officials would determine, likely through engagement with residents and local stakeholders, whether CCA is appropriate for the municipality and whether residents and businesses would support it. They might also consider whether working with other municipalities to develop a joint CCA program would be fruitful. They would determine whether to seek aggregation of electric supply, gas supply, or both, as well as whether to seek

aggregation of non-residential customers, and if so, which non-residential customers.

Officials would ascertain if the municipality already has employees with the necessary expertise to implement a program; should hire employees with the necessary expertise to implement it; or, should work with consultants to develop the program. To the extent that new hires or consultants are necessary, municipal officials would retain those individuals and begin discussions. At this stage, consultants might be engaged based on an agreement that they would be compensated only after a CCA contract is signed and only through the funds collected through the CCA program, not through the municipality's general fund or otherwise through tax dollars.

Municipal officials would then enact an ordinance as required by GML §360(3)-(4) and plan for a referendum as required by GML §360(5), or follow the procedure required by an alternate grant of municipal authority. In addition to the notice required by law, the municipality or its consultants would likely conduct public outreach to engage with residents and businesses about CCA. At this stage, and through the solicitation and selection process, the municipality, municipal officials, and consultants could interact with residents and businesses to learn more about their interests in various features of CCA and their preferences for particular benefits, including price savings, price stability, local power production, and environmental attributes.

If the referendum passes, the municipality would request that the distribution utility that serves its residents and businesses provide it with data necessary to issue a solicitation for the provision of CCA services. The data would be aggregated for all residents and businesses receiving supply service from the distribution utility, including the number of

such customers and their aggregate gas and electric usage. This data could also include a separate total for residential and applicable business customers taking service from an ESCO. At this stage, no personally identifiable information (PII) would be transferred. The utility would furnish that data to the municipality or consultant within a time frame fixed by the Commission.

The municipality would then seek bids from ESCOs through an RFP or other solicitation process permitted by law. This solicitation would in all respects be governed by the GML and other laws and regulations related to municipal procurement. There may be a public forum or other public engagement at this stage to determine what is important to residents and businesses. The solicitation would include the aggregate data provided by the utility and information on program features the municipality seeks. For example, a municipality could ask for contracts including certain terms or with fixed prices; state a preference for contracts that include commitments to purchase certain levels of renewable or local generation; or, instruct ESCOs to include in their bid prices a small per kWh or Btu charge that would be transferred to a consultant, a municipal fund, or both. ESCOs would also ensure that their bids comply with any requirements imposed on CCA programs by the Commission.

Once the period of time set to receive bids elapses, the municipality would select an ESCO. Based on engagement with residents and businesses and in consideration of municipal policy goals, the municipality would choose the bid that best fits local needs. The municipality would then enter into a contract based on the winning bid. If, on review, the municipality determines that no bidder has offered sufficient value, the municipality may hold another RFP or terminate the CCA process.

After entering into a contract, the municipality would request, from the distribution utility, data necessary to contact residents receiving supply service from the distribution utility, as well as data needed to enroll the customer, including customer names, addresses (including mailing address where different from the service address), telephone numbers, account numbers, and, if available, email addresses. The municipality would then send those customers notification of the contract by mail, and email where possible, providing all relevant details of the contract including price, contract duration, and early termination fee, as well as the sales agreement that will apply to customers, and advising the customers that they will be enrolled in the ESCO supply service of the winning bidder on a certain date if they do not opt out. The notification would offer mail-in, phone, and electronic options to opt out. Customers already enrolled with an ESCO or non-residential customers could also be provided with information on the CCA and permitted to opt-in to the CCA program. Customers would be provided some period of time to consider the offer, ask questions of the municipality and/or winning bidder, and determine if they should accept the service or opt out.

Once the opt-out period has passed, the municipality would transfer to the ESCO the data necessary to enroll all residents who have not opted out. The ESCO would then provide the utility with the necessary enrollment information and begin providing service, for the contract term, in compliance with the contract and with general requirements in the UBP and other regulatory and legal requirements, including ensuring that all customers received a copy of the sales agreement.

Once customers are enrolled with the ESCO, the primary remaining responsibilities of municipalities and their

consultants would be oversight of the ESCO; ensuring that any opt-out rules are followed;<sup>10</sup> enrolling new residents and businesses through a similar opt-out process; permitting customers who originally opted out, or who were covered by an ESCO at the time of signing, to opt in to the extent allowed by the contract; collecting any appropriate fees; renewing the ESCO contract or initiating a RFP process for renewing the CCA program; and administering and eventually spending any municipal fund created through the program, including through engagement in municipal energy planning. This could include purchasing and installing renewable generation facilities or other distributed energy resources and administering those facilities.

#### Benefits and Risks of CCA

CCA programs potentially provide a number of benefits to residents of the municipalities that adopt them. However, they also create some risks for customers. CCA programs should be enabled in New York only to the extent that the benefits outweigh the risks and appropriate consumer protections are applied.

One category of potential CCA benefits relates to prices. Because the aggregation of a large group of customers creates negotiating power, municipalities may be able to find attractive prices for their residents. Nationally, many CCA programs offer rate savings to customers. CCA programs generally include fixed prices, which stabilize bills. Price stability is an especially significant benefit during price spikes, like those that occurred during this previous winter, and can be especially important to fixed-income customers. CCA may present a service option with a very limited downside to

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<sup>10</sup> As described above, the Commission and the Department would also retain authority to oversee the ESCO, take customer complaints, and ensure compliance with opt-out rules.

customers, as they may be able to return to the distribution utility at no or low cost, depending on how the contract between the municipality and the ESCO is designed.<sup>11</sup>

CCA programs also potentially yield public policy benefits. Municipalities can set their own goals, ranging from price stability to clean energy to local generation, and negotiate contracts that best achieve those goals. Municipalities can also negotiate contract terms favorable to customers. CCA programs have minimal or no effect on taxpayers, since they can be funded through energy payments. Layers of oversight attending a program, including the political accountability of local officials and the involvement of qualified consultants, can also help protect customers. Finally, since CCA decisions are generally made publically after public forums or other opportunities for outreach, CCA programs can lead to customer education and engagement on energy issues facing New York.

CCA programs can also support the deployment of renewable generation, energy efficiency programs, home energy management, and other distributed energy resources (DER). In concert with CCA programs, municipal governments can collaborate with ESCOs, DER providers, and utilities to engage in energy planning that can provide price savings and public policy benefits.

Notwithstanding the benefits described above, CCA carries with it some risk. Existing policy on retail markets and the UBP currently require affirmative consent for any

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<sup>11</sup> General Business Law (GBL) §349-d(5) limits the amount of termination fees to a maximum of one hundred dollars for contracts with less than a year remaining, two hundred dollars for contracts with more than a year remaining, or twice the estimated bill if such an estimate was provided when the contract was offered.

transfer, and the enrollment of customers to ESCO supply service on an opt-out basis has not been permitted. While a number of protections described below that can be attached to CCA may render affirmative consent unnecessary, such a change in policy requires careful consideration. CCA programs also involve the transfer of customer data, without the customer's affirmative consent, to municipalities, which do not currently handle utility customer data, as well as ESCOs.

While CCA programs in other states have generally resulted in cost savings to customers, none of the states that permit them structure their utility supply charges to fluctuate on a monthly basis in response to market conditions. Consequently, unlike other states, in New York, municipalities, ESCOs, and experts considering contracts and prices cannot precisely predict utility rates over the coming year. A CCA contract that includes a fixed price could produce savings for customers, in the case of a price spike as in this past winter, but it could also result in customers paying higher prices under other circumstances.

Some stakeholders have also expressed other policy-based opposition to CCA programs. CCA programs result in increased governmental involvement in the retail energy market, which some believe to be inappropriate. CCA programs also benefit only the ESCOs selected by governmental bodies, and not the larger group of ESCOs that are not selected.

#### Consumer Protections in CCA Programs

Many important current legal protections, including the Home Energy Fair Practices Act (HEFPA), will apply fully to residential CCA customers. Another important protection inherent in CCA programs is the ability of residents to opt out of participation. Requirements for opting out can be tailored to ensure that residents are aware of the program and their

options. It is vital that the details of providing notification and the deadlines and methods for opting out provide sufficient opportunity for all customers to make an informed decision.

Another key protection in CCA programs is the political process. CCA programs can only be initiated with the consent of elected representatives and may also require the passage of a referendum by a majority of voters. CCA program rules could also require outreach that, coupled with the notice associated with ordinances and referenda, will ensure residents are aware of the connection between the program and their municipal government, and that officials who plan and oversee programs will be accountable to voters.

Rules for CCA programs must also ensure that customer data is appropriately protected. While municipalities do not normally have access to customer-specific utility data, they do collect and store other private and potentially sensitive data regarding their residents. Municipalities should therefore possess the capability to protect customer data they receive through a CCA program from misuse or inappropriate disclosure. ESCOs, for their part, are already responsible for appropriately managing and protecting customer data, and would not receive any individualized customer data until selected by a municipality.

Customers of CCA programs are also protected by the oversight that the Commission and Department exercise over ESCOs and over the supply of energy in New York. Only ESCOs that have been deemed eligible by the Department will be able to enter into CCA contracts. ESCOs would also be restricted from entering into or transferring customers based on any CCA program that did not comply with standards set by the Commission through the UBP and other rules and orders. Staff will continue to receive and respond to customer complaints and perform investigations if necessary. To the extent that an ESCO



violates the standards created for CCA programs, a contract, Commission regulations, or law, the Commission could take appropriate action.

In some ways, CCA customers will benefit from increased levels of oversight as compared to other customers in the retail market. Experts working for a municipality will review bids to ensure they are legitimate and contain no hidden risks or fees. Customers also retain the ultimate ability to return to distribution utility supply service or to participate individually in the retail market.

#### SOLICITATION OF COMMENTS

Before a determination is made regarding whether action should be taken to enable CCA programs in New York, comments are sought on issues raised in the Order and White Paper. In particular, comments are sought on the following topics, organized into sections as numbered below:

1. Should non-residential customers who are not served by ESCOs be included in CCA programs on an opt-out basis? If not, should they be included on an opt-in basis? Should any inclusion of small non-residential customers be based on the UBP definition of that phrase, or should municipalities be able to include a differently-defined group of non-residential customers in CCA?
2. Should customers already served by an ESCO be included in CCA programs? If so, how can they best be offered that opportunity? Some customers may be month-to-month under contracts with no termination fee or their contracts may be about to expire, and find the CCA contract offered attractive. Others may be willing to pay the early termination fee to obtain CCA benefits.

What are the benefits and costs of allowing program participation of customers served by ESCOs?

3. Should customers who participate in a low-income energy assistance program administered by a utility or receive Home Energy Assistance Program (HEAP) benefits be included in CCA on an opt-out basis? If not, should they be included on an opt-in basis?
4. What provisions, if any, should be made to allow customers who move into the region served by a CCA after it has commenced, to participate in the CCA? Similarly, what provisions should be made to allow customers who are served by an ESCO at the time the CCA has commenced, to participate in the CCA at a later time, or to allow customers who initially opted out to later opt in?
5. Should the program include a requirement that the primary price contained in a CCA contract begin below a certain benchmark?<sup>12</sup> What are the benefits and costs of such a requirement? If so, what benchmark is appropriate? For example, New Jersey sets a benchmark based on the distribution utility supply rate.
6. Should the Commission require that CCA contracts contain a fixed price for at least a certain minimum period? A fixed price for their entire term? If prices are permitted to vary during the contract period, should any benchmark apply to these prices? What are the benefits and costs of such requirements?

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<sup>12</sup> Generally requirements for CCA contracts are needed rather than requirements for bids by ESCOs. Because any bid by an ESCO will only be valid if it can, if selected, result in valid CCA contract, any requirements imposed on contracts will naturally translate into requirements for bids.

7. Is twenty days an adequate period within which a customer can opt out to avoid automatic enrollment in CCA? If not, what is an adequate opt-out period? Are the opt-out provisions described above appropriate and sufficient? If not, what specific additional requirements are appropriate? Is one notification sufficient or should multiple notifications be required?
8. Should the Commission permit the presence in CCA contracts of cancellation fees for customers who do not opt out during the opt-out period and later wish to leave the CCA program? If so, should these cancellation fees be subject to any additional requirements beyond the generally applicable rules, including the General Business Law? For example, customers might be permitted to leave CCA programs without charge for a certain period of time after the program starts or during a certain period each year. What are the benefits and costs of requirements of this nature?
9. Should municipalities be required to allocate a portion of the CCA customer payments to a clean energy or public benefit fund? For what purposes should municipalities be permitted to use these funds? Examples from other states or proposed programs include municipal-owned renewable generation, as well as energy efficiency projects.
10. Is ten days an adequate period in which a distribution utility must transfer initial, aggregated customer data to municipalities after a request has been submitted by a municipality that has adopted a program? Is five days an adequate period in which a

distribution utility should transfer customer data to municipalities to support the mailing of opt-out notices after a request has been submitted by a municipality that has entered into a CCA contract? What data should each transfer include?

11. Should municipalities receiving personally identifiable information be required to abide by the same policies for protecting and use of that information that are currently applicable to utilities and ESCOs? If not, why not?
12. Should municipalities considering CCA be required to conduct public forums or other public engagement at certain points during the process of establishing a CCA program?
13. Should municipalities be required or requested to provide to Staff for approval or review copies of communications that would be distributed to customers regarding the CCA program and the contract selected, in addition to Staff's continued review of ESCO communications to customers?
14. Are any revisions to the Uniform Business Practices other than those described above necessary or helpful for CCA?
15. Should any specific modifications be made to the structure of CCA, as described above, that are not covered by the above questions?
16. Are there any reasons CCA programs should not be adopted, including issues with opt-out aggregation generally, not covered by the above questions?
17. Are there any reasons supporting implementation of CCA, including descriptions of positive experiences in other states, not covered by the above questions?

18. Are there matters, including concerns regarding policy and legal issues, not fully addressed in the above questions? If so, please provide comments on those matters.

In order to facilitate the consideration of comments, information should be organized into sections with headings corresponding to the above question numbers to the extent possible. Each commenter is not expected to respond to every question, only those for which they can provide meaningful input. To the extent that statements would fit in multiple sections, commenters are encouraged to place them in only one section and cross-reference them as appropriate in other sections.

Interested parties are invited to submit comments on the questions presented and the issues raised in the Order and White Paper by February 17, 2015. Parties should submit comments electronically to the Secretary by e-filing through the Department's Document and Matter Management System (DMM),<sup>13</sup> or by e-mail to [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov). Parties unable to file electronically may mail or deliver their comments to the Hon. Kathleen H. Burgess, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York, 12223-1350. All comments filed with the Secretary will be posted to the Commission's Web site and become part of the official case record.

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<sup>13</sup> [http://www.dps.ny.gov/DMM Registration.html](http://www.dps.ny.gov/DMM%20Registration.html); How to Register with DMM, <http://www.dps.ny.gov/e-file/registration.html>.

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Commissioner Diane X. Burman, abstained

As reflected in my comments made at the public session on December 11, 2014, I abstain.