

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 18, 2021

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

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

ORDER IDENTIFYING FURTHER PROCEDURAL STEPS REGARDING THE
DEVELOPMENT OF OPT-OUT COMMUNITY DISTRIBUTED GENERATION

(Issued and Effective November 22, 2021)

BY THE COMMISSION:

INTRODUCTION

Community Choice Aggregation (CCA) programs have the potential to create opportunities that provide substantial benefits for local, community, and individual engagement on topics related to energy needs, such as innovative energy programs, products, and services that promote and advance local goals. A well-designed CCA program can also support the achievement of New York State's clean energy policies and the Public Service Commission's (Commission) efforts to build a cleaner, smarter, and more distributed electric system through

the Reforming the Energy Vision (REV) initiative.¹ Access to CCA programs offer residential and small non-residential customers, generally described as “mass market customers,” an opportunity to receive benefits that have not been readily available to them in the past, including more affordable or cleaner energy supply choices. Similarly, CCA programs can incorporate distributed energy resources (DER) and the benefits they offer, such as Community Distributed Generation (CDG) and the program’s associated net-crediting savings, to mass market customers participating in CCA programs.

In April 2021, the Department of Public Service Staff (Staff) published a CCA Whitepaper that described the status of New York’s CCA programs, detailed the successes and challenges faced since the initiation of these programs, identified potential program improvements, and presented recommendations based upon Staff’s experience in conducting oversight and monitoring of the CCA programs.² To provide a clear path forward that ensures uniformity, transparency, and clarity of CCA programs statewide, the Whitepaper recommends, among other things, the standardization of CCA program filing requirements, streamlining the filing process, and adopting additional requirements that will provide reassurance to consumers and municipalities that the appropriate protections are in place to safely participate in opt-out CCA programs. To provide an opportunity for CCA programs to invest in local clean energy and DER, the Whitepaper proposes the addition of a statewide CDG program on an opt-out basis.

¹ Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014).

² Case 14-M-0224, Department of Public Service Staff Whitepaper on Community Choice Aggregation Programs (filed April 14, 2021).

This Order addresses Staff's CCA Whitepaper proposals as they relate to a statewide opt-out CDG program. The Commission will address Staff's recommendations that pertain to a CCA supply program, which were identified in the CCA Whitepaper, in a subsequent order.

BACKGROUND

In April 2016, the Commission authorized the establishment of CCA programs by municipalities statewide, and instituted the process and CCA Rules for developing and implementing a CCA program.³ The CCA Rules define requirements for, among other things, customer eligibility, low-income customer participation, customer outreach and education, and the provision of data. The Commission recognized that the CCA Framework Order was a starting point for the development of the State's CCA program and that there may be a need for modifications, or expansion, to the initial requirements based upon program monitoring and lessons learned.

To date, the Commission has issued orders authorizing four CCA Administrators: Sustainable Westchester (SW);⁴ Municipal Electric and Gas Alliance, Inc. (MEGA);⁵ Good Energy, L.P. (Good

³ Case 14-M-0224, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order), Appendix D: CCA Rules Summary.

⁴ Case 14-M-0564, Sustainable Westchester - Community Choice Aggregation Program, Order Granting Petition in Part (issued February 26, 2015) (SW Pilot Order); and Case 14-M-0224, et al., Order Approving Renewal of Sustainable Westchester Community Choice Aggregation Program (issued November 15, 2018).

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

Energy);⁶ and Joule Assets, Inc. (Joule)⁷ (collectively, CCA Administrators). Each of the authorizing orders includes the approval of a Master Implementation Plan (MIP), as well as confirmation that the necessary cybersecurity and data privacy requirements will be in place to allow for the safe transfer of data needed to facilitate the CCA program. While the CCA Framework Order's CCA Rules served as the starting point and guidance for CCA programs, the subsequent orders that approved CCA Administrators included clarification and refinements to the CCA Rules to keep the CCA Rules consistent with relevant regulatory requirements and to ensure the necessary consumer protections are in place.

In the Joule Order, the Commission approved Joules' CCA Program's MIP. The Commission also introduced requirements for integrating an opt-out CDG component into a CCA program, quarterly and annual reporting on CDG programs, DER registration consistent with the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS), and compliance with the Environmental Disclosure Program (EDP) standards for green products. With respect to the integration of an opt-out CDG component into a CCA program, the Joule Order required the submittal of a CDG Implementation Plan (IP) for Staff review and approval. The CDG IP must detail the magnitude of participating CDG projects, the target subscription class, the scope and structure of the guaranteed savings, the billing arrangement, and details on additional CDG specific outreach and education.

⁶ Case 14-M-0224, Order Approving Community Choice Aggregation Programs with Modifications (issued January 18, 2018) (Good Energy Order).

⁷ Case 14-M-0224, et al., Order Approving Joule Assets' Community Choice Aggregation Program with Modifications (issued March 16, 2018) (Joule Order).

To date, Joule has received Staff approval to conduct their opt-out CDG/CCA program in five municipalities: the towns of Geneva and Marbletown, as well as the Villages of Lima, Brockport, and Honeoye Falls. Furthermore, sufficient outreach and education has been conducted in the Villages of Lima and Brockport to warrant Staff approval of municipal opt-out letters.

The CCA Whitepaper recognizes the continuous growth and success of CCA programs across the State, while identifying valuable opportunities for program improvements and proposing several recommendations to advance the State's CCA programs. It also proposes that all Commission approved CCA Administrators be permitted to integrate an opt-out CDG component into their existing CCA programs by submitting an updated CCA program MIP that includes the CDG IP and details the proposed opt-out CDG component, for Staff's review and approval. Staff believes that this proposal would enable all CCA Administrators to offer comparable products and services to existing and prospective municipalities, not just Joule. The Staff Whitepaper also seeks comments on whether the Commission should explore the development of a program that would, like the traditional CCA supply program, allow municipalities to pass local legislation to enable CDG enrollment for all eligible members within their community on an opt-out basis. This would be a standalone program that would not be integrated with a CCA supply product.

Since Joule has initiated the operation of an opt-out CDG program, stakeholders have started to petition the Commission for approval of opt-out CDG programs. On April 7, 2021, Ampion, PBC (Ampion), a public benefit corporation that provides turnkey solutions for developers and operators of community energy assets, filed a petition and implementation plan within this proceeding seeking Commission approval for an

opt-out only CDG program.⁸ The Ampion Petition asserted that their proposed program would provide municipal residents with a local clean energy product and guaranteed savings. Shortly following the Ampion Petition, on April 19, 2021, Upstate Power, LLC, (Upstate Power), an affiliate of Delaware River Solar, LLC (Delaware River Solar) and an entity created specifically to serve as a CCA administrator, filed a petition to enable an opt-out CDG only program that would aid in the achievement of the State's clean energy goals.⁹ Through Delaware River Solar's experience in CDG projects within New York State, Upstate Power expressed its qualifications to become a CCA administrator and operate an opt-out CDG focused program.

As parties petition for an opt-out only CDG program, several of the currently approved CCA administrators have requested, or voiced support, in obtaining Commission approval to integrate CDG on an opt-out basis into their current CCA supply programs. On August 11, 2021, SW filed a petition and updated MIP within this proceeding to integrate opt-out CDG into their existing CCA supply program.¹⁰ SW claimed an opt-out CDG program would help save customers money on their energy bills, promote local clean energy, and attract customers to the overall CCA program that may otherwise have been uninterested. MEGA has also expressed support for an integrated opt-out CCA/CDG program, but has not filed, to date, a petition or an update to their MIP for Commission consideration.

⁸ Case 14-M-0224, et al., Ampion Petition for Approval of CDG-only Opt-Out CCA (filed April 07, 2021) (Ampion Petition).

⁹ Case 14-M-0224, et al., Upstate Power Petition for Creation of Opt-Out CDG Program (filed April 19, 2021) (Upstate Power Petition).

¹⁰ Case 14-M-0224, et al., Petition for Approval (filed August 11, 2021) (Sustainable Westchester Petition).

COMMENTS

On April 27, 2021, the Secretary issued a Notice Soliciting Comments on the CCA Whitepaper indicating that initial comments were due on July 6, 2021, with reply comments due July 20, 2021. Initial comments on opt-out CDG were received by 23 parties, with six parties submitting reply comments on this topic. Comments were received both in support of and opposition to an opt-out CDG program. Summarized here is a high-level synopsis outlining both positions. For the most part, the summary below addresses the concept of an opt-out CDG program and does not distinguish between an integrated or a standalone program model.

Many parties comment that an opt-out CDG program would help further the State's clean energy goals as this type of program would greatly promote the development of CDG. Specifically, parties note that CDG, such as solar farms up to 5 MW, could displace fossil units and thereby reduce pollution across the State, predominantly in vulnerable areas. They state that through CDG's guaranteed savings model, participation in this type of program would reduce a customer's utility bill, creating a vital benefit for those programs that target low-income customers. Parties also note that the ability to use opt-out enrollment for CDG would allow municipalities to offer a renewable energy program to its constituents, which they may not otherwise be able to offer, that would provide savings to participants and allow the municipality to contribute toward the State's clean energy goals.

Parties also comment that when coupled together, an opt-out CDG program could significantly influence a traditional CCA supply program and address the concerns regarding the ability to obtain reasonably priced EDP compliant Renewable Energy Certificates (RECs). They assert that the additional

benefit of applying net credited savings to all eligible customers' bills who do not chose to opt-out could improve energy-related engagement across municipalities and, therefore, increase the number of CCA participants. Parties also claim that there is also an opportunity to engage communities in the development of locally sourced renewable CDG projects.

Many commenters mention the advantages an opt-out CDG would offer CDG developers. They state that due to the programs' ability to offer enrollment on an opt-out basis, marketing, customer acquisition and onboarding, and program management would be reduced and could possibly eliminate many of the expenses CDG developers currently face.

Conversely, some commenters identified issues that might undesirably affect the CDG market. These commenters caution against a broad based opt-out CDG program without the development of program limitations. These explanations include the possibility for a conflict of interest, as well as an overcompensation to potential opt-out CDG program administrators. Commenters also recognize the program's possibility of creating inequalities among municipalities based on community profiles, as well as the possibility that such a program could reduce a customer's net credited savings if allocations are spread across a larger customer base. Commenters further note the program's potential impact on available CDG memberships for customers who want to opt into CDG.

With the elimination of many of the expenses CDG developers currently face, commenters warn that a program administrator's interest in operating such a program might favor financial gains, as opposed to what is in the community's best interest. Commenters also remark that certain communities are likely to be more attractive to CDG developers than others,

resulting in community inequalities across the State. Others state that a limitless CCA opt-out CDG program would consume a disproportionate share of CDG credits, causing only customers living in CCA communities to have access to minimal CDG net credits.

DISCUSSION

The opportunity to offer CDG on an opt-out basis could spur significant clean energy development and benefits across the State, contributing to the achievement of the State's distributed clean energy goals. With the assurance that a certain amount of CDG members will enroll in a CDG project - a guarantee that a large group of consumers will become CDG members - the development of CDG projects could grow considerably across New York. The soft costs associated with customer acquisitions will potentially be reduced as CDG Sponsors and CCA Administrators begin to enroll customers by the masses. With that, there are several issues and concerns that need to be addressed to enable the establishment of a statewide opt-out CDG program.

The CCA Whitepaper sought stakeholder comments on the integration of opt-out CDG into a CCA supply program as well as feedback on the establishment of a standalone opt-out CDG program. As stated in the CCA Whitepaper, Staff understands that additional rules or requirements would need to be developed to ensure that an integrated CCA/CDG program would benefit all New Yorkers, not just CCA participants. Therefore, comments were sought on what those rules should be and what, if any, other programmatic items should be considered.

Staff was in the early stages of overseeing compliance for Joule's first of its kind opt-out CDG integrated with CCA supply programs in the Villages of Lima and Brockport when the

CCA Whitepaper was published. Since that time, it has become apparent that the CDG specific requirements, previously mentioned and established in the Joule Order, were minimal and that additional program requirements and rules, as well as such things as technical functionality related to the transfer of data, require further development prior to the establishment of a statewide opt-out CDG program.

National Grid, the utility whose service territory covers the Villages of Lima and Brockport, has worked collectively with Joule during their initial opt-out CDG roll out to address preliminary matters. These items include the execution of a non-CCA data security agreement (DSA), as well as the necessary compiling, or query filtering, of the data required for CDG enrollment, which is similar to the data needed for CCA supply, albeit differences exist between customer eligibility.

However, there are still several outstanding items that remain unresolved. In order to ensure a minimal level of CDG net-credited savings against their average usage load, Joule requires access to historical usage data for potential customers including those accounts that have an energy service company (ESCO) enrollment block on them, such as low-income customers. Though low-income customers are ineligible to participate in a CCA supply program that does not offer a guaranteed savings product due to the Commission's prohibition on ESCO service to low-income customers, they are eligible for opt-out enrollment in a CDG program.¹¹ Due to Electronic Data Interchange (EDI) limitations and no existing alternative process in place, Joule is unable to receive historical usage data for any account that

¹¹ See Case 12-M-0476, et al., Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (issued December 16, 2016).

has an ESCO enrollment block on it from National Grid via EDI. National Grid is currently working with Joule to resolve this unique issue by proposing an alternative method to transfer historical usage data for those accounts they are unable to transmit through the EDI transmission process.

Along with the data issue described above, the technical functionalities necessary for an automated consolidated billing process continues to be under development.¹² Although each utility can offer consolidated billing at this time, the billing is being processed manually, and is therefore labor intensive. Considering that some of the CCA programs are large and could be submitting mass enrollment for thousands of accounts at one time, there is the potential for system overloads and errors, which have been seen when processing these types of transactions for CCA programs.

Another barrier for CDG integration on an opt-out enrollment basis are the existing utility CCA and CDG tariffs that pertain to utility interactions for CCA programs and customer consent to opt into a CDG project as part of a CCA program. In the CCA Data Access Fees Order, the Commission required each utility to file a CCA tariff that detailed the CCA program requirements and, among other things, included what data could be shared.¹³ The CDG tariffs, while providing necessary programmatic details, do not have any provisions related to facilitation of an opt-out program and the specifics regarding the necessary data and the ability to provide the data without individual customer consent.

¹² The utilities reported an estimated timeframe for the completion of their consolidated billing automation processes to be between 2022 and 2023.

¹³ Case 14-M-0224, et al., Order Establishing Community Choice Data Access Fees (issued December 14, 2017) (CCA Data Access Fees Order).

Additionally, several questions on how such a program should be implemented have arisen during initial program execution. For example, questions have arisen regarding the treatment of CCA participants who belong to an integrated CCA/CDG program and how those participants should be treated if their supply contract expires and their CDG contract has years remaining on it. Additional questions including what the minimal net credited savings should be for opt-out CDG participants and how the avoided cost of customer acquisition savings should be treated remain unanswered. Similarly, questions regarding the prioritization of low-income customers, whether an opt-out CDG program should be permitted without the offering of supply, and the applicability of the existing CCA supply program rules and requirements also need to be addressed.

Although the State's CCA program has been in operation for approximately five year now, CCA is still a new concept for many municipalities and residents within the State. CCA Administrator's invest a significant amount of time and effort educating potential CCA participants on the structure of CCAs and explaining what the program will mean for the given community. With the incorporation of an opt-out CDG product offering into a CCA supply program, customers will need additional education to better understand the differences between the product offerings, as well as the implications for the choices they'll be offered. Enabling customers to make informed decisions about their energy choices requires detailed outreach and education through various avenues in order to reach as many people as possible. With a CCA program that also offers opt-out CDG, a customer would receive one of three different opt-out letters: participation in a CCA supply only program, participation in a CDG only program, or participation in both a CCA supply and CDG program. As many are unfamiliar with CCA,

let alone CDG, there has, understandably, been some confusion as to what each program is, and which options the customer has.

The Commission sees merit in advancing an opt-out CDG program and believes that an opt-out CDG program will help spur the development of CDG projects across the State, all while motivating participating communities to make cleaner energy choices that will, in turn, bring the State closer to reaching its clean energy targets. In order to properly safeguard CDG benefits for all New Yorkers, the Commission finds that additional time is required to properly develop the appropriate program operation, oversight, and enforcement rules to ensure a successful opt-out CDG program. The Commission believes that by identifying the solutions necessary to resolve the issues described in this Order, such as, but not limited to, data and billing technical issues, program implementation advantages and disadvantages, and necessary limitations and/or requirements unique to such a program, the Commission will be able to establish an opt-out CDG program that will benefit all New Yorkers, not just the communities who choose to participate.

Accordingly, the Commission finds that additional procedural steps are necessary to address the matters discussed herein and directs Staff to file, within 120 days of the effective date of this Order, proposed opt-out CDG program operation, oversight, and enforcement rules, with the Secretary for future Commission consideration. The filing shall be informed by a stakeholder collaborative process that allows for

the comprehensive discussion of potential solutions to the issues identified in the body of this Order.¹⁴

Commission decision on the Ampion, Upstate Power, and SW petitions for opt-out CDG will not be made until these programmatic rules are established. Additionally, given the implementation issues mentioned above preventing the integration of opt-out CDG into existing CCA programs, neither the Commission nor Staff will approve additional opt-out CDG implementation plans, whether integrated with a CCA program or standalone, until further Commission action is taken.

The Commission orders:

1. Department of Public Service Staff is directed to file, with 120 days of the effective date of this Order, a proposal for opt-out CDG program operation, oversight, and enforcement, consistent with the discussion in the body of this Order.

2. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

¹⁴ This process is not intended to determine any necessary rules or requirements regarding the Joint Petition for Approval of an Expanded Solar For All Programs for Providing Community Solar to Low-Income Customers filed by NYSERDA and National Grid and any decisions regarding that petition will be made in that proceeding. See Case 19-E-0735, Petition of New York State Energy Research and Development Authority Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025 (filed April 23, 2021).

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary