

## Local Law 1 2019

### A LOCAL LAW TO ESTABLISH A COMMUNITY CHOICE AGGREGATION PROGRAM IN THE TOWN OF NISKAYUNA

Be it enacted by the Town Board of the Town of Niskayuna as follows:

The Code of the Town of Niskayuna is hereby amended by adding Chapter 77, entitled “Community Choice Aggregation Program” to read as follows:

#### **§1. Legislative Findings; Intent and Purpose; Authority.**

A. It is the policy of both the Town of Niskayuna (the “Town”) and the State of New York to reduce costs and provide cost certainty for the purpose of economic development, to promote deeper penetration of energy efficiency and 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 Eligible Consumers in those markets. Among the policies and models that may offer benefits in New York is Community Choice Aggregation (“CCA”), which allows local governments to determine the default supplier of electricity and natural gas on behalf of Eligible Consumers

B. The purpose of CCA is to allow participating local governments to procure energy supply service for Eligible Consumers, who will have the opportunity to opt out of the procurement, while maintaining transmission and distribution service from the existing Distribution Utility. This Chapter establishes a program (“CCA Program”) that will allow the Town and other local governments to work together through a shared purchasing model to put out for bid the total amount of electricity being purchased by Eligible Consumers within the jurisdictional boundaries of participating municipalities. Eligible consumers will have the opportunity to have more control to lower their overall energy costs, to spur clean energy innovation and investment, to improve customer choice and value, and to protect the environment; thereby, fulfilling the purposes of this Chapter and fulfilling an important public purpose.

C. The Town is authorized to implement this CCA Program pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law; and State of New York Public Service Commission Case No. 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs (issued April 21, 2016) as may be amended, including subsequent orders of the Public Service Commission (PSC) issued in connection with or related to Case No. 14-M-0224, to the extent that orders related to Case No. 14-M-0224 enable actions by the Town.

D. This chapter of the Code shall be known and may be cited as the “Community Choice Aggregation Program Law”.

## §2. Definitions.

For purposes of this Chapter, and unless otherwise expressly stated or unless the context otherwise requires, the terms in this Chapter shall have the meanings employed in the State of New York Public Service Commission's Uniform Business Practices or, if not so defined there, as indicated below:

A. AGGREGATED DATA shall include the number of consumers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity by month for the past 12 months by service class.

B. ASSISTANCE PROGRAM PARTICIPANT (APP) shall mean participants in utility low-income assistance programs

C. CCA ADMINISTRATOR shall mean the Town or third-party administrator duly authorized to put out for bid the total amount of energy being purchased by Participating Consumers. CCA Administrators are responsible for CCA Program organization, administration, procurement, and communications, unless otherwise specified. A third-party administrator can be retained by the Town via a separate CCA Administration Agreement, adopted by Resolution of the Town Board.

D. CUSTOMER SPECIFIC DATA shall mean customer contact information to send opt-out letters and include data for all consumers in the Town eligible for opt-out treatment based on the terms of PSC CCA Orders and the CCA program design including the customer of record's name, mailing address, and primary language, if available, and any customer-specific alternate billing name and address.

E. DATA SECURITY AGREEMENT shall mean an agreement between the Distribution Utility and the Town or third-party CCA Administrator that obligates each party to meet, collectively, (i) all national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual Eligible Consumer with respect to the CCA Administrator or its representative's processing of confidential utility information; (ii) the Distribution Utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify individual Eligible Consumer with respect to the CCA Administrator or its representative's processing of confidential utility information; and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to

confidential data.

F. DEFAULT SERVICE shall mean supply service provided by the Distribution Utility to consumers who are not currently receiving service from an energy service company (ESCO). Eligible Consumers within the Town that receive Default Service, and have not opted out, will be enrolled in the Program as of the Effective Date.

G. DISTRIBUTED ENERGY RESOURCES (DER) shall mean local renewable energy projects, shared renewables like community solar, energy efficiency, demand response, energy management, energy storage, microgrid projects and other innovative Reforming

the Energy Vision (REV) initiatives that optimize system benefits, target and address load pockets/profile within the CCA's zone, and reduce cost of service for Participating Consumers.

H. DISTRIBUTION UTILITY shall mean owner or controller of the means of distribution of electricity that is regulated by the Public Service Commission.

I. ELIGIBLE CONSUMERS shall mean eligible customers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or New Consumers that subsequently become eligible to participate in the Program, at one or more locations

within the geographic boundaries of the Town, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility or customers otherwise excluded from automatically participating based on the rules of the CCA Orders. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Town, as such boundaries exist on the effective date of the

Energy Supply Agreement.

J. ENERGY SUPPLY AGREEMENT (ESA): An agreement between an energy customer

and an Energy Services Company (ESCO) to provide electricity or gas service to the customer for a fixed or variable price.

K. ENERGY SERVICES COMPANY (ESCO) shall mean a third-party energy supplier eligible to sell electricity, natural gas and/or energy related value-added services to customers in New York State, utilizing the transmission and distribution systems of existing utilities. ESCOs are regulated by the New York State Department of Public Service and the New York State Public Service Commission, and must comply with the New York State Public Service Law.

L. NEW CONSUMERS shall mean consumers of electricity that become Eligible Consumers after the effective date of the ESA, including those that opt in or move into the Town.

M.. PARTICIPATING CONSUMERS shall mean Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or are New Consumers.

N. PSC CCA ORDER shall mean the PSC's Order Authorizing Framework for Community

Choice Aggregation Opt-Out Program, issued on April 21, 2016 in Case 14-M-0224,

“Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.”

O. PUBLIC SERVICE COMMISSION or PSC shall mean New York State Public Service Commission.

P. SUPPLIERS shall mean ESCOs that procure electric power for Eligible Consumers in

connection with this Chapter or, alternatively, generators of electricity or other entities who procure and resell electricity.

### **§3. Establishment of a Community Choice Aggregation (Energy) Program.**

A. A Community Choice Aggregation (Energy) Program is hereby established by the Town

Board of the Town of Niskayuna, whereby the Town may implement a CCA Program to the full extent permitted by the PSC CCA Order, as set forth more fully herein.

B. The Town or third-party administrator may act as aggregator or broker for the sale of electric supply to Eligible Consumers and may enter into contracts with one or more Suppliers for energy supply and other services on behalf of Eligible Consumers.

C. The Town may enter into agreements and contracts with other municipalities, non-profits, consultants, and/or other third parties to i) develop and implement the CCA Program, ii) act as CCA Administrator, and/or iii) develop distributed energy resources (DER) products and services to Participating Consumers, including opportunities to participate in local renewable energy projects, shared solar, energy efficiency, microgrids, storage, demand response, energy management, and other innovative Reforming the Energy Vision (REV) initiatives and objectives designed to optimize system benefits, target and address load pockets/profile within the CCA zone, and reduce costs for CCA customers.

D. The operation and ownership of the utility service shall remain with the Distribution Utility. The Town's participation in a CCA Program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Town shall not take over any part of the electric transmission or distribution system and will not furnish any type of utility service, but will instead negotiate with Suppliers on behalf of Participating Consumers.

### **§4. Eligibility.**

A. All consumers within the Town, including residential and non-residential, regardless of size, shall be eligible to participate in the CCA Program.

B. All consumers that are members of utility service classes eligible for inclusion in the CCA Program on an opt-out basis, as set forth in the NYSPSC Order Authorizing CCA's,

Appendix C, or as otherwise specified by the Commission shall be enrolled on an opt-out

basis except for consumers i) that are already taking service from an ESCO, ii) that have

placed a freeze or block on their account, or iii) for whom inclusion in the CCA Program will interfere with a choice the customer has already made to take service pursuant to a special rate. Those consumers may be enrolled on an opt-in basis.

C. New Consumers shall be enrolled on an opt-out basis.

#### **§5. Opt-Out Process.**

A. An opt-out letter, printed on municipal letterhead, shall be mailed to Eligible Consumers

at least 30 days prior to customer enrollment. The opt-out letter shall include information on the CCA Program and the contract signed with the selected ESCO including specific details on rates, services, contract term, cancellation fee, and methods for opting-out of the CCA Program. The letter shall explain that consumers that do not opt-out will be enrolled in ESCO service under the contract terms and that information on those consumers, including energy usage data and APP status, will be provided to the ESCO.

B. All consumers shall have the option to opt-out of the CCA Program at any time without penalty.

C. Termination fees shall not be charged to consumers that cancel their CCA service as a result of moving out of the premises served.

#### **§6. Customer Service.**

Participating Consumers shall be provided customer service including a toll-free telephone

number to resolve concerns, answer questions, and transact business with respect to the service received from the Supplier.

#### **§7. Data Protection Requirements.**

A. The Town, third party administrator or Supplier may request Aggregated Data, Customer

Specific Data and Detailed Customer Information from the Distribution Utility provided, however, that the request for Detailed Customer Information is limited to only those Eligible Consumers who did not opt-out once the initial opt-out period has closed.

B. All data shall be protected in a manner compliant with, collectively, (i) all national, state

and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the Town or its representative's processing of confidential utility information; (ii) the utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the Town or its representative's processing of confidential utility information; and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.

C. The Town or third party administrator must enter into a Data Security Agreement with the Distribution Utility for the purpose of protecting customer data.

### **§8. CCA Advisory Group.**

A. A CCA Advisory Group is hereby established to develop and review CCA related proposals, assist the Town or third party administrator in awarding said proposals, and forward information regarding such awards to the Town Board of the Town of Niskayuna for ratification.

B. Membership to the CCA Advisory Group shall include but is not limited to the Town Planner and Town Comptroller.

### **§9. Administration Fee.**

The Town or third party administrator may collect, or cause to be collected, funds from customer payments to pay for administrative costs associated with running the CCA program.

### **§10. Reporting.**

A. Annual reports shall be filed with the NYSPSC Secretary by March 31 of each year and cover the previous calendar year.

B. Annual reports shall include, at a minimum: number of consumers served; number of consumers cancelling during the year; number of complaints received; commodity prices paid; value-added services provided during the year (e.g. installation of DER or other clean energy services); and administrative costs collected. The first report shall also include the number of consumers who opted-out in response to the initial opt-out letter or letters.

C. If a CCA supply contract will expire less than one year following the filing of the annual report, the report must identify current plans for soliciting a new contract, negotiating an extension, or ending the CCA program.

### **§11. Effective Date.**

This local law shall take effect upon the filing with the Department of State pursuant to section 27 of the Municipal Home Rule Law.