

## LOCAL LAW NO. [1]-2019

### A LOCAL LAW TO ESTABLISH A COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM IN THE VILLAGE OF UPPER NYACK

Be it enacted by the Village of Upper Nyack as follows:

The Code of the Village of Upper Nyack is hereby amended by adding a new Chapter 15, entitled “COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM,” to read as follows:

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

- A. It is the policy of both the Village of Upper Nyack (“Municipality”) 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 Municipality and other local governments to work together through a shared purchasing model to put out for bid the total amount of natural gas and/or 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 Municipality 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 Municipality.
- D. This Chapter shall be known and may be cited as the COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM Law of the Municipality.

#### **§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 mean aggregated and anonymized information including 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 or volumetric consumption for gas by month for the past 12 months by service class.
- B. **CCA ADMINISTRATOR** shall mean The Village of Upper Nyack or third party CCA Administrator duly authorized to put out for bid the total amount of electricity and/or natural gas being purchased by Participating Consumers. CCA Administrator is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.
- C. **CUSTOMER SPECIFIC DATA** shall mean customer specific information, personal data and utility data for all consumers in the municipality eligible for opt-out treatment based on the terms of PSC CCA Order and the CCA program design including the customer of record's name, mailing address, telephone number, account number, and primary language, if available, and any customer-specific alternate billing name, address, and phone number.
- D. **DATA SECURITY AGREEMENT** shall mean an agreement between the Distribution Utility and the Municipality 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.
- E. **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 Municipality that receive Default Service, and have not opted out, will be enrolled in the Program as of the Effective Date.
- F. **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.
- G. **DISTRIBUTION UTILITY** shall mean owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission.

- H. ELIGIBLE CONSUMERS shall mean eligible customers of electricity and/or natural gas 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 Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. 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 Municipality, as such boundaries exist on the effective date of the ESA.
- I. ESCO or ENERGY SERVICES COMPANY mean an entity duly authorized to conduct business in the State of New York as an ESCO.
- J. 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 Municipality.
- K. 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.
- L. PROGRAM ORGANIZER shall mean the group responsible for initiating and organizing the CCA. This group will typically secure buy-in from local governments and engage in preliminary outreach and education around CCA. The Program Organizer may be a non-profit organization, local government, or other third party. The Program Organizer and the CCA Administrator may be the same.
- M. 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.”
- N. PUBLIC SERVICE COMMISSION or PSC shall mean New York State Public Service Commission.
- O. SUPPLIERS shall mean ESCOs that procure electric power and natural gas for Eligible Consumers in connection with this Chapter or, alternatively, generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

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

- A. A Community Choice Aggregation (Energy) Program is hereby established by the Municipality, whereby the Municipality may implement a CCA Program to the full extent permitted by the PSC CCA Order, as set forth more fully herein.
- B. The Municipality may act as aggregator or broker for the sale of electric supply, gas supply, or both 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 Municipality 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 offers of opt-in 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 Municipality's participation in a CCA Program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Municipality shall not take over any part of the electric or gas 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 Municipality, including residential and non-residential, regardless of size, shall be eligible to participate in the CCA Program.
- B. All consumers that are members of and serviced by Orange and Rockland Utilities, Inc. 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 available during normal business hours (9:00 A.M.- 5:00 P.M. Eastern Time, Monday through Friday) to resolve concerns, answer questions, and transact business with respect to the service received from the Supplier.

**§7. Data Protection Requirements.**

- A. The Municipality may request Aggregated Data and Customer Specific Data from the Distribution Utility provided, however, that the request for Customer Specific Data is limited to only those Eligible Consumers who did not opt-out once the initial opt-out period has closed.
- B. Customer Specific 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 Municipality 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 Municipality 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 Municipality 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, act as the Municipality's agent in awarding said proposals, and forward information regarding such awards to the Village of Upper Nyack for ratification.
- B. Membership to the CCA Advisory Group shall include the Mayor, Treasurer, Village Clerk and at least one Trustee.

**§9. Administration Fee.**

The Municipality 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 Village Clerk of the Municipality 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 be effective immediately upon passage.

**§12. Severability.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.