

## TOWN OF MARBLETOWN

### Local Law No.   1   of 2018

#### **A Local Law Providing for Community Choice Aggregation (Energy) Program**

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

§ 1. Legislative findings; intent and purpose; authority.

- A. As noted by this state's Public Service Commission (PSC) in Case No. 14-M-0224, decided April 20, 2016, it is the policy of the State of New York to reduce costs and to provide cost certainty to promote economic development; to promote deeper penetration of energy efficiency and renewable energy resources, such as hydroelectric, wind and solar; to promote wider deployment of distributed energy resources; and 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 serve these policies in New York is community choice aggregation (CCA), as defined in PSC Case No. 14-M-0224, which allows local governments, including towns, villages and cities, to determine the default supplier of electricity and/or natural gas on behalf of eligible consumers.
- B. The purpose of CCA is to allow participating local governments to procure both energy supply service and distributed energy resources for eligible consumers, who will retain the opportunity to opt out of such procurement by maintaining transmission and distribution service from the existing distribution utility. This chapter establishes authority to establish a program (CCA program) that will allow the Town of Marbletown, with (or without) 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, as well as to bid out for the development of distributed energy resources for the benefit of eligible consumers. 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 important purposes.
- C. The Town of Marbletown is authorized to implement a CCA program in the exercise of its powers pursuant to § 10, Subdivision 1(ii)a(12) of this state's Municipal Home Rule Law and the authority bestowed upon towns in the PSC's ruling in Case No. 14-M-0224, issued April 21, 2016. Exercise of the authority shall be consistent with the processes and procedures set forth in Appendix D of the PSC's aforesaid ruling, or with such other processes and procedures as the PSC may order or may regulate, or the state legislature may determine.

## § 2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

### AGGREGATED DATA

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.

### CCA ADMINISTRATOR

The Town Board of the Town of Marbletown, New York, or a third party selected by the Town Board which shall be duly authorized to put out for bid the total amount of electricity and/or natural gas being purchased by participating consumers and the distributed energy resources that will be incorporated into the CCA program. The CCA Administrator shall be responsible for CCA program organization, administration, procurement, and communications, unless otherwise specified.

### CCA EFFECTIVE DATE

The date on which the CCA program becomes effective within the municipality, following implementation of all actions required of the municipality and/or CCA Administrator to enroll participating customers in the CCA program, said actions to be set forth in more detail within a PSC order approving the Community Choice Aggregation Implementation Plan described herein.

### CUSTOMER-SPECIFIC DATA

Customer-specific information, personal data and utility data for all consumers in the municipality eligible for opt-out treatment based on the terms of the PSC ruling in Case No. 14-M-0224 or 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.

### DATA SECURITY AGREEMENT

An agreement between the distribution utility and the Town of Marbletown which obligates each party to satisfy, collectively:

- A. All federal, 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's or its representative's processing of confidential utility information;
- B. The distribution utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify

individual eligible consumers with respect to the CCA Administrator's or its representative's processing of confidential utility information; and

- C. The PSC ruling in Case No. 14-M-0224 or the PSC's other orders, rules, regulations and guidelines relating to confidential data.

#### DEFAULT SERVICE

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 of Marbletown that receive default service, and have not opted out, will be enrolled in the CCA program as of the effective date of said program.

#### DISTRIBUTED ENERGY RESOURCES (DER)

Local renewable energy projects, shared renewables such as 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/profiles within the CCA's zone, and reduce cost of service for participating consumers.

#### DISTRIBUTION UTILITY

Central Hudson Gas and Electric Corporation, or any successor thereto.

#### ELIGIBLE CONSUMERS

Eligible customers of electricity and/or natural gas who receive default service from the distribution utility as of the effective date of a CCA program, or new consumers that subsequently become eligible to participate in the program, at one or more locations within the geographic boundaries of the Town of Marbletown, 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 Town of Marbletown.

#### ESA or ENERGY SERVICES AGREEMENT

An agreement entered into by and between the municipality, the CCA Administrator and a supplier concerning procurement of electricity and/or natural gas supply or electricity and/or distribution utility bill credits generated by a DER on behalf of the participating customers, upon terms and conditions that are mutually agreeable to the municipality, the CCA Administrator and the supplier; provided, however, that if the CCA Administrator is a third party, it shall sign each ESA solely for the purpose of furthering its administrative obligations under the CCA program and shall not have any financial liability under any ESA.

#### ESCO or ENERGY SERVICES COMPANY

An entity duly authorized to conduct business in the State of New York as an ESCO.

#### NEW CONSUMERS

Consumers of electricity that become eligible consumers after the effective date of any ESA, including those that opt in or move into the municipality.

#### PARTICIPATING CONSUMERS

Eligible consumers enrolled in the program, either because they are consumers who receive default service from the distribution utility as of the CCA effective date and who have not opted out or who are new consumers.

#### PROGRAM ORGANIZER

The group or entity responsible for initiating and organizing the CCA program. The program organizer will typically secure buy-in from local governments and engage in preliminary outreach and education around CCA. The program organizer may be a local government, nonprofit organization or other third party. The program organizer and the CCA Administrator may be the same.

#### PSC CCA ORDER

The PSC's Order Authorizing Framework for Community Choice Aggregation Opt-Out Program, issued on April 21, 2016, in Case No. 14-M-0224, "Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs."

#### PUBLIC SERVICE COMMISSION or PSC

New York State Public Service Commission.

#### SUPPLIERS

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 Community Choice Aggregation (Energy) Program.

- A. A Community Choice Aggregation (Energy) Program is hereby authorized to be established by the Town of Marbletown. The Town may establish and implement a CCA program to the full extent permitted by the PSC CCA Order and any subsequent PSC orders approving the CCA program Implementation Plan, as set forth more fully herein.
- B. The Town 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 and/or DER providers for energy supply and other services on behalf of eligible consumers.
- C. The Town may enter into agreements and contracts with other municipalities, nonprofits, consultants, and/or other third parties to:
  - (1) Develop and implement the CCA program;

- (2) Act as CCA Administrator and/or contract out the role of CCA Administrator to a third party; and/or
  - (3) Develop offers of 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 or gas transmission or distribution system and will not furnish any type of utility service, but will instead negotiate with suppliers and/or DER providers on behalf of participating consumers.
- E. Participating consumers will be charged a CCA program subscription fee which may include (but not necessarily be limited to): the ESCO supply charge; a DER subscription charge (if applicable); and the administration fee described in § 154-8 of this chapter. This subscription fee will appear on the participating consumers' bills from the distribution utility.
- F. The Town Board, either acting on its own or through the CCA Administrator, is authorized to prepare and submit a Community Choice Aggregation Implementation Plan to the New York Public Service Commission for approval of a CCA program, as outlined in the PSC CCA Order. Such an implementation plan will include final details of the CCA program as outlined therein.

#### § 4. Eligibility.

- A. All consumers within the Town, including residential and nonresidential, regardless of size, shall be eligible to participate in the CCA program; provided, however, that participation in DER projects may depend on DER project availability and may be restricted by distribution utility service class.
- B. All consumers who are members of Electric SC 1 Residential Service, SC 2 General Service, and Gas SC 1 Residence Rate, SC 2 Commercial and Industrial Rate may be enrolled on an opt-out basis except for consumers that are already taking service from an ESCO, that have placed a freeze or block on their account, or 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. The definitive rules with

respect to enrollment of eligible consumers will be set forth in the CCA Implementation Plan.

- 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 and/or DER provider(s), including specific details on rates, fees, 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 the CCA program under the contract terms and that information on those consumers, including energy usage data and APP status, will be provided to the ESCO and/or the DER providers. The opt-out letter shall also explain that the CCA Administrator will be authorized to enroll participating consumers in DER projects and communicate such enrollment to the distribution utility under relevant PSC-approved rules and tariffs so that participating consumers may receive applicable billing credits from the distribution utility.
- 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. through 5:00 p.m. Eastern time, Monday through Friday) to resolve concerns, answer questions, and transact business with respect to the CCA program.

#### § 7. Data protection requirements.

- A. The Town 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 before the initial opt-out period closed.
- B. Customer-specific data shall be protected in a manner compliant with, collectively:
  - (1) 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's or its representative's processing of confidential utility information;

- (2) 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's or its representative's processing of confidential utility information; and
  - (3) The PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.
- C. The Town must enter into a data security agreement with the distribution utility for the purpose of protecting customer data.

#### § 8. 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.

#### § 9. Reporting.

- A. Annual reports shall be filed with the Town Board 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.