

Local Law No. 1 of 2019, entitled:

“Community Choice Aggregation Program”

BE IT ENACTED BY, the Town Board of the Town of Clinton as follows:

1. Chapter 170 is hereby added to the Town Code which shall read as follows:

Chapter 170. COMMUNITY CHOICE AGGREGATION PROGRAM.

§ 170.1 Legislative Findings; Intent and Purpose; Authority.

- A. It is the policy of both the Town of Clinton (the “Town”) and the State of New York to reduce costs and provide price certainty for the purpose of consumer protection and economic development, to expand access and opportunities for consumers in retail energy markets, as well as to promote the sustainability and resilience of energy systems through the proliferation of renewable energy, energy efficiency, and Distributed Energy Resources. Among the initiatives that may advance these objectives in New York is Community Choice Aggregation, a policy that empowers local governments to select the source of electricity and/or natural gas supply on behalf of its residents and small businesses, reflecting local resources, priorities, and challenges. Energy delivery shall remain the responsibility of the Distribution Utility.
- B. This Chapter establishes the authority for the Town, in connection with the implementation a CCA Program, to acquire utility data; to select, through competitive solicitation, one or more energy Supplier(s) on behalf of Participating Customers within the Town; and to maximize value for Participating Customers through enhanced services related to Distributed Energy Resources. The Town may choose to collaborate with other local governments to form an intermunicipal CCA Program. By establishing a CCA Program, Participating Customers will have the opportunity to lower and stabilize their energy costs, to spur local clean energy innovation and investment, and to reduce their environmental impact; thereby, fulfilling the purposes of this Chapter and fulfilling an important public purpose.
- C. The Town is authorized to implement this Community Choice Aggregation Program pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law; and consistent with 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 issued in connection with or related to Case No. 14-M-0224.

D. This Chapter shall be known and may be cited as the “COMMUNITY CHOICE AGGREGATION PROGRAM”.

§ 170.2. 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 as amended or, if not so defined there, as indicated herein:

- A. AGGREGATED DATA means aggregated and anonymized information relating to electricity and/or gas consumption including, but not limited to, the number of consumers by service and rate class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months by service and rate class, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service and rate class.
- B. COMMUNITY CHOICE AGGREGATION PROGRAM or CCA Program means the Community Choice Aggregation Program enabled herein.
- C. CCA ADMINISTRATOR means the Town or third party CCA administrator duly authorized by the Town to administer the CCA Program including without limitation to request Aggregated Data and Customer Specific Data; to competitively solicit Suppliers for the aggregated demand for electricity and/or natural gas on behalf of Default Consumers; and to offer Participating Customers additional opportunities to participate or enroll in programs or projects related to DER. The CCA Administrator shall be responsible for program organization, administration, procurement, communications, and for meeting all requirements for program implementation specified in the PSC CCA Order, unless otherwise specified.
- D. CUSTOMER SPECIFIC DATA means customer-specific information, personal data and utility data for Default Customers including 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.
- E. DEFAULT CUSTOMER means a consumer of electricity and/or natural gas services within opt-out eligible service classes (as delineated in the PSC CCA Order), who receives supply service from the Distribution Utility as of the date that the Supply Contract goes into effect, or a consumer within these service classes who subsequently becomes eligible to become a Participating Customer in the CCA Program including a consumer who has terminated a supply

contract with an ESCO; a consumer who has removed a freeze or block on consumer's account; a consumer who has voluntarily suspended service pursuant to a special rate; or a consumer who becomes a new resident of the Town after the Supply Contract goes into effect. None of the following are considered a Default Customer and will not be enrolled on an opt-out basis: a consumer within opt-out eligible service classes who receives supply service from an ESCO as of the date that the Supply Contract goes into effect; a consumer who has placed a freeze or block on consumer's account; and a consumer for whom enrollment in the CCA Program would interfere with a choice consumer had already made to take service pursuant to a special rate. For the avoidance of doubt, a Default Customer must reside or be otherwise located at one or more locations within the geographic boundaries of the Town, as such boundaries exist as of the date the Supply Contract goes into effect.

- F. DISTRIBUTED ENERGY RESOURCES or DER means local renewable energy projects, community distributed generation (e.g. shared solar), peak demand management, energy efficiency, demand response, energy storage, community resilience microgrid projects, and other innovative Reforming the Energy Vision ("REV") initiatives of the State of New York that further engage and/or reduce cost of service for Participating Customers, optimize system benefits, and/or address infrastructure and demand challenges within geography of the CCA Program.
- G. DISTRIBUTION UTILITY means the owner or controller of the means of distribution of the natural gas or electricity in the Town. The Distribution Utility also serves as the default supplier of electricity and natural gas preceding the establishment of a CCA Program.
- H. ESCO or ENERGY SERVICES COMPANY means an entity duly authorized to conduct business in the State of New York as an ESCO
- I. PARTICIPATING CUSTOMERS means Default Customers of the CCA Program who have not opted out, and non-Default Customers of any service class who have voluntarily enrolled in the CCA Program.
- J. PSC CCA ORDER means 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."
- K. PUBLIC SERVICE COMMISSION or PSC means the New York State Public Service Commission.

- L. SUPPLIER means an ESCO that procures electric power and/or natural gas for Participating Customers in connection with this Chapter or, alternatively, a generator of electricity and/or natural gas or other another entity that procures and resell electricity or natural gas.
- M. SUPPLY CONTRACT means a contract for the supply of electric power or natural gas entered into between a Supplier and the Town.
- N. SUPPLY CONTRACT DATE means the date when electric power and/or natural gas is first delivered to Participating Customers in connection with the CCA Program.

§ 170.3. Authorization of a Community Choice Aggregation Program.

- A. A Community Choice Aggregation Program is hereby authorized by the Town, which the Town may implement to the full extent permitted by the PSC CCA Order, as set forth more fully herein.
- B. The Town may enter into contracts with one or more Suppliers and other providers of services on behalf of Participating Customers.
- 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 offers of opt-in DER products and services to Participating Customers.
- D. The operation and ownership of the utility service shall remain with the Distribution Utility. The Town's participation in the 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 shall not furnish any type of utility service, but will instead negotiate with Suppliers on behalf of Participating Customers.
- E. The Public Service Commission supervises retail markets and participants in these markets through legislative and regulatory authority and the Uniform Business Practices, which includes rules relating to the eligibility of participating ESCOs, the operation by which ESCOs provide energy services, and the terms on which customers may be enrolled with ESCOs.

§ 170.4. Eligibility.

- A. All Default Customers shall be enrolled on an opt-out basis. Default Customers will have the right to opt out before the Supply Contract goes into effect, or disenroll any time thereafter with

no penalty. Default Customer who do not opt out before the Supply Contract goes into effect will be enrolled automatically.

- B. All non-Default Customers within the Town, regardless of service class, shall be eligible to participate in the CCA Program on an opt-in basis.
- C. The CCA Administrator shall issue one or more requests for proposals to Suppliers to provide energy to participants and may then award a contract in accordance with the CCA Program, this Local Law, and the PSC CCA Order.

§ 170.5. Opt-Out Process.

- A. The CCA Administrator shall cause the mailing of a program notification letter, printed on municipal letterhead, to Default Customers at least 30 days prior to customer enrollment. The letter shall include information on the CCA Program and the Supply Contract signed with the selected Supplier(s) including specific details on rates, services, contract term, and methods for opting out of the CCA Program. The letter shall explain that Default Customers who do not opt out will be enrolled in the CCA Program under the Supply Contract terms and that information on those customers, including energy usage data, will be provided to the ESCO.
- B. After the 30 day opt-out period, all Participating Customers shall have the option to disenroll from the CCA Program at any time without penalty.

§170.6. Data Protection Requirements.

- A. CCA Administrator may request Aggregated Data and Customer Specific Data from the Distribution Utility.
- 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 Default Customer or Participating Customer that apply with respect to the Town 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 an individual Default Customer or Participating Customer 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. The Town shall enter

into an agreement with the Distribution Utility that obligates each party to meet the above provisions of this paragraph.

§ 170.7. Administration Fee.

The CCA Administrator may collect, or cause to be collected, funds from Participating Customer payments to pay for administrative costs associated with operating the CCA Program.

§ 170.8. Reporting.

- A. The CCA Administrator shall prepare and file with the Town Board an annual report by March 31 of each year concerning the operations of the CCA Program for the previous calendar year.
- B. Each annual report shall include, at a minimum, the following: number of Participating Customers served; number of Participating Customers cancelling; number of complaints received; commodity prices paid; value-added services provided (e.g. installation of DER or other clean energy services); and administrative costs collected. The first annual report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters.
- C. If a Supply Contract will expire less than one year following the filing of an annual report, the report shall describe current plans for soliciting a new Supply Contract, negotiating an extension, or terminating the CCA Program.

§ 170.9. Effective Date.

This Local Law shall be effective immediately upon filing with the Secretary of State.

§170.10. 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.

2. If any section, subsection, or specific part or provision or standard of this Local Law or the application hereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such section, subsection or specific part or provision or standard shall be deemed a separate, distinct and independent provision, and such judgment shall not affect the validity of the remaining portions thereof.
3. To the extent that any provision of this Chapter is inconsistent with Town Law §§ 263, 274-a, 274-b, or any other provision of Article 16 of the Town Law, or of the Public Health Law, or of Real Property Law, the provisions of this chapter are expressly intended to and do hereby supersede any such inconsistent provisions under the Town's municipal home rule powers, pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3); §10(1)(ii)(a)(14) and §22 to supersede any inconsistent authority.
4. This Local Law shall take effect immediately upon filing with the Secretary of State.