

Chapter 135

COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM

[HISTORY: Adopted by the Town Board of the Town of Ithaca 8-22-2022 by L.L. No. 15-2022. Amendments noted where applicable.]

§ 135-1. Legislative findings; intent and purpose; statutory authority.

- A. The Town of Ithaca has long demonstrated its commitment to sustainability and community-wide greenhouse gas reduction from energy use, transportation, land use and waste management. The primary goal of the Green New Deal resolution, passed unanimously by the Town Board in March of 2020, is to achieve an equitable transition to carbon neutrality Town-wide by 2030. The resolution calls for meeting the electricity needs of Town government operations with 100% regionally sourced renewable electricity and reducing emissions by 50% from the Town fleet of vehicles by 2025.
- B. To meet reduction targets for greenhouse gas emissions, the Town will seek reductions for all addressable carbon emissions associated with the community, including electricity use in buildings, heating of buildings, energy for transportation, and solid and sewer waste exports.
- C. To achieve the Town's 2030 goal, it may choose to accelerate the deployment of distributed energy resources (DER) such as photovoltaic panels and energy storage systems, as well as to examine the retail energy markets and increase participation of eligible consumers in those markets.
- D. Community choice aggregation has the potential to enable greenhouse gas reductions from electricity use in existing buildings while at the same time guaranteeing affordability and minimizing risk associated with price volatility to eligible consumers.
- E. Among the foremost policies and models to increase access to affordable community-wide energy transition in the state of New York is community choice aggregation (CCA), which allows local governments to determine the supplier(s) of electricity on behalf of eligible consumers, and provide a significant opportunity to diversify electricity supply based on DER.
- F. The purpose of CCA is to allow participating local governments to procure electricity and gas supply service for eligible consumers, while maintaining transmission and distribution service from the existing distribution utility.
- G. The purpose of the Town of Ithaca's CCA program is to administer the energy service in a manner that expands access to solar and other local renewables and energy efficiency technologies by offering optional enrollment of eligible consumers in voluntary investments in DER, with access to financial mechanisms, including the financial mechanism developed under the City of Ithaca's Energy Efficiency Retrofitting and Thermal Load Electrification program, approved by that City's Common Council.
- H. This chapter establishes a program (CCA program) that will allow the Town of

Ithaca, in conjunction with the City of Ithaca, as well as any other local governments in Tompkins County, which may elect to join the CCA program at a later date, to work together using a shared purchasing model to put out for bid the total amount of electricity and natural gas being purchased by eligible consumers within the jurisdictional boundaries of participating municipalities. The CCA program will offer service to every eligible consumer in its service territory, including municipal accounts, and will investigate opportunities to divert municipal sewage and solid waste exports as potential feedstock sources of hydrogen for use by DERs.

- I. The Town of Ithaca is authorized to implement this CCA program pursuant to § 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 of Ithaca.
- J. This chapter shall be known and may be cited as the "Community Choice Aggregation (Energy) Program Law" of the Town of Ithaca.

§ 135-2. 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:

ADDRESSABLE CARBON — Greenhouse gas emissions from electricity, heating, cooling, hot water, transportation vehicles, sewer waste and solid waste.

AGGREGATED DATA — Aggregated and anonymized information, including the number of eligible 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.

ASSISTANCE PROGRAM PARTICIPANTS (APPs) — Low- and medium-income residents so designated by the Tompkins County Department of Social Services.

BASIC SERVICE — The default retail electricity and/or natural gas product received by all customers who do not opt out of the CCA program.

CCA ADMINISTRATOR — A third party designated by the Town of Ithaca which shall be duly authorized to put out for bid the total amount of electricity and natural gas being purchased by eligible consumers and the DERs that will be incorporated into the CCA program. The CCA administrator shall be responsible for CCA program organization, public outreach, data, administration, procurement and communications.

COOPERATIVE — A group formed by building owners and residents who are eligible consumers to invest mutually in onsite DERs.

CUSTOMER-SPECIFIC DATA — Energy account-specific information, personal data

and utility data for all eligible consumers in the municipality eligible for opt-out enrollment based on the terms of the 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.

DATA SECURITY AGREEMENT — An agreement between the distribution utility and the Town of Ithaca that obligates each party to meet, collectively:

- A. 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'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 consumer with respect to the CCA administrator's or its representative's processing of confidential utility information; and
- C. The PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.

DEFAULT SERVICE — Supply service provided by the distribution utility to eligible consumers who are not currently receiving service from an energy service company (ESCO). Eligible consumers eligible for opt-out enrollment within the Town of Ithaca that receive default service, and have not opted out, will be enrolled in the program. Eligible consumers eligible for opt-in enrollment will be enrolled in the program according to its scheduled energy supply contract renewals.

DISTRIBUTED ENERGY RESOURCES (DER) — Local renewable energy projects and energy efficiency measures, shared renewables like community solar and shares and cooperatives, renewable heat and hot water systems, energy management, energy storage, microgrid projects, geothermal heat loop projects, electric vehicles and charging systems, local renewable hydrogen fuel cells, and other innovative Reforming the Energy Vision (REV) initiatives that optimize system benefits, target and address load pockets/profile within the CCA program's zone, and reduce cost of service for customers.

DISTRIBUTION UTILITY — New York State Electric and Gas Corporation (NYSEG), or any successor thereto.

ELIGIBLE CONSUMERS (CUSTOMERS) — Consumers 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 CCA program, except those consumers currently receiving default service that have requested not to have their account information shared by the distribution utility. All eligible consumers must reside or be otherwise located within the geographic boundaries of the CCA program, as such boundaries exist on the effective date of the energy supply agreement, where they will be offered basic service through several enrollment mechanisms based on Public Service Commission rules, including opt-out and opt-in depending on account size and type, and also be offered additional services requiring an affirmative choice to invest in a local DER project.

ENERGY EFFICIENCY RETROFITTING AND THERMAL LOAD ELECTRIFICATION PROGRAM — The City of Ithaca's program along with financial partners to determine potential energy efficiency improvements on residential and commercial buildings and provide financing for voluntary loans and leasing programs available to eligible consumers in the City of Ithaca, as well as in the Town of Ithaca, to pay for efficiency and electrification projects, with an emphasis on serving disadvantaged communities.

ENERGY LOAN ACCOUNT — A shares or cooperative loan repayment account voluntarily subscribed by a CCA customer and administered and/or supervised by the CCA administrator.

ENERGY SERVICES COMPANY (ESCO) — An entity duly authorized to conduct business in the State of New York as an ESCO.

ENERGY SUPPLY AGREEMENT — An agreement between an energy consumer and an energy services company (ESCO) to provide electricity or gas service to the customer for a fixed or variable price. For purposes of this chapter, the CCA administrator would conduct a competitive procurement on behalf of all eligible consumers and would enter into such agreement(s) with an ESCO to provide power to all such eligible consumers in the community that elect to receive service.

EQUITY — Ownership benefits, financial and/or physical, from participating in voluntary investments in local DER.

MUNICIPAL ACCOUNTS — Electricity and gas accounts that serve municipal government-related operations.

NEW CONSUMERS — Consumers of electricity that become eligible consumers after the effective date of the energy supply agreement, including those that opt in or move into the Town of Ithaca.

OPT-UP — An affirmative decision of an eligible consumer, in addition to not opting out of the CCA program as per Public Service Commission rules, to select a premium rate in order to voluntarily invest in a local DER project in the form of shares.

OPT-WITH — An affirmative decision of an eligible consumer, in addition to not opting out of the CCA program as per Public Service Commission rules, to select a premium rate in order to voluntarily invest in a local DER project in the form of cooperatives.

PARTICIPATING CONSUMERS — 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.

PROGRAM ORGANIZER — A designated local nonprofit organization responsible for educating energy users about participation in the CCA program, and about participation in the program's voluntary investment opportunities, as well as supporting the organization of cooperatives by neighbors. This group will typically secure participation from local governments and engage in preliminary outreach and education around CCA.

PSC CCA ORDER — 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."

PUBLIC SERVICE COMMISSION (PSC) — New York State Public Service

Commission.

SHARES — Units of ownership by a customer in local DERs, whether in a nearby building through individual enrollment in a designated CCA shares premium rate and energy loan, or on site through a cooperative enrollment in a designated CCA cooperative premium rate and energy loan account.

SUPPLIERS —

- A. ESCOs that procure electric power and natural gas for eligible consumers in connection with this chapter;
- B. Developers and operators of DERs, or other entities that procure and resell electricity or natural gas, or are involved in aspects of DERs.

§ 135-3. Program established.

- A. A community choice aggregation (energy) program is hereby established by the Town of Ithaca, whereby the Town of Ithaca may implement a CCA program to the full extent permitted by the PSC CCA Order and this chapter, as set forth more fully herein.
- B. The Town of Ithaca may act as aggregator 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 Town of Ithaca may select a third party as CCA administrator for such purpose to the full extent permitted by the order, as set forth more fully herein, and shall include a process for other municipalities in Tompkins County to join the CCA program.
- D. The Town of Ithaca may enter into an intermunicipal agreement with the City of Ithaca and other municipalities in Tompkins County, and potentially municipalities in adjoining counties who join the CCA program, for the purpose of sharing administrative resources to support eligible consumers' access to the City's solar access, building electrification and decarbonization program resources, and shall include a process for other municipalities in Tompkins County to offer their eligible CCA customers such resources to join the CCA program.
- E. As detailed in the PSC CCA Order, the PSC will need to approve an implementation plan before the CCA program can begin operations. The implementation plan shall be prepared for the CCA administrator and approved by the Town before it is submitted to the PSC for approval. The implementation plan shall describe the program and its goals, plans for value-added services, and DER voluntary investment options that will be included in requests for proposals (RFPs) and/or power purchase agreements, contracts and/or bids, a public outreach plan, and drafts of written communications with its residents, including opt-out letters. The plan must also include, when applicable, information on APP guaranteed savings program and community distributed generation program implementation.
- F. The CCA administrator, may act as energy loan account administrator to engage, prequalify, list, and track the performance of the loan accounts of eligible consumers who elect to voluntarily invest in DERs.

- G. The CCA administrator may directly administer opt-out notification communications to eligible consumers, and may offer two additional options:
- (1) To opt-up for a loan to purchase shares in a neighborhood DER project; and
 - (2) An option to opt-with neighbors in a cooperative to own and operate on-site DERs.
- H. The CCA administrator may offer a premium product to any eligible consumer to purchase shares in DERs or to join with neighbors to form a cooperative to directly own and operate DERs.
- I. The CCA administrator may create a system of credits or direct payments to compensate each participant for such equity and may transfer collected premium payments into the customer's energy loan account to facilitate funding, including through the City of Ithaca's Energy Efficiency Retrofitting and Thermal Load Electrification Program or other sources.
- J. The CCA administrator may designate one or more program organizers to assist in the education and engagement of eligible consumers and municipalities in Tompkins County to participate in the CCA program.
- K. The Town of Ithaca may designate all Town-owned properties and rights-of-way available, where allowed by law, for accommodation and connection of DERs, including microgrids, electric vehicle chargers, and geothermal microdistricts, and authorizes the Department of Public Works to develop protocols for DER access.
- L. The Town of Ithaca may make up to 49% of equity in any municipally sited DERs available for voluntary share investments by eligible consumers.
- M. The operation and ownership of the utility service shall remain with the distribution utility. The Town of Ithaca's participation in a CCA program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The CCA program 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 eligible consumers.

§ 135-4. Eligibility.

- A. All consumers within the Town of Ithaca, including residential and nonresidential, regardless of size, shall be eligible to participate in the CCA program's basic service, provided that different methods of enrollment are required to be used for different NYSEG customer classifications.
- B. All participating consumers that are members of New York State Electric and Gas (NYSEG) SC 1 Residential Service, SC 6 General Service and Gas SC 1 Residential Service, SC 2 General Service 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, alongside all other NYSEG service classifications, including: i) for electricity

service, SC2 General Service with Demand Metering, SC3 Primary Service 25 KW or more, SC5 Outdoor Lighting Service, SC7 Large General Service with Time-of-Use Metering, SC8 Residential - Day Night Service, SC9 General Service - Day Night Service, SC10 Cogeneration or Small Power Production/Sale of Energy to the Corporation, SC11 Standby Service, SC12 Residential Service with Time-of-Use Metering, SC13 Competitive Alternative Industrial Service and SC14 Large Economic Development Service; and ii) for gas service, SC3 Interruptible Sales Service, SC4 Natural Gas Motor Vehicles, SC5 Seasonal Gas Cooling Service, SC6 Standby Sales Service, SC10 Non-Residential Distributed Generation Firm Sales Service, SC11 Residential Distributed Generation Firm Sales Service. The Town of Ithaca may include all of its electricity and natural gas accounts to participate as an opt-in customer in the CCA program at the earliest possible date, or for any smaller accounts eligible for opt-out enrollment, may participate through the opt-out process.

- C. New consumers whose electric and/or gas NYSEG meters are eligible for opt-out enrollment, including SC1 Residential Service 1 and SC6 General Services 6, shall be enrolled in basic service on an opt-out basis. New consumers whose meters are eligible for opt-in service shall be offered service and enrolled on an opt-in basis.
- D. The Town of Ithaca, through its CCA administrator, will actively seek to offer service, on an opt-out basis, to low-to-moderate-income (LMI) residents who are assistance program participants (APPs) and are enrolled in products that comply with requirements for ESCO service to APPs at the time of enrollment. The CCA administrator will consult with local and state social services program administrators in considering whether and how to include APPs, specifically where social services organizations receive and pay the resident's energy bill.
- E. All customers of the CCA program shall be eligible to participate in shares and cooperatives, provided that ability to participate shall depend upon the availability of DER projects and financing.
- F. The CCA administrator, on behalf of the Town of Ithaca, shall issue one or more requests for proposals to suppliers to provide energy and related services to participants and may then award a contract, in accordance with the CCA program, and after consultation with and authorization by the involved municipalities as per an intermunicipal agreement.
- G. The CCA administrator will request individual customer data for the accounts of eligible consumers located within the jurisdictional boundaries of the Town of Ithaca from the distribution utility in accordance with the CCA program.
- H. The CCA administrator and the selected energy supplier will notify eligible consumers of the contract terms and their opportunity to opt out of the CCA program.
- I. In accordance with and for purposes of the order, the existing distribution utility, New York State Electric and Gas Corporation, will provide to the CCA administrator aggregate and customer-specific data (including usage data, capacity tag obligations, account numbers, and service addresses) of all eligible customers in the Town of Ithaca not currently enrolled with an ESCO.

- J. The CCA administrator and the Town of Ithaca will protect customer information as required by law, subject to the order and the limitations of the New York State Freedom of Information Law.¹

§ 135-5. Opt-out process.

- A. An opt-out letter, printed on municipal letterhead, shall be mailed to eligible consumers at least 30 days prior to eligible consumer enrollment. The opt-out letter shall include information both on the CCA program and the contracts signed with the selected ESCO and/or DER provider(s), including specific details on rates, fees, services, contract terms, cancellation fee, and methods for opting out of the CCA program. The letter shall explain that eligible consumers that do not opt out will be enrolled in the CCA program under the contract terms and that information on those eligible consumers, including energy usage data and assistance program participant (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 customers in DER projects through an opt-up and opt-with process as defined in this chapter, communicate such enrollment to the distribution utility under relevant PSC-approved rules and tariffs so that customers signing up to participate in investment may receive applicable billing and credits from the distribution utility, and communicate opt-up and opt-with enrollment information to the CCA administrator for energy loan account processing and management.
- B. All eligible consumers shall have the option to opt out of the CCA program. Per the Public Service Commission's CCA Framework Order, customers will be permitted to cancel CCA program service any time before the end of the third billing cycle of a new contract period without penalty or other charges.
- C. Termination fees shall not be charged to customers that cancel their CCA program service as a result of moving out of the service territory of the CCA program.

§ 135-6. Opt-in process.

Eligible consumers with electric and/or gas accounts that are eligible for opt-in enrollment may be offered service on an opt-in basis, based on capacity and opportunity, according to the supply contract renewal schedule of the CCA program.

§ 135-7. Customer service.

Customers shall be provided customer service by the CCA administrator, including a toll-free telephone number available during normal business hours (9:00 a.m. to 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, as well as a secure customer-specific online account, scheduled direct mail, and messages inserted into Town of Ithaca scheduled direct mail and public notices.

§ 135-8. Data protection requirements.

- A. Town of Ithaca departments and other CCA program member municipalities

1. Editor's Note: See Public Officers Law § 84 et seq.

involved in supporting the CCA program and energy loan shares service and cooperative service will share energy data and other data with its CCA administrator to tailor DER products to eligible customers, facilitate customer engagement, program administration, operation, billing and collection.

- B. The Town of Ithaca may request aggregated data and customer-specific data from the distribution utility; provided, however, that this 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.
- C. 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 with respect to the CCA administrator's and Town of Ithaca'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 with respect to the Town of Ithaca 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.
- D. The Town of Ithaca will enter into a data security agreement with the distribution utility for the purpose of protecting customer data.

§ 135-9. Administration fee.

The Town of Ithaca may collect, or cause to be collected, funds from customer payments to pay the designated CCA administrator for administrative costs associated with running the CCA program. These fees will be included in any agreement signed with CCA administrator and an ESCO.

§ 135-10. Loan account management fee.

The Town of Ithaca may collect, or cause to be collected, funds from customer payments to pay for administrative costs associated with running a DER loan account service.

§ 135-11. Reporting.

- A. Annual reports shall be prepared by the CCA administrator and filed with the Town Board of the Town of Ithaca by March 31 of each year and cover the previous calendar year.
- B. Annual reports shall include, at a minimum: number of customers served; number of customers canceling 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. Information shall be broken down by municipality, where applicable. The first report shall also include the number of customers who opted out in response to the initial opt-out

letter or letters.

- C. If a CCA program energy supply agreement 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.

§ 135-12. 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, 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.

§ 135-13. When effective.

This chapter shall take effect immediately upon its filing with the New York State Secretary of State.