

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 26, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre

COMMISSIONER EXCUSED:

Diane X. Burman

CASE 14-M-0564 - Petition of Sustainable Westchester for
Expedited Approval for the Implementation of a
Pilot Community Choice Aggregation Program
within the County of Westchester.

ORDER GRANTING PETITION IN PART

(Issued and Effective February 26, 2015)

BY THE COMMISSION:

BACKGROUND

In a Petition filed on December 23, 2014, Sustainable Westchester, Inc. (SW or Petitioner) requested approval to implement a demonstration community choice aggregation (CCA) program within the County of Westchester. The Petitioner asked that Consolidated Edison Company of New York, Inc. and New York State Electric & Gas Corporation (the Utilities) be required to provide certain customer information to Petitioner and that it be relieved from compliance with certain provisions of the Uniform Business Practices (UBP). In order for it to expeditiously implement the demonstration CCA program and take advantage of historic low electricity and natural gas prices, the Petitioner concluded, action on the Petition should be expedited.

PUBLIC NOTICE AND COMMENTS

In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the Petition was published in the State Register on January 7, 2015 (SAPA No. 14-M-0546SP1). The SAPA §202(1)(a) period for submitting comments in response to the notice expired on February 23, 2015. A comment was received from the Joint Utilities.¹ No other comments were received.

THE PETITION

Sustainable Westchester is a New York State not-for-profit corporation whose members include several municipalities in Westchester County.² According to SW, it has been working toward achieving CCA for its members for more than two years, and several of its member municipalities have already adopted resolutions in support of CCA, including County of Westchester, the Cities of Peekskill and Yonkers, the Towns of Bedford, Lewisboro, North Castle, North Salem, Ossining, and Somers, and the Village of Pleasantville. These resolutions support implementation of a CCA program 1) whereby individual consumers

¹ Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (O&R), Central Hudson Gas & Electric Corporation (Central Hudson), National Fuel Gas Distribution Corporation (National Fuel), The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), KeySpan Gas East Corporation d/b/a National Grid (KEDLI), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E).

² Sustainable Westchester was organized in 2010 as Northern Westchester Energy Action Consortium, Inc. (NWEAC). In 2014, NWEAC merged with the Southern Westchester Energy Action Consortium (SWEAC), and the combined entity was named Sustainable Westchester, Inc.; members include forty towns, villages and cities in Westchester County.

are free to opt-out of CCA offerings and 2) whereby municipalities may execute a CCA contract under which residential and small commercial customers who are not currently served by an Energy Services Company (ESCO) are enrolled with an ESCO for the provision of gas and/or electricity at a rate which either saves them money, is a fixed rate contract, or is a contract for a green product.

According to SW, its CCA Program is intended to include both residential and commercial customers and to permit aggregation of both electric and natural gas purchases. As municipalities agree to participate in the CCA pilot, SW proposes that they be permitted to request on a rolling basis aggregated customer information, by fuel type, service classification, and capacity tag, from the distribution utilities.³ The relevant utility would be required to provide such information to SW within ten days of receiving SW's written request, free of charge, or at most for a nominal fee.

SW expects to issue an RFP to energy suppliers and/or independent power producers on or about 90 days after the date of the Commission Order in this proceeding, with a response to the RFP due within ten days later. Within 20 days of issuance of the RFP, SW expects to issue an award to one or more suppliers and notify them of any surcharge required to support administration, legal support, communications needs, and the build-up of a fund intended to support energy efficiency and control retrofits, distributed generation, enhanced renewable generation, and other permissible measures that SW reasonably deems appropriate.

SW proposes that once the award is issued, it will notify the appropriate utility, and the utility will then provide

³ Westchester County is served in part by Con Edison and in part by NYSEG.

notifications to "bundled customers" of the contract terms and of their opportunity to opt-out within ten days. The utility notification would include the most recent updated price information and the contract period, terms for making prospective price changes, exit costs (if any), name of supplier, and any other permitted terms or features that SW deems are appropriate. Within five days following the ten day opt-out deadline, SW maintains, the utility should provide precise usage data and capacity tag obligations, account numbers, and service addresses of all customers who have not opted out of the CCA to the selected ESCOs.

SW anticipates that it will request of the utilities permission to insert communication material into utility-issued bills. SW indicates that it prefers free movement of customers out of the awarded contract, unless an upgrade has been financed on-bill. SW also proposes that an "Open Underwriting Resource Service" fund (OURS) be created to support upgrades over-and-above those supported by state programs, as well as other energy efficiency investments, distributed generation, distributed or merchant renewable generation, control systems, microgrid technology or marketing measurement technology, or other innovative technologies or business strategies.

SW affirmed that it will abide by strict policies for protection of the confidentiality of personally identifiable information, intended to approach, mimic, or surpass standards applicable to utilities and ESCOs. SW also indicated that it intends to offer on-bill financing in the future but did not provide details. SW proposes a four year duration for its CCA Program, a time frame it believes is sufficient to incorporate into the Program newly-developed renewable resources.

SW supported its request for expedited Commission action by stating that it was involved in an extensive and open

consultation process with many stakeholders throughout a more than two-year process in which the group had sought and gained New York State Assembly and Senate passage of enabling legislation for a Westchester County demonstration CCA project.⁴ SW's view is that the legislative process it participated in, which included multiple public hearings in more than ten municipalities, discussions with utility staff, continuing consultation with ESCOs and with environmental action groups, and consistent engagement with consumer advocates, academic experts, and Community Choice Aggregators throughout the United States, obviates the need for a further comment period.

COMMENTS

Although the Petition would only affect Con Edison and NYSEG, the Joint Utilities submitted comments because authorization of a pilot could have an impact on the development of other CCA programs throughout New York. The Joint Utilities believe that the development of CCA programs requires careful consideration and analysis. The Joint Utilities explain that CCA programs should be implemented in a way that preserves existing retail access processes, including Electronic Data Interchange (EDI), and is consistent with the Staff White Paper and the Joint Utilities' comments in the Generic CCA Proceeding,⁵ which envision the municipality as the entity to inform, educate, and administer a CCA program.

The Joint Utilities express a preference for customer opt-in CCA programs and stress that, if the Commission does

⁴ The Legislation was subsequently vetoed by Governor Andrew Cuomo.

⁵ See Case 14-M-0224, Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (issued December 15, 2014)(CCA Initiation Order).

determine that opt-out is acceptable practice for CCA programs, the Commission should also ensure that adequate customer protections are in place to avoid unintended switches of commodity suppliers. The Joint Utilities also argue that a detailed CCA program plan should be filed by the municipality and approved by the Commission prior to implementation. The Joint Utilities recommend that the CCA demonstration be limited to one municipality and to residential customers only so that municipalities, customers, and the utilities all can understand the impacts associated with the changes to existing business models and to inform statewide implementation of CCA programs.

The Joint Utilities state that the SW proposal would require utility ratepayers to shoulder significant costs for the implementation of the proposed CCA program without any payment for such service. For instance, the Joint Utilities explain, the Petition requests that the utilities notify residents of the municipality's decision to establish a CCA program, to inform them of the municipality's contract terms with an ESCO, and to inform them of the opportunity to opt-out of the CCA program. The Petition also requests that utilities include SW communication materials in utility bills. According to the Joint Utilities, these provisions are contrary to the process envisioned in the Staff White Paper and the processes used in other jurisdictions with established CCA programs, where the municipality that has chosen to implement CCA is also responsible for informing and educating customers and administering the CCA. The Joint Utilities further maintain that these provisions are also inconsistent with the existing utility-ESCO relationship and the Commission-approved Uniform Business Practices, and that the provisions fail to recognize that the utilities do not have access to ESCO/customer contracts and thus cannot and should not notify residents of their terms.

Pointing specifically to Section 9 of the Petition, which seeks to impose obligations on the utility for provision of data and notification of customers at no, or minimal cost, and within ten days of a request from SW, the Joint Utilities express the concern that SW fails to recognize that any data or information, whether aggregated or customer-specific, must be carefully developed by the utilities and reviewed for accuracy. Additionally, the Joint Utilities explain that utilities' customer data generally contains the customer's address, ZIP code, municipality, and tax district. Due to the way municipality boundary lines are drawn, however, a customer may live in one town or village while the ZIP code is identified with another municipality, and may be served by a separate tax district.

Consequently, the Joint Utilities contend, while the utility can provide data, SW or the municipality must review that data and determine which customers would be eligible for the demonstration project. Additionally, the Joint Utilities state, SW or the municipality must reconcile any differences between municipal records and the utilities' customer data. For example, a customer may place their electric and/or gas service under the name of their spouse, who may or may not have a different surname, while the tax records show the name of the other spouse as the property owner. In these situations, the Joint Utilities explain, SW must consider the data and contact the customer to resolve any data discrepancies, because the utility is obliged to place the service in the name of the appropriate applicant.

SW also requests that the utility provide via EDI the customers' consumption, capacity tag obligation, account numbers, and service addresses for all customers who have not opted out. The Joint Utilities believe that the municipality

given access to personally-identifiable information should be required to obtain cyber-insurance and be held to such data security riders as may be necessary in order to protect the customers and indemnify the utility.

Finally, the Joint Utilities state, the Petition lacks the detail necessary to fully evaluate the proposed CCA program. For instance, the Joint Utilities note, SW seeks to establish an "energy efficiency tariff" and "demand response and micro-grid development/financing" but provides little to no detail on these proposals. If the Commission approves the development of a CCA demonstration project, consistent with the Joint Utilities' comments in the Generic CCA Proceeding, the Joint Utilities urge the Commission to require SW to develop and file a detailed CCA plan with the Commission for approval. This would allow Staff and interested parties to review the plan in detail.

DISCUSSION AND CONCLUSION

The Commission recently commenced, in the CCA Initiation Order, a proceeding to examine implementation of CCA in New York, and sought comments on a number of issues related to CCA, in advance of a determination regarding whether action should be taken to enable CCA programs in New York. At the same time, in a Memorandum and Resolution on Demonstration Projects, issued on December 12, 2014 in Case 14-M-0101, the Commission expressed interest in utilities and third parties working together to develop potential demonstration projects. Although the Commission is not prepared to act on the Generic CCA Proceeding at this time, in light of the Memorandum and Resolution on Demonstration Projects, it is appropriate to consider a demonstration or pilot CCA program.

CCA programs can serve as an opportunity to introduce larger numbers of customers to retail competition with the

safeguards, credibility, and accountability that an energy procurement program administered by a local government can provide. For the reasons provided in the CCA Initiation Order, and consistent with the Memorandum and Resolution on Demonstration Projects, it is appropriate to approve a CCA demonstration project, in order to gain experience with CCA programs and explore their potential benefits for consumers, municipalities, and the utility system. However, the SW Petition lacks the detail necessary to fully evaluate some of the proposed provisions of its CCA program. For now, a determination will not be made on issues related to the establishment of an energy efficiency tariff, demand response and micro-grid development and financing, the insertion by municipalities of communication material into utility-issued bills, or the Open Underwriting Resource Service fund.

To initiate this demonstration CCA project, the utilities must provide aggregated customer data for residential and small commercial customers who are not currently taking service from an ESCO to the municipalities that have been properly authorized to implement the CCA pilot. Rather than the review and approval process the Joint Utilities propose, a municipality that chooses to join the CCA pilot shall furnish a letter to Department of Public Service Staff (DPS Staff) certifying that a public outreach campaign has been conducted by the municipality or its designee. The municipal representative shall also certify that the municipality has the requisite authority to implement CCA. To assist in restricting the availability of the data to circumstances where it is warranted, the utility will only provide data to the municipality or its consultant after DPS Staff notifies the utility that an appropriate letter has been received. The aggregated customer data, which should include aggregated usage and capacity tag,

shall be provided within twenty days of the notification from DPS Staff.

The utilities maintain they will incur costs in aggregating and providing the data, but have not quantified those costs. Consequently, Con Edison and NYSEG shall make a filing within ten days of the date of this Order that identifies the costs the utility will incur and justifying any charges it intends to impose for providing the data.

Once an ESCO supplier has been selected, municipalities will also require information in order to notify customers. Upon selection of an ESCO the municipality or its consultant should request from the utilities the information necessary to send the opt-out letter, including, at a minimum, customer names, addresses, and account numbers. Discrepancies between the customer information provided by the utility and similar information retained by the municipality should be resolved by the municipality.

Notwithstanding the Joint Utilities' assertion that cyber insurance is necessary for this CCA pilot proposal, it will not be required at this time. The municipalities currently possess much of the information that the utility will be providing, and should be expected to protect personally identifiable customer information that is confidential.

Moreover, SW, its municipal members, and any municipal contractors shall agree to take all reasonable steps to protect that information, employing methods at least as protective as those used for other personally identifiable information possessed by the municipality. In addition, SW, its municipal members, and any municipal contractors shall agree that they will not permit the use of personally identifiable information received under this Order for any purpose other than the administration of the programs authorized here. Furthermore,

they shall agree not to share that personally identifiable information received under this Order except as necessary for the administration of the program and only with other entities that agree to appropriately protect the data and use it only for the administration of programs authorized here.

It is the municipality's responsibility, however, to notify its residents and small commercial customers of its decision to establish a CCA Program, to inform them of the contract terms with an ESCO, and to inform them of the opportunity to opt-out of the CCA program. The municipality could send the opt-out letter itself or provide a co-branded opt-out letter from the municipality and the ESCO that will be providing the services. The letter should, at a minimum: explain community choice aggregation and the ESCO contract in detail; identify the methods by which the customer can opt-out of the CCA Program; and provide information on how the customer can access additional information about CCA on the municipality's website. A draft standard form letter shall be submitted to DPS Staff for review before it is mailed.

Further, the ten day opt-out period SW proposes is inadequate. The CCA Initiation Order asked if twenty days was an adequate opt-out period. In response, two ESCOs, Energy Next and Constellation New Energy, recommended a fourteen day period based on programs in other states. A number of other parties recommended longer opt-out periods. Therefore, for this pilot project, the opt-out period shall be at least twenty days.

Finally, as with all customers enrolled in retail access programs by ESCOs, CCA participants, upon enrollment, will receive a welcome letter from the distribution utility that will explain the customers' options for canceling the enrollment if they believe they were enrolled incorrectly. Residential customers are entitled to the added protection of the mandated

three-day rescission period, as detailed in Section 5(B)(3) of the Uniform Business Practices.

The Commission has had a longstanding policy, underlying the Uniform Business Practices and implementation of retail choice programs, that affirmative customer consent is required in order for a customer to change suppliers. However, the economies of scale and bargaining power that large-scale opt-out aggregation programs create are expected to translate into tangible benefits for customers. In order to help ensure costs savings or rate stability for CCA participants, the Uniform Business Practices are waived to the extent necessary to allow for the enrollment of customers and transmittal of customer information by the utility to the ESCO without express customer consent only for this specific CCA demonstration program.

As to the details of the agreement between the ESCO and the municipality, the municipalities are in the best position to choose a product for their citizens. In turn, their citizens can opt out of the program or leave at a later time, ensuring that customers are protected.

SW, however, will not be authorized at this time to implement its "Open Underwriting Resource Service" (OURS) fund, which would be intended for the support of various distributed energy resources. CCA participants will continue to contribute to the state-mandated energy efficiency and clean energy funds through distribution charges. Therefore, at this time, SW is prohibited from collecting the surcharges identified in its Petition for the OURS fund or other programs.

However, the administrative costs of operating the program, including legal and communications expenses, may be recovered as part of the energy charges billed to customers. To the extent that any order issued in the Generic CCA Proceeding

will permit the creation of an OURS fund or similar program, this Order does not restrict SW from implementing such a program. Alternately, SW may submit a further petition providing additional detail and justification on proposed programs for consideration.

SW proposes that the pilot be approved for a period of four years. While the Commission will not interfere with the terms of the agreement between the municipality and the ESCO, it would be premature to commit to a four year pilot at this time. Instead, SW is directed to file an annual report, which identifies: the number of customers enrolled in CCA by municipality and customer class; the number of customers who returned to utility service or service with another ESCO during the reporting period; and, the average cost of commodity supply by month for the reporting period. The first report should be filed thirteen months after the CCA program is implemented through commencement of service of customers by the selected ESCO. In addition, any Order issued by the Commission in the Generic CCA Proceeding will govern the CCA pilot program authorized here except as otherwise noted in that Order.

The Commission orders:

1. The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order, and is otherwise denied.

2. To facilitate the Community Choice Aggregation demonstration project authorized in Ordering Clause No. 1, Uniform Business Practices Sections 4(B)(1)-(3), 5(B)(1), 5(D)(1) and (4), and 5(K) are suspended for municipalities participating in the demonstration project and ESCOs and

utilities engaging with those municipalities, to permit: (a) transfers of aggregated and customer-specific information from utilities to Sustainable Westchester, Inc., its municipal members, and municipal contractors under the terms and timeframes described in the body of this Order; and, (b) the switching of customers currently receiving supply service from the utility to ESCO supply service without affirmative consent consistent with the discussion in the body of this Order.

3. Consolidated Edison Company of New York, Inc. and New York State Electric & Gas Corporation are directed to provide aggregated and customer-specific data to Sustainable Westchester, Inc. its municipal members, and municipal contractors under the terms and timeframes described in the body of this Order.

4. Consolidated Edison Company of New York, Inc. and New York State Electric & Gas Corporation are directed to make a filing within ten days of the issuance of this order identifying and justifying their charges to Sustainable Westchester, Inc. for providing aggregated customer data.

5. Sustainable Westchester, Inc., its municipal members, and any other municipal contractors receiving the personally identifiable information of utility customers shall agree to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.

6. Sustainable Westchester, Inc. will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued.

7. Sustainable Westchester, Inc. will file an annual report as described in the body of this Order, with the first report due thirteen months after the commencement of service to customers.

8. The Secretary in her sole discretion may extend the deadlines set forth in this Order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to any affected deadline.

9. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary