

**BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK**

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In the Matter of the Petition of Sustainable Westchester, in connection with the Implementation of a Demonstration Community Choice Aggregation Program within the County of Westchester, for an Order requiring Consolidated Edison and New York State Electric and Gas Corporation to Provide Certain Customer Information To Petitioner and for an Order providing Relief to Petitioner from Certain requirements of the Uniform Business Practices.
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Case ___ - _____

**PETITION OF SUSTAINABLE WESTCHESTER, IN CONNECTION WITH ITS
IMPLEMENTATION OF A DEMONSTRATION COMMUNITY CHOICE
AGGREGATION PROGRAM WITHIN THE COUNTY OF WESTCHESTER, FOR AN
ORDER REQUIRING CONSOLIDATED EDISON AND NEW YORK STATE
ELECTRIC AND GAS CORPORATION TO PROVIDE CERTAIN CUSTOMER
INFORMATION TO PETITIONER AND FOR AN ORDER PROVIDING TO
PETITIONER RELIEF FROM CERTAIN REQUIREMENTS OF THE UNIFORM
BUSINESS PRACTICES.**

I. INTRODUCTORY STATEMENT

Sustainable Westchester, Inc. (“Sustainable Westchester” or “SW”) submits this request in connection with its implementation of a demonstration community choice aggregation (“CCA”) program (“Demonstration CCA Program”) within the County of Westchester, for an order requiring Consolidated Edison of New York, Inc. and New York State Electric and Gas Corporation (individually and collectively, the “Utility”) to provide certain of the Utility’s customer information (“Customer Information”) to Petitioner as specifically set forth herein; and for an order providing relief to SW from the otherwise applicable requirements of the Uniform Business Practices (“UBP”) related to allowing SW’s proposed opt-out approach for electricity and natural gas purchases.

Petitioner respectfully requests expedited action by the New York Public Service Commission (“Commission”) to provide a final Commission order at the January 8, 2015 Commission session, or in the alternative, Petitioner respectfully requests that the Commission make a determination and issue a final Commission order at the next Commission Open Session period following the expiration of the State Administrative Procedure Act (“SAPA”) comment period.

An expedited final Commission order is required to permit Petitioner to expeditiously implement the Demonstration CCA Program so as to establish the viability of the CCA Program concept and to gather information that will be critical to a wide scale of CCA Programs. The requested order will enable the Demonstration CCA Program to proceed, which, particularly if expedited, will permit communities in Westchester County to aggregate their energy consumption in order take advantage of the current historic low electricity and natural gas prices and provide substantial health and safety benefits to the residents of Westchester County, particularly its low income residents, as described below.

In support of this Petition, Petitioner has available and will provide upon request, the following documents: (i) copies of the resolutions, adopted by certain Westchester County municipalities which are members of Sustainable Westchester, supporting a CCA Program, as discussed below; (ii) a copy of the current Certificate of Incorporation of Sustainable Westchester; and (iii) a copy of the resolution of Sustainable Westchester authorizing Mike Gordon to file this Petition.

Communications regarding this filing should be directed to:

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II. PETITION

1. The Commission instituted a proceeding in Case 14-M-0224 by its Order issued and effective December 15, 2014 (“CCA Order”) that recognizes the importance of CCA Programs. Sustainable Westchester is a New York State Not-For-Profit corporation the members of which include nearly all of the municipalities in Westchester County. Sustainable Westchester, and its predecessor entities, have been working toward achieving Community Choice Aggregation for its members for more than two years, and several of its member municipalities, the Westchester County Legislature and the Sustainable Westchester Board of Directors have already adopted resolutions in support of Community Choice Aggregation. These member municipalities in the County of Westchester are poised to take the final steps toward achieving Community Choice Aggregation and the relief requested herein is required to consummate their efforts.

2. Community Choice Aggregation is an energy procurement model that the Commission has stated can support the goals set forth in the Commission’s Reforming the Energy Vision (REV) and Retail Markets proceedings.¹ The Commission has indicated that CCA can help achieve the Commission’s longstanding goals of achieving wider deployment of distributed energy resources including wind and solar, enhancing energy efficiency and demand management, and of increasing the participation of, and benefits to, residential and small non-residential customers in retail energy markets. See CCA Order, p. 3.

3. In particular, CCA involves local governments procuring energy supply service for their residents on an opt-out basis. With CCA programs, which have been implemented in at least six other states, local governments can also develop distributed energy resources or otherwise engage in energy planning. See CCA Order, p. 3.

4. Petitioner’s members include forty (40) communities in Westchester County -- nearly all of the Towns, Villages and Cities in the County, and the number is growing.²

¹ Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014); Case 12-M-0476 et al., Residential and Small Non-Residential Retail Energy Markets, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012).

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”), NWEAC amended its Certificate of Organization and changed its name to Sustainable Westchester, Inc., and SWEAC members joined Sustainable Westchester.

5. The purpose of Sustainable Westchester is, among other things, to “improve the health and welfare of communities in New York State by coordinating and implementing energy efficiency, conservation, and sustainability efforts by and among residents and local governments in Westchester County, New York.”

6. Sustainable Westchester and its predecessor entities have been working on CCA activities for nearly two years. During this time, leaders of these entities have reached out to communities across Westchester County, and resolutions in support of CCA have been passed by the following municipal corporations or legislative bodies including the 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.

7. In particular these resolutions have requested that New York State enable a CCA Program whereby individual consumers are free to opt-out of CCA offerings and purchase energy through the franchised utility; whereby municipalities must execute a CCA contract pursuant to which CCA customers save on, or fix, energy costs vis-à-vis the franchised utility or “green” their energy buys; whereby the franchised utility retains its obligation to provide service of last resort offering in the event a CCA supplier does not perform; and whereby no customer who is currently purchasing energy from a free market supplier will be switched to the CCA provider in the absence of that customer’s active request to switch.

8. The characteristics of SW’s Demonstration CCA Program match those described in the preceding paragraph. In particular, the SW Demonstration CCA Program is intended to include both residential and commercial customers and to permit aggregation of both electric and natural gas purchases. However, SW intends to proceed, even in the event that the Commission limits relief from UBP to residential and to those customers defined by UBP as "small non-residential" customers.

9. Sustainable Westchester’s Demonstration CCA Program will utilize a process substantially as follows:

- a. Prepare Request For Proposal. First, SW will prepare and post a request for proposal (“RFP”) inviting certain subcontractors to submit proposed terms of service that may include legal, communications, commodity purchase RFP preparation and program management services (but not energy suppliers). This is currently occurring.

- b. Issue & Award of RFP. Second, awards will be issued in accordance with municipal and other legal requirements at appropriate times.
- c. Prepare RFI for Energy Suppliers. Third, SW will draft and issue a “request for information” to potential energy suppliers soliciting information including information relating to pricing and price changes, information security, and preferred RFP format. This process is currently occurring and expected to continue for thirty (30) days after the date of the Commission’s Order (“Commission Order”) in response to this Petition (“Order Date”).
- d. Presentation and Approval by Municipalities. Fourth, Westchester County cities, towns and villages will be invited to join in an RFP for energy supply. Municipal entities may indicate their intent to join by vote of an elected governing body. The deadline for inclusion in the first RFP is intended to be sixty (60) days after the Order Date. Notwithstanding this deadline, Sustainable Westchester will offer continuing membership to communities who do not participate in this first tranche, though purchase terms are expected to differ.
- e. Requests for Data from Utility. Fifth, as municipalities approve and agree to join in the RFP, SW will issue requests to the Utility on a rolling basis for aggregated consumer data including total consumption by fuel type and by service classification and capacity tag by service classification. The Petitioner requests that the Utility be required to provide such information to SW within ten (10) days of receiving the SW’s written request; or, alternatively, understanding that after discussion with the relevant Utility a less aggressive schedule may be necessary, an expedited schedule accommodating the Demonstration CCA Program goals and the Utility’s reasonable requests.
- f. RFP for Energy Suppliers. Sixth, after steps c-e above are completed, SW will issue a final RFP to suppliers and/or Independent Power Producers on or about ninety (90) days after the Order Date or, alternatively, understanding that after discussion with the relevant Utility a less aggressive schedule may be necessary, an expedited schedule accommodating the Demonstration CCA Program goals and the Utility’s reasonable concerns. Upon this issuance, SW

will request that RFP responses be submitted within ten (10) days; further tranches of such RFPs are expected to be ongoing.

- g. Award and Inform. Seventh, within twenty (20) days of issuance of the supply RFP, SW expects to award one or more suppliers, and notify them of any surcharge required to support administration, legal, communications and the build-up of a fund intended to support efficiency and control retrofits, distributed generation, enhanced renewable generation, and other permitted measure that SW reasonably deems appropriate.
- h. Notification of Utility and Customers; Opt-Out. Eighth, after the award, SW will notify the appropriate Utility who will notify “bundled customers” of contract terms and of their opportunity to opt-out. Petitioner requests that this notification occur within ten (10) days of Petitioner’s notification of the relevant Utility; or, alternatively, understanding that after discussion with the relevant Utility a less aggressive schedule may be necessary, an expedited schedule accommodating the Demonstration CCA Program goals and the Utility’s reasonable concerns. Utility notification of customers shall include the most recent updated price information and the contract period, prospective price change terms, exit costs (if any), name of supplier, and any other permitted terms/features that SW deems are appropriate. Petitioner requests that within five (5) days following this opt-out deadline, Utility will provide (via EDI) precise consumption including capacity tag obligations, account numbers, and service addresses of all customers who have not opted out to the awarded supplier or suppliers; or, alternatively, understanding that after discussion with the relevant Utility a less aggressive schedule may be necessary, an expedited schedule accommodating the Demonstration CCA Program goals and the Utility’s reasonable concerns.
- i. Service. Ninth, on an ongoing basis. SW will:
 - i. analyze & confirm valid price adjustments;
 - ii. confirm that payments & bills are accurate, offer SW staff trained to provide customer support, and resolve customer complaints with supplier;

- iii. manage an efficiency, control, DG and renewable energy fund (“Open Underwriting Resource Service” or “OURS”) with participating customers eligible;
- iv. seek to expand participation in all programs: procurement, efficiency, control, DG and renewable generation;
- v. Over the course of the demonstration period, SW will seek to develop an energy efficiency tariff (e.g., self-contained white certificate and peak demand reduction compliance and payment schema) for municipalities that want to implement such tariffs subject to municipal law, notice requirements, opt-out abilities and, ultimately, PSC approval;
- vi. prepare other tariffs for submission to the DPS and/or PSC approval (e.g. capacity tag adjustments for micro-grid residential); and
- vii. provide demand response and micro-grid development/financing services beyond that envisioned to be funded through OURS.

10. Administrative coverage to SW is expected to be one half of one (0.5%) percent of the amount spent, plus a component that is inversely related to consumption and cost per household. Ten (10%) percent of this administrative coverage is expected to go to administrative services, in addition to external legal and communication costs. The remainder is expected to go into the OURS Fund.

11. In connection with the above, SW anticipates that it will request of each appropriate Utility the ability to insert communication material into utility-issued bills.

12. The timing of the above-outlined process is designed to ensure that all required information is in place for the next step to succeed, without requiring any Utility to provide any personally specific or identifying information prior to notification of all individuals that they may preserve privacy through opting out of the process.

13. Aggregated data may be provided by each Utility in any format; specific data will be provided in EDI format.

14. We respectfully request that all data be provided by each Utility free of charge, or at most for a nominal fee.

15. SW may request and retain a list of customers. However, in order to minimize risk of disclosure and protect privacy, handling of that information is intended to be limited, due to the fact that the Utility would handle notification and billing of customers. In discussions leading up to the design of legislation (A7896/ S05500D), relevant utilities indicated that this was their preference.

16. The Petitioner requests that the Commission's Order in response to this Petition provide relief to SW from the otherwise applicable requirements of the Uniform Business Practices ("UBP") related to allowing SW's proposed opt-out approach.

17. Information requested and opt-out procedures relate to all customers who are not served by ESCOs for either electric or gas. SW will proceed, even in the event that the Commission limits relief from UBP to residential and to those customers defined by UBP as "small non-residential" customers.

18. The Demonstration CCA Program will be conducted so as to comply with all applicable New York State Public Service Law and regulatory requirements including but not limited to the Home Energy Fair Practices Act ("HEFPA") and the implementing regulation, 16 NYCRR Part 12.

19. Petitioner requests that the Demonstration CCA Program last for four (4) years in order to allow for inclusion of newly-developed renewable resources.

20. In connection with the CCA Order, DPS Staff requested comments concerning proposed CCA programs in New York State. To the extent that Petitioner has not addressed such requests for comment above, and such requests are pertinent to Petitioner's request herein, Petition provides the following responses:

- a. If the Commission provides relief from Uniform Business Practices ("UBP") related to allowing Petitioner's proposed opt-out approach, and if the Commission directs all appropriate Utilities to provide necessary data, SW will proceed, even in the event that the Commission alters the timetable in any way.
- b. Information requested and opt-out procedures relate to all customers who are not served by ESCOs for either electric or gas. SW will proceed, even in the event that the Commission limits relief from UBP to residential and to those customers defined by UBP as "small non-residential" customers.

- c. The Demonstration CCA Program will be open to customers served by ESCOs, but SW will initiate no formal notification of these customers. SW will provide opt-in services and contracts for those customers, however.
- d. SW intends to treat Home Energy Assistance Program (“HEAP”) customers exactly as any other customer with benefits flowing exactly as they currently flow.
- e. All customers who move in, or who choose to opt-in over the course of any contract period, will be accepted. However, prices will not necessarily match prices for those who opt-in, or do not choose to opt-out, at the commencement of any contract period.
- f. It is SW’s goal that prices offered will always be lower than non-ESCO rates, or they will be fixed for a period at a rate that is less than the trailing non-ESCO rate (six months or a year trailing). It is also possible that prices will float based on a benchmark that is expected to yield rates lower, on average, than non-ESCO rates. Participating communities may choose to relax these requirements to, for example, buy a carbon and/or nuclear free (or reduced carbon and/or nuclear) product, as a default. This will only be chosen after extensive community engagement, notification and discussion.
- g. Cancellation fees will burden an ESCO bid. SW strongly prefers free movement out of the awarded contract, unless an upgrade has been financed, on bill.
- h. The Clean Energy Fund described in the CCA Order (and described above as the “Open Underwriting Resource Service” or “OURS”) is intended to support upgrades over-and-above those supported by state programs, other energy efficiency financing, distributed generation, distributed or merchant renewable generation, control systems, microgrid technology or marketing measurement technology, or other innovative technologies or business strategies.
- i. SW will abide by strict policies related to confidentiality of personally identifying information, intended to approach, mimic, or surpass standards applicable to utilities and ESCOs.

- j. SW is currently determining the nature of public engagement that we will pursue. While it will be repeated and extensive, we are specifically seeking to determine whether referenda are required under applicable New York law. If referenda are required, or if any municipality wants a referendum, such will be held prior to expiration of any opt-out period and in conformance with any other requirement – timing or otherwise.
- k. All material distributed by SW or on behalf of SW, with its knowledge, will be submitted to DPS Staff for review. Any material in potential conflict with any of the above will be submitted for approval.
- l. While SW intends to, in the future, request the ability to piggy-back on Utility bills by inserting material of its own, denial of this request would not prevent SW from moving forward with its plans.
- m. While SW intends to offer on-bill financing in the future, specifics of that offering will conform with all applicable laws and will be subject to any required PSC approvals.

21. The need for expedited Commission action comes only after SW’s extensive and open consultation with many stakeholders throughout a more than two-year process in which the group has sought and gained New York State Assembly and Senate passage of enabling legislation for a Westchester County demonstration project (A7896/ S05500D). It is Petitioner’s view that this process and result obviate the need for further comment period. Consultation has included multiple public hearings in more than ten municipalities, discussions with utility staff, continuing cooperation with ESCOs and with environmental action groups, and consistent engagement with consumer advocates, academic experts and with Community Choice Aggregators throughout the United States.

22. This need is particularly urgent given the current energy market. There has been a recent historic drop in prices for natural gas and electricity. However, because of the current market structures, only the largest and wealthiest customers are able to take advantage of these prices. High energy prices directly impact the health and safety of customer because it reduces available cash necessary to pay for other needs such as food and housing.

23. For example, a recent Massachusetts study by the Child Health Impact Working Group (Boston Medical Center, Lauren Smith, MD, MPH entitled “Child Health Impact

Assessment of Energy Costs and the Low Income Home Energy Assistance Program (LIHEAP)³ found that “unaffordable home energy has preventable, potential consequences on the health and well-being of the more than 400,000 Massachusetts children living in low-income households.”

More specifically, this study found that:

- a. High energy costs jeopardize child health when families spend less on food, medications, and housing in order to pay high energy costs;
- b. High energy costs force the use of risky alternative sources of heat including ovens, stoves, space heaters, or fireplaces to replace or augment primary heating systems;
- c. When combined with unaffordable housing, high energy costs force families to endure unhealthy housing conditions resulting in exposure to unhealthy housing conditions including rodent and cockroach infestation; water leaks and mold; and peeling paint and lead paint; and
- d. High energy costs result in unpaid bills, arrearages and utility disconnection and families make partial rent or mortgage payments or miss entire payments because of unaffordable energy bills.

24. By aggregating the purchasing power of energy consumers throughout Westchester County, the Demonstration CCA Program can empower disenfranchised consumers in Westchester County to help free-up energy dollars for other needs such as food, medications and safe housing. By enabling this action, the Commission can help Sustainable Westchester lock-in low prices for an extended period of time. Because current price conditions are likely to change, a delay is likely to result in higher prices over an extended term.

³ <http://www.hiaguide.org/sites/default/files/ChildHIAofenergycostsandchildhealth.pdf>

III. CONCLUSION

WHEREFORE, for the above-stated reasons, Petitioner respectfully requests expedited action by the Commission at the January 8, 2015 Commission session, or alternatively to provide a final Commission order at the next Commission Session following the expiration of the SAPA comment period, for an Order requiring Consolidated Edison of New York, Inc. and New York State Electric and Gas Corporation to provide certain customer information to Petitioner and to provide to Petitioner relief from certain requirements of the UBP relating to the implementation of a Demonstration CCA Program within the County of Westchester.

Respectfully submitted,

Sustainable Westchester, Pro Se

A handwritten signature in black ink, appearing to read 'Mike Gordon', with a long horizontal line extending to the right.

Mike Gordon, Board of Directors

Dated: December 22, 2014