

## Chapter 153

### COMMUNITY CHOICE AGGREGATION

#### **§ 153-1. Purpose.**

It is the intent of the City of Albany to establish a Community Choice Aggregation ("CCA") Program to aggregate the energy supply needs of residents and small commercial customers, and to negotiate and enter into, or authorize its agent to negotiate and enter into, energy supply agreements ("ESAs") with energy service companies ("ESCOs") on behalf of eligible citizens to obtain stable, lower-cost energy prices, as well as environmental benefits and/or a community-based solution to meeting our collective energy needs. The purpose of this chapter is two-fold: to establish a CCA Program in the City of Albany and to adopt certain provisions relating to the creation and implementation of the CCA Program.

#### **§ 153-2. Findings.**

- A. New York State's energy industry is in the midst of a significant transition; a shift away from the old top-down, utility-centered model toward a cleaner, more affordable, more resilient system in which consumers and communities will have a substantial role to play. The state's ongoing Reforming the Energy Vision ("REV") initiative emphasizes the importance of reliability and grid-resilience, distributed energy resources, increased renewable generation, and greater opportunity for citizens to take an active role in helping the state reach its energy goals and in making more informed energy choices in their homes, businesses, and communities.
- B. As part of this REV initiative, the New York State Public Service Commission ("NYSPSC"), on April 21, 2016, adopted an order authorizing cities, towns and villages within the state to create Community Choice Aggregation Programs, by themselves or in concert with other municipalities (hereinafter "NYSPSC Order Authorizing CCAs"), and/or to retain a CCA Administrator to implement the program and negotiate ESAs.
- C. CCA Programs allow communities to take control of their energy supply through an open, transparent and competitive electric supply procurement process driven by the consumers themselves.
- D. A successful CCA Program offers citizens cost savings, more stable energy prices, deterrence of deceptive marketing practices by unscrupulous ESCOs, fair contracts negotiated directly with energy suppliers, and/or the opportunity to pursue goals and initiatives important to the community, such as reliability, grid resiliency, supporting renewable energy generation, cutting greenhouse gas emissions, protecting the state's natural resources, and improving energy efficiency.
- E. The City of Albany has explored the CCA policy and background and believes it would provide numerous benefits in this community, enhancing the public welfare and making energy more affordable and costs more predictable for our residents.
- F. Therefore, the City of Albany authorizes the creation of a CCA Program that will

include an opt-out option for customers in this community for the provision of electric supply service pursuant to the rules of the NYSPSC, as well as other high priority energy-related value-added services as may be determined to meet the community's goals. Customers can opt out without penalty or fees.

### **§ 153-3. Authority.**

The NYSPSC Order Authorizing CCAs expressly empowers cities, towns and villages in this state to create CCA Programs. Further, the New York Municipal Home Rule Law, Article 2, § 10, authorizes a municipality to adopt general laws relating to its property, affairs, and government, the protection and enhancement of its physical and visual environment, the protection and well-being of persons within the municipality, and for other authorized purposes.

### **§ 153-4. Definitions.**

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

**AUTOMATICALLY ELIGIBLE CUSTOMERS** — Customers' accounts in those utility service classes eligible for inclusion in the CCA Program on an opt-out basis, as set forth in the NYSPSC Order Authorizing CCAs, Appendix C, or as otherwise specified by the Commission. Generally, these classes of customers include those receiving residential electric supply service, including those in multi-family housing, certain types of institutions, and some small commercial customers covered by "small general service" class designations. Automatically eligible customers shall not include customers' accounts that have already been enrolled in service through an ESCO, enrolled in utility programs which require them to take supply service from their current utility, or that have a block on their utility account at the time of CCA formation (NOTE: Except assistance program participants ("APPs"), customers enrolled in utility low-income assistance programs who may have blocks on their accounts with their existing utility, but who may still be eligible to participate); those customers' accounts shall be eligible to participate on an opt-in basis, if they so desire.

**CCA ADMINISTRATOR** — An agent of the municipality charged with overseeing creation, implementation and operation of a CCA Program, as well as competitively procuring and negotiating energy supply agreements with ESCOs. The CCA Administrator shall be retained by the City of Albany via a separate CCA administration agreement and shall work together with the Community Choice Aggregation Oversight Board.

**COMMUNITY CHOICE AGGREGATION (CCA)/CCA PROGRAM** — A program authorized by the New York State Public Service Commission (NYSPSC) to aggregate residential and commercial electric supply and/or energy-related value-added products and services within a given municipality, and/or among multiple municipalities, in order to leverage that energy demand to negotiate favorable energy supply agreements directly with ESCOs. Customers within a CCA Program would no longer purchase their energy supply directly from their utility. However, the utility would continue to deliver energy to these customers, to charge for that delivery, and will retain its transmission and distribution network. The energy supply portion of a customer's energy service is provided by an ESCO or ESCOs, pursuant to an energy supply agreement competitively procured and negotiated for the CCA Program at large, then delivered to customers via

the local utility.

**COMMUNITY CHOICE AGGREGATION OVERSIGHT BOARD (CCA OVERSIGHT BOARD)** — Reference to the board that will oversee the implementation of the CCA Program, the CCA Administrator, CCA agreements, among other duties as outlined by this chapter.

**ELIGIBLE CUSTOMERS —**

- A. All automatically eligible customers plus those utility customers eligible for inclusion in the CCA Program on an opt-in basis, as set forth in the NYSPSC Order Authorizing CCAs or otherwise authorized by the Commission. Those customers eligible to participate in the CCA Program on an opt-in basis currently include: those customers already enrolled in service through an ESCO at the time of CCA formation, customers in large commercial, institutional, or industrial utility service classes that cannot be automatically enrolled in the CCA on an opt-out basis, and all other customers not considered automatically eligible customers.
- B. References to the broader class of eligible customers shall signify the entire pool of customers participating in the aggregation, either because they have been automatically enrolled on an opt-out basis, or because they have affirmatively opted in.

**ENERGY SERVICES COMPANY (ESCO)** — A third-party energy supplier eligible to sell electricity and energy-related value-added services to customers in New York State, utilizing the transmission and distribution systems of existing utilities. ESCOs are regulated by the New York State Department of Public Service and the New York State Public Service Commission, and must comply with the New York State Public Service Law.

**ENERGY SUPPLY AGREEMENT (ESA)** — An agreement between an energy customer and an energy services company (ESCO) to provide electricity 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 customers and would work with the Community Choice Aggregation Oversight Board to enter into an energy service agreement(s) with an ESCO to provide power to all such customers in the community.

**MUNICIPALITY** — Reference to these terms throughout this chapter indicate the City of Albany unless otherwise noted.

**UTILITY** — Refers to traditional electric and/or natural gas utilities regulated by the New York State Department of Public Service and the New York State Public Service Commission and permitted to provide electric supply, transmission, and distribution services to all customers within their designated service territory. For the purposes of this chapter, the term "utility" will refer to the national grid.

**§ 153-5. Establishing community choice aggregation.**

The City of Albany hereby establishes a CCA Program for aggregation of electric supply to serve all eligible customers in its jurisdiction. All automatically eligible customers shall be included in the CCA Program on an opt-out basis, and shall be afforded the opportunity to opt out of the CCA Program, without penalty and at no cost at any

time, with the understanding that after enrollment in the Program, the effective date of the opt-out will need to allow for reasonable administrative processing timeframes. All customers who are not automatically eligible to be included in the CCA Program on an opt-out basis shall be permitted to affirmatively opt in to the Program in accordance with the terms of the ESA and/or the NYSPSC Order Authorizing CCAs.

### **§ 153-6. Community Choice Aggregation Oversight Board established.**

There is hereby created a City of Albany Community Choice Aggregation Oversight Board (hereinafter referred to as the "CCA Oversight Board") for the purposes of overseeing the CCA Program and general implementation.

### **§ 153-7. Scope of authority and duties of CCA Oversight Board.**

The CCA Oversight Board shall:

- A. Review and approve the selection of the CCA Administrator, the implementation plan, the education and outreach plan, selection of the ESCO, any and all contracts and supplemental changes to any contracts and plans as provided in this chapter.
- B. Receive timely notices of all proposed actions, plans, changes, and updates relating to the CCA Program.
- C. Together with the CCA Administrator create and follow a Customer Data Protection Plan.
- D. Meet at a minimum of quarterly to receive an update on the CCA from the CCA Administrator and report back to the Common Council and the Mayor.
- E. Perform general oversight of the CCA Program and public outreach of the CCA Program and the CCA Administrator.
- F. The Board must submit a report six months after the initial implementation of the Program and thereafter annually to the Common Council and Mayor.

### **§ 153-8. Membership of CCA Oversight Board.**

- A. The membership of the CCA Oversight Board shall consist of five members comprised of: two members of the Common Council selected by the President Pro Tem, the Chair of the Sustainability Advisory Committee or his or her designee, the Chief Planning Official or his or her designee, and a Mayoral appointee who is a resident of the City of Albany.
- B. The Chairperson of this Board shall be chosen amongst the membership by a majority vote.

### **§ 153-9. Provisions for implementing CCA Program.**

- A. Implementation plan.
  - (1) The City of Albany CCA Oversight Board with support from its CCA Administrator, will create and follow a CCA implementation plan which shall outline the details of how the CCA Program will be created and operated,

including how public outreach and education will occur, what rules will apply to the Program, how the procurement process will be implemented, how energy contracts will be selected, and how responsibilities will be divided amongst the CCA Administrator, municipality, and eligible customers.

- (2) In accordance with the NYSPSC Order Authorizing CCAs, the CCA implementation plan will be reviewed and approved by the Public Service Commission. Such review may involve NYSPSC approval of a generic CCA implementation plan, with the understanding that community-specific appendices would be submitted later and would outline appropriately tailored local education and outreach efforts.
- (3) Where a generic CCA implementation plan will be used, the City of Albany CCA Oversight Board and the CCA Administrator will make community-specific revisions to the plan's appendices to ensure the plan is properly tailored to the needs of the City of Albany's residents. Therefore, prior to or in conjunction with the enactment of this chapter, and thereafter from time to time, the City of Albany CCA Oversight Board, with support from the CCA Administrator, will create and update a CCA Program opt-out letter, as well as an education and outreach plan, as provided in the implementation plan appendix for this community.
- (4) The City of Albany opt-out letter and education and outreach plan shall conform to those requirements for public outreach, education, and opt-out procedures set forth in the NYSPSC Order Authorizing CCAs, and any other applicable laws or regulations, and shall ensure that the City of Albany and its CCA Administrator engage in a robust effort to educate and inform the community about the CCA Program and their options for participating or opting out.
- (5) Opt-out letters will be provided to all automatically eligible customers no less than 30 days prior to the time at which those customers would be automatically enrolled in the CCA Program. The letters will be printed on the City of Albany letterhead, in official City of Albany envelopes. The logo of the CCA Administrator and selected ESCO may also be included on these letters, so long as it is clear that the letter is official correspondence from the City of Albany.

B. Public outreach and education.

- (1) The City of Albany, the CCA Oversight Board, together with its CCA Administrator, will provide public notices, presentations, information sheets, and other forms of outreach, as outlined in the appendix of the implementation plan, to ensure residents are informed about the CCA Program and their options for participating or opting out.
- (2) Once the CCA Program is operating, the City of Albany, CCA Oversight Board together with the CCA Administrator will continue to engage in public outreach to keep CCA customers informed about any changes to the CCA Program; opportunities for new products or services available through the CCA Program, such as renewable energy buying options; important terms and durations of ESAs; information about the selected ESCOs; and any other

matters related to the CCA Program.

- C. Customers moving into or out of the community after CCA adoption. Residents and small commercial customers who establish utility accounts in this community after the effective date of this chapter shall be afforded the opportunity to opt out of the CCA Program within a reasonable time after their utility account is established, in accordance with contractual agreements between the CCA Administrator and any ESCO(s) providing service to the Program. Customers can opt out without penalty or fee cost at any time, with the understanding that after enrollment in the Program, the effective date of the opt-out will need to allow for reasonable administrative processing timeframes.
- D. Customer data protection.
  - (1) The CCA Administrator together with the CCA Oversight Board will create and follow a customer data protection plan which ensures that any confidential or sensitive personal customer information provided by the utility to the City of Albany, CCA Oversight Board, together with its CCA Administrator, and/or the selected ESCO(s), will be given all privacy protections required by law and regulation, and protected from unauthorized release or use to the greatest extent possible. This customer data protection plan will ensure that the CCA Program and any selected ESCO(s) handle all confidential or sensitive customer data in keeping those customer data protections already afforded by utility prior to the enactment of this chapter.
  - (2) This plan will also ensure that CCA customer data, such as contact information, is not used for inappropriate purposes, such as solicitation of business unrelated to the CCA Program, its goals and objectives.

#### **§ 153-10. CCA Administrator.**

- A. CCA administration agreement. The City of Albany will enter into a CCA administration agreement with its CCA Administrator. Such an agreement will set forth the various rights and responsibilities of the parties and will govern the manner in which the CCA Program is run. This agreement shall also authorize the CCA Administrator to act as the City of Albany's agent for the purpose of procuring energy supply or other energy-related value-added services for CCA Program eligible customers. The CCA Oversight Board shall have oversight, review, and approval authority of the contract and any changes thereafter.
- B. Customer service; complaints. The CCA Administrator will provide the City of Albany CCA Oversight Board with clear, up-to-date contact information for customer questions, concerns or complaints. The CCA Administrator and CCA Oversight Board shall, from time to time, and/or at the request of the City of Albany's Mayor or Common Council, submit a report regarding customer service matters.

#### **§ 153-11. Compliance with statutes and regulations.**

In accordance with the NYSPSC Order Authorizing CCAs, it shall be the responsibility of the City of Albany, supported by any CCA Administrator that may be under contract,

to ensure the CCA Program is operated in compliance with all applicable provisions of the New York State Public Service Law, regulations of the New York State Public Service Commission and/or the New York State Department of Public Service, the Uniform Business Practices (to the extent applicable), the NYSPSC Order Authorizing CCAs and any other relevant laws or regulations. This provision applies regardless of whether a CCA Administrator is retained to organize and implement the City of Albany's CCA Program. This shall include, but not be limited to, compliance with any reporting requirements related to the CCA Program.

#### **§ 153-12. Review and/or dissolution of CCA Program.**

- A. The City of Albany will, from time to time, review the CCA Program and its progress to determine how the Program is faring, confirm it is affording benefits to the community, and provide information to the public thereon.
- B. The initial term of the ESCO contract will be a minimum of 12 months and a maximum of 36 months. The CCA Administrator shall be responsible for recommending to the Mayor and the CCA Oversight Board the specific terms and conditions for the initial ESCO contract and any subsequent contracts based upon the proposals received and the best interests of the City's eligible customers and consistency with the goals of the Program. Such recommendations shall be transmitted to the Common Council at the same time they are transmitted to the Mayor's office and CCA Oversight Board. The CCA Oversight Board shall have review and approval authority of the contract.
- C. As the expiration of its ESA(s) approaches, or in the event an ESCO provides notice of its intention to terminate an ESA (where authorized by the terms of that ESA), the City of Albany Common Council may consider whether it wishes to discontinue the CCA Program. Dissolution of the CCA Program will require:
  - (1) Enactment of a local law amending or repealing this chapter;
  - (2) Lawful termination of ESAs in accordance with their terms;
  - (3) Lawful termination of the CCA administration agreement, in accordance with its terms; and
  - (4) At least 60 days' notice to customers that their energy services will be automatically returned to utility, an effective date upon which such a change would occur, and information on what other options may be available to those customers, if applicable.

#### **§ 153-13. Conflicts.**

In the event the New York State Public Service Commission, the State Legislature, or other state agency enacts laws or regulations regarding the operation of CCAs which are in conflict with this chapter, the state provisions shall govern.

#### **§ 153-14. Liability.**

Nothing in this chapter shall be read to create liability on the part of the City of Albany related to the provision of electric service to customers. The ESCO selected to provide

such service will be ultimately responsible for compliance with all applicable laws, rules, and regulations governing retail energy services, and will assume any liability stemming from the provision of such service to retail customers, including any potential liability associated with the service itself, customer data and information, and any other matters which would traditionally fall under the purview of a merchant utility providing the same service to customers prior to the formation of the CCA. This chapter is meant merely to facilitate the creation of an aggregation program in this community. The City of Albany will not assume the role of ESCO or utility in the sale or delivery of energy services.

**§ 153-15. Severability.**

Each provision of this chapter is severable from the others so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this chapter, which shall nonetheless remain in full force and effect.