



Southampton Town Board

116 Hampton Road
Southampton, NY 11968

Meeting: 02/26/19 06:00 PM

Department: Town Attorney

Category: Local Laws

Prepared By: Kathleen Murray

Initiator: James Burke

Sponsors: Bouvier, Lofstad, Schiavoni

DOC ID: 31016

ADOPTED

TOWN BOARD RESOLUTION 2019-285

Resolution of Adoption Enacting Town Code Chapter 139 to Establish a Community Choice Aggregation Energy Program

WHEREAS, the Town Board of the Town of Southampton is considering enacting Town Code Chapter 139 to establish a Community Choice Aggregation Energy Program within the Town of Southampton; and

WHEREAS, public hearings were held by the Town Board of the Town of Southampton on November 27, 2018, and January 22, 2019, at which time all persons either for or against said enactment were heard; and

WHEREAS, the Department of Land Management has advised the Town Board that this proposed local law is considered a "Type II Action" under 6 NYCRR Part 617.5, provisions of the New York State Environmental Quality Review Act (SEQRA) and Chapter 157 of the Town Code, and that no further review under New York Conservation Law, Article 8, is necessary; now therefore be it

RESOLVED, that Local Law No. 5 of 2019 is hereby adopted as follows:

LOCAL LAW NO. 5 OF 2019

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

A LOCAL LAW enacting Town Code Chapter 139 to establish a Community Choice Aggregation Energy Program within the Town of Southampton.

SECTION 1. Legislative Intent.

The Town Board of the Town of Southampton (the "Town") has established a goal of achieving 100% renewably sourced electric energy by the year 2025. Achieving this goal will require the Town to evaluate every available renewable energy technology and related policy options. In addition, it is the policy of both the Town of Southampton, as reflected in its adopted Sustainability 400+ Plan, and the State of New York, as a component of its Renewal Energy Vision Initiative, to: (i) reduce costs and provide cost certainty for the purpose of economic development, (ii) promote deeper penetration of energy efficiency and renewable energy resources, such as wind, solar, and the wider deployment of distributed energy resources, and (iii) examine the retail energy markets and increase participation of, and benefits for, Eligible Consumers in those markets. Among the policies and models that may offer benefits in New York is Community Choice Aggregation ("CCA"), which allows local governments to determine the default supplier of electricity and natural gas on behalf of Eligible Consumers.

Currently, operational in twenty-seven (27) cities, towns and villages in New York State, and legislatively approved in thirty-six (36) additional New York State municipalities, the purpose of CCA is to allow participating local governments to procure energy supply service for Eligible Consumers, who will have the opportunity to opt-out of the procurement, while maintaining transmission and distribution service from the existing Distribution Utility. This Chapter establishes a program (the "CCA Program") that will allow Southampton Town,

which may include other local governments, to work together where appropriate through a shared purchasing model to request bids based upon the total amount of natural gas and/or electricity being purchased by Eligible Consumers within the jurisdictional boundaries of participating municipalities, in order to identify more competitive pricing and source generation. Eligible consumers will have the opportunity to: (i) have more control and thus, lower their overall energy costs, (ii) spur clean energy innovation and investment, (iii) improve customer choice and value, and (iv) protect the environment, thereby, fulfilling the purposes of this Chapter and fulfilling an important public purpose.

SECTION 2. Amendment.

Southampton Town Code Chapter 139 is hereby enacted by adding the underlined words as follows:

Chapter 139

Community Choice Aggregation Energy Program

§139-1. 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:

AGGREGATED DATA

Aggregated and anonymized information, including the number of 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.

CCA ADMINISTRATOR

The individual duly authorized by Town Board resolution to put out for bid the total amount of electricity and/or natural gas being purchased by Participating Consumers. The CCA Administrator is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

CUSTOMER SPECIFIC DATA

Customer specific information, personal data and utility data for all consumers in the municipality eligible for opt-out treatment based on the terms of Public Service Commission (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 Municipality that obligates each party to meet, collectively, (i) all national, state and local laws, regulations or

other government standards relating to the protection of information that identifies or can be used to identify an individual Eligible Consumer with respect to the CCA Administrator or its representative's processing of confidential utility information; (ii) the Distribution Utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify individual Eligible Consumer with respect to the CCA Administrator or its representative's processing of confidential utility information; and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.

DEFAULT SERVICE

The supply service provided by the Distribution Utility to consumers who are not currently receiving service from an energy service company (ESCO). Eligible Consumers within the Municipality that receive Default Service, and have not opted-out, will be enrolled in the Program as of the Effective Date.

DISTRIBUTED ENERGY RESOURCES (DER)

Local renewable energy projects, shared renewables like community solar, energy efficiency, demand response, energy management, energy storage, microgrid projects, and other innovative Reforming the Energy Vision (REV) initiatives that optimize system benefits, target and address load pockets/profile within the CCA's zone, and reduce cost of service for Participating Consumers.

DISTRIBUTION UTILITY

Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission.

ELIGIBLE CONSUMERS

Eligible customers 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 Town, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the effective date of the ESA.

ESCO or ENERGY SERVICES COMPANY

An entity duly authorized to conduct business in the State of New York as an ESCO.

MUNICIPALITY

The Town of Southampton.

NEW CONSUMERS

Consumers of electricity that become Eligible Consumers after the effective date of the ESA, including those that opt in or move into the Municipality.

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

The group responsible for initiating and organizing the CCA. This group will typically secure buy-in from local governments and engage in preliminary outreach and education around CCA. The Program Organizer may be a non-profit organization, local government, or other third party. The Program Organizer and the CCA Administrator may be the same.

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 or PSC

The New York State Public Service Commission.

SUPPLIERS

ESCOs that procure electric power and natural gas for Eligible Consumers in connection with this Chapter or, alternatively, generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

§139-2. Establishment of a Community Choice Aggregation (Energy) Program.

- A. A Community Choice Aggregation (Energy) Program is hereby established by the Municipality, whereby the Municipality may implement a CCA Program to the full extent permitted by the PSC CCA Order, as set forth more fully herein.
- B. The Municipality may act as the aggregator or broker 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 Municipality may enter into agreements and contracts with other municipalities, non-profits, consultants, and/or other third parties to: (i) develop and implement the CCA Program, (ii) act as CCA Administrator, and/or (iii) develop offers of opt-in distributed energy resources (DER) products and services to Participating Consumers, including opportunities to participate in local renewable energy projects, shared solar, energy efficiency, microgrids, storage, demand response, energy management, and other innovative Reforming the Energy Vision (REV) initiatives and objectives designed to optimize system benefits, target and address load pockets/profile within the CCA zone, and reduce costs for CCA customers.
- D. The operation and ownership of the utility service shall remain with the Distribution Utility. The Municipality's participation in a CCA Program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Municipality 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 Participating Consumers.

§139-3. Eligibility.

- A. All consumers within the Municipality, including residential and non-residential, regardless of size, shall be eligible to participate in the CCA Program.
- B. All consumers that are members of classes identified by the utility as inclusive of residential and non-residential 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.
- C. New Consumers shall be enrolled on an opt-out basis.

§139-4. Opt-Out Process.

- A. An opt-out letter, printed on municipal letterhead, shall be mailed to Eligible Consumers at least 30 days prior to customer enrollment. The opt-out letter shall include information on the CCA Program and the contract signed with the selected ESCO, including specific details on rates, services, contract term, cancellation fee, and methods for opting-out of the CCA Program. The letter shall explain that consumers that do not opt-out will be enrolled in ESCO service under the contract terms, and that information on those consumers, including energy usage data and APP status, will be provided to the ESCO.
- B. All consumers shall have the option to opt-out of the CCA Program at any time without penalty.
- C. Termination fees shall not be charged to consumers that cancel their CCA service as a result of moving out of the premises served.

§139-5. Customer Service.

Participating Consumers shall be provided customer service, including a toll-free telephone number available during normal business hours (9:00 A.M.- 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.

§139-6. Data Protection Requirements.

- A. The Municipality may request Aggregated Data and Customer Specific Data from the Distribution Utility provided however, that the 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.
- B. Customer Specific Data shall be protected in a manner compliant with, collectively, (i) all national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the Municipality or its representative's processing of confidential utility information; (ii) the utility's internal requirements and procedures relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the Municipality or its

representative's processing of confidential utility information; and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.

- C. The Municipality must enter into a Data Security Agreement with the Distribution Utility for the purpose of protecting customer data.

§139-7. CCA Advisory Group.

- A. A CCA Advisory Group is hereby established to develop and review CCA related proposals, act as the Municipality's agent in recommending an award of said proposals, and forward information regarding such awards to the Southampton Town Board for consideration and potential ratification.
- B. Membership to the CCA Advisory Group shall include the Town Comptroller, the Town Attorney, the Town Planning and Development Administrator, and the Director of Municipal Works, or the designee of each.

§139-8. Administration Fee.

The Municipality may collect, or cause to be collected, funds from customer payments to pay for administrative costs associated with running the CCA program.

§139-9. Reporting.

- A. Annual reports shall be filed with the Southampton Town Clerk by March 31 of each year and cover the previous calendar year.
- B. Annual reports shall include, at a minimum: number of consumers served; number of consumers cancelling 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. The first report shall also include the number of consumers who opted-out in response to the initial opt-out letter or letters.
- C. If a CCA supply contract 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.

SECTION 3. Authority.

The Municipality is authorized to implement this CCA Program pursuant to Section 10(1)(ii)(a)(12) of Municipal Home Rule Law, and takes guidance from the 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 Municipality.

SECTION 4. Severability.

If any section or subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date.

This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

AND BE IT FURTHER RESOLVED, that the Town Clerk is hereby authorized to publish the following Notice of Adoption:

NOTICE OF ADOPTION

TAKE NOTICE, that after public hearings were held by the Town Board of the Town of Southampton on November 27, 2018, and January 22, 2019, the Town Board, at its meeting of February 26, 2019, adopted LOCAL LAW NO. 5 OF 2019, as follows: "A LOCAL LAW enacting Town Code Chapter 139 to establish a Community Choice Aggregation Energy Program."

Copies of the proposed local law, co-sponsored by Councilman John Bouvier, Councilwoman Julie Lofstad and Councilman Tommy John Schiavoni, are on file in the Town Clerk's Office, Monday through Friday, from 8:30 a.m. to 4:00 p.m.

BY ORDER OF THE TOWN BOARD
TOWN OF SOUTHAMPTON, NEW YORK
SUNDY A. SCHERMEYER, TOWN CLERK

Financial Impact

None.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John Bouvier, Councilman
SECONDER:	Julie Lofstad, Councilwoman
AYES:	Schneiderman, Lofstad, Scalera, Bouvier, Schiavoni