STATE OF NEW YORK

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2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. BARRETT, LUPARDO -- read once and referred to the Committee on Energy

AN ACT authorizing certain municipalities to participate in a community choice energy aggregation program by a single municipality or through an inter-municipal agreement with two or more municipalities in order to coordinate efforts to procure electric and/or gas supply services on behalf of participating residents, businesses and municipal customers within municipal jurisdictional boundaries

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Definitions. The following terms, when used in this act, shall have the following meanings:

1. "Customer" shall mean a customer of record who received residential or non-residential electric and/or gas supply services from a distribution utility at the time of a local resolution by his or her municipality to participate in a municipally administered community-wide energy aggregation program, provided that such customer did not receive electric and gas supply services from an energy services company and/or a publicly-owned utility.

2. "Distribution utility" or "distribution utilities" shall mean any investor-owned utility in the state of New York.

3. "Participating customer" shall mean a customer who receives electric and/or gas supply services through a municipally administered community-wide energy aggregation program, including residential and commercial, and municipal customers.

4. "Community choice aggregation," "program," or "community energy aggregation program" shall mean an inter-municipal agreement or a municipal resolution for the purpose of coordinating or initiating efforts by a municipality or by community choice aggregators to request bids for and potentially select an ESCO or ESCOs to provide electric and/or gas

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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supply services to participating residential, commercial and government customers.

5. "Municipal governing board" is single municipal board for local programs limited within municipal jurisdictional boundaries, or an inter-municipal agreement entered into by resolution of two or more municipal boards aggregating load on a regional basis.

6. "Energy services company" or "ESCO" shall have the same meaning as such term is used in subdivision 5 of section 44 of the public service law.

7. "Municipality" or "municipalities" shall mean a city, town or village located in the state of New York.

8. "Community choice aggregator" or "energy aggregator" shall mean a municipality authorized pursuant to a local resolution to participate in an inter-municipal agreement establishing a municipal energy aggregation program to offer energy services to residential, commercial and municipal customers located within the energy aggregator's jurisdictional boundaries.

9. "Program administrator" shall mean a community choice aggregator that is designated pursuant to a local municipal governing board resolution or an inter-municipal agreement, or an employee or a contractor designated by a community choice aggregator to fulfill the responsibilities of: (i) requesting and compiling historical usage data of distribution utility customers as required under this act, (ii) submitting a request for bids for energy supply services from ESCOs authorized to supply electric and/or gas in New York state, and (iii) carrying out the administration of the contract and implementation of aggregated services.

10. "Department" shall mean the New York state department of public service.

§ 2. Community choice aggregation programs. 1. A municipality may, after adopting a resolution approved by a majority of its governing board, participate in a community choice aggregation program through an inter-municipal agreement with one or more municipalities in order to coordinate efforts, or through its own community choice aggregation program to procure electric and/or gas supply services, and municipal programs to develop energy efficiency and renewable energy installations, gas efficiency and renewable heating technologies on behalf of its participating customers.

Such community choice aggregation program must provide for the designation of a program administrator to facilitate the operations of a community choice aggregation program, including but not limited to the receipt of customer historical usage data information from distribution utilities pursuant to section three of this act and any communications necessary with potential ESCOs that would provide electric and/or gas supply services for such program, and otherwise entering into contracts with other energy efficiency and renewable energy developers, including gas efficiency and renewable heating technologies, provider power and/or capacity to the community choice aggregation program.

2. A community choice aggregator shall be responsible for responding to inquiries regarding the particular community choice aggregation program in which it is a participant. Such community choice aggregator shall provide contact information, including but not limited to a mailing address, telephone number, e-mail address and fax number at which it may be contacted in all notices to participating customers.

3. In establishing a contract for electric and/or gas services with an ESCO, a program administrator shall comply with article 7 of the public officers law.

§ 3. Establishment of community choice aggregation program. 1. The program administrator designated pursuant to an inter-municipal agreement or municipal resolution establishing a community-wide aggregation program shall provide a copy of such agreement to the distribution utilities and submit a formal request for usage information provided for under subdivision two of this section.

2. In order to augment energy efficiency and renewable energy programs, and within 60 days of the establishment of a community choice aggregation program or of an inter-municipal agreement establishing an aggregation program and the formal request, distribution utilities shall, at a reasonable cost as determined by the commission within 120 days of the effective date of this act, provide to the program administrator the following utility information regarding customers receiving gas and/or electric supply services from such distribution utilities who are eligible to receive service from the community choice aggregator:

(a) aggregate monthly usage (kWh) by rate schedule: energy consumption (kWh) for the most recent 60 months of completed information for each customer class for a given period of time for each municipality included in the data request;

(b) customer-specific information from the current billing periods as well as prior 60 months consisting of the following billing information: meter number, service agreement number, name on agreement, service address with zip code, mailing address with zip code, telephone number, monthly kWh usage, monthly maximum demand where available, Baseline Zone, low income residential participation (Home Energy Assistance Program or HEAP), End Use Code (Heat Source), Service Voltage, Medical Baseline, Meter Cycle, Bill Cycle, Level Payment Plan and other plans, HP Load and Number of Units, monthly rate schedule for all accounts within the community choice aggregator's territory;

(c) system wide residential and non-residential load shapes by New York Load Zones and New York Control Area designations for the most recent five years for which the distribution utility has completed information;

(d) standard system average load profiles by rate class also referred to as Dynamic Load Profiles & Static Load Profiles posted to the distribution utility's website;

(e) quarterly or monthly aggregated participation data for energy efficiency programs already tracked in New York State Energy Research and Development Authority reports, as available;

(f) aggregate monthly usage (kWh) by zip code within a city code;

(g) customer-specific information consisting of: service agreement number, monthly interval meter data where available, and rate schedule for all accounts within the community choice aggregator's territory;

(h) number of service agreements in each rate schedule within a municipal energy aggregation's territory or proposed territory;

(i) mapping of customer rate schedule to rate class;

(j) estimated annual generation revenues by community choice aggregator's territory;

(k) estimation of peak coincident and non-coincident demands;

(l) data fitting community choice aggregator's annual usage to New York Control Area load shapes; estimation of peak coincident and non-coincident demands;

(m) total annual kWh loads of bundled customers and customers already receiving ESCO service, firstly on a monthly basis and secondly on a rate schedule basis within the community choice aggregator's territory;

(n) aggregated residential, small commercial, large commercial and government annual kWh usage for the past three years in a format by tier for each rate schedule, and for Time of Use (TOU) rates or other meter-specific rates, providing further separation by summer/winter peak, partial peak, and off peak periods and summer/winter period;

(o) annual proportional share of system benefit charge energy efficiency funds for a community choice aggregator's proposed territory;

(p) system benefit charge customer payment by city code;

(q) all electricity usage data at the most granular interval recorded by the distribution utility;

(r) all monthly unbundled rate components and charges for each customer;

(s) natural gas consumption and billing data for all customers located within the territorial boundaries of the community choice aggregator, similar in extent and specification to what is being requested on the electricity side (i.e. customer data, consumption data at the most granular interval available, monthly bills within unbundled charges, and all data necessary to calculate those charges);

(t) clarification and datasets used to associate gas meters with electric meters at the building level and customer level;

(u) all energy efficiency program data for all customers (by account number, service ID number, street address, etc), listing account contacts and all recorded activity and information, including but not limited to on-site or online audits, benchmarking, retro-commissioning, and energy use analyses and efficiency recommendations, and paperwork filed by customers or contractors, and financing information such as on bill financing amounts and repayment status, as available, as well as any associated data sets such as building information on tenant/owner occupancy, square footage and year built, as well as rebate code and measure tables, as available;

(v) demand response program participation and all relevant metrics recorded for these programs;

(w) the type of interconnect agreement and all relevant metrics associated with customers that have already interconnected distributed generation to the distribution utility's distribution grid;

(x) distribution grid data that could impact the siting of distributed generation or demand-side assets, in a GIS format including shape-files and any associated datasets;

(y) the number of customers, by class including indication of those that are currently provided electric and/or gas supply service from an ESCO, that are not served by a publicly-owned utility;

(z) the aggregate gas and electric usage of eligible customers, by class served, for the 12-month period preceding the request; the system peak hour or hours that determines capacity buying requirements, and to the degree that it is available the aggregated load factor by class served for the 12-month period preceding the request; and

(aa) to the degree that it is available, reasonable efforts to provide more detailed historic information relating to energy usage characteristics of customers, including but not limited to information by rate class on meter type, the number of smart meters deployed, kWh usage and peak demand information classification, meter reading cycle information, load profile designating information, the number of customers enrolled in budget billing plans, loss factor information, net-metering informa-

tion and any other information deemed useful by the community choice aggregation program administrator to successfully solicit bids for and implement the aggregation program.

§ 4. Selection of ESCO providers. 1. Upon receipt of utility bulk information required under section three of this act, the program administrator is authorized to advertise for the request of bids from ESCOs for the provision of services for a community choice aggregation program. Any request for bids shall specify that a contract for aggregation program services must:

(a) include price benchmarks, which shall provide for:

(i) monthly per kWh rates for electric supply services for each applicable class of customers that are before the 12-month average monthly price supply services provided by distribution utilities or lower than the distribution utility's rate at the time of a request for bids as provided for in this section, except insofar as customers voluntarily pay higher rates to pay for and receive ownership benefits from energy efficiency retrofits and/or renewable distributed generation;

(ii) monthly per Btu rates for gas supply services for each applicable class of customers that are below the 12-month average monthly price of supply services provided by distribution utilities or lower than the distribution utility's rate at the time of a request for bids as provided for in this section, except insofar as customers voluntarily pay higher rates to pay for and receive ownership benefits from energy efficiency retrofits and/or renewable distributed generation;

(b) provide that the ESCO will not levy any form of cancellation charge to participating customers who, after receiving electric and/or gas supply services from the ESCO, choose to receive such supply services from their respective distribution utility;

(c) provide that the community choice aggregator municipal board may levy a cancellation charge to participating customers only insofar as such charges cover obligations to repay investment in renewable energy and energy efficiency installations serving participating customers;

(d) provide for a website for participating customers to view the monthly rates charged for electric and/or gas supply and any related renewable energy and/or energy efficiency services and products being offered by the community choice aggregation program administrator; and

(e) provide that any costs associated with preparation for or implementation of this program or contract shall be reflected in the benchmark per kWh and per Btu bid price.

2. (a) After a review of bids submitted for energy supply services, community choice aggregator are authorized to select the ESCO or ESCOs that will offer the best service, price, environmental, greenhouse gas reductions, and local employment and local business benefits and other factors considered, provided that the per kWh supply rate for electricity and per Btu rate for gas supply services at the initiation of service is lower than the distribution utility's average monthly rate for supply services for the prior 12-month period, or lower than the distribution utility's rate at the time of a request for bids as provided for in this section and meet the requirements of subdivision one of this section, provided that community choice aggregator, may at their discretion, reject all bids or offers and re-advertise for new bids or offers in a manner provided by this act.

(b) In making a selection, community choice aggregator shall (i) select one ESCO for the provision of electric supply services; and (ii) select one ESCO for the provision of gas supply services, provided however that the community choice aggregators may select an ESCO to

provide both electric and gas supply service, provided further that community choice aggregators may not select any ESCO that has been deemed ineligible to provide energy services by the department.

(c) in making a selection, community choice aggregators may contract with any number of contractors to design, build, operate, and/or maintain renewable energy facilities and energy efficiency measures that provide power or capacity to the community choice aggregation program.

3. After selection of an ESCO or ESCOs, the community choice aggregators are authorized to set rates and to enter into a contract for supply services by a local law of the local governing board. Such contract shall include:

(a) provisions prohibiting the ESCO or ESCOs from denying service to any customer receiving service from his or her distribution utility at the commencement of such contract;

(b) monthly per kWh rates for electric supply services for each applicable class of customers that is below the average monthly rate of supply services provided by distribution utilities in the previous 12-month period or lower than the distribution utility's rate at the time of a request for bids as provided for in this section, with approval of any changes requiring a resolution of the community choice aggregator's municipal board;

(c) monthly per Btu rates for gas supply services for each applicable class of customers that is below the average monthly rate of supply services provided by distribution utilities in the previous 12-month period or lower than the distribution utility's rate at the time of a request for bids as provided for in this section with approval of any changes requiring a resolution of the community choice aggregator's municipal board;

(d) provisions requiring the ESCO or ESCOs to provide electric and/or gas supply rates lower than the distribution utility's electric and/or gas supply rates pursuant to paragraphs (b) and (c) of this subdivision for the duration of the contract, provided that a violation of this provision shall subject such ESCO to refund participating customers at the time of termination of a contract pursuant to section six of this act, subject to a determination by resolution of the community choice aggregator's municipal board;

(e) provisions prohibiting a community choice aggregator from opting out of the contract during the term of such contract;

(f) provisions for the community choice aggregation municipal board to decide whether to terminate a contract for services if an ESCO fails to meet the price benchmarks pursuant to this act with the ESCO having exclusive responsibility for all re-entry fees charged to a participating customer by distribution utilities for the resumption of supply services;

(g) provisions indemnifying community choice aggregators from all liabilities, damages and costs associated with the non-performance of an ESCO operating under a contract for services;

(h) a requirement that the ESCO provide a performance bond if required by the community choice aggregator; and

(i) any other requirement that the community choice aggregators deem necessary for the adequate and reliable supply of electric and/or gas supply services to participating customers.

§ 5. Notice of community choice aggregation contract required. 1. Upon the completion of the contract for services provided for under subdivision three of section four of this act, the program administrator shall obtain from distribution utilities at a reasonable cost as determined by

the commission within 60 days of the effective date of this act their lists of customers that may be affected by such contract and provide the community choice aggregators with such information, including the transfer of all data on each meter for all eligible accounts within the community choice aggregator jurisdictional boundaries for the past 5 years. The community choice aggregator shall then notify such customers as to the provisions of such contract, including but not limited to price benchmarks.

2. Distribution utilities must make all reasonable preparations to release customers who do not choose to opt-out pursuant to subdivision three of this section from receiving electric and/or gas supply services, provided that all customers shall continue to receive delivery services from such utilities.

3. Upon completion of a contract provided for under subdivision three of section four of this act, community choice aggregators must mail a notice to each eligible customer not currently receiving supply services from a publicly-owned utility, which shall include:

(a) that the customer's municipal board has chosen to participate in a community choice aggregation contract;

(b) for customers not currently served by an ESCO, that unless he/she elects to opt-out within 60 days of the postmarked notice, such opt-out customers will become a participating customer and will receive electric and/or gas supply services through a community choice aggregation contract;

(c) for customers not currently served by an ESCO, instructions detailing how a customer may submit an opt-out response, provided that such procedures shall permit the customer to opt-out at no cost within sixty days by returning a reply mail form to the program administrator, as determined by the community choice aggregation municipal board;

(d) for customers not currently served by an ESCO, that each customer who does not elect to opt-out within the prescribed period may elect to opt-out of such contract at any time, but may be subject to exit fees by the community choice aggregator municipal board;

(e) for customers already served by an ESCO, that each customer wishing to switch to service with the community choice aggregator may do so by opting-in to the program within sixty days of the postmarked notice to become a participating customer and receive electric and/or gas supply services through the community choice aggregation contract;

(f) for customers already receiving ESCO service that elect to opt-in to the program, instructions detailing how a customer may submit an opt-in response, by returning a reply mail form to the program administrator, as determined by the community choice aggregation municipal board; and

(g) that in the case of a participating customer the distribution utility is no longer responsible for supply rates charged to such customer and that all complaints about supply service under the aggregation contract shall be the responsibility of the program administrator and ESCO or ESCOs, according to the community choice aggregation contract.

4. Immediately following the 60-day opt-out period provided for in paragraph (b) of subdivision three of this section, a community choice aggregator shall provide the program administrator with the following information:

(a) the number of customers that received electric and/or gas supply services from such distribution utility who are participating customers by rate class; and

(b) the name, address, and account number of each participating customer.

5. The program administrator, upon receipt of information required under subdivision four of this section, shall submit such information and the information provided for under subdivision two of section three of this act to the ESCO or ESCOs. Such ESCOs shall commence supply services to participating customers.

§ 6. Public service commission review. 1. Within 365 days of the commencement of gas and/or electric supply services under an aggregation contract, the commission, after consultation with the department shall commence an audit to ensure such ESCO or ESCOs selected have achieved benchmarks established pursuant to paragraph (b) of subdivision one of section four of this act.

2. (a) If the commission determines that the ESCO or ESCOs providing gas and/or electric gas supply services has failed to achieve such benchmarks as established in subdivision three of section four of this act, the contract for services established pursuant to subdivision three of section four of this act shall be subject to termination by resolution of the community choice aggregator's governing board.

(b) Within 30 days of the termination of a contract for services by the community choice aggregator's municipal board, the ESCO shall issue payment to each participating customer for any supply rates above those specified in the contract, including the cost of any applicable re-entry fees charged to a customer for resumption of supply services.

(c) The commission shall ensure that all customers eligible for resumption of electric and/or gas supply service from their respective distribution utility receive such services regardless of the actual timing of the payment provided for under paragraph (b) of this subdivision.

3. An ESCO shall not levy any charge to a community choice aggregator to cover expenses related to the termination of a contract.

§ 7. Report. Within 30 months of the establishment of a supply services contract for services or upon the termination of such contract, the commission shall submit a report to the executive, the temporary president of the senate, the speaker of the assembly, the chairs of the senate energy and telecommunications committee and the assembly energy committee detailing the performance of any aggregation contract. Such report shall include the following information:

1. the number of participating customers served;

2. the ability of the ESCO or ESCOs selected under an aggregation program to provide adequate supply services;

3. the actual supply rates charged under a contract for services;

4. the amount, if any, of participating customers whose residential or non-residential service was disconnected; and

5. any other information the public service commission deems necessary.

§ 8. Energy services company bill of rights applicable to participating customers. For purposes of this act the term "customer" as defined in paragraph (c) of subdivision 1 of section 349-d of the general business law, shall include participating customers.

§ 9. This act shall take effect immediately.