

# STATE OF NEW YORK

2961

2021-2022 Regular Sessions

## IN SENATE

January 26, 2021

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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:

- 1 Section 1. Definitions. The following terms, when used in this act,  
2 shall have the following meanings:
- 3 1. "Customer" shall mean a customer of record who received residential  
4 or non-residential electric and/or gas supply services from a distrib-  
5 ution utility at the time of a local resolution by his or her munic-  
6 3 2. "Distribution utility" or "distribution utilities" shall mean any  
7 4. "Community choice aggregation," "program," or "community energy  
8 3. "Participating customer" shall mean a customer who receives elec-  
9 a publicly-owned utility.  
10 investor-owned utility in the state of New York.  
11 12 13 14 15 16 17 18 19 20

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

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1 supply services to participating residential, commercial and government  
2 customers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (h) number of service agreements in each rate schedule within a munic-  
48 ipal energy aggregation's territory or proposed territory;

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

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

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

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

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

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

9 (o) annual proportional share of system benefit charge energy effi-  
10 ciency funds for a community choice aggregator's proposed territory;

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

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

14 (r) all monthly unbundled rate components and charges for each custom-  
15 er;

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

22 (t) clarification and datasets used to associate gas meters with elec-  
23 tric meters at the building level and customer level;

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

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

36 (w) the type of interconnect agreement and all relevant metrics asso-  
37 ciated with customers that have already interconnected distributed  
38 generation to the distribution utility's distribution grid;

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

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

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

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

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

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

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

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

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

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

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

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

37 (e) provide that any costs associated with preparation for or imple-  
38 mentation of this program or contract shall be reflected in the bench-  
39 mark per kWh and per Btu bid price.

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

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

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

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

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

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

15 (b) monthly per kWh rates for electric supply services for each appli-  
16 cable class of customers that is below the average monthly rate of  
17 supply services provided by distribution utilities in the previous  
18 12-month period or lower than the distribution utility's rate at the  
19 time of a request for bids as provided for in this section, with  
20 approval of any changes requiring a resolution of the community choice  
21 aggregator's municipal board;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 39 1. the number of participating customers served;
- 40 2. the ability of the ESCO or ESCOs selected under an aggregation  
41 program to provide adequate supply services;
- 42 3. the actual supply rates charged under a contract for services;
- 43 4. the amount, if any, of participating customers whose residential or  
44 non-residential service was disconnected; and
- 45 5. any other information the public service commission deems neces-  
46 sary.

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

51 § 9. This act shall take effect immediately.