STATE OF NEW YORK

6899

2023-2024 Regular Sessions

IN SENATE

May 15, 2023

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

AN ACT to amend the public service law, in relation to enacting the "state and local clean energy partnership"

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

Section 1. Short title. This act shall be known and may be cited as the "state and local clean energy partnership".

§ 2. Legislative findings and statement of purpose. The legislature hereby finds, determines and declares:

1. In April 2016, the New York state public service commission ("the commission") adopted a CCA Framework Order in Commission Case 14-M-0224 which authorized towns, villages and cities in New York state to form opt-out Community Choice Aggregation ("CCA") Programs.

2. CCA programs allow municipalities, alone or jointly, to enact local laws giving themselves the requisite legal authority to enter into competitively-procured contracts with one or more energy service companies in order to act as an aggregator and broker for the sale of electric supply, gas supply, and/or other energy services, to residents of that municipality wherein all customers, including residential and non-residential, are eligible to participate in the program and shall have the option to opt out of participating if desired.

3. Well-designed CCA programs can empower communities to take control of their energy future; encourage and expand opportunities for customers to access Community Distributed Generation ("CDG") programs, particularly for low- to moderate-income households and renters who may not otherwise have access to solar energy; and educate and encourage community engagement in energy programs.

4. Since the adoption of the CCA Framework Order, CCA programs have demonstrated their potential as a tool for facilitating engagement by

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

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communities and retail customers in taking charge of their energy choices, securing competitive energy contracts on behalf of aggregated customers, financially supporting the current renewable market and in growing the renewable market in New York.

5. This act is intended to signal the state's continuing support of CCA; to recognize the vibrant market created by CCA and the tremendous progress achieved by those programs in encouraging residential demand for renewables and community participation in making energy choices locally; to recognize CCA as offering significant new opportunities for the state to advance the Climate Act at the municipal and community level; and to provide clarity and confidence necessary to allow the commission to expeditiously advance broader deployment of CCA and to incorporate opt-out CDG as part of the CCA framework.

6. Moreover, this act is intended to level the playing field for communities seeking to participate in CCA, to ensure that opt-out CDG is authorized within the CCA framework, and to promote fairness and equal opportunity for communities across the state to innovate and advance Climate Act goals.

7. Chapter 106 of the laws of 2019 enacted the New York State climate leadership and community protection act (the "Climate Act") which among other things:

a. Directed the department of environmental conservation to establish statewide greenhouse gas emissions limits as a percentage of 1990 emissions as follows: (i) 2020: 60% of 1990 emissions; and (ii) 2050: 15% of 1990 emissions;

b. Directed the commission to establish programs to require that a minimum of 70% statewide electric generation be produced by renewable energy systems by 2030, and that by the year 2040 the statewide electrical demand system will generate zero emissions;

c. Directed the New York Climate Justice Working Group to identify Disadvantaged Communities which are often overlooked in climate policy initiatives and to ensure they directly benefit from the State's transition to cleaner, greener sources of energy, reduced pollution and cleaner air, and economic opportunities created by or in conjunction with the Climate Act; and

d. Directed that Disadvantaged Communities receive a minimum of 35 percent (with a goal of 40%) of benefits of investments in clean energy and energy efficiency programs or projects in the areas of housing, workforce development, pollution reduction, low- and moderate-income energy assistance, energy, transportation, and economic development.

8. Decisions made by New Yorkers and their communities regarding their energy usage and purchasing significantly impact the ability of the State to achieve the Climate Act's goals and to encourage the deployment of distributed energy resources.

9. Moreover, empowering communities to take control of their energy future through CCA, and to choose and encourage local deployment of renewable energy through opt-out CDG, advances the goals of the Climate Act at the local level, encourages local participation in State energy initiatives such as the Reforming the Energy Vision, Clean Energy Standard, and Climate Act, sends appropriate market signals to drive investment and innovation in New York's energy markets, empowers municipalities to make long-term planning and investment decisions related to energy opportunities, and promotes equity and environmental justice by leveraging community-level buying power and aggregated customer demand to ensure access to CDG credits and other CCA program benefits for low- and moderate-income New Yorkers in participating communities.

10. The Climate Act reaffirms the State's commitment to advancing social and environmental equity, and righting past environmental injustices; this act furthers those commitments by ensuring equal access to CCA among historically marginalized communities and prioritizes low-income customers to benefit first from opt-out CDG crediting programs to lower their energy bills.

11. A public policy purpose would be served and the interests of the people of the state would be advanced by codifying the State's CCA programs in law, directing the commission to streamline review and approval of CCA programs consistent with this enactment, encouraging community participation in CCA, authorizing CCA programs to integrate opt-out CDG into their offerings, and prioritizing access to opt-out CDG in Disadvantaged Communities.

§ 3. The public service law is amended by adding a new section 74-c to read as follows:

§ 74-c. Community choice aggregation programs. 1. As used in this section, the following terms shall have the following meanings:

(a) "Community choice aggregation" or "CCA" means a program serving the interests of its residents and appropriately protecting consumer data, in which an eligible municipality either alone or jointly, after a public hearing held following public notice, exercises its municipal home rule law authority by enacting a local law giving itself the requisite legal authority to enter into competitively-procured contracts with one or more energy service companies and/or energy suppliers in order to act as an aggregator and broker for the sale of electric and/or gas supply, and/or allocation of CDG credits, to residents of that municipality. CCA programs may aggregate or otherwise integrate other energy services into their programs.

(b) "CCA administrator" means the entity selected by the eligible municipality or municipalities to design, manage, and implement the CCA program. Eligible municipalities may opt to perform the role of CCA administrator on their own, or they may retain an expert or other third-party to do so on behalf of the municipality or municipalities.

(c) "Community distributed generation" or "CDG" means a community shared renewable generation program involving an eligible generation source, as defined by the commission, located behind a non-residential host meter which remotely shares net metering or other monetary credits through a monetary credit applied to the utility bills of participating customers.

(d) "Community distributed generation credit" or "CDG credit" means monthly credits generated and allocated to participating customers on their utility bills from a community distributed generation program.

(e) "Distributed energy resources" or "DER" refers to initiatives undertaken under the climate leadership and community protection act (CLCPA), New York state clean energy standard (CES), or similar energy program which further engage and/or reduce cost of service for participating consumers, optimize system benefits, and/or address infrastructure and demand challenges including, but not limited to, local renewable energy projects, distributed energy resources such as CDG, peak demand management, energy efficiency, demand response, energy storage, community resilience microgrid projects, and other innovative initiatives.

(f) "Eligible customers" means customers of electricity and/or gas supply eligible to participate in CCA, either on an opt-out or opt-in basis.

(g) "Eligible municipality" means any city, town, or village, which retains the legal authority to enact local laws under subparagraph twelve of paragraph a of subdivision one of section ten of the municipal home rule law.

(h) "Energy services" refers to the provision of electric and/or gas energy supply, CDG credits, or other DER offerings.

(i) "Participating customers" means (i) eligible customers who have not opted out of participation in a CCA program, and/or (ii) customers who were not eligible to be automatically enrolled into a CCA program on an opt-out basis who voluntarily opted into said program.

(j) "Suppliers" means the entity or entities under contract with the CCA program to provide electricity, gas, CDG credits, and/or other related energy services to participating customers, including but not limited to energy service companies, generators of electricity, and/or other entities who procure and resell electricity, gas and/or CDG credits.

2. The commission shall establish by order, rules and/or regulations a standard New York state CCA program, for all utility service territories, which provides the following:

(a) Eligible municipalities will continue to be permitted to form, on their own or in cooperation with other eligible municipalities, a CCA program, after providing public notice, holding a public hearing in the community and adopting enabling legislation.

(b) Eligible municipalities shall have the ability to structure the CCA program to encompass eligible customers within the entire municipality or within a geographical subset of the municipality, or to create multiple CCA program aggregations based upon reasonable geographic or utility service territory parameters.

(c) Eligible municipalities shall be permitted to seek the assistance of a third-party to serve as a CCA administrator, where such third-party shall be deemed a provider of professional services for purposes of the municipalities' compliance with section one hundred three of the general municipal law.

(d) The CCA administrator shall be responsible for ensuring that the CCA program is established to aggregate eligible customers utilizing an approved opt-out process, in accordance with requirements established by the commission.

(e) A CCA program may solicit, negotiate and enter into contracts with suppliers to provide electricity, gas and/or CDG credits to participating customers on an opt-out basis, and may offer such related energy services as may reasonably be included on an opt-in basis, or on an opt-out basis as approved by the commission, including but not limited to energy efficiency programs, demand response, peak load reduction, energy management, storage, and other innovative energy initiatives aimed at optimizing program benefits, reducing the cost of energy service for participating customers, or otherwise furthering the goals of the CLCPA.

(f) Eligible municipalities shall have the right, through a CCA program, to enter into contracts at a price and contract terms to be negotiated at the municipalities' discretion to serve the best interests of their constituents. Best interests may include benefits associated with advancing one or more of the CLCPA objectives.

(g) Eligible municipalities shall have the right to integrate into their CCA program: (i) opt-out CDG and/or (ii) other energy services programs on an opt-in basis, at their discretion, either as standalone offerings or in addition to energy supply.

(h) Opt-out CDG programs should prioritize the granting of CDG credits first to low-income customers and/or eligible customers located in disadvantaged communities designated pursuant to section 75-0111 of the environmental conservation law.

(i) All CCA Administrators shall ensure that eligible customers are provided, in plain language: (i) information regarding the opt-out process for customers who do not wish to participate; (ii) instructions for voluntarily opting in to a CCA offering for energy services not offered on an opt-out basis and/or for customers who are not automatically eligible to participate in CCA offerings on an opt-out basis; and (iii) information for eligible customers who move into or within the community after the CCA program has commenced and/or who may wish to participate in a CCA program.

(j) CCA programs shall adopt and implement standard data security agreements to govern treatment, collection, storage and protection of customer data, in accordance with rules, regulations and guidelines established by the commission.

(k) The commission shall establish reasonable and consistent reporting requirements for CCA programs, municipalities, and/or serving utilities.

(l) The commission shall periodically review the CCA program rules, reporting requirements, data security agreements, and/or other requirements to determine whether costs or burdens on CCAs could be reduced and/or consumer protections improved in a manner consistent with this section.

(m) Such other requirements and guidelines as deemed appropriate by the commission.

3. No person or entity shall disadvantage a CCA program by virtue of its status as a CCA.

4. CCA programs established pursuant to the provisions of this section shall be consistent with the CLCPA to the maximum extent practicable.

5. The commission shall promulgate rules and regulations necessary to implement this act within ninety days of the effective date of this section. This section shall not cause interruption of current CCA program operations and, where appropriate, shall provide a process for existing CCA programs to integrate beneficial modifications into current and/or future operations consistent with this section.

§ 4. Severability. If any provision of this act or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, that judgment shall not affect or impair the validity of the other provisions of this act or the application thereof to other persons and circumstances.

§ 5. This act shall take effect immediately.