

LOCAL LAW NO \_\_ of 2019

A LOCAL LAW TO ESTABLISH A  
COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM  
IN THE TOWN OF GARDINER

Be it enacted by the Town Board of the Town of Gardiner as follows:

The Code of the Town of Gardiner is hereby amended by adding a new Chapter [#],  
entitled  
“COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM,” to read as follows:

**§1. Legislative Findings; Intent and Purpose; Authority.**

~~A. It is the policy of both the Town of Gardiner (“Municipality”) and the State of New York to reduce costs and provide cost certainty for the purpose of economic development, to promote deeper penetration of energy efficiency and renewable energy resources such as wind and solar, and wider deployment of distributed energy resources as well as to 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 on behalf of Eligible Consumers.~~

~~C. 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 (“CCA Program”) that will allow the Municipality and other local governments to work together through a shared purchasing model to put out for bid the total amount of electricity being purchased by Eligible Consumers within the jurisdictional boundaries of participating municipalities. Eligible consumers will have the opportunity to have more control to lower their overall energy costs, to spur clean energy innovation and investment, to improve customer choice and value, and to protect the environment; thereby, fulfilling the purposes of this Chapter and fulfilling an important public purpose.~~

A. It is the intent of the Town of Gardiner to establish a Community Choice Aggregation (“CCA”) Program to aggregate the energy supply needs of residents and small commercial enterprises, 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 Customers to obtain stable, lower-cost energy prices, as well as environmental benefits and a community-based solution to meeting our collective energy needs. The purpose of this Local Law is two-fold: to establish a CCA Program the Town of Gardiner and to adopt certain provisions relating to the creation and implementation of the CCA Program.

**Commented [LB1]:** Below are our suggested Findings/Statements of purpose for this local law. The language previously provided is not very clear. Further, it seems to conflate the roles of the Town and CCA Administrator, which the Town may not desire.

- B. 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.
- C. As part of this REV initiative, the New York State Public Service Commission ("Commission"), on April 21, 2016, adopted an Order authorizing towns, village and cities within the State to create Community Choice Aggregation programs, by themselves or in concert with other municipalities (hereinafter "Commission Order Authorizing CCAs"), and/or to retain a CCA Administrator to implement the program and negotiate ESAs.
- D. CCA Programs allow communities to take control of their energy supply through an open, transparent and competitive electric and gas supply procurement process driven by the consumers themselves.
- E. 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 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. For low-income customers, consistent with the Commission Order Authorizing CCAs, and subsequent Orders related thereto, the CCA Program must also offer a cost-savings guarantee when compared with service offered through the Distribution Utility.
- F. The Town of Gardiner has explored CCA and believes it would provide numerous benefits in this community, enhancing the public welfare and making energy more affordable and costs more predictable for its residents.
- G. Therefore, the Town of Gardiner authorizes the creation of an opt-out CCA Program pursuant to rules of the Commission in this community for the provision of [electric and/or natural gas] supply service, as well as other high priority energy related value added services as may be determined to meet the community's goals.
- ~~D-H.~~ The ~~Municipality-Town~~ is authorized to implement this CCA Program pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law; and 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.

**Commented [LB2]:** Town needs to decide whether to authorize this for electric and gas service, or just electric.

E-I. This Chapter shall be known and may be cited as the COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM Law of the Municipality.

## §2. 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:

A. AGGREGATED DATA shall mean 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 by month for the past 12 months by service class.

B. CCA ADMINISTRATOR shall be duly authorized to put out for bid the total amount of electricity being purchased by Participating Consumers. CCA Administrator is responsible for Program organization, administration, procurement, and communications, unless otherwise specified. The CCA Administrator is responsible for ensuring and tracking compliance with Public Service Commission requirements applicable to CCA Programs, including reporting requirements. The Town may retain a CCA Administrator to oversee and operate its CCA Program consistent with the Commission's rules and with this local law, as well as any CCA Administration Agreement executed between the Town and the CCA Administrator.

C. CUSTOMER SPECIFIC DATA shall mean customer specific information, personal data and utility data for all consumers in the municipality eligible for opt-out treatment based on the terms of 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. The CCA Administrator shall take all reasonable steps to protect Customer Specific Data from unauthorized release or improper use, in accordance with the terms of the CCA Administration Agreement, any Data Security Agreement executed in relation to the Town's CCA Program, and any other relevant rules regarding customer data protection.

D. DATA SECURITY AGREEMENT shall mean an agreement between the Distribution Utility and the CCA Administrator and/or the Municipality that which 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 any other applicable PSC rules, regulations, and orders, rulings, and guidelines relating to CCA Programs and/or confidential data.

**Commented [LB3]:** The Town should carefully consider how it plans to structure its relationship with the CCA Administrator. There are legal obligations which are imposed on the CCA Administrator/Town – particularly related to customer data—which we caution the Town not to take on in full. Ultimately, the entity operating the CCA Program, and benefitting financially from its operation, must bear the responsibility for ensuring customer data protection and customer service.

Data protections and responsibility/liability therefor can be more fully addressed in a future CCA Agreement executed between the Town and CCA Administrator, which we would strongly recommend be reviewed by counsel prior to execution, to ensure compliance with applicable Commission Orders.

E. DEFAULT SERVICE shall mean 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.

F. DISTRIBUTED ENERGY RESOURCES (DER) shall mean 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.

G. DISTRIBUTION UTILITY shall mean owner or controller of the means of distribution of the electricity that is regulated by the Public Service Commission.

H. ELIGIBLE CONSUMERS shall mean 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 Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. Customers who are not receiving Default Service from the Distribution Utility, but who wish to voluntarily opt in to the CCA Program are also Eligible Consumers. 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.

I. ESCO or ENERGY SERVICES COMPANY mean an entity duly authorized to conduct business in the State of New York as an ESCO.

J. NEW CONSUMERS shall mean consumers of electricity that become Eligible Consumers after the effective date of the ESA, including those that opt in or move into Municipality.

K. PARTICIPATING CONSUMERS shall mean 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, because they are Eligible Consumers who voluntarily opted into the program, or are New Consumers.

L. PSC CCA ORDER shall mean 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," and as amended by the Commission.

M. PUBLIC SERVICE COMMISSION or PSC shall mean New York State Public Service Commission which regulates ~~the rates and services of a public utility-the generation,~~

distribution and sale of public utility services in New York State.

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

**Commented [LB4]:** Again, the Town is authorized to allow CCA to cover gas service as well as electric. If desired, this should be revised to add gas.

### **§3. Establishment of a Community Choice Aggregation (EnergyCCA) Program.**

A. A Community Choice Aggregation (EnergyCCA) Program is hereby established by the Municipality, whereby the Municipality shall cooperate with the Administrator to implement a CCA Program to the full extent permitted by the PSC CCA Order and any related regulations, orders, or guidelines; the CCA Administration Agreement, and this Local Law, as set forth more fully herein.

B. The Municipality's role under the CCA Program involves approval of this local law authorizing the aggregating of the electric supply for its residents, and retaining a CCA Administrator to implement CCA and operate the CCA Program. The CCA Administrator will solicit and evaluate bids for Energy Services to the CCA Program, then recommend for the Town's approval entering into a contract(s) with one or more suppliers, through an Administrator, for the procurement of electricity supply for its residential and small cCommercial customers. Under the CCA Program, the operation and ownership of the utility service, and distribution of the energy supplied, shall remain with the Distribution Utility.

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, through the Administrator, on behalf of Participating Consumers.

E. In order to implement the CCA Program, the Municipality shall adopt one or more resolutions that outline the process of and conditions for participation in the CCA Program, as consistent with the Local Law. The Municipality, in cooperation with and/or through the Administrator, shall adopt the following policies and agreements: (i) a CCA implementation plan; (ii) a Data Protection Plan; (iii) a Data Security Agreement; and (iv) a Certification of Local Authority (collectively, the "Policies"). The Policies shall be adopted,

submitted, amended, supplemented and filed with the Commission in accordance with the Order before the CCA Program may commence.

#### §4. Eligibility.

A. All consumers within the Municipality, including residential and non-residential, regardless of size (except to the extent limited by the CCA Order), shall be eligible to participate in the CCA Program.

B. All consumers 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. If these consumers are to be enrolled on an opt-out basis, the Administrator shall mail them an opt-out letter.

D. The initial opt-out period when the CCA is established must be at least 30 days. When a New Consumers becomes eligible, that New Consumer must be given at least 30 days from the date of notification of eligibility to opt out. The CCA Administrator shall be responsible for making such notification of eligibility.

E. For low-income consumers whose energy bills are paid by a social services organization, the social services organization may opt out on the consumer's behalf. However, the consumer shall be notified of the option to opt out, and shall be provided additional information by the CCA Administrator at that consumer's request.

~~Drafting Note: This is consistent with the discussion below providing an opt out period of at least 30 days before the customer is enrolled. Pursuant to the PSC CCA Order, for those low-income customers whose energy bills are paid by a social services organization, the social services organization shall be the one to opt out on their behalf.~~

#### §5. Supplier Selection; Supplier Contracts.

A. The Administrator, on behalf of the Municipality, shall issue one or more requests for proposals to Suppliers to provide energy to participants and may then award a contract in accordance with the CCA Program.

B. The terms of the Supplier contracts ("CCA Contract") shall comply with the Order. The CCA Administrator shall be responsible for serving any notices required to the Town and/or CCA Program participants prior to execution of contract(s) for supply.

#### §5. Opt-Out Process.

A. The Administrator shall provide information and education to potential CCA customers over no less than a two (2) month period. At a minimum, the CCA Administrator

**Commented [LB5]:** This is not consistent with the CCA Framework Order, which does not necessarily allow very large industrial or institutional customers to join. If the Town has very large customers of that nature, it should investigate whether there will be limitations on those customers' participation/eligibility under State rules. For example, large industrial facilities, energy-intensive operations (fabrication, hydroponics, data centers, etc.).

shall provide a website explaining the CCA Program in plain language, and shall hold at least two informational meetings or presentations, during formal Town Board Meetings or otherwise, to enable interested Town residents to ask questions and seek additional information about the CCA Program.

B. 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, will be provided to the ESCO.

C. All consumers shall have the option to opt-out of the CCA Program at any time without penalty.

D. Termination fees shall not be charged to consumers that cancel their CCA service as a result of moving out of the premises served.

#### **§6. 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. At the Town's request, the CCA Administrator shall provide information regarding available customer service opportunities, including but not limited to reports related to customer service inquiries, complaints, and the resolution of those complaints.

#### **§7. Data Protection Requirements.**

A. The Municipality and/or Administrator 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~~federal, 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~~CCA Administrator's processing of confidential utility information, including any executed Data Security Agreement (DSA); and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data, and the Data Protection Plan adopted for this CCA Program.

**Commented [LB6]:** This is very important, and something the Town may want to stress to residents if there are concerns.

**Commented [LB7]:** This does not make sense, since a list of customer names and addresses is critical to ensuring that customers are appropriately identified to receive opt-out notices.

Suggest either that this language be eliminated, or that the Town require that the CCA Administrator assume responsibility for the gathering of sufficient Customer Specific Data to ensure: (1) that customers reside within the Town—to avoid unlawful “slamming” of customers not within the Town’s jurisdiction—and (2) that appropriate customers receive opt-out notices during the opt-out period.

C. The Municipality, the Administrator, and the contracted Supplier will protect customer information as required by law, subject to the Order, applicable Data Security Agreement(s), and the limitations of the New York State Freedom of Information Law.

#### **§8. 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 awarding said proposals, and forward information regarding such awards to the Town Board of Gardiner for ratification.

B. Membership to the CCA Advisory Group shall include the members of the Town Board of Gardiner and Climate Smart.

#### **§9. Administration Fee.**

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

#### **§10. Reporting.**

A. Annual reports shall be filed with the Town Board of the Municipality by March 31 of each year and cover the previous calendar year. The CCA Administrator shall be responsible for ensuring that reporting required by the Commission is made on behalf of the CCA Program, on whatever timeline is established by the Commission, and/or as otherwise necessary or appropriate.

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.

#### **§11. Effective Date.**

This Local Law shall be effective immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

#### **§12. Severability.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid

judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

**§13. Repeal.**

All ordinances, local laws, and parts thereof inconsistent with this Local Law are hereby repealed.

