

**LOCAL LAW FILING**

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Village of Fayetteville

**Local Law No. \_\_\_\_\_ of the year 2016**

Local Law Adding a New Chapter to the Village Code Entitled  
“Community Choice Aggregation (Energy) Program”

**Be it enacted by the \_\_\_\_\_ Board of Trustees**  
of the

Village of Fayetteville as follows:

**Section 1:**  
**Add**

A new chapter to the Village of Fayetteville Code entitled “Community Choice Aggregation Program” as follows:

**ARTICLE I**

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

- A. It is the policy of both the Village of Fayetteville and the State of New York to seek to reduce the cost of natural gas and electricity to its residents 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 development 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 and natural gas on behalf of Eligible Consumers.

- B. The purpose of this CCA Program, is to allow participating local governments including the Village of Fayetteville to procure electricity or natural gas supply service on behalf of their residential and commercial customers while maintaining transmission and distribution service from the existing Distribution Utility. Residential and commercial customers will have the opportunity to opt out of any approved CCA Program. This Chapter establishes a program that will allow the Village of Fayetteville or its designated agent or Administrator for that purpose, to put out for bid the total amount of natural gas and/or electricity being purchased by residential and commercial customers participating in the CCA Program. 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.
- C. The Village of Fayetteville is hereby authorized to participate in a COMMUNITY CHOICE AGGREGATION 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 Village.
- D. This Chapter shall be known and may be cited as the “COMMUNITY CHOICE AGGREGATION PROGRAM Law” of the Village of Fayetteville.

## **§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 to 24 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 to 24 months by service class.
- B. CCA Administrator – shall mean GOOD ENERGY, L.P., the entity selected by the Village of Fayetteville duly authorized to put out the bid for the total amount of electricity and/or natural gas being purchased by Participating Consumers. CCA Administrator is responsible for program organization, administration, procurement, and communications, unless otherwise specified.

- C. Community Choice Aggregation Program or CCA Program – shall mean a municipal energy procurement program, which replaces the incumbent utility as the default Supplier of energy for all residential and commercial customers within the Village of Fayetteville who have not opted out of the CCA Program. Notwithstanding the above, the incumbent utility will continue to distribute energy as the Distribution Utility to all residential and commercial customers within the CCA Program.
- D. Customer Specific Data – shall mean customer specific information, personal data and utility data for all consumers in the Village of Fayetteville eligible for opt-out treatment based on the terms of the 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.
- E. Data Security Agreement – shall mean an agreement between the Distribution Utility and the Village of Fayetteville that obligates each party to meet, collectively, (i) all national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual Eligible Consumer with respect to the CCA Administrator’s 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’s or its representative’s processing of confidential utility information; and (iii) the CCA Order and PSC rules, regulations, and guidelines relating to confidential data.
- F. 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 Village of Fayetteville that receive Default Service, and have not opted out, will be enrolled in the CCA Program.
- G. 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.
- H. Distribution Utility – shall mean the local incumbent utility owning and controlling the means of distribution of the natural gas or electricity that is regulated by the PSC.
- I. Eligible Consumers – shall mean eligible consumers 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 CCA Program, at one or more locations within the geographic boundaries of the Village of Fayetteville, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Village of Fayetteville as such boundaries exist on the effective date of the Energy Services Agreement (ESA) between the Village of Fayetteville and the Supplier.

- J. New Consumers – shall mean consumers of electricity that become Eligible Consumers after the effective date of the ESA between the Village of Fayetteville and the Supplier, including those that opt in or move into the Village of Fayetteville.
- K. Participating Consumers – shall mean Eligible Consumers enrolled in the CCA Program, either because they are consumers who receive Default Service from the Distribution Utility as of the effective date of the ESA and have not opted out, or are New Consumers.
- L. 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.”
- M. Public Service Commission or PSC – shall mean New York State Public Service Commission.
- N. Suppliers – shall mean an Energy service company (ESCO) duly authorized to conduct business in the State of New York as an ESCO and that produces electric power and natural gas for Eligible Consumers in connection with this Chapter or, alternatively, generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

### **§3. Establishment of a COMMUNITY CHOICE AGGREGATION Program.**

- A. A Community Choice Aggregation Program is hereby established by the Village of Fayetteville, whereby the Village of Fayetteville may implement a CCA Program to the full extent permitted by the CCA Order, and any subsequent orders, as set forth more fully herein.
- B. The Village of Fayetteville may act as aggregator or broker for the sale of electric supply, gas supply, or both to Eligible Consumers and may enter into contracts with one or more Suppliers, through the CCA Administrator, for energy supply and other services on behalf of Eligible Consumers.

- C. The CCA Administrator and the Village of Fayetteville may enter into agreements and contracts with other municipalities to develop offers of opt-in distributed energy resources (DER) products and services to Participating Consumers, including opportunities to participate in local renewable energy projects, solar, energy efficiency, benchmarking, microgrids, storage, demand response, energy management, and other innovative Reforming the Energy (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. Under the CCA Program, the operation and ownership of distribution service shall remain with the Distribution Utility. The Village of Fayetteville's procurement of energy supply through a CCA Program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Village of Fayetteville will 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 CCA Administrator on behalf of Participating Consumers.

#### **§4. Customer Eligibility.**

- A. All consumers within the Village of Fayetteville, including residential and nonresidential, regardless of size, shall be eligible to participate in the CCA Program in accordance with the CCA Order.
- B. All consumers that are members of [identify eligible service classes listed, by utility, in Appendix C of the CCA Order] 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 consumer 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. Those consumers will be mailed an opt-out letter consistent with the requirements in the CCA Order.

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

- A. The CCA Administrator, on behalf of the Village of Fayetteville, 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 applicable laws and State programs and policies.

#### **§6. Opt-Out Process.**

- A. An opt-out letter, printed on municipal letterhead, shall be mailed to Eligible Consumers at least 30 days prior to customer enrollment. The opt-out letter shall include information on the CCA Program and the contract signed with the selected ESCO including specific details on rates, services, contract term, cancellation fee, and methods of opting-out of the CCA Program. The letter shall explain that consumers that do not opt-out will be enrolled in ESCO service under the contract terms and that information on those consumers, including energy usage data and APP status, will be provided to the ESCO.

**§7. Customer Service.**

- A. 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.

**§8. Data Protection Requirements.**

- A. The CCA Administrator may request the Distribution Utility's aggregated customer information on all Participating Consumers in the Village of Fayetteville.
- B. Customer Specific Data shall be protected in a manner compliant with, collectively, (i) all national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to the Village of Fayetteville 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 Village of Fayetteville or its representative's processing of confidential utility information; and (iii) the CCA Order and PSC rules, regulations and guidelines relating to confidential data.
- C. The Village of Fayetteville must enter into a Data Security Agreement with the Distribution Utility for the purpose of protecting customer data.

**§9. Administration Fee.**

- A. The Village of Fayetteville may collect, or cause to be collected, funds from customer payments to pay for administrative costs associated with running the CCA Program.

**§10. Reporting.**

- A. Annual reports shall be filed with the [Legislative Body] of the Village of Fayetteville by March 31 of each year and cover the previous calendar year.

- B. Annual reports shall include, at a minimum: number of consumers served; number of consumers cancelling during the year; number of complaints received; commodity prices paid; value-added services provided during the year (e.g. installation of DER or other clean energy services); and administrative costs collected. The first report shall also include the number of consumers who opted-out in response to the initial opt-out letter or letters.

**§ 11. Effective Date.**

- A. This Local Law shall be effective immediately upon passage.

**§12. Severability.**

- A. The invalidity or unenforcability 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 unenforcability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.