

**TOWN OF PHILIPSTOWN LOCAL LAW NO. 1 OF 2017**

**A LOCAL LAW TO AMEND TOWN CODE CHAPTER 82 BY ADDING A NEW  
ARTICLE II ENTITLED "COMMUNITY CHOICE AGGREGATION PROGRAM".**

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

**Section 1.**      Purpose:

The purpose of this Local Law is to amend Town Code Chapter 82 ("Energy Conservation") by adding a new Article II ("Community Choice Aggregation Program") in order to more fully provide for the public health, good and welfare. Particularly, this Local Law establishes the authority for the Town of Philipstown, in connection with the implementation a Community Choice Aggregation Program, to acquire utility data, to select, through competitive solicitation, energy supplier(s) on behalf of Default Consumers within the jurisdictional boundaries of the Town of Philipstown, and to maximize value for Participating Consumers through enhanced services related to Distributed Energy Resources. The Town may choose to collaborate with other local governments to form an intermunicipal program. As a result, consumers will have the opportunity to lower and stabilize their energy costs, to spur local clean energy innovation and investment, and to reduce their environmental impact.

**Section 2.**      Municipal Home Rule Law.

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York. The Town of Philipstown is authorized to implement this Community Choice Aggregation Program pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law; and consistent with 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 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 Town. To the extent the provisions of this local law are in conflict with Town Law, the Town Board hereby asserts its intention to supersede Town Law pursuant to the Municipal Home Rule Law.

**Section 3.**      Amendment of Code:

The Town of Philipstown Town Code, Chapter 82 entitled "Energy Conservation" is hereby amended to add a new Article II entitled "Community Choice Aggregation Program" as follows:



**ARTICLE II:**  
**COMMUNITY CHOICE AGGREGATION PROGRAM**

**§82-5. Definitions.**

For purposes of this Article, and unless otherwise expressly stated or unless the context otherwise requires, the terms in this Article 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 means aggregated and anonymized information including, but not limited to, the number of consumers by service and rate class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months by service and rate class, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service and rate class.
- B. CCA ADMINISTRATOR means the Town of Philipstown or its duly authorized Community Choice Aggregation Administrator authorized to request Aggregated and Customer Specific Data, to competitively solicit Suppliers for the aggregated demand for electricity and/or natural gas on behalf of Default Consumers, and to offer Participating Consumers additional opportunities to participate or enroll in programs or projects related to Distributed Energy Resources. CCA Administrator is responsible for program organization, administration, procurement, communications, and for meeting all requirements for program implementation specified in the Public Service Commission Community Choice Aggregation Order ("PSC CCA Order"), unless otherwise specified.
- C. COMMUNITY CHOICE AGGREGATION ("CCA") means a town-sponsored program, either alone or in concert with other municipalities, under which the aggregate buying power of individual energy customers within a defined jurisdiction is used in order to secure alternative energy supply contracts on a community-wide basis, while allowing consumers not wishing to participate in the program to opt out.
- D. CUSTOMER SPECIFIC DATA means customer specific information, personal data and utility data for all Default Consumers 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.     **DEFAULT CONSUMERS** means customers of electricity and/or natural gas within opt-out eligible service classes (as delineated in the PSC CCA Order), who receive supply service from the Distribution Utility as of the date the supply contract goes into effect, or consumers within these service classes that subsequently become eligible to participate in the Program including those that have terminated a supply contract with an Energy Services Company, removed a freeze or block on their account, have voluntarily suspended service pursuant to a special rate, or are new residents of the Town. Consumers within opt-out eligible service classes, as of the date the supply contract goes into effect, taking service from an Energy Services Company, those that have placed a freeze or block on their account, and those for whom enrollment in the CCA program would interfere with a choice they have already made to take service pursuant to a special rate are not considered Default Consumers and will not be enrolled on an opt-out basis. For the avoidance of doubt, all Default Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Town, as such boundaries exist as of the date the supply contract goes into effect.

F.     **DISTRIBUTED ENERGY RESOURCES (DER)** means local renewable energy projects, community distributed generation (e.g. shared solar), peak demand management, energy efficiency, demand response, energy storage, community resilience microgrid projects, and other innovative Reforming the Energy Vision (REV) initiatives that further engage and/or reduce cost of service for Participating Consumers, optimize system benefits, and/or address infrastructure and demand challenges within geography of the CCA.

G.     **DISTRIBUTION UTILITY** means owner or controller of the means of distribution of the natural gas or electricity in the Town. The Distribution Utility also serves as the default supplier of electricity and natural gas preceding the establishment of a CCA program.

H.     **ENERGY SERVICES COMPANY ("ESCO")** means an entity duly authorized to conduct business in the State of New York as an ESCO.



I. PARTICIPATING CONSUMERS means Default Consumers who have not opted out, and non-Default Consumers of any service class that have voluntarily enrolled in the Program.

J. PSC CCA ORDER means 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."

K. PUBLIC SERVICE COMMISSION ("PSC") means New York State Public Service Commission.

L. SUPPLIER means an ESCO that procures electric power and natural gas for Participating Consumers in connection with this Article or, alternatively, generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

**§82-6. Authorization of a Community Choice Aggregation Program.**

A. A CCA program is hereby authorized by the Town, whereby the Town may implement a CCA program to the full extent permitted by the PSC CCA Order, as set forth more fully herein.

B. The Town may enter into contracts with one or more Suppliers for electric and/or natural gas supply and other services on behalf of Default Consumers.

C. The Town 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 DER products and services to Participating Consumers.

D. The operation and ownership of the utility service shall remain with the Distribution Utility. The Town's participation in a CCA program constitutes neither the purchase of a public utility system, nor the furnishing of utility service. The Town 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 on behalf of Participating Consumers.



E. The Public Service Commission supervises retail markets and participants in these markets through legislative and regulatory authority and the Uniform Business Practices, which includes rules relating to the eligibility of participating ESCOs, the operation by which ESCOs provide energy services, and the terms on which customers may be enrolled with ESCOs.

#### **§82-7. Eligibility.**

A. All Default Consumers shall be enrolled on an opt-out basis. Default Consumers will have the right to opt out before the supply contract goes into effect, or un-enroll any time thereafter with no penalty. Those that do not opt out before the supply contract goes into effect will be enrolled automatically.

B. All non-Default Consumers within the Town, regardless of service class, shall be eligible to participate in the CCA program on an opt-in basis.

C. CCA Administrator, on behalf of the Town of Philipstown, 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.

#### **§82-8. Opt-Out Process.**

A. A program notification letter, printed on municipal letterhead, shall be mailed to Default Consumers at least thirty (30) days prior to customer enrollment. The letter shall include information on the CCA program and the contract signed with the selected Supplier(s) 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 the program under the contract terms and that information on those consumers, including energy usage data, will be provided to the ESCO.

B. After the 30 day opt-out period, all consumers shall have the option to un-enroll from the CCA program at any time without penalty.

#### **§82-9. Data Protection Requirements.**

A. The Town, or CCA Administrator on its behalf, may request Aggregated Data and Customer Specific Data from the Distribution Utility.



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 Town 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 Town or its representative's processing of confidential utility information; and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.

C. For the purpose of protecting customer data, the Town shall enter into an agreement with the Distribution Utility 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 Default Consumer or Participating 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 Default Consumer or Participating Consumer with respect to the CCA Administrator or its representative's processing of confidential utility information; and (iii) the PSC CCA Order and PSC rules, regulations and guidelines relating to confidential data.

#### **§82-10. Administration Fee.**

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

#### **§82-11. Reporting.**

A. Annual reports shall be filed with the Philipstown Town Board 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.

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.

Section 4. Effective Date.

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Town Board.

Section 5. Severability.

If any clause, sentence, paragraph, word, section or part of this local law shall be judged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the language directly involved in the controversy in which judgment shall have been rendered.