

# LEGAL NOTICE

**Please take notice that the Mayor and Common Council of the City of North Tonawanda will hold a public hearing on Tuesday, May 10<sup>th</sup>, 2022 at 6:00pm in the Common Council Chambers, City Hall, 216 Payne Avenue, North Tonawanda, New York 14120. The purpose of said public hearing will be to accept comments on proposed Local Law No. 1 of the year 2022 entitled "COMMUNITY CHOICE AGGREGATION PROGRAM." A copy of said proposed Local Law No. 1 of the year 2022 is available and may be inspected on the City Hall website [www.northtonawanda.org](http://www.northtonawanda.org)**

Be it enacted by the City of North Tonawanda of the County of Niagara as follows:

**Section 1.** The Code of the Municipality is hereby amended by adding a new Chapter entitled "COMMUNITY CHOICE AGGREGATION PROGRAM," to read as follows:

## **ARTICLE 1**

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

- A. The Municipality supports the policy of the State of New York to reduce costs and provide price certainty for the purpose of consumer protection and economic development, to expand access and opportunities for customers in retail energy markets and promote the sustainability and resilience of energy systems through the proliferation of renewable energy, energy efficiency, and Distributed Energy Resources ("DER").
- B. Among the initiatives that may advance these objectives is Community Choice Aggregation ("CCA"). CCA is a policy that, taking into account local resources, priorities, and challenges, empowers local governments, among other things, to select default energy offerings on behalf of its residents and small businesses. Energy delivery shall remain the responsibility of the Distribution Utility.
- C. By establishing a CCA Program, it is the Municipality's goal to provide Participating Customers with the potential to lower and stabilize their energy costs, to spur local clean energy innovation and investment, to reduce environmental impact and to help achieve New York State's goals set forth in the Reforming the Energy Vision initiative ("REV") and the Climate Leadership and Community Protection Act; thereby, fulfilling the purposes of this Chapter and fulfilling a public purpose.
- D. The Municipality may choose to collaborate with other local governments to form an intermunicipal CCA Program.
- E. This Chapter establishes the authority for the Municipality, to implement a CCA Program to the full extent authorized by the 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 from time to time, including subsequent orders of the Public Service Commission issued in connection with, or related to, Case No. 14-M-0224 (collectively, the "CCA Orders"), which shall include, without limitation, acquiring utility data and selecting one or more Energy Supplier(s) on behalf of Participating Customers.
- F. The Municipality hereby implements this COMMUNITY CHOICE AGGREGATION PROGRAM pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law and to the full extent authorized by CCA Orders.
- G. This Chapter shall be known and may be cited as the "COMMUNITY CHOICE AGGREGATION PROGRAM Law of the City of North Tonawanda"

### **§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 meaning indicated herein:

- A. **AGGREGATED DATA** means information aggregated and anonymized at the municipal level that are used to support Program design and solicitations for energy offerings.

- B. CCA ADMINISTRATOR means the third-party duly authorized to administer the CCA Program including without limitation to request Aggregated Data and Customer Specific Data; to solicit Energy Offerings on behalf of Default Customers; and to offer Participating Customers additional opportunities to participate or enroll in programs or projects related to DER. The CCA Administrator shall be responsible for program organization, administration, procurement, communications, and for meeting all requirements for program implementation specified in the CCA Orders, unless otherwise specified.
- C. CCA ORDERS 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," as it may be amended from time to time, including subsequent orders of the Public Service Commission issued in connection with, or related to, Case No. 14-M-0224
- D. COMMUNITY CHOICE AGGREGATION PROGRAM or CCA PROGRAM means the Community Choice Aggregation Program enabled by this local law.
- E. CUSTOMER-SPECIFIC DATA means personal data and utility data for Default Customers including without limitation customer of record's name, mailing address, account number, and primary language, if available, and any customer-specific alternate billing name, and address.
- F. DEFAULT CUSTOMER means a customer of electricity and/or natural gas services eligible to participate on an opt-out basis in the CCA Program (as set forth in the CCA Orders) or a customer who subsequently becomes eligible to participate in the CCA Program.

To the extent permitted by the CCA Orders, the Municipality may further limit Default Customers to specific geographic areas, specific service classes or otherwise defined segments of the Municipal population.

For the avoidance of doubt, a Default Customer must reside or be otherwise located within the geographic boundaries of the Municipality, as such boundaries exist as of the date an Energy Contract goes into effect.

- G. DER PROVIDER means a provider of products and/or services related to Distributed Energy Resources.
- H. DISTRIBUTED ENERGY RESOURCES or DER means local renewable energy projects, community distributed generation (e.g., community renewables), energy storage, peak demand management, energy efficiency, demand response, community resilience microgrid projects, and other clean energy projects and initiatives that reduce cost of service for Participating Customers, optimize system benefits, and/or address infrastructure and demand challenges within the geography of the CCA Program.
- I. DISTRIBUTION UTILITY means the owner or controller of the means of distribution of electricity or natural gas in the Municipality. The Distribution Utility also serves as the default supplier of electricity or natural gas preceding the establishment of a CCA Program.

- J. ENERGY CONTRACT means an agreement to provide a default Energy Offering to Participating Customers as entered into by and between the Energy Supplier, Municipality and/or CCA Administrator.
- K. ENERGY OFFERING means any product or service authorized by the CCA Orders to be part of a CCA Program, including without limitation electricity or gas supply; community distributed generation; demand response or load management; energy efficiency; or other DER.
- L. ENERGY SUPPLIER means an ESCO, DER Provider, or a provider of other energy products or services that provides a default Energy Offering for Participating Customers in connection with this Chapter.
- M. ESCO or ENERGY SERVICES COMPANY means an entity duly authorized to conduct business in the State of New York as a generator of electricity and/or natural gas or other entity that procures and resells electricity or natural gas.
- N. MUNICIPALITY means the City of North Tonawanda.
- O. PARTICIPATING CUSTOMER means a Default Customer of the CCA Program who has not opted out, and a non-Default Customer of any service class who has voluntarily enrolled in the CCA Program.
- P. PUBLIC SERVICE COMMISSION or PSC means the New York State Public Service Commission.

**§3. Authorization of a Community Choice Aggregation Program.**

- A. A Community Choice Aggregation Program as set forth more fully herein, is hereby authorized by the Municipality, which the Municipality may implement to the full extent authorized by the CCA Orders.
- B. The Municipality may enter into Energy Contracts with one or more Energy Supplier(s) on behalf of Participating Customers.
- C. The Municipality may enter into one or more agreements 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 DER products and services to Participating Customers.
- D. The operation and ownership of the utility service shall remain with the Distribution Utility. The Municipality's participation in the 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.

- E. The Public Service Commission supervises retail and DER markets and participants in these markets through regulatory authority, which includes rules relating to the eligibility of participating ESCOs and DER Providers, the operation by which they provide energy services, and the terms on which they may enroll customers.

#### **§4. Eligibility.**

- A. All Default Customers shall be enrolled in the CCA Program on an opt-out basis. Such Default Customers will have the right to opt-out of the CCA Program before an Energy Contract goes into effect or dis-enroll any time thereafter with no penalty. Such Default Customers who do not opt-out before the Energy Contract goes into effect will be enrolled automatically.
- B. The CCA Administrator shall issue one or more solicitation(s) to Energy Suppliers to provide a default Energy Offering(s) to Default Customers and may then award an Energy Contract(s) in accordance with the CCA Program, this Local Law, and the CCA Orders.

#### **§5. Opt-Out Process.**

- A. The CCA Administrator shall cause the mailing of a program notification letter, printed on municipal letterhead, to Default Customers at least 30 days prior to customer enrollment. The letter shall include information on the CCA Program and the Energy Contract executed with the selected Energy Supplier(s) including specific details on rates, price, benefits, services, contract term, and methods for opting out of the CCA Program. The letter shall explain that Default Customers who do not opt-out will be enrolled in the CCA Program under the Energy Contract terms and that information on those customers, including energy usage data, will be provided to the Energy Supplier.
- B. After the initial 30 day opt-out period, all Participating Customers shall have the option to dis-enroll from the CCA Program at any time without penalty.

#### **§6. Data Protection Requirements.**

- A. CCA Administrator 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 and other government standards relating to the protection of information that identifies or can be used to identify an individual Default Customer or Participating Customer that apply with respect to the Municipality 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 an individual Default Customer or Participating Customer that apply with respect to the Municipality or its representative's processing of confidential utility information; and (iii) the CCA Orders and PSC rules, regulations and guidelines relating to confidential data.
- C. The CCA Administrator shall enter into an agreement with the Distribution Utility that obligates each party to meet the above provisions of this paragraph.

#### **§7. Administration Fee.**

The CCA Administrator may collect, or cause to be collected, fees from Energy Suppliers and/or funds from Participating Customer payments to pay for administrative costs associated with operating the CCA Program.

**§8. Reporting.**

- A. The CCA Administrator shall prepare and file with the City Board of the Municipality an annual report by March 31 of each year concerning the operations of the CCA Program for the previous calendar year.
- B. Each annual report shall include, at a minimum, the following: number of Participating Customers served; number of Participating Customers cancelling; number of complaints received; commodity prices paid; value-added services provided (e.g., installation of DER or other clean energy services); and administrative costs collected. The first annual report shall also include the number of customers who opted-out in response to the initial opt-out letter or letters.
- C. If an Energy Contract is scheduled to expire less than one year following the filing of an annual report, such annual report shall describe current plans for soliciting a new Energy Contract, negotiating an extension, or terminating the CCA Program.

**§9. Effective Date.**

This Local Law shall be effective immediately upon being filed with the New York State Secretary of State.

**§10. 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.