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May 6, 2022

**VIA E-FILING & E-MAIL**

Carmen D. Diaz, Acting Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Community Solar Energy Program**
**BPU Docket No. QO22030153**

Dear Acting Secretary Diaz,

On behalf of our client, Ampion, PBC ("Ampion"), enclosed please find Ampion's comments on the design of the permanent Community Solar Energy Program filed in response to the BPU's Stakeholder Notice issued on April 11, 2022.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Murray E. Bevan

Enclosures

May 6, 2022

**Comments Regarding Docket No. QO22030153: In the Matter of the Community Solar Energy Program - Chris Kallaher on behalf of Ampion, PBC**

Ampion, PBC, is pleased to submit these comments in response to the Board's April 11, 2022, Request for Comments. Ampion is a community solar subscriber organization that is currently operating in New York, Massachusetts, Maine, Illinois, Maryland, Colorado, Minnesota, and other states that are in the process of implementing community solar and other distributed generation programs. We greatly appreciate the Board's efforts to build on the momentum of the New Jersey Community Solar Energy Pilot Program ("Pilot Program") to create a permanent community solar program. Our comments will focus on three topics referenced in the April 11, 2022, Request for Comments: Low and Moderate-Income (LMI) Access, an opt-out subscription model, and Utility Consolidated Billing (UCB).

Our comments focus on these three issues because they are strongly connected. This connection is created by a singular characteristic of the Pilot Program that will likely carry through to the permanent program. Given the scoring rubric of the Pilot Program, the projects awarded in the two years of the program required the highest percentage of LMI subscribers of any community solar program in the country (51 percent), coupled with the most restrictive requirements that we have encountered for qualifying LMI subscribers for participation in the program, while providing no realistically accessible financial premium for serving such a high percentage of LMI subscribers. In addition, many of the Pilot Program projects are further encumbered with geographical restrictions that are also absent for programs in other states.

Let's compare this characteristic to the programs in two other states, New York and Massachusetts, each of which is pursuing a very aggressive program for distributed energy

resources development that relies heavily on the community solar model. In New York, which plans to build 10 GW of distributed solar by 2030, developers can access the Inclusive Community Solar Adder ("ICSA") for projects that meet certain requirements. The minimum level of LMI subscribers to qualify is 20 percent "eligible residential subscribers," which allows a project to receive an upfront payment of up to $0.20/Wattdc for ICSA qualified subscribers. Moreover, New York has a robust range of options for identifying and acquiring the 20 percent eligible residential subscribers, including the use of geographically broad "Disadvantaged Community" areas within which a resident can qualify based on self-attestation to income eligibility. New York allows the remaining 80 percent of qualifying sites to be filled with an even wider range of LMI load that also qualifies for the ICSA, including master-metered load from certain affordable housing facilities.[1]

Massachusetts offers an even more generous incentive for sites that enroll at least 50 percent LMI subscribers. Qualifying "Low Income Community Shared Solar Tariff Generation Units" receive an incentive that begins at $0.060/kWh of production from the site that serves qualifying subscribers, stepping down in 80 MW blocks (which compose a total of 1280 MW) to $0.03253/kWh. Identifying and acquiring LMI subscribers is also more straightforward in Massachusetts than it is in New Jersey. Massachusetts allows location-based qualification within areas in which the median household income is at or below 65 percent of the state median household income. Purely as a result of the demographic vagaries of Massachusetts compared to New Jersey, these "green zones" encompass a much larger percentage of the State's population than the similar zones in New Jersey, especially in the Eversource East service territory. Outside of these zones, LMI subscriber acquisition is aided by the fact that potential subscribers who are

[1] Please see https://www.nyserda.ny.gov/All-Programs/NY-Sun/Contractors/Resources-for-Contractors for more information about the ICSA program.

on utility assistance programs, inclusion in which is prima facie evidence of qualification as LMI for community solar purposes, have a unique rate class, allowing subscriber organizations to "qualify" subscribers based on a utility bill rather than requiring detailed evidence of income that must be provided by potential subscribers themselves.

This is not to say that the New York and Massachusetts community solar programs are better than New Jersey's in some absolute sense. Every program represents a tradeoff among competing interests that takes into account the characteristics and resources of the jurisdiction within which the program operates. But given strong evidence that the 51 percent LMI component of the Pilot Program, combined with the restrictive options for qualifying LMI subscribers, is already causing challenges to developers in New Jersey trying to fill sites in the Pilot Program, these differences should inform New Jersey's decision-making process in designing its permanent program.

As an initial matter, New Jersey clearly must choose between maintaining its commitment to a high level of LMI participation in community solar and continuing the restrictive qualification requirements for LMI subscribers. There is simply no reason to believe that developers and subscriber organizations could fill the Pilot Program sites plus another 750 MW of capacity in the permanent program with 51 percent LMI subscribers using the current means of qualifying subscribers as LMI.

Fortunately, New Jersey has tools readily at hand that would allow it to retain its strong unequaled commitment to LMI participation in the permanent program while going a long way to ensuring that sites get built and filled in a timely and efficient manner. These tools include the following, in order of their importance to the success of the permanent program:

### 1. Implement a robust, municipality-based opt-out community solar program.

As noted in Question 17 of the Request for Comments, in a previous Order the Board proposed a rule amendment that "would have allowed certain projects owned and operated by public entities to automatically enroll subscribers without first seeking subscribers' affirmative consent to join the project." It is our understanding that no such projects have been proposed, which is not surprising given the challenges that would come with actual ownership and operation of projects by a public entity. Rather than attempting to modify this proposal, we strongly encourage the Board to adopt an opt-out program similar to that currently in use (and soon to be expanded) in New York, which allows a municipality to establish an opt-out program without owning or operating any generating assets. We will provide much greater detail on this program in our response to Question 17.

### 2. Implement utility consolidated billing using the net crediting model.

Question 20 seeks comments on the EDCs' May 28, 2021, report and recommendations to the Board regarding the implementation of utility consolidated billing for community solar charges. Because the viability of a municipal opt-out program depends on the availability of utility consolidated billing, we strongly encourage the Board to adopt such a program. We believe the "net crediting" model, as implemented by Rockland Electric Company's affiliated Orange and Rockland Utilities, Inc., is vastly superior in every meaningful way to the "separate line item" model, which closely mirrors the current method by which the EDCs bill and collect for the retail charges of third-party electricity and natural gas suppliers. Because of the fundamental differences in the two methods and in the nature of community solar bill credits versus third-party retail supply charges, the Board should only allow EDCs to implement the net crediting model of utility consolidated billing rather than a purchase-of-receivables-based model.

**3. In the interim, while municipal opt-out and net crediting programs are being developed, the Board should allow developers and subscriber organizations to qualify LMI subscribers using a simple self-attestation form.**

As discussed further in response to Question 12, while there may be other measures for enabling LMI subscriber qualification that the Board should consider and perhaps adopt, the most effective option would be to allow developers and subscriber organizations to qualify an LMI subscriber based on the subscriber's self-attestation that they meet the LMI criteria, without the need for other documentation.

With that introduction, Ampion is pleased to provide responses to the following questions set forth in the Board's Request for Comments:

## III. Low-and-Moderate-Income Access

**11. What policies and measures should the Board consider to ensure that the Permanent Program maintains a high level of low- to moderate-income ("LMI") participation? How can the Board support community outreach and education?**

Please see summary comments above and responses to Questions 12, 14, 17, and 20 below.

**12. Should the Board modify the Pilot Program's income verification standards (see the Pilot Program rules at N.J.A.C. 14:8-9.8)? If so, how?**

Yes. It is clear that the current standards and methods for subscriber income verification are too restrictive. While Ampion believes strongly that a municipality-controlled opt-out program combined with the net crediting model of utility consolidated billing is the best path forward for efficiently enrolling a high level of LMI subscribers, we recognize that implementing these two programs will take time. In the interim, developers and subscriber organizations need a better method for qualifying LMI subscribers if the 51 percent LMI requirement is to remain viable. It would be possible to adjust the criteria for census tract-based qualification, which is currently set at 80 percent of households having less than 80 percent of the median statewide household income, to something that encompasses a larger number of census tracts. Given New Jersey's unique

demographic and geographical characteristics, as is the fourth smallest state by area, with the highest population density and variety of economically diverse communities in close proximity to each other, adjusting the census tract criteria would not be as effective as another measure: allowing residents to qualify as LMI based on execution of a self-attestation form without requiring additional, more onerous and intrusive means of income verification.

Self-attestation addresses the two main barriers to LMI qualification under the current method, which are logistical and emotional. Without readily available means of scale acquisition (such as the opt-out program discussed below), subscribers must be enrolled through some kind of one-to-one sales interaction. Direct sales of this kind are challenging but manageable in the context of non-LMI subscribers. Introducing the additional element of asking a potential subscriber for physical documentation of their income or other evidence of participation in a program that allows one to qualify as LMI for purposes of community solar makes the sales process an order of magnitude more challenging. The logistical difficulties aside, introducing this requirement into sales conversations has powerful emotional consequences. Few people are eager to discuss their financial circumstances, especially when they find themselves in a vulnerable position. Self-attestation provides a more discreet and respectful path to qualification.

Ampion believes the natural reticence people feel in discussing their financial situation would also be a check on fraud, which is the main concern one might have about self-attestation. Moreover, the consequences of misrepresentation in this context can be tightly controlled. Subscribers found not to qualify would be removed from the program, and developers and subscriber organizations could be required to post a bond that could be drawn upon to make the program whole for the financial impact of fraudulent qualifications.

As with every policy decision, finding the best method of LMI qualification involves the balancing of competing interests. In this case, concerns about the risk of fraud (the consequences of which, as noted, can be mitigated) should give way to continuing New Jersey's admirable goal of providing 51 percent of the benefits of its community solar program to LMI residents.

## IV. Community Solar Subscribers

**14. What should the geographic limitations for community solar projects and subscribers be (i.e., How far from the project can subscribers to the project reside)?**

**For context, the Pilot Program allowed projects to self-select the geographic limits of the project. Projects could choose between three options: municipality and adjacent municipalities, county and adjacent counties, and no limit (EDC-wide).**

The policy justification for these limitations has never been clear. As noted above, New Jersey is already the fourth smallest state by area; it is less than one-third the size of National Grid's New York service territory. Moreover, it is divided among four investor-owned utilities and an array of municipal utility authorities, the boundaries of which further divide many municipalities, increasing the challenge of subscriber acquisition for sites that can only enroll subscribers in the same utility service territory. Developers and subscriber organizations should be allowed to assign to a site any subscriber in the same service territory as the site.

**17. In November 2020, the Board proposed a rule amendment to the Community Solar Energy Pilot Program rules, which would have allowed certain projects owned and operated by public entities to automatically enroll subscribers without first seeking subscribers' affirmative consent to join the project. Subscribers would then have the option to "opt-out" of the project should they not wish to participate. How can the Board best support subscriber education and acquisition? Should the Board revisit its automatic enrollment proposal, and if yes, how can automatic enrollment be implemented consistent with customer data privacy rights?**

As noted in our summary comments, Ampion sees an opt-out model as New Jersey's best opportunity to bring community solar to LMI residents efficiently and at scale, allowing New Jersey to meet its aggressive target for LMI participation. The program proposed in the November

2020 order, however, is not workable and should either be abandoned or retained only as an option for any municipality that wishes to pursue it. In its place, Ampion recommends that New Jersey adopt a program similar to what has been partially implemented in New York and which is on its way to broader adoption. The program is described in detail in the New York Public Service Commission's March 15, 2018 "Order Approving Joule Assets' Community Choice Aggregation Program with Modifications" and the New York Department of Public Service's March 29, 2022 "Straw Proposal on Opt-Out Community Distributed Generation."

New York's opt-out program was built on the same foundation as its Community Choice Aggregation program, which allows municipalities to provide, through a third-party supplier, electricity and/or natural gas service on an opt-out basis, meaning that residents are automatically enrolled in the program unless they affirmatively choose not to participate.[2] With respect to its basic features and goals, the New York program is essentially identical to New Jersey's Government Energy Aggregation program, which allows municipalities to buy electricity at scale through a third-party supplier on behalf of electricity consumers in the municipality.[3]

New York's opt-out community distributed generation ("CDG") program is a logical extension of its opt-out commodity purchasing program. It allows municipalities to add community solar to the services that are provided to residents, leveraging the buying power of the municipality as a whole to attract a robust group of potential sellers and to negotiate favorable terms. Municipal ownership of the solar assets is not required or even contemplated; there is no discernible advantage provided by municipal ownership of a solar site used for community solar

[2] See "Order Establishing a Community Distributed Generation Program and Making Other Findings," New York Public Service Commission Case 15-E-0082 (July 17, 2015).

[3] The Government Energy Aggregation program is codified at N.J.S.A. 48:3-92 - N.J.S.A. 48:3-95. The Board of Public Utilities' rules for GEA programs can be found in N.J.A.C. 14:4-6, Government Energy Aggregation Programs.

and, to our knowledge, no municipality that is served by an investor-owned utility in New York has expressed any interest in owning and operating a solar facility for use in a municipality-based community solar program.[4]

In practice, an opt-out community solar program works much like the opt-out commodity programs already in place in New Jersey. A municipality chooses a program administrator, who is responsible for procuring supply for the program, educating residents about the program, running the opt-out process (which involves communicating with residents about the nature of the program, their ability to choose not to participate, and the means by which that choice can be exercised), and managing the ongoing allocation of bill credits to participants in the program and providing the billing interface with the utility. The providers of community solar supply would have a direct relationship with the municipality, giving the municipality additional control over the program.

New York successfully launched its opt-out CDG program last year in several towns in the National Grid service territory. Expansion of the program to more municipalities has been paused as the Public Service Commission considers changes to the program recommended by Department of Public Service Staff in its Straw Proposal. Some features of this proposal would make a program that is already a good one from the perspective of LMI participation into a potentially transformative one, and these features should be adopted by the Board in approving an equivalent program in New Jersey. These features are:

- Municipal opt-out programs would have to prioritize LMI residents. This is the most important feature that the Board should adopt in an opt-out program. In circumstances in

[4] Municipalities with full-fledged municipal utilities may be a different story; these comments are limited to the conditions that will obtain within the service territories of New Jersey's investor-owned utilities. We have seen interest on the part of municipalities in tying a municipal opt-out program to solar sites that are either within the municipalities borders or in close proximity, but this interest does not involve actual municipal ownership of the site.

which there is insufficient CDG capacity to place all residents on a solar site at the same time, the New York Straw Proposal would require that LMI residents be placed first. Ampion strongly supports this feature. Municipal opt-out programs have an inherent advantage over some traditional forms of subscriber acquisition in that they enroll LMI subscribers in proportion to the percentage of LMI residents in a municipality. Implementing a municipal opt-out program that prioritizes LMI residents would allow New Jersey to move rapidly to equalize LMI participation while also giving developers and subscriber organizations an effective means of meeting the 51 percent LMI subscriber requirement that will likely remain a feature of the permanent program. This would especially be the case if municipalities choose to implement an opt-out program that applies only to LMI residents, which Ampion believes would be very attractive to both municipalities and developers.

The following example shows why this would be the case. A typical residential customer in New Jersey uses about 8,000 kWhs of electricity annually. Based on data compiled by the New Jersey Department of Environmental Protection, a solar site in New Jersey can expect a capacity factor of about 15 percent.[5] This means that a 5 MW site would require about 400 LMI subscribers to meet the 51 percent requirement.[6] Assuming a fairly conservative 10 percent opt-out rate, this means that any single municipality with more than about 450 LMI households could fill the entire 51 percent requirement for a 5 MW solar project. Larger municipalities could fill the LMI requirement for multiple sites, and even municipalities with much smaller numbers of LMI households could combine

[5] See New Jersey Department of Environmental Protection Solar Siting Analysis Update

[6] 5MW x 1000 kW/MW x 8760 h/yr x 0.15 cf x 0.51 LMI x 1/8000 kWh/yr/subscriber = 419 subscribers

their LMI load to allow one or more projects to meet their LMI requirement. An LMI-focused opt-out program would be a very powerful tool in helping New Jersey maintain its commitment to LMI participation in the permanent program.

- An opt-out program would be allowed either in conjunction with an electricity commodity program or on a stand-alone basis, which would allow communities that are not interested in procurement of competitive electricity supply to provide the benefits of community solar to their residents. Community solar offers municipalities guaranteed savings for their residents; bill credits are sold at a discount to their value when applied on a subscriber's utility bill. New Jersey requires that electricity aggregation programs provide savings, but there may be times when market conditions do not allow savings to be offered. Regardless of one's view of retail electricity competition (and Ampion, in general, strongly supports giving electricity customers competitive options), a municipality could reasonably choose to pursue community solar while foregoing competitive commodity supply.
- The program would require minimum guaranteed savings of 10 percent for LMI participants (that is, bill credits would be sold at no more than 90 percent of the value of those credits when applied to the subscriber's utility bill).
- The program would be implemented only in conjunction with the net crediting model of utility consolidated billing (which is discussed further below).

While implementing an opt-out community solar program as part of the permanent program might be somewhat streamlined by New Jersey municipalities' experience with government energy aggregation, program development would still take time, especially given that a utility consolidated billing program would be a prerequisite for the opt-out program's successful implementation. This is why Ampion recommends that the Board not wait to pursue the

development of an opt-out program. The rules allowing an opt-out program should be an immediate feature of the permanent program, allowing the technical groundwork for the program to be established while the EDCs are in the process of developing and implementing a consolidated billing program based on New York's net crediting model.[7]

**V. Community Solar Bill Credits**

**20. In May 2021, following an opportunity for public comment, the EDCs submitted a report to the Board with options and recommendations regarding the implementation of consolidated billing for community solar. In summary, the EDCs recommend that, if the Board adopts consolidated billing for community solar projects, this billing process be handled by the EDCs. The EDCs further recommended that the method of reflecting subscription fees on a subscriber's EDC bill be determined by each EDC based on the format that best corresponds to their existing billing practices. The EDCs did not recommend that the Board allow non-EDC billing options. Do you agree with the EDCs' recommendations? If not, why? How do you recommend the Board address payment default by customers?**

In April 2021, Ampion filed comments (which are attached) in response to the Board's request for comments on consolidated billing for community solar. We will not repeat here the arguments in favor of utility consolidated billing for community solar, as we believe the benefits of such a program are manifest, especially where LMI participation is among the State's highest policy priorities. Ampion was pleased that the EDCs' report and recommendations were largely consistent with our April 2021 comments, with one notable exception. The EDCs' recommendation is summarized as follows:

> The proposed UCB process consists of two possible methods of incorporating the Subscriber Organization's Fee in the EDCs' bill and/or billing calculation. The two methods are: (1) a Net Crediting Methodology (i.e., the Subscription Fee is netted from the Applied Credit resulting in a net credit amount reflected on the EDC bill); or (2) a Separate Line Item on the invoice for the Subscriber's fee ("Fee"). **Each EDC would select the method to implement so that the community solar consolidated billing process can align with the EDC's consolidated billing processes used with TPSs and/or used in**

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[7] Regarding the question of how an opt-out program with automatic enrollment can be implemented "consistent with customer data privacy rights," Ampion believes this issue has already been substantially addressed in the context of the Board's rules for Government Energy Aggregation programs, which make use of the same method of automatic enrollment. There may be some nuances between the data privacy implications of an opt-out community solar program compared to an opt-out electricity supply program, but we are not aware of any material differences at this time.

**other jurisdictions, thereby minimizing implementation timelines and required systems costs**.[8]

Ampion disagrees with the bolded portion of the above summary, which would allow an EDC to choose the "Separate Line Item" method over the "Net Crediting" method, as is currently being used in New York, including by Rockland Electric's New York affiliate. The net crediting model is vastly superior to the separate line-item model when taking into account the nature of community solar credits and the relative complexities and burdens of implementing each model.

It is true that the New Jersey EDCs currently offer utility consolidated billing with purchase of receivables ("POR") for third-party electricity and natural gas suppliers. But community solar credits are very different from third party supply charges and thus warrant different treatment. Bill credits reflect an obligation owed by the State in compensation for the value of renewable generation placed on the distribution grid. The value of that obligation is conveyed to solar project owners in the form of credits that appear on subscribers' utility bills and for which, in the absence of utility consolidated billing, the project owner or subscriber organization must bill the subscriber at the agreed upon discount.

Net crediting is an elegant solution to the challenges created by this system, especially where mass market and potentially credit-challenged subscribers are involved, as is the case in New Jersey with its 51 percent LMI requirement. Net crediting takes the amount "owed" to the project owner and distributes it between the subscriber and the project owner based on the agreed upon discount. So, for credits in a given month sold at a ten percent discount to a subscriber, the subscriber will receive 10 percent of the total value of the allocated credits (the "net credit" value), with the project owner receiving the other 90 percent (minus the utility's administrative fee).

[8] EDCs' May 28, 2021, Consolidated Billing Report for the Billing of Community Solar Subscriber Fees, at 27 (emphasis added).

The net crediting model creates no "receivable" that the utility must purchase from the project owner. It does not increase the overall amount of the subscriber's bill. To the contrary, it reduces the subscriber's bill by an amount equal to the "net credit" value (which is the discount rate times the value of the bill credits allocated in that month). Other things being equal, this reduction in the total bill amount will have a positive impact on utility collections. Moreover, a subscriber's non-payment has no impact on the community solar billing arrangement because all of the charges on the bill are utility charges. Again, if anything, the bill reduction caused by the net community solar credit makes it easier for the subscriber to bring their utility account current. Finally, in terms of recovery for the bill credits themselves, the utility is made whole through the same mechanism, regardless of which model is used.

The "separate line item" model subverts all of these advantages, to the detriment of every participant in the process. The subscriber has a much larger bill amount to pay, increasing the likelihood of non-payment. The utility must collect a larger amount, increasing its bad debt exposure and creating an additional burden on customer service personnel who must answer what would likely be many inquiries from customers asking why their bills are suddenly nearly double what they had been. The project owner is in a worse position, as they must now compensate the utility for bad debt expense related to community solar credit receivables which, for mass market customers, would likely be a higher amount than the administrative fee for a net crediting program. The relationship created between the utility and the project owner in the "separate line item" model is also fundamentally disadvantageous to the project owner, as it takes a relationship in which the utility is the conduit for the conveyance of something of value that is owed to the project owner and turns it into some kind of service that the utility is providing to the project owner at a cost. Finally, the Board would be in a worse position as they would have to devise rules to deal with the

consequences of non-payment, replaying the debates over recourse versus non-recourse POR that attended utility consolidated billing of TPS charges.

It may be tempting, as seems to be implied by the language of the EDCs' report, to believe that because the EDCs already have a POR-based program in place for TPS charges that there would be advantages to using the same method for community solar bill credits. Any possible advantages would be ephemeral and would be quickly overwhelmed by the complexity and operational disadvantages discussed above, including the need to establish billing services relationships with project owners similar to those required for TPSs using POR. It is also worth noting that every single New York investor-owned electric utility, including Rockland Electric's affiliate, Orange and Rockland Utilities, Inc., had an established utility consolidated billing with POR program for third party retail supplier charges when the New York Public Service Commission ordered that they implement only the net crediting model. In fact, it was the joint utilities who recommended the net crediting model to the Commission over the POR model already in use for third party suppliers.[9] The Board should follow this example and direct the New Jersey EDCs to implement a net crediting program - and only a net crediting program - as a key feature of the permanent community solar program.

Thank you for the opportunity to provide comments on these important questions.

Respectfully submitted this 6th day of May 2022.

/s/ Chris Kallaher

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[9] See Order Regarding Consolidated Billing for Community Distributed Generation, Case No. 19-M-0463 (December 12, 2019), at 3.

Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350

April 9, 2021

**Comments Regarding Docket No. QO18060646: New Jersey Community Solar Energy Pilot Program - Chris Kallaher on behalf of Ampion, PBC**

Dear Secretary Camacho-Welch:

Ampion, PBC is pleased to submit these comments in response to the Board's March 11, 2021 Request for Comments and Stakeholder Meeting Notice. Ampion is a community solar subscriber organization that is currently operating in New York, Massachusetts, Maine, Maryland, and other states that are in the process of implementing community solar and other distributed generation programs. We greatly appreciate the Board's efforts to enable community solar in New Jersey and see consolidated billing as an important accelerant for that goal. The detailed questions put out for comment are helpful in that regard; though we may not have answers to every question at this time, they are the right questions to be asking.

**Responses to Stakeholder Questions**

Question 1: In New Jersey, customers who purchase their electricity supply from a Third Party Supplier (TPS) are typically billed by their EDC. Known as Utility Consolidated Billing, the customer receives a single bill that includes supply charges and related taxes from its TPS and delivery charges and related taxes and charges from its utility. Occasionally, in NJ and in other jurisdictions, dual billing is employed where a customer receives a bill from the customer's utility company that includes only the utility's charges and a separate bill from the customer's TPS that includes only the TPS charges. In other jurisdictions, the TPS sends the utility bill to the customer, which contains all of the utility's relevant charges. This billing methodology is sometimes called TPS Consolidated Billing.

What lessons can be drawn from consolidated billing for TPS customers with respect to its potential application to community solar? What are the advantages or disadvantages of Utility Consolidated Billing, TPS Consolidated Billing and dual billing as they apply to community solar?

**Response:**

Consolidated billing for TPS customers offers only limited lessons with respect to its application to community solar. The reason for this is the fundamental difference between the service being provided by the utility to TPSs in the former and that provided to community solar sponsors and subscribers in the latter. TPSs use the utilities distribution system to deliver commodity electricity to end-use customers. Those delivery services are charged to the end-use customers at tariffed rates and the responsibility for paying both the delivery and commodity charges remains with the end-use customer.

Community solar, on the other hand, involves the creation of bill credits through the production of electricity by a participating solar facility, which bill credits represent an obligation of the utility to the subscribers to whom the bill credits have been allocated. The application of those credits to a subscriber's bill thus reflects a financial obligation of the utility. No such financial obligation underpins the relationship between a utility and a TPS to which the utility provides consolidated billing services; absent the agreement to bill, collect and remit on the TPS's behalf, the utility owes the TPS nothing.

This distinction will be important to keep in mind as this docket proceeds. As discussed further below, the net crediting approach adopted by New York captures this distinction well, and Ampion encourages the Board to adopt that approach as soon as possible so that any confusion between that approach and "consolidated billing with purchase of receivables," which is the service provided to TPSs, can be avoided.

Distilled to its essence, the difference between these approaches can be described as follows. Consider a transaction involving $10 worth of bill credits owed by Utility to Solar Company. Solar Company has sold the right to those bill credits to Customer for $9. Under net crediting, rather than giving the full $10 of credits to Customer, Utility allocates the net amount that Customer will realize from the transaction - $1 - to Customer and remits the remaining amount of the value of the credits - $9 - to Solar Company, minus a processing fee. This arrangement discharges Utility's obligation to Solar Company for the $10 worth of credits while obviating the need for Solar Company to bill and collect the $9 from Customer.

In contrast, let's say a TPS customer uses $10 worth of power provided by the TPS. The TPS customer owes the TPS $10, period; the utility owes neither the TPS nor the customer anything. In exchange for a fee (usually in the form of a fixed billing fee plus a percentage of the TPS's receivables), the utility bills the customer for the $10, collects that amount, and remits it to the TPS, net of the fee.

Applying this distinction to the three approaches in the question results in the following. Utility consolidated billing, especially in its net crediting form, is superior to either dual

billing or TPS consolidated billing from the perspective of the solar provider because it achieves the same appropriate allocation of the rights to bill credits as dual billing while eliminating the need for the solar provider to bill and collect directly from the customers to whom the bill credits have been allocated.

There are notable secondary benefits to this approach as well, especially in the area of credit. In subscriber organization dual billing, the subscriber receives the benefit of the credits directly from the utility on his or her bill. If the customer doesn't pay the solar provider for the credits, the provider has few remedies other than traditional means of collection. This means that solar providers must carefully screen potential subscribers for their ability to pay and also collect and verify a payment method, limiting the overall pool of possible subscribers and tilting the playing field away from low- and moderate-income subscribers.

The net crediting approach to utility consolidated billing provides benefits to the utility as well by greatly expanding the number of its customers who subscribe to community solar projects. The credits these subscribers become eligible for lowers their utility bill, making it more likely that they will pay their delivery and commodity charges in full.[1]

For these reasons, utility consolidated billing is, in general, superior to dual billing for both community solar providers and subscribers.

In contrast, TPS consolidated billing, in some circumstances, may offer some advantages over dual billing but offers no advantages over utility consolidated billing except in the scenario where the TPS has already committed to TPS consolidated billing for both its own commodity charges and the utility's delivery charges and the TPS wishes to offer its own community solar option as well. However, while Ampion sees the advantages of TPS consolidated billing from the TPS perspective, we see the implementation of a net crediting approach to utility consolidated billing, which every community solar could take advantage of, as a much higher priority than TPS consolidated billing, at least in the context of the community solar discussion. If the goal is to accelerate the development of community solar resources in New Jersey, the Board should make utility consolidated billing a high priority, even if there are valid, even compelling, policy justifications for implementing TSP consolidated billing at some point.

**Question 2:** Do you recommend implementation of some form of consolidated billing for community solar projects? If so, do you recommend Utility Consolidated Billing, or third party provision of consolidated billing for community solar subscriber fees (Subscriber Organization Consolidated Billing)? Please consider this question from the perspective of billing

[1] The positive impact community solar has on the utility comes into play in a much larger way in the discussion, below, regarding the consequences, if any, of subscriber non-payment of the utility bill.

implementation and administration, community solar project financing, and subscriber (customer) protection.

**Response:**

As discussed above, Ampion strongly supports the development of consolidated billing for community solar, and all of the factors cited favor utility consolidated billing (UCB) more so than subscriber organization consolidated billing (SOCB). This is especially the case if the Board adopts the net crediting approach adopted by the New York Public Service Commission.

- Billing implementation and administration are more straightforward with UCB compared to SOCB. As noted above, the utility already has the obligation to reflect bill credits on a subscriber's bill, and the net crediting approach adds only one extra element to the transaction, namely the recognition that the subscriber is paying the subscriber organization for the credit. Under SOCB, however, as we understand that term to be used, the utility's charges would need to be presented and collected by the subscriber organization. This would require a great deal of operational and financial heavy lifting compared to net crediting.
- As noted above, UCB, especially in its net crediting form, greatly expands the pool of potential subscribers for a project, which would have a strongly positive impact on a project's ability to attract financing.
- Where the utility retains the billing relationship, consumer protection is more straightforward as well as a result of the highly regulated nature of utility billing and collections operations.

**Question 3:** Please describe in detail how your proposed method of consolidated billing would work and the benefits you believe would be achieved by the use of consolidated billing for community solar. If you are or represent a community solar developer or subscriber organization, please speak specifically to your experience. Please address all related issues, including the following:

- Would the bill be sent by the utility (Utility Consolidated Billing) or the subscriber organization (Subscriber Organization Consolidated Billing)?
- How would your proposal address customer nonpayment of bills, partial payment of bills, and late payment of bills? In cases of partial payment of bills, which portion of the bill should the payment be allocated towards?
- Should customers be dropped from consolidated billing for late payments?
- Discuss any purchase of receivables issues.
- Discuss any issues relating to consumer credit.
- Should there be a fee using consolidated billing and, if yes, what should it be?
- Discuss any consumer protection implications of utilizing consolidated billing for community solar, including data privacy and data protection.

- How would customer specific data be exchanged? Alternatively, please address why you and/or your organization prefer dual billing.

**Response:**

New York is the first state to implement UCB for community solar and, as discussed above, Ampion strongly supports the net crediting approach adopted by the New York Commission. Because New York is in the midst of implementing net crediting, it is difficult at this point to draw firm conclusions with respect to some aspects of the process, though the advantages of net crediting versus dual billing are clear, as discussed in detail above. That being said, the process in New York to date and Ampion's experience elsewhere allows us to make the following observations on the issues listed above.

- Ampion prefers UCB over SOCB.
- Under net crediting, there is no "allocation" of customer payments. The customer is not paying the utility for his or her credits. To the contrary, the net credits reduce the customer's overall bill, making it more likely that the customer will pay the bill in full. The only charges the customer is paying for are the electricity commodity charges (whether from the utility or a TPS) and the utility's delivery charges.
- A customer should not be dropped to dual billing for nonpayment, as is currently the case for utility consolidated billing, with purchase of receivables, for TPS charges. As noted above, the customer is not paying the utility directly for community solar bill credits and none of the charges that appear on the customer's bill are for community solar bill credits. When a utility customer who is also a community solar subscriber doesn't pay, he or she would be subject to the same remedies that are available today to the utility with respect to customers who are not community solar subscribers. Dropping the community solar customer to dual billing does nothing to improve the utility's cash flow but it would severely reduce the advantages of net crediting in the area of improving the ability of solar projects to obtain financing, as the residual credit risk would, once again, require subscriber organizations to apply a rigorous credit screen to the pool of potential subscribers.
- As described in the New York Commission's order on consolidated billing for community solar, with net crediting the utility does not purchase the community solar provider's receivables. The utility satisfies its obligation to provide bill credits that are created by the production from a solar facility by allocating a portion of the value of those credits to the end-use customer (in an amount equal to the full value of the credits minus what the subscriber agreed to pay the solar provider for them) and the remainder to the solar provider, minus a fee. In this

scenario there is no purchase of receivables as there is in the current system of UCB for TPS charges.

- New York-style net crediting eliminates any issues related to consumer credit. As noted above, the customer's community solar subscription reduces his or her overall payment obligation to the utility and, thus, should have either no impact or a positive impact on the customer's credit profile vis a vis the utility.
- Because the implementation of net crediting in New York is still underway, the question of whether the utility should charge a fee for it and, if so, what the basis of the fee would be is an open one for now. It may be the case that the utility will incur programming expenses for building out the functionality required to do net crediting, but it is not at all clear that providing net crediting exposes the utility to the kind of credit risk that justifies the application of a discount similar to that applied to TPS receivables in the POR program. This question deserves further discussion in the context of subsequent stakeholder meetings.
- Protecting customer data and maintaining data privacy is a top priority for Ampion and others in the community solar value chain. One advantage of UCB, especially in its net crediting incarnation, is that it retains the data protections currently embedded in the utility systems with respect to customer billing and collections. Moreover, the additional information that might need to be exchanged between the utility and the community solar provider (e.g., the discount that is applied to the value of the credits allocated to the subscriber in calculating the amount to be remitted to the community solar provider) can be exchanged in a manner that protects both the privacy of the data and the integrity of the utility's system, as has been the case with data exchange between utilities and ESCOs in New York that make use of UCB with purchase of receivables.
- The optimal method for data exchange should remain open subject to further discussions among stakeholders. EDI would likely be sufficient but other alternatives may prove to be superior.

**Question 4:** If you are or represent a community solar developer or subscriber organization, please describe in detail the terms of the agreement between the subscriber and the subscriber organization. In particular, please explain the following:

- What are the fees and contract terms for subscribers?
- Are the fees and contract terms consistent among all subscribers? Does it differ by customer class?
- Do subscriber organizations intend to offer guaranteed savings to the subscriber?
- Do subscriber fees vary each month?

**Response:**

Ampion generally considers its form of subscriber agreement to be proprietary and would prefer not to publish the entire agreement in a public forum. That concern notwithstanding, we are happy to provide the following overview of the terms included in a typical subscriber agreement.

- Regarding fees and contract terms, our typical agreement calls for credits to be sold to the subscriber at 90 percent of the value of the credits. Standard contract terms include the following:
  - High-level description of the state's community shared solar program and the nature of the bill credits that are the subject of the agreement;
  - Amount of and process for allocation of bill credits;
  - Payment for bill credits;
  - Dispute resolution;
  - Term and termination provisions;
  - Events of default;
  - Assignment;
  - Force majeure;
  - Limitation of damages; and
  - Notice provisions
- Fees and terms are usually, but not always, the same among subscribers, and can vary by rate class.
- Ampion cannot speak for other subscriber organizations, but our value proposition to subscribers is that the credits they acquire through us will be worth more than the subscriber pays, thus guaranteeing savings on a net basis after the subscriber pays for the credits and they are applied to the subscriber's utility bill.
- The unit price of the credits is fixed by the subscriber agreement (TRUE?) but the amount the customer pays each month will vary based on the amount of electricity produced by the renewable facility from which the subscriber has been allocated a percentage of the credits produced.

**Question 5:** Do any subscriber organizations currently use consolidated billing for community solar subscriber fees in other jurisdictions? If so, please identify the jurisdictions and explain the design of the billing framework, being sure to address the issues identified in Question 2 and 3 above.

**Response:**

As noted above, New York is in the process of implementing utility consolidated billing in the form of net crediting. All of the relevant design features of that approach to utility consolidated billing can be found in the relevant documents in that docket, which is New York PSC Case No. 19-M-0463. The New York Commission's

December 19, 2019 Order Regarding Consolidated Billing for Community Distributed Generation and the various utility net crediting manuals filed in compliance with that Order are particularly instructive.

**Question 6:** Are subscriber organizations paying an administrative fee to EDCs for the use of consolidated billing of subscriber fees in other jurisdictions? If so, how is it structured? If not, how does the EDC recover those costs? Please provide your recommended method of cost recovery.

**Response:**

The New York net crediting program anticipates the payment of a "Utility Administrative Fee," which is defined in Niagara Mohawk's net crediting manual as "the amount of the monthly value of the CDG Project's Value Stack Credits that the Company will retain, as approved by the Commission. The current Utility Administrative Fee is 1.0%."

**Question 7:** Should consolidated billing of community solar subscriber fees only be available to projects that provide a guaranteed monthly savings to subscribers? If not, would the provider of consolidated billing be expected to charge subscribers for their community solar participation resulting in an amount due greater than the amount due for electric service? Should this result be permitted for low- to moderate-income (LMI) customers?

**Response:**

The application of utility consolidated billing to community solar providers that do not ensure that customers pay less for their credits than the value of those credits on their utility bill (thus providing guaranteed savings) would create a variety of complications best avoided at this point in the development of the market. Thus, the New York Commission required guaranteed savings in its Order addressing consolidated billing for community solar:

> As compared to the more traditional consolidated billing used for ESCOs, where the ESCO identifies a charge for the utility to put on the customer's bill and the utility collects that charge on behalf of the ESCO, the net crediting model avoids putting the utility in the position of collecting a higher charge than it would have applied to the customer by guaranteeing savings to the customer. Therefore, it can be assumed that any partial payment or nonpayment would have happened even in the absence of the customer's CDG membership and there is no risk that the amount of uncollectibles or the utility's exposure will increase. [2]

[2] New York Public Service Commission Case. No. 19-M-0463, December 19, 2019 Order Regarding Consolidated Billing for Community Distributed Generation, at 13 (footnote omitted).

**Question 8:** Please provide comments on the following framework for utility consolidated billing of subscriber fees, which is currently being implemented in New York:

a. Utility consolidated billing of subscriber fees is optional for community solar projects. If a project chooses utility consolidated billing of subscriber fees, all subscribers enrolled in that project are billed via utility consolidated billing (with the exception of one anchor subscriber per project).
b. In order to participate in utility consolidated billing, all subscribers enrolled in the project must receive a percentage of their original community solar credit on their bills each month. Currently, this minimum percentage is five percent (5%) in New York.
c. The subscriber fee is a percentage of the subscriber's original community solar credit each month. The dollar amount of the subscriber fee varies each month based upon the underlying community solar credit.
    - Example: The subscriber fee is 90% of a customer's community solar credit. On the monthly bill, the customer receives 10% of their credit. The remaining 90% of the credit is remitted by the EDC to the subscriber organization less the administrative fee retained by the EDC.
d. At least 60 days prior to operating under a consolidated billing framework, the community solar project owner must provide the EDC with the percentage of the subscriber community solar credits that is available to be applied to the subscribers' bills.
e. The same percentage must be applied to all subscribers for the same project (with the exception of an anchor subscriber, if applicable, that will receive its entire community solar credit on its utility bill and is billed by the community solar project owner for subscription fees). The percentage can change no more frequently than every six (6) months.
f. Subscriber organizations must agree to use the EDC's communication tool for sharing subscriber percentage information.
g. The EDC retains a portion of the subscriber fee to compensate for their implementation and administrative costs associated with utility consolidated billing. This results in the Subscriber Fee percentage in item "c" above being reduced.
h. The EDC receives timely recovery of subscriber credits through a surcharge or similar mechanism.

**Response:**

As noted above in response to Questions 1, 2, and 3, Ampion strongly supports the net crediting model adopted by the New York Commission, which is described above. Regarding (e), above, we do believe that subscriber organizations should be given the flexibility to have different percentages for different subscribers. There is no clear benefit at this point in the development of the community solar industry to this constraint.

**Question 9:** If you disagree with any portion of the framework in Question 8, please describe in detail the framework you would support (or refer to your response to Question 3, as relevant). Include specific examples from other jurisdictions, if possible.

**Response:**

Please see responses to Question 1, 2, 3, and 8, above. In addition, we note that there is a concern with the manner in which the New York utilities propose to apply bill credits when using net crediting. This concern, and a proposed solution for it, is described in detail in a petition filed with the New York Commission by the Coalition for Community Solar Access on December 9, 2020.[3] That matter is pending before the Commission. This is an issue that we believe should continue to be addressed in the context of ongoing stakeholder meetings, during which any further developments on the subject in New York can be taken into account.

**Question 10:** In the case of Utility Consolidated Billing, if you are a community solar subscription organization, should you opt to participate in Utility Consolidated Billing would you maintain backup billing procedures to bill customers who fail to pay the EDC for their community solar subscription? What other options would you suggest to address the risk of non-payment by customers?

**Response:**

As noted by the New York Commission, when the net crediting approach is adopted the risk of non-payment of the utility's charges is not increased. If anything, that risk is decreased. Thus, under net crediting there is no scenario in which a customer "fails to pay the EDC for their community solar subscription." The customer's community solar subscription reduces the total amount the customer owes to the utility. The only charges the customer pays are the commodity charges owned to the utility or a third-party supplier and the utility's own delivery charges. For those reasons, community solar subscription organizations need not maintain "backup billing procedures to bill customers who fail to pay the EDC for their community solar subscription." While some community solar subscription organizations might retain such a billing capability, requiring them to do so would reduce the overall positive effect of adopting utility consolidated billing (at least in the form of net crediting), with no corresponding benefit.

**Question 11:** What are the potential challenges to implement consolidated billing for community solar? How can these challenges be addressed?

[3] Petition of the Coalition for Community Solar Access Regarding Net Crediting Billing, Case 19-M-0463, filed December 9, 2020.

**Response:**

The challenges to implementing consolidated billing for community solar are those that are endemic to any such change to a complex system that attempts to balance the interests of multiple stakeholders while doing so at a reasonable cost to those who will pay for such changes. Ampion is confident, however, that implementing consolidated billing for community solar can be achieved much more quickly and efficiently than the implementation of consolidated billing for TPS commodity charges many years ago because of the tremendous amount of experience the utilities and other stakeholders have gained through the presence of that system over the years. Moreover, the ongoing implementation of net crediting in New York provides an excellent template for such an effort in New Jersey. This is especially the case given that one New Jersey utility, Rockland Electric, is a subsidiary of a New York utility, Orange and Rockland, that is in the process of implementing net crediting.

**Question 12:** If Utility Consolidated Billing were available, how would subscriber billing inquiries be handled? Would subscriber inquiries regarding subscriber fees and/or community solar credits be handled by the subscribing entity or the developer, or would the utility be required to take on that role?

**Response:**

Customer care is an issue that requires further consideration and stakeholder input. Ampion's view at this time, which is not definitive, is that requiring community solar subscription organizations to continue to answer questions that relate to the customer's solar subscription would benefit the most parties, including the utility, which would otherwise have to train its customer care representatives with respect to the community solar programs of every subscription organization making use of utility consolidated billing. Fully enabling subscription organizations to serve this function will require the sharing of certain customer-level information with them, which would be appropriate in any event given the need of subscription organizations to maintain clear sight into how credits are being allocated among subscribers and whether any of their subscribers are falling in arrears to the utility to an extent that could result in termination, which would affect the subscriber's ability to fulfill the terms of its subscriber agreement.

**Question 13:** If Utility Consolidated Billing were available, how would subscriber billing information be provided to the utility?

**Response:**

> As noted above, the optimal method of information exchange between community solar subscription organizations and the utility should be the subject of further discussion among stakeholders.

Thank you for the opportunity to provide comments on these important questions.

Respectfully submitted this 9th day of April, 2021.

/s/ Chris Kallaher

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**Department of Public Service**

CASE 14-M-0224 – Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.

CASE 15-E-0082 – Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program.

CASE 19-M-0463 – In the Matter of Consolidated Billing for Distributed Energy Resources.

DEPARTMENT OF PUBLIC SERVICE STAFF
STRAW PROPOSAL ON OPT-OUT COMMUNITY DISTRIBUTED GENERATION

Dated March 29, 2022

# Contents

Introduction ........ 1
Section 1 - Opt-Out CDG Program Structure ........ 6
Section 2 - Opt-Out CDG Programs Rule ........ 9
  Eligible Customers ........ 9
  Order of CDG Subscription Memberships ........ 11
  CDG Crediting and Minimal Level of Savings ........ 12
    Credit Pooling Mechanism ........ 14
  Administrator Fees ........ 14
  Administrator Roles ........ 17
  Limiting Opt-Out CDG Capacity ........ 20
  Alignment with the Expanded Solar for All Program ........ 21
  Subscribing Opt-In CDG Customers ........ 23
  Opt-Out CDG Specific Outreach and Education ........ 24
    Outreach and Education ........ 25
    Opt-out Letters ........ 26
Section 3 - Data Access and CDG Crediting and Billing ........ 26
  Data Access ........ 26
    Aggregated Data ........ 28
    Customer Contact Information ........ 28
    Detailed Customer Data ........ 28
  CDG Billing and Crediting ........ 29
    Utility CDG Billing and Crediting Performance Metrics ........ 32
Section 4 - Opt-out CDG Program Compliance and Enforcement ........ 33
  Municipal Implementation Plans ........ 34
  Reporting ........ 36
Conclusion ........ 37

## Introduction

Community Choice Aggregation (CCA) is a strategy that allows participating local governments to procure energy supply service and distributed energy resources (DER) for eligible energy customers in the community. It is a municipal model for procuring energy that replaces the utility as the default supplier of electricity and/or natural gas for virtually all homes and small businesses within a jurisdiction. A well-designed CCA program can create benefits for participating communities and their residents, while supporting New York State's clean energy policies and the Public Service Commission's (Commission) efforts to build a cleaner, smarter, and more distributed electric system through the Reforming the Energy Vision (REV) initiative.[1] Access to CCA programs offers residential and small non-residential customers, generally described as "mass market customers," an opportunity to receive benefits that have not been readily available to them in the past, including more affordable or cleaner energy choices through an opt-out enrollment process.

CCA programs have the potential to create opportunities for local, community, and individual engagement on topics related to energy needs, such as innovative energy programs, products, and services that promote and advance local and statewide clean energy goals. Under a CCA program, each municipality intending to implement a CCA program must exercise its Municipal Home Rule Law authority by enacting a local law, after holding a public hearing on notice, giving itself the requisite legal authority to act as an aggregator and broker for the sale of energy and other services to residents via an opt-out enrollment process. CCA Administrators then work with the municipality to procure energy supply services and, for the purpose of this straw proposal, distributed energy resources (DER) for eligible customers within their community.[2] CCA Administrators coordinate and manage the CCA program and are responsible

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[1] Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014).

[2] The term "CCA Administrator" refers to either the municipality acting on its own behalf or a third party acting on behalf of the municipality.

to conduct outreach and education within the community to ensure that customers are aware and informed of their CCA choices.

Ensuring that the CCA programs are implemented with the proper consumer education and protections in place is imperative to the success of these programs. To that end, the Commission issued its CCA Framework Order which authorized the establishment of CCA programs by municipalities statewide and instituted the process and CCA Rules for developing and implementing a CCA program.[3] The CCA Rules define requirements for, among other things, customer eligibility, low-income customer participation, customer outreach and education, and the provision of data.[4] In the CCA Framework Order the Commission recognized that this was a starting point for the development of the State's CCA program and that there may be a need for modifications, or expansion, of the initial requirements based upon program monitoring and lessons learned.

To date, CCA programs – through the bargaining power that energy load aggregation provides - have been able to offer participants more attractive energy supply terms compared to what an individual customer could obtain. The opportunity to integrate a statewide Community Distributed Generation (CDG) program on an opt-out basis under the CCA model will allow customers to participate in a product that offers guaranteed savings from a clean energy resource. CDG was adopted by the Commission in July 2015 to offer customers the benefits of distributed generation (DG) who were otherwise encountering obstacles to participating in DG.[5] CDG is installed at an offsite location, such as a solar farm project, and shares the CDG benefits through a subscriber membership. The CDG subscriber model allows renters, homeowners, low-income residents, and businesses to have access to the benefits of CDG. CDG projects must have

[3] Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order).

[4] CCA Framework Order, Appendix D: CCA Rules Summary.

[5] Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015).

at least 10 subscribers (excluding projects sited on master metered multifamily buildings with at least 10 residential units). Each subscriber must be allocated at least 1,000 kWh per year (not to exceed their historic average annual consumption) and no more than 40% of the generation may serve large demand-metered (25 kW or greater) subscribers.

On April 14, 2021, Staff filed its CCA Whitepaper which recognized the growth and success of CCA programs across the State and identified valuable opportunities for CCA program improvements.[6] As part of the CCA Whitepaper, Staff sought comments on whether the Commission should explore the development of a standalone opt-out CDG program that would not be integrated with a CCA supply product and input on the development of an opt-out CDG program, the necessary rules for such a program, and its association or disassociation with the traditional CCA program model. In response to that request, Staff received many comments in support of such a program with numerous comments identifying several areas that would require more detailed investigation before recommendations could be made.

To build on the current success of CCA programs in New York State and in recognition of the areas identified in the stakeholder comments submitted on the CCA Whitepaper, in November 2021, the Commission issued its Order Identifying Further Procedural Steps Regarding the Development of Opt-Out Community Distributed Generation in which it directed the Department of Public Service Staff (Staff) to file, within 120 days of the effective date of the CDG Procedural Order, proposed opt-out CDG program operation, oversight, and enforcement rules, with the Secretary for future Commission consideration.[7] In the CDG Procedural Order, the Commission concluded that, once the proper rules are in place, an opt-out CDG program would provide low-income and mass-market customers energy savings on their bills and help spur the development of CDG projects across the State, all while motivating participating communities to

[6] Case 14-M-0224, Department of Public Service Staff Whitepaper on Community Choice Aggregation Programs (filed April 14, 2021) (CCA Whitepaper).

[7] Case 14-M-0224, Order Identifying Further Procedural Steps Regarding the Development of Opt-Out Community Distributed Generation (issued November 22, 2021) (CDG Procedural Order).

make cleaner energy choices that will, in turn, bring the State closer to reaching its clean energy targets.

Over the past several months, Staff - along with staff from the New York State Energy Research and Development Authority (NYSERDA) - conducted a stakeholder collaborative process with the objective of identifying program areas or issues that require consideration prior to the development of an opt-out CDG program. The collaborative was also relied upon to solicit recommendations to resolve the issues identified in the CDG Procedural Order – including additional issues recognized during the collaborative process – and to propose opt-out CDG specific program rules and recommendations within this straw proposal. The Commission believed that by identifying the solutions necessary to resolve the issues described, such as, but not limited to, data and billing technical issues, program implementation advantages and disadvantages, and necessary limitations and/or requirements unique to such a program, the Commission would be able to establish an opt-out CDG program that will benefit New Yorkers by creating further opportunities for clean energy projects - leading to a more sustainable future.

The collaborative process included two webinars held during the month of February, along with a process for informal stakeholder review and feedback.[8] The webinars discussed proposed program recommendations and included an explanation or reasoning for those recommendations. The first webinar was held on February 2, 2022 and included over 160 participants. The following recommendations were discussed during that webinar: permitting municipalities to offer opt-out CDG solely or combined with a CCA supply product offering; enrolling all Assisted Program Participants (APP) customers first before additional opt-out CDG customer are enrolled; utilizing the CDG net-crediting model or the credit pooling mechanism (if available) for customer billing; setting a minimal level of savings for APP and non-APP customers; creating clear guidance for what can be charged by Administrators as their fee; limiting opt-out CDG capacity to ensure CDG subscriptions are available for all CDG models; aligning an opt-out

[8] The webinars were recorded and uploaded to NYSERDA's YouTube channel. The February 2, 2022 webinar can be found at https://youtu.be/R5W6mnstyVg and the February 16, 2022 can be found at https://youtu.be/MLIHlwRN9MI.

CDG program with the Expanded Solar for All (E-SFA) program; establishing outreach and education requirements that comply with the CCA framework requirements, as well as specific requirements for opt-out CDG; requiring each utility to test and confirm that their information technology (IT) systems can produce the data and consolidated billing necessary for the program; and requiring Municipal Implementation Plans to be filed by the Administrator with specific CCA program product information.

The second webinar was held on February 16, 2022 and included over 115 participants with the following recommendations discussed: proposals regarding which mass-market customers should be included in an opt-out CDG program; proposals for optionality in participation for the E-SFA participants; using the net-crediting model to collect and distribute Administrator fees at the time the CDG credits are reimbursed by the utility; proposals regarding the roles of the Administrator with questions on whether a municipality could have more than one Administrator, allowing asset owners to be Administrators, and what the necessary terms and discloser should be; recognizing that an opt-out CDG could not begin until the community's utility's automated net-crediting billing processes are fully tested and implementation is properly in place; listing of data necessary for such a program; proposals regarding the treatment of opt-in CDG customers; and proposals on the CDG specific information to be shared with customers.

Collectively, the webinar's participants included a mix of utilities, current and prospective CCA Administrators (Administrators), CDG developers, CDG customer acquisition companies, research organizations, non-profit associations, NYS Department of State, Massachusetts Department of Energy, municipal officials, private citizens, NYSERDA, and Staff. An extensive question and answer session arose during both webinars with Staff receiving 11 written comments from nine different stakeholders during the weeks that followed the conclusion of the webinars. Staff received stakeholder feedback on how the program should be structured, what the CCA Administrator's roles should be, the transparency of Administrator Fees including cost to implement the program, the State's utility's inability to properly bill for CDG, CDG access availability for all CDG models, CDG net-crediting, and NYSERDA incentive programs for an opt-out CDG project. The recommendations discussed within this straw proposal reflect

consideration of the input and feedback from those stakeholders who were actively involved in the collaborative process.

This straw proposal offers numerous recommendations for topics within each of the following four categories: Opt-Out CDG Program Structure, Opt-Out CDG Program Rules, Data Access and CDG Billing and Crediting, and Opt-Out CDG Compliance and Enforcement.

## Section 1 - Opt-Out CDG Program Structure

Staff recommends that the opt-out CDG program Administrator and product offering follow the foundational requirements established in the CCA Framework Order.[9] Although the CCA Framework Order was structured around a CCA supply offering, the Commission – at that time - understood that CCAs could potentially evolve and that the foundational program structure of a municipal-wide opt-out program could be applied to additional opt-out product offerings. Those foundational requirements include the need for a municipality to pass a local law under their home rule law enabling opt-out enrollment - that local law should clearly identify each product that will be included in the opt-out CCA program, in this case, CDG. The CCA Framework Order required an Administrator to file with the Secretary to the Commission for consideration and approval an Implementation Plan describing the CCA program in detail, including a description of the program's goals and its plans for value-added services.[10] Additionally, and possibly more prominently, an Administrator was required to develop and execute a robust outreach and education (O&E) plan specific to a given municipality that would include public outreach meetings, clear and concise opt-out letters, and additional customer communication and materials. The CCA Framework Order also addressed the need for aggregated, customer specific and customer usage data to be compiled and transferred safely from the utility to a CCA Administrator by requiring the execution of a data security agreement (DSA). Lastly, the CCA Framework Order established the need for program reporting. This straw

[9] Case 14-M-0224, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order).

[10] Commission approved Administrator Implementation Plans are typically referred to as Master Implementation Plans, or MIPs, in practice.

proposal will address both the foundational requirements of the CCA framework as applied to an opt-out CDG program as well as the specific program rules for the establishment of an opt-out CDG program.

Staff recommends that the opt-out CDG product be permitted to be offered as a standalone product offering for municipalities who choose to solely offer CDG, or as an additional product offering to CCA supply. When CDG and supply are offered together, Staff clarifies that the savings from a CDG subscription cannot be applied towards the supply rate to offset the cost of supply under a product that guarantees savings compared to what the customer would pay as a full-service customer of the distribution utility. In other words, the savings arising out of a guaranteed savings product must be realized by the customer irrespective of any CDG credits that would provide additional savings to that customer. By allowing municipalities to participate exclusively in a CDG opt-out program, customer awareness towards energy needs and choices will continue to grow - like the engagement and participation growth of the current CCA supply program - resulting in more energy conscious New Yorkers. Likewise, by letting municipalities participate solely in a CDG opt-out program, more CDG projects will be financed, developed, and interconnected to New York's distributed energy grid which will increase the production of clean energy and help the State meets its ambitious Climate Leadership and Community Protection Act (CLCPA) goals.[11] This will also allow communities who are either not able to implement a CCA supply program due to the lack of a robust retail access market – such as those communities on Long Island, are not able to obtain a valuable supply contract, or have no desire to procure a supply contract to still implement a beneficial community-based program under the CCA model.

[11] See, Chapter 106 of the Laws of 2019 (codified, in part, in Public Service Law (PSL) §66-p). The CLCPA, which became effective on January 1, 2020, codified and expanded several statewide clean energy and climate goals, including that New York develop 6 GW of distributed solar projects by 2025, and that 70 percent of New York's electricity come from renewable energy sources, such as wind and solar, by 2030. Recognizing that the inclusion of low-to-moderate income (LMI) customers and disadvantaged and environmental justice communities in New York State's clean energy programs is crucial both to the programs' success and to their fairness, the CLCPA also added section 75-0117 to the Environmental Conservation Law (ECL), which includes a requirement that disadvantaged communities receive at least thirty-five percent of the benefits of clean energy programs.

Lastly, CDG offers customers savings on their energy bills and with the availability of Net-Crediting billing for DER – such as CDG – customers will be able to easily take advantage of the benefits and savings CDG offers.

Staff understands that a CCA program that includes multiple product offerings, such as CDG in addition to the supply product, will allow for greater energy options and consumer choices. However, in most instances, these two product offerings are implemented under differing timelines, necessitating additional requirements regarding outreach and education. Product differences exist such as - customer eligibility, life of product offering, the need for product specific marketing and communication, as well as the roll-out or timing of the two unique products and when they show up on a customer's bill. With that, Staff recommends that specific requirements be established for program implementations when a municipality chooses both CCA supply and CDG membership offerings. Those requirements are discussed below in Section 2, Opt-Out CDG Program Rules. If a given municipality is aiming to offer their constituents both supply and CDG on an opt-out basis, Staff recommends that a municipality, who has not already adopted a CCA local law, adopts one local law that allows for an opt-out CCA program and specifically lists each opt-out product offering the municipality may choose to offer as part of its CCA program. This would, then, allow a municipality to offer any - or all - of the Commission approved product offerings under the State's CCA model that it has specified in its local law. If the municipality has already passed a local law for another opt-out product, such as supply for its current CCA program, it will be up to the municipality to determine how best to adopt any additional opt-out CCA product offerings.

To enable an opt-out CDG program with the investor-owned utilities, Staff recommends that existing utility CDG tariffs be revised, or preferably, a municipal opt-out CCA tariff be created, to include provisions related to the facilitation of a community based opt-out CCA program, including both supply and CDG, and the specifics regarding the necessary data and the ability to provide the data without individual customer consent. The Joint Utilities should work with Staff on the development of a draft municipal opt-out CCA tariff; the tariffs would then be filed shortly after the Commission's decision on the adoption an opt-out CDG program. Comments were

received in support of the recommendation that an opt-out CDG program should fall under the CCA model with many of those comments supporting the recommendation of allowing for a standalone CDG product offering.

## Section 2 - Opt-Out CDG Programs Rule

Specific programs rules for an opt-out CDG program are required to ensure that the program, in its implementation and roll out, appropriately protects the State's energy customers - not just customers participating in opt-out CDG – by informing and educating them on the CDG offering and allowing for non-participating CCA municipalities to promote and participate in additional CDG models. Program rules will allow for the proper program oversight and management at a State level and create clear guidance for municipalities and CCA Administrators. The following section will discuss recommendations that deal with customer eligibility and order of subscription memberships, CDG crediting and savings, Administrator fees and roles, CDG capacity limitations, alignment with the State's E-SFA program, subscribing opt-in CDG customers, and specific opt-out CDG O&E requirements.

### Eligible Customers

The opt-out eligible service classes identified within Appendix C of the CCA Framework Order would also apply to an opt-out CDG program. However, Staff recommends that the following mass-market customer types, who would be excluded from the eligible list for a CCA supply program according to the current CCA Rules, be eligible for participation in an opt-out CDG program. The CCA Framework Order specifically prohibited CCA supply program enrollment of the below customer types because there wasn't a comparable product offering, enrolling them would interfere with a choice the customer has already made, or, in the instance of APP customers, serving ESCOs were unable to meet the necessary requirements to receive approval for a guaranteed savings supply product as required by the Commission. These customer type exclusions are specific to ESCO supply products and should not be applied to eligibility rules for a CDG product offering. Thus, Staff recommends that the following customers, who are ineligible to be opt-out enrolled in CCA supply, be eligible for opt-out enrollment in CDG:

- Time-of-use or time varying rate customers;
- Assistance Program Participant (APP) customers;
- Customers with energy service company (ESCO) blocks on their utility accounts; and
- Customers who are being served by an ESCO.

CCA supply program rules are unique to the supply product and with the inclusion of these additional customers in an opt-out enrollment program, CDG will be available to those customers to which the CDG program was established to reach – customers otherwise encountering obstacles to participating in DG. With that, the following customers will continue to be ineligible to receive CDG memberships on an opt-out basis.

- Customers with net meter on-site projects;
- Customers who are already participating in CDG;
- Customers with less than 1000 kWh of annual usage;
- Customers allocated by the utility to a CDG project with a near term commercial operation date;[12] and
- DER blocked customers.[13]

As discussed in the CCA Framework Order, CCA Administrators will be permitted to request newly eligible customer lists from the utility monthly.

Comments were received in support of the recommendations related to eligible customer classes and the availability of an eligible customer list for an opt-out CDG program offering under the CCA model.

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[12] This recommendation will assist the utility with prioritizing a customer's opt-in CDG choice.

[13] The Uniform Business Practices for Distributed Energy Resource Suppliers states that "Upon request by a customer, a distribution utility or DSP shall block access by DER suppliers to information about the customer." 2C:B4 (p. 8).

## Order of CDG Subscription Memberships

Staff recommends that APP customers be prioritized for enrollment and first subscribed within a municipality's opt-out CDG program. Staff also recommends, if practical, that all APP customers be subscribed at the same time to ensure equality across the customer base. For those municipalities who are unable to subscribe all of their APP customers concurrently - due to locational CDG capacity constraints and/or magnitude of APP customer count - an Administrator should plan for and procure enough CDG capacity contracts to serve all APPs within a certain timeframe. In part, all municipal APPs should be served within 12 months, starting from the time the first phase of APP customers begin receiving CDG credits on their utility bills. This recommendation is in recognition of the need to include low-income customers, specifically those in disadvantaged and environmental justice communities, into New York State's clean energy programs and to fulfill the CLCPA statutory requirement. If all APP customers cannot be subscribed simultaneously, Staff seeks stakeholder feedback on how those customers' subscription enrollments are selected throughout the APP membership timeline.

If an APP customer becomes a non-APP customer during the life of the CCA program, they should continue to receive their CDG credits and not be dropped or unsubscribed due to their change in APP status. By doing so, the administrative burden of drops and enrollments related to changes in APP status will be eliminated for both the utilities and the CCA Administrator. A municipality will be permitted to subscribe non-APP residents into an opt-out CDG program only after all APP residents in the municipality have first been subscribed or have opted-out of the community's program. Regardless of APP status, customers who drop out of the program will be removed from the next monthly CDG Allocation form submitted for the project, which shall be submitted no more than 45 days after the opt-out notification is received by the Administrator.

While APP customers have the ability to participate in opt-in CDG projects, there has been a low subscription rate to date. This had led to the customers who could benefit most from CDG participation, not receiving the guaranteed savings a CDG subscription provides. Enabling CCA programs to opt-out enroll APP customers into a CDG project, and prioritizing their enrollment, will create an efficient and effective path for those guaranteed savings to first reach the customers who need them the most. Comments received were in support of subscribing APP

customers first within an opt-out CDG program offering under the CCA model. With that, the practicality – in certain instances – with subscribing all APP customers concurrently was brought up and for that reason, Staff recommends that the Administrator should plan for and procure enough CDG capacity contracts to serve all APPs within a certain timeframe.

## CDG Crediting and Minimal Level of Savings

New York's Net-Crediting model allows for a subscriber's membership fee to be incorporated on their utility bill with their CDG credits. Meaning, CDG members of projects enrolled in Net-Crediting are no longer receiving two bills - a utility bill with their CDG credits and a separate subscription fee bill from their CDG Host or Sponsor. Under Net-Crediting, the utility keeps 1% of credits generated each month for billing administrative purposes, a minimum of 5% of credits go to the customers, and the remaining value is paid to CDG owners by the utility. This model guarantees savings for customers participating in CDG.

Using the Net-Crediting rate savings methodology, Staff recommends that the 5% minimum discount for non-APP customers be maintained, and a minimum discount of 10% be established for APP customers. Due to the current Net-Crediting requirements that all customers on a project be assigned the same savings rate,[14] this recommendation could present a challenge for Administrators wanting to serve non-APP and APP customers on the same CDG project. On balance, Staff believes that this challenge is manageable given that the volume of customers in most CCAs will in any event require multiple CDG projects to serve, and that the recommended minimum 10% discount for APP customers can be implemented from the start of the program. However, while understanding the single savings rate requirement was established to ease the transition to Net-Crediting and to reduce administrative complexity, Staff recognizes that there is now a need for increased flexibility for savings levels to allow projects to serve more than one

[14] 19-M-0463, In the Matter of Consolidated Billing for Distributed Energy Resources.

savings rate and customer type. Therefore, Staff recommends that the requirement for a single savings rate per project be modified to allow for multiple savings rates.[15]

During the stakeholder collaborative process, alternative or complementary options for minimum savings requirements for APP customers were presented in the public webinars (for example, minimum annual savings of $60). Informal stakeholder comments convincingly argued that a requirement based on monetary savings, versus a percentage discount, would be impractical to implement within the Net-Crediting model. To clearly communicate to municipalities and customers what expected monetary savings will be, Administrators should use the Value Stack calculator to estimate monetary savings for APP and non-APP customers. Those expected monetary savings should be included within the Municipal Implementation Plans, discussed below, and recorded in program reporting.

Informal comments were received in support of maintaining the 5% minimum discount for non-APP customers and supported offering a higher minimum for APP customers. Comments were received suggesting that no further minimum discount requirements be adopted by the Commission due to potential changes in the market and in the event a rule needs to be made, it should define the requirement as being equal to market and allow Staff to determine what market is during the approval process. These commenters suggested that while they support the 10% discount for APP customers currently, there may not be sufficient incentives going forward to allow that level of discount. While Staff understands that there may be changes in the market, and available incentives, the APP customer discount should not be solely determined by these factors. Opt-out programs create efficiencies and the potential for cost savings that could, if necessary, compensate for these potential market changes. By setting a minimum savings of 10% for APP participants, the Commission would be ensuring that these customers are all receiving the same savings rate thereby removing the potential for certain communities to receive more or less than another.

[15] This recommendation is also being discussed as part of a broader package of recommendations for CDG process improvements within the CDG Billing & Crediting Working Group.

## Credit Pooling Mechanism

In January 2022, the Commission approved, with modifications, the proposal jointly submitted by NYSERDA and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to implement the E-SFA program.[16] Within the E-SFA Order, the Commission approved a "credit pooling" mechanism that allows National Grid, for the E-SFA program, to bank and pool the credits generated by a portfolio of CDG projects selected via a NYSERDA competitive procurement and distribute these credits evenly to low-income electric service customers participating in the Energy Affordability Program the following year.

During the stakeholder collaborative process, Staff received informal comments from some stakeholders that the credit pooling mechanism designed for the E-SFA program should be adapted to serve opt-out CDG programs managed by CCAs. Staff included this concept in the first public webinar and requested additional informal comments on the topic. Informal comments were subsequently received from multiple stakeholders, who predominantly recommended that, while the credit pooling concept had E-SFA merit, the initial implementation of opt-out CDG programs by CCAs be conducted using the established Net-Crediting mechanism. Staff also sought feedback on the topic from the utilities, who advised that designing and implementing a credit pooling mechanism for CCAs may require significant time and expense.

Therefore, Staff recommends that the Net-Crediting model should be used for an opt-out CDG program at this time and if the credit pooling mechanism is implemented statewide, the CCA should have the option to choose whichever crediting model will be most beneficial for the program and its participants. The venue for future stakeholder discussions regarding the credit pooling concept will be within the CDG Billing & Crediting Working Group.

## Administrator Fees

In the CCA Framework Order, the Commission allowed for CCA Administrators to collect funds, through the supply charge, to pay for the administrative costs associated with running the CCA program. With CCA customers receiving a single bill from the utility, any CCA customer

[16] Case 19-E-0735, Order Approving Expanded Solar for All Program with Modifications (issued January 20, 2022) (Expanded Solar for All Order).

payments to the CCA Administrator would need to be negotiated as part of the contract and built into the per kWh/Therm rates. In the CCA supply model, this would mean the payments to the CCA Administrator for CCA administrative purposes would need to be processed and remitted by the ESCO serving the CCA program. When a CCA program is offering an opt-out CDG product, the existing Commission defined rules for Administrator Fees would not be applicable as there is no ESCO or supply product offering to build the fee into or to perform the necessary collection and remittance roles.

In recognition of the differences between a supply product and a CDG product offering, Staff recommends clear and specific guidelines for the process by which Administrator fees are proposed, collected, and reported to ensure transparency and competitive, cost-effective selection of Administrators and CDG projects. During the stakeholder collaborative process, Staff presented a draft process for Administrator fee collection that had two main elements: 1) Administrator fees should be paid by the CDG project owner(s), with Administrators barred from collecting other fees from municipalities or customers; and 2) that fees should be exclusively collected on an ongoing basis during the operation of the program, building on the Net-Crediting payment process.

In informal comments, stakeholders predominantly supported the first element of this concept, but almost uniformly opposed the second element. Stakeholders argued that Administrators will incur significant upfront costs for procurement, outreach, education, and other activities prior to customers receiving credits from operational projects. Stakeholders further argued that the Administrator role is analogous to - and inclusive of - the responsibilities held by a customer acquisition/management company in opt-in CDG, and that these companies typically require the bulk of their total payment upfront, or upon the initial operation of the CDG project. Some stakeholders provided broad estimates of the proportion of costs that would be incurred upfront versus over the life of the program, which mostly fell at an approximately even split.

Staff therefore recommends that:

- CCA Administrator fees for opt-out CDG be paid exclusively by the CDG project owner(s) serving the CCA. Administrators, and their subcontractors or partners, should be barred from collecting fees or any other payment from municipalities, customers, or other parties for the purpose of administering an opt-out CDG program.
- CCA Administrators may collect fees on either an upfront (prior to project operation) basis, and ongoing (monthly, annually, or some other period) basis, or some combination thereof.
- Fees can be calculated on % basis, a per Watt/per kWh basis, a per customer basis, or on some other reasonable basis.
- CCA Administrators must clearly present their proposed fee structure in proposals to municipalities, and in Municipal Implementation Plans. This must include the method by which fees will be calculated (e.g., % basis, per Watt basis) for upfront and/or ongoing fees, and an estimate of the monetary ($) equivalent of those fees, made using the Value Stack Calculator if fees will be calculated on a % basis. For example, if a CCA Administrator estimates that they will procure 50 direct current megawatts (MWdc) of CDG for a CCA and proposes to charge fees of $.02/Watt DC upfront and $.001/Watt DC annually, they must indicate that upfront fees will total an estimated $1,000,000 and ongoing fees will be an estimated $50,000 per year.
- CCA Administrators must clearly present the intended milestone for payment of upfront fees, such as at contract signing by CDG owner(s) or upon allocation of customers to CDG projects. All procurement and contracting documents between parties must hold harmless municipalities in the event of nonperformance by either party to ensure that municipalities are not liable for the recovery of any upfront fees.
- Administrator reporting must include fees collected during that period and cumulatively.

For the purpose of the 10 GW Roadmap,[17] Staff and NYSERDA estimated that typical opt-in CDG customer acquisition and management costs totaled the equivalent of $0.108/Watt DC.

[17] See Case 21-E-0629, In the Matter of the Advancement of Distributed Solar, New York's 10 GW Distributed Solar Roadmap: Policy Options for Continued Growth in Distributed Solar (filed December 17, 2021) (Solar Roadmap).

The bulk of these costs were assumed to come from upfront customer acquisition, with a smaller portion for ongoing customer management and replacement over the life of the project. While the customer acquisition component of opt-in CDG project development is in certain ways analogous to the outreach and education requirements for a CCA undertaking opt-out CDG, there are important differences. Opt-in CDG customer marketing and acquisition activity result in a relatively low "conversion rate" (customers reached by CDG marketing that ultimately choose to subscribe to a project). In contrast, the equivalent for opt-out (proportion of eligible customers remaining after the opt-out period concludes) will almost certainly be many times greater. Likewise, ongoing customer management and acquisition costs are also likely to be significantly lower for opt-out CDG.

These important differences will result in lower overall costs compared to opt-in CDG, and thus lower fees being required for the CCA Administrator compared to the equivalent customer acquisition and management roles in the opt-in model. This dynamic is fundamental to the opt-out model and provides much of its appeal from a market and policy perspective. While Staff believes fees should be permitted on an upfront and reoccurring basis, there are efficiencies to an opt-out CDG program and these fees should be commensurate with the efficiencies achieved through the opt-out process.

## Administrator Roles

An Administrator will play a central role with the feasibility, facilitation, and implementation of their participating municipality's CCA program. After an Administrator enters a contract with a municipality, and similar to their role in procuring an acceptable supply contract on behalf of that given municipality, they will also be responsible for procuring CDG, via a competitive request for proposals (RFP) process and procurement. The municipality will continue to be the entity that contracts with the CCA product, in this case - the CDG developer. These contractual agreements between the municipality, the CCA Administrator, and the entity offering the product (i.e., ESCOs for supply or CDG developer for CDG) can transpire numerous ways and Staff does not feel the need to be overly prescriptive with the relationships of these agreements. With that, there are necessary terms that must be included within the agreements

to ensure the continued protection of participating municipalities and customers within the program.

Staff has received many comments on both the pros and cons of allowing a CDG asset owner to become a CCA Administrator.[18] Some argue that conflicts of interest exist and believe an asset owner could represent their self-interest rather than the interest of the community. Others believe that with the proper disclosures and transparency of affiliation, it should be the municipality's decision on which Administrator they choose to work with and that by allowing asset owners to become authorized Administrators, they would be responsible to comply with the same required Administrator CCA Rules. Additionally, by allowing asset owners to become Administrators, the number of Administrators a municipality could contract with will increase and potentially result in a more competitive CCA market.

For those reasons, Staff recommends that a CDG asset owner be permitted to become a CCA Administrator and, further recommends that disclosures of affiliation must be acknowledged by the municipality during the time of the initial Administrator and municipal agreement. Disclosures of affiliation should also be contained within the municipal RFP processes to protect sensitive information, as well as the CDG contract procurement agreements. Staff is looking for feedback on additional measures that could address potential conflicts of interest.

Terms should be included within these opt-out CDG agreements that clearly address what will happen with the program if the Administrator leaves the CCA market, if the municipality decides to take over the Administrator role itself, or if the municipality wants to terminate its contract with the Administrator or discontinue its CCA program. Due to the longer life of a CDG program, especially when compared to the length of a supply product contract, these terms should provide optionality for how a municipality can proceed with the program, if it chooses to do so.

[18] Several parties submitted comments on this topic during the CCA Whitepaper's comment period.

The role of the CCA Administrator does not end after product procurement. Administrators are responsible for conducting continuous customer outreach and education efforts; enrolling eligible customers; offering interminable customer management and support; allocating and churning CDG participants, ensuring the minimal level of opt-out CDG program savings are met; as well as meeting the Commission's requirements for necessary program operation, compliance, and reporting. With that, a question arose during the February 2 webinar that has instigated further debate: can a municipality have more than one CCA Administrator?

Staff perceives the many possible benefits a community could obtain from allowing a municipality to have multiple Administrators. The municipality would be able to offer additional products in a competitive manner to better meet their community's CCA objectives, in turn, creating additional customer choices while allowing for further opportunities for new program offerings and structures. A municipality already contracted with a CCA Administrator for supply would have the ability to offer opt-out CDG either through their existing CCA Administrator or through another CCA Administrator, thereby ensuring municipalities are able to offer their constituents the best option available to them. Though, a municipality with multiple Administrators could cause customer confusion connecting which Administrator is offering which product, as well as misunderstanding regarding the vital Administrator roles recently discussed. As CCAs were created to give municipalities more control of their energy needs and choices on a local level, Staff recommends that the option for a municipality to contract with multiple Administrators remains in the hands of the municipality, and it should be the municipalities' responsibly to ensure that customer awareness and Administrator alignment is properly in place.

Administrators should encourage municipalities to run a robust and competitive CDG bid process. To inform and assist municipalities to better understand their procedure of CDG procurement, NYSERDA should create a guiding CDG bidding procurement document which would include information to assist municipalities through the process, guaranteeing they are

aware of their bargaining powers and options. This document would be available in NYSERDA's CCA toolkit.[19]

Staff recommends that the Administrators submit copies of the municipality's CDG RFPs and CDG Agreements within the Municipal Implementation Plan. By allowing for a competitive and transparent municipal bidding process, Staff and NYSERDA will be able to better understand how the program works and how the value of such a program is placed back into the community and its participating CDG members. CCA Administrators are unable to provide payment to municipalities who choose to participate in their CCA program outside of a clean energy or community benefit fund which may only be funded by the CCA Administrator fees collected for that municipality. This will promote transparency of municipal participation and ensure a fair CCA Administrator selection process for all current and prospective CCA Administrators.

## Limiting Opt-Out CDG Capacity

Staff recommends the establishment of rules to ensure that CDG is available to all customers, including those that choose to sign up for CDG, and not just those customers that live within a municipality where a CCA opt-out program is in place. With the focus on ensuring that there will be enough CDG capacity available for all CDG models, stakeholders discussed ways to preserve CDG incentives, including whether the allocation of the NY-Sun Community Adder and/or the Inclusive Community Solar Added (ICSA) for opt-out CDG programs should be limited.

Informal comments were received supporting both sides – limiting the incentives for opt-out and keeping the same incentives for both opt-in and opt-out. Some commenters support keeping the same incentives for which they would otherwise qualify, but that either the total capacity or the total amount of incentive funding for that block be capped.

Several stakeholders expressed specific concerns, shared by Staff, about the impact of an opt-out CDG program in utility territories that either have limited potential for CDG development, or potentially do not have sufficient pipeline capacity to support both opt-in and opt-out CDG

[19] https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Communities/How-It-Works/Toolkits/Community-Choice-Aggregation.

models. The Consolidated Edison Company of New York, Inc. (Con Edison) territory has the most limited potential for CDG development relative to population size due to the limited number of available sites for large CDG projects in dense, urban communities. Most of Con Edison's service territory's residents, and an even greater proportion of disadvantaged community residents, live in New York City, which is not currently enabled to establish CCAs. This dynamic presents a real possibility that an opt-out CDG CCA program serving customers outside of New York City but still in the Con Edison territory could, while potentially still benefitting some low-income residents in the Con Edison territory, inadvertently restrict access to opt-in CDG for New York City residents and specifically impact the availability of such a program for the disadvantaged community residents that could most benefit from a CDG subscription and the savings it guarantees. Staff also received comments from stakeholders concerned about the possibility that customers - who live in non-CCA communities – would be unable to participate in an opt-in CDG program. Some stakeholders argued that without capacity caps or blocks being put in place, for each utility territory, available CDG capacity would be contracted to serve CCA opt-out programs thereby greatly restricting capacity for non-CCA customers who wanted to subscribe to a CDG project. This could potentially lead to community inequality driven by the inability for all New Yorkers to have equal access to a program that guarantees savings.

With these concerns, Staff is requesting further stakeholder feedback on whether a cap, block, carve-out, or some other mechanism be put in place to ensure all New Yorkers have access to CDG, either through an opt-in or opt-out model. Customers living in utility territories with limited potential for CDG development, or with insufficient pipeline capacity, should not be jeopardized by opt-out CDG programs operating within their utility service territory. Specifics on these CDG access controls - whether they be statewide or by utility service territory, based on a percentage of installed capacity, or further – will help the Commission realize the impacts an opt-out program will have on a customer's ability to join opt-in CDG programs.

## Alignment with the Expanded Solar for All Program

Staff recommends the alignment with the E-SFA program for those National Grid municipalities that choose to implement an opt-out CDG program. Municipalities in National Grid's service territory can now leverage and take advantage of the E-SFA program. There are a

few options that allow for leveraging, or synergizing, the two separate programs. One option is to keep APP customers in the E-SFA program, which would allow the municipality to serve a greater number of non-APP residents with their opt-out CDG program.

The second option is to provide a deeper savings alternative to the E-SFA savings through the CCA opt-out CDG program. In this case, National Grid would switch the customers over without gaps in credits. Staff recommends a practical method for CCAs to exercise this option if they so choose. As part of the Municipal Implementation Plan, the CCA should indicate whether they intend to take this approach and, if so, use the Value Stack calculator to demonstrate that the proposed program for APP customers will result in greater estimated savings than $60 annually for APP customers provided under E-SFA, using the average electric usage of the community's APP customers as a reference point for the calculation. The Municipal Implementation Plan should also indicate how monthly savings would compare for an average APP customer, taking into account the seasonal variation in solar production and credit value under Net-Crediting.

A third option - layering the E- SFA program with opt-out CDG (i.e., allowing dual participation in the E-SFA program and opt-out CDG) - was discussed during the collaborative and, in turn, was greatly supported by numerous stakeholders. Recently the dual participation option was included in a petition seeking limited rehearing or reconsideration of the Commission's Order authorizing the E-SFA program.[20] Specifically, the CCSA Petition requests rehearing or reconsideration of the Commission's determination that customers participating in the E-SFA program will not be permitted to simultaneously participate in another CDG project, or to simultaneously enroll in a remote crediting or remote net metered project. The CCSA Petition states that dual participation in E-SFA and CDG would enhance both programs toward the CLCPA's goals and that, because the E-SFA does not actually assign a customer to a CDG project, simultaneous participation would not result in a customer subscribing to more than one

[20] Case 19-E-0735, Coalition for Community Solar Access's Request for Rehearing (filed February 2, 2022) (CCSA Petition).

CDG project. The CCSA Petition notes that, if allowed, dual participation would allow APP customers to receive both the flat $5 monthly credit as well as monthly savings from a standard CDG subscription. This could encourage CDG Sponsors - or in this case, CCA Administrators - to enroll APP customers into an opt-out CDG program within National Grid's communities by creating an equitable opportunity to provide APPs additional CDG savings. With that, and if permitted, we must ensure that dual participation does not cause issues with over-crediting customers more than what their bill requires. Municipalities and their CCA Administrators will need to ensure that the opt-out CDG program will be designed and implemented consistent with Commission decisions regarding alignment with the E-SFA program, which will be addressed in the E-SFA proceeding, Case 19-E-0735.

## Subscribing Opt-In CDG Customers

An opt-out CDG program can obstruct enrollment and cause confusion for those customers who have already opted into a CDG project - yet are still on their individually elected CDG developer's membership waiting list and, consequently, their opt-in choice is unknown or has not yet been validated by the utility. To recognize those customers' opt-in choices, a process for how to treat subscribing customers must be developed. In this situation, Staff recommends prioritizing those customers' opt-in choice and allowing customers who appear on another CDG project's allocation form to be removed from the CCA opt-out program and subscribed to their individually elected opt-in project without requiring the customer to opt-out of their CCA's opt-out CDG program. Utilities should develop a procedure to prioritize the customer's opt-in choice by categorizing each CDG participant as either opt-out or opt-in and, uninterruptedly, transferring that customer to their opt-in CDG project when the project goes live. The CCA Administrator should be notified by the utility monthly on which customers were moved out of the opt-out program and into an opt-in project.

One potential procedure would be for utilities to add an "opt-out program" column to their CDG allocation forms, which would then be used by the CDG project owner(s) to indicate that the customer allocation is part of an opt-out CCA program. When a current CDG customer appears on an allocation form from a new opt-in project, the utility could then cross reference the customer's existing allocation. If the existing allocation is not indicated as opt-out, the new

allocation will be rejected, per the current process. But if the existing allocation is indicated as opt-out, the new opt-in allocation will be accepted and the customer's next monthly opt-out allocation rejected - if the customer has not yet been removed by the CCA Administrator and CDG project owner. Staff requests feedback from the utilities on the practicality of this concept, as well as alternative ideas for implementing this recommendation.

This recommendation is intended to ensure the customers' choice is being recognized and to prevent an opt-in customer from breaching their subscriber agreement contract with their individually elected CDG provider - which could lead to membership unpredictability and customer confusion. If a utility has validated an opt-in customer and is, therefore, aware that a customer is allocated to an opt-in project, but that customer's CDG project has not reached its commercial operation date, the utility should treat the customer as a current CDG member and not include them on the list of eligible customers when CCA Administrators request the list from utilities. Comments were received strongly supporting prioritizing a customer's opt-in CDG choice with recognition that the utilities will need to come up with a process to do so.

## Opt-Out CDG Specific Outreach and Education

A municipality's CCA outreach and education (O&E) plan is one of the most substantial components of an opt-out program as it must ensure that all eligible customers are aware of their municipality's CCA program and that they are mindful of their choices for their CCA to be deemed successful. Ensuring opt-out eligible customers are properly educated on the CCA program and informed of their right to opt-out of participating, is an absolute must. Customers need to clearly understand their municipality's program offering(s) and the implications of their energy decisions. For that reason, Staff recommends that the opt-out CDG O&E complies with the CCA Framework requirements. Those requirements require an Administrator to provide multiple forms of outreach information and education to potential CCA members over no less that a two-month period and then provide at least one opt-out notification, on municipal letterhead, that sets an opt-out period of at least 30 days.[21] With that, there are specific opt-out

[21] These CCA Rules were discussed within Staff's CCA Whitepaper and may be subject to change in future CCA orders.

CDG O&E requirements that need to be established to guarantee that customers who also have a supply product are not confused by another product offering or misguided by the timing of the offerings, as well as requirements specific to opt-out CDG, including O&E for a phased-in CDG program.

### Outreach and Education

Staff recommends that Administrators only be permitted to conduct a combined CCA supply and opt-out CDG O&E period if those products are offered within six months of each other. To increase customer awareness, there should be publicly held O&E meetings providing education on both products, with those meetings clearly discussing the differences between the product offerings. To simplify, if a municipality is offering both CCA supply and opt-out CDG, and each of the two products will be on a customer's bill within six months from the end date of the O&E period, there should be one additional publicly held meeting conducted, in addition to the number of meetings required for O&E to offer CCA supply, before the combined opt-out letter is mailed. If a municipality is offering both CCA supply and opt-out CDG, but both product offerings will not be offered within six months from the end date of the O&E period, the municipality shall conduct a full O&E period for each product offering. In the case when a municipality is solely offering CDG and the opt-out CDG is phased-in with CDG memberships for a certain customer class beginning six months after the initial O&E period, the Administrator should conduct an O&E period for each CDG phase that involves at least one publicly held meeting, which should target the customer class of that phase, and an opt-out letter specific to the CDG offering. When a municipality has multiple Administrators who will be performing O&E during overlapping periods, the O&E plans for each product should be reviewed by the municipality. Verification of the municipality's review should be included in the Administrator's filed Municipal Implementation Plan.

The O&E should provide clear communication to potential customers about CDG subscriptions. This would include education about how CDG generally works, how savings are calculated, seasonality of project generation, how credits appear on the bill, enrollment timelines, and how to opt out. Administrators should be required to communicate on an annual

basis with their CDG customers and share information on their programs' performance and benefits, as well as information on how to contact their Administrator with questions or issues.

### Opt-out Letters

Like the CCA supply opt-out letters, customers should receive a letter that plainly describes the opt-out CDG offering, its savings, and how someone can opt-out. The opt-out letter should be provided in the customers primary language, if known. Staff recommends that APP customers receive an opt-out CDG letter that includes additional information on the impact a CDG subscription would have on their status as an APP. In most instances, Staff expects that this communication would confirm for the customers that participation in a CDG program will not negatively impact this APP status. Generally, these letters must be simple to understand, explain the CDG program clearly and explicitly communicate the program's benefits.

When a municipality has chosen the same Administrator for its supply and CDG products and their eligible customers will be initially offered supply and, in time, will be eligible to receive an opt-out CDG membership, the initial supply opt-out letter may only include general information regarding the opt-out CDG program. As previously explained, if each of the two products are on a customer's bill within six months from the end date of the O&E period, a combined opt-out letter should be allowed. However, if CDG credits are not on a customer's bill within that six-month block, the supply opt-out letter should exclusively focus on informing the customer of their supply opt-out options. While understanding the importance of making sure customers are aware of their options and potential upcoming savings, these recommendations are aimed at preventing customer confusion and promoting transparency as to when a customer may be eligible to participate in CDG. This should be the same case for municipalities who offer CDG prior to supply. Comments were received in support of the additional opt-out CDG product O&E requirements.

## Section 3 - Data Access and CDG Crediting and Billing

### Data Access

The CCA Framework Order established rules to ensure that customer data and IT systems be sufficiently protected before the utilities can share the data necessary for facilitation of a CCA

program. The CCA Framework Order required the development and implementation of a CCA DSA for parties to agree to before data would be released by the utility to the CCA Administrator. The CCA DSA includes cybersecurity and privacy controls that address the risk to both the utility IT systems and customer privacy. In its Cybersecurity Order, the Commission adopted minimum cybersecurity and privacy protections necessary for access to customer data and with that, an Energy Service Entities DSA (ESE DSA) was established.[22] As discussed within Staff's CCA Whitepaper, when the CCA DSA was originally put into place, there was not an existing document that could be used for CCA data needs. To ensure consistent treatment of parties and ensure the correct protections are in place, Staff recommended that the CCA DSA be replaced with the requirements established in the Cybersecurity Order and, therefore, replace the CCA DSA with the ESE DSA. With the data for opt-out CDG falling outside of what was defined in the CCA DSA and the ESE DSA not allowing for opt-out enrollment, the Administrators and some utilities have been using the ESE DSA with an addendum that allows for the data necessary to facilitate an opt-out CDG program, while concurrently using the CCA DSA for their opt-out supply program. Understanding that the Data Access Framework's Data Ready Certification process will replace all existing data sharing agreements in the future, Staff recommends the continued use of the ESE DSA with an addendum specific to the data needs for CCA, including opt-out CDG and opt-out supply until that time.[23]

Regarding the data required to implement an opt-out CDG program, Staff recommends that each utility test and confirms that their IT systems can produce the data necessary for the program, including historic usage for all eligible CDG customers, prior to opt-out CDG program implementation.

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[22] Case 18-M-0376, et al., Proceeding on Motion off the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place, Order Establishing Minimum Cybersecurity and Privacy Protections and Making Other Findings (issued October 17, 2019) (Cybersecurity Order).

[23] Case 20-M-0082, Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data, Order Adopting a Data Access Framework and Establishing Further Process (issued April 15, 2021).

Utilities should be permitted to share with a CCA Administrator information and data related to their APP customers, including identification of APP status and historical usage data. This program would be a guaranteed cost savings program targeting APP customers first and with the execution of a DSA between the utilities and the CCA Administrator, Administrators will be authorized to implement an opt-out program that offers cost saving benefits to APP customers.

When integrating an opt-out CDG program, Staff recommends excluding customers from the aggregated data and customer specific contact information if they have an active onsite or remote net metering account, are already participating in CDG, are customers with less than 1000 kWh annual consumption, are currently allocated by the utility to a CDG project with a near term commercial operation date or have a DER block on their account. Staff recommends including customers who are on a time-of use or time varying rate, have an ESCO block on their account, or are being served by an ESCO.

### Aggregated Data

Data should be compiled by municipality and include:

1. the number of eligible customers by service class, with a subset for the number of eligible APP customers.
2. the aggregated energy for electricity by month for the past 12 months, by service class with a subset load for APP customers.

### Customer Contact Information

This data should consist of the customer of record's name, mailing address, service address, proxy ID number,[24] meter read/cycle information, primary language, if available, and any customer-specific alternate billing name or address.

### Detailed Customer Data

This data consists of account number, point of delivery (PoD ID) if available, and 12 months of historical usage data for all program participants. Consistent with the data transfer timelines established in the CCA Framework Order, utilities should transfer the aggregated data

[24] Proxy ID number for a given customer should remain with that customer for the life of the CCA program. This will ensure that the Administrator's customer's records remain accurate and consistent throughout the program's numerous data request.

within twenty days of a request from the municipality or the CCA Administrator and the customer specific data to the municipality or CCA Administrator within five days of a request. Detailed Customer Data necessary to the municipality or CCA Administrator for opt-out CDG should be transferred within five days of a request.

## CDG Billing and Crediting

The ability for customers to receive understandable, timely, and accurate billing is imperative for all types of customer energy choices and, in support of this, consumer protection requirements have been created for utility billing practices throughout numerous proceedings. With the use of an opt-out CCA enrollment process, it is necessary to ensure a sufficient level of customer protections are in place, in addition to those existing outside of the CCA model. To reduce the potential for additional customer confusion through opt-out enrollment, it has been imperative that CCA participants receive a consolidated bill that includes their CDG and/or ESCO supply charges in addition to their utility charges. When the Commission considered Joule Assets' petition to offer opt-out CDG as part of its CCA program, the potential for customer confusion from a CDG dual billing model was evaluated. It was determined by the Commission that the addition of an opt-out CDG product to the CCA program would not work until CCA participants could receive a single bill to include all their energy related choices. In the Commission's Consolidated Billing Order, the Commission adopted a Net-Crediting model for consolidated billing and, with that, opt-out CDG could potentially move forward from a consolidated billing perspective.

Over the past several years, the CDG Billing & Crediting Working Group has worked with the utilities on their progress to automate their Net-Crediting billing processes. The last filed update on their progression was submitted within the Commission's Consolidated Billing

Proceeding's October 2020 Billing Update Reports.[25] These reports included the following dates:

- National Grid's Value Stack crediting for Value Stack CDG projects and CDG Net-Crediting Program for Value Stack projects to be completed in September 2021.
- NYSEG/RGE anticipate automation to be completed by end of 2021.
- Consolidated Edison is making its best effort to begin the Net-Crediting Program in June 2021.
- O&R anticipate that automation of the Net-Crediting methodology for CDG Value Stack projects will be complete in June 2021.
- Central Hudson estimates it will be able to commence automated billing of Net-Crediting in September 2021.

As the dates included in each of the utility's Billing Update Reports are now long past due, Staff recently reached out to the utilities on their advancement and as of February 2022, the following timelines were reported for when each utility will complete their Net-Crediting automation for value stack projects:

- National Grid intends to automate Value Stack Net-Crediting calculation and subscriber allocation by summer of 2022, and host reporting by December 2022.
- NYSEG/RGE intend to have Net-Crediting implemented by the end of 2022. They intend to take a staggered approach with phasing of all Value Stack projects to automation expected to be complete by Summer 2023.
- Consolidated Edison expected to have Net-Crediting implemented by end of February 2022.
- O&R reports that its Net-Crediting is currently automated, with 11 projects participating in Net-Crediting.

[25] Case 19-M-0463, In the Matter of Consolidated Billing for Distributed Energy Resources, National Grid Billing Upgrade Report, New York State Electric and Gas Corporation (NYSEG)-Rochester Gas and Electric Corporation (RGE) CDG Net-Crediting Billing Upgrade Report, Con Edison Billing Upgrade Report, Orange and Rockland Utilities, Inc. (O&R) Billing Upgrade Report, and Central Hudson Gas and Electric Corporation (Central Hudson) Billing Upgrade Report (all filed October 1, 2020).

- Central Hudson is currently beginning the testing phase for Value Stack Net-Crediting, with full automation for Value Stack Net-Crediting expected to be complete by the 2nd half of 2022.

Staff initially recommended that an opt-out CDG program should not begin until the community's utility properly implemented automated Net-Crediting billing processes as customers, including APP customers, need to be fully protected and ensured that they will be billed in an accurate and timely manner. Agreeing that customers need protections from receiving inaccurate bills, many stakeholders commented and cautioned against waiting for the utilities to automate their Net-Crediting billing processes as they have lost trust in the utilities to complete their automation efforts and/or accurately bill for CDG credits.

Understanding that the utilities' automation implementation delays can significantly interrupt the CDG market from offering a seamless Net-Crediting billing option, additional billing incidences have been reported to Staff over the past several months that have, similarly, impacted both the CCA and CDG market. For that reason, and in recognition of the comments received on this topic, Staff is recommending that the Commission establish quarterly utility CDG billing and crediting performance reports, utility performance metrics and consumer protection measures related to all CDG crediting & billing, including Net-Crediting billing.

Recently, Staff was notified that several of the State's investor-owned utilities have, or currently are, experiencing numerous ongoing billing issues that have left tens of thousands of New Yorkers confused about their energy costs and their energy choices. Instances have occurred, and are still occurring, where customers have not been billed for several months and later received multiple bills within a short period, or a single very high bill due to not being billed for any of their usage for that extended period. There have also been many reports of CDG members not receiving appropriate credits on their bills, when those bills do finally arrive.

Although some of these occurrences have happened at a broader utility level and others are tied to issues unrelated to CDG crediting and billing – including Net-Crediting – a significant number of customers, including current CCA and opt-in CDG customers, along with the CCA and CDG market participants have been impacted by the utilities' inability to properly bill customers

in a timely fashion and/or delays in automating their Value Stack crediting. It's important to note that these billing deficiencies have also impacted the CDG project's ability to bill and collect payments from the utilities and/or customers for the generation that has been produced by these CDG projects throughout these timeframes. This has led to DER provider capital issues and, in some instances, the potential for default on their contractual obligations to their customers and project funding sources.

These issues, which originate with the utilities, are greatly impacting CCA and CDG markets and action should be taken by the Commission to ensure regulatory action is taken against the utilities to prevent them from inadvertently pushing these market participants out of New York, as well as unnecessarily increasing future customer acquisition costs by undermining consumer confidence in CDG billing and crediting. With that, and with the recommendations discussed within this straw proposal, Staff seeks to ensure that all CDG customers, including CCA customers, are properly protected from the financial impacts these billing issues are causing customers, even more so for APP customers who will be the first to be enrolled in an opt-out CDG program. Resolution of these utility billing issues will ensure that when New York mass-market customers, including APP customers, are subscribed to a CDG project as part of their municipality's opt-out CCA program, they will be sufficiently protected against the severe billing issues currently experienced at the utilities.

### Utility CDG Billing and Crediting Performance Metrics

To ensure customers are fully protected and informed when these billing issues materialize, to improve the market's visibility with the utility's transition to an automated Net-Crediting billing process, and to provide a means to provide an incentive for more acceptable utility performance in this area, Staff is recommending that the Commission establish quarterly utility CDG billing and crediting performance reports, utility performance metrics and consumer protection measures related to all CDG crediting & billing, including Net-Crediting billing.

Staff recommends requiring each utility to report their quarterly CDG billing and crediting performance for accuracy measures. These reports should be publicly available – to ensure market transparency – and include performances on all CDG crediting and billing with a subset for Net-Crediting accuracy. Reports should include, at a minimum, their percentage of customer

base – including the number of customers – with CDG crediting and billing issues. Reports should also include where each utility is with their implementation and functionality of their automated Net-Crediting billing processes.

In conjunction, Staff recommends that the Commission adopts Negative Revenue Adjustment (NRA) mechanisms to be tied directly to the utilities' CDG crediting and billing performances. Utilities should be held accountable for their performance and, therefore, Staff recommends that NRAs be assessed if it is determined that minimum acceptable standards for accurate billing performance are not being met. To ensure accuracy and consistency of the reporting, an audit process will need to be put in place. This reporting and audit could be structured like the current reporting and audit functions that determine NRAs. Staff is requesting further stakeholder feedback on what the specific performance metrics of such a mechanism should be and what the minimum acceptable standards for accurate billing should be set at.

Staff also recommends that each utility clearly and proactively communicate with customers – using Staff approved written communications – information that includes resolution timeframes, utility phone numbers and contact information, the ability for a customer to enroll in payment plan agreements, and disconnection holds placed on customer accounts. Utilities should work with the CDG host to make sure that allocations are being performed and calculated appropriately so that customers are not overallocated portions of a project thereby raising subscription fees unnecessarily. Utilities should take public responsibility for their billing and crediting mistakes; should train their customer service staff to place blame appropriately on the utility and not, inappropriately, on CDG hosts or State policy in general; and should be held accountable when such erroneous communications are provided to customers or the public at large.

## Section 4 - Opt-out CDG Program Compliance and Enforcement

Staff recommends that any opt-out CDG program follow the Administrator and compliance filing paradigm and requirements that were established in the CCA Framework Order and are anticipated to be addressed in the forthcoming CCA foundation requirements and supply program order. CCA Rules require the Administrator to file an Implementation Plan describing

their program and its goals, plans for value-added services that are included in their RFP, a public outreach plan, and drafts of written communication with its residents, including opt-out letters. As discussed within the April 2021 CCA Whitepaper and to promote the standardization of program structures, the development of a uniform filing structure will reduce the need for duplicate filings. Consistent filing processes between the CCA supply program and the CCA opt-out CDG program will ensure that Staff properly manages the oversight of the two programs, including but not limited to, specific Municipal Implementation Plan compliance filings and necessary reporting. Similar to the requirements for CDG developers, Administrators facilitating an opt-out CDG program should register with the Department and comply with the UBP-DERS prior to partnering with municipalities and subscribing CDG members.

The development of an enforcement mechanism will ensure that all CCA market participants act fairly and conduct business in a way that will protect the CCA market and, in turn, create a more positive, robust CCA program for the State as a whole. For the CCA market to grow and continue to offer communities the many benefits a CCA program might offer, CCA Administrators must act in good faith when it comes to marketing and program administration. Like the Administrator and compliance filing requirements, Staff recommends that the proposed enforcement mechanism discussed within the CCA Whitepaper, if adopted by the Commission for the CCA supply program, be applied to the opt-out CDG program.

## Municipal Implementation Plans

Authorized Administrators will be required to file Municipal Implementation Plans for Staff review and verification. The Municipal Implementation Plan should be specific to the opt-

out CCA program product offering - in this case, opt-out CDG - and, in addition to the existing foundational requirements[26] for a CCA, include the following information.[27]

- Copies of CDG RFPs;
- Copies of CDG Agreements;
- CDG Specific information to include:
    - Magnitude of participating CDG projects including all CDG projects' size, location, utility service territory, and estimated number of participating members for each project;
    - Confirmation that all APP customers will be served first and phasing or prioritizing of subscription enrollments by service classes (APP, SC1 residential, SC2 small business, etc.);
    - Proposed timing of subscriptions and percentage of eligible customers subscribed at the initial subscription phase and future subscription phases;
    - Administrator fees collected, including Community Benefit Fund contributions, if collected; and
    - Net-Crediting rate savings for CDG subscribers.
- Outreach and Education Package;
    - If the municipality has more than one Administrator performing O&E during overlapping periods, proof of verification that the municipal reviewed the O&E plans for each product are required.
    - Demonstrate outreach and education has been performed consistent with the existing outreach and education requirements for a CCA program.

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[26] The foundational requirements include, amongst additional items, a copy of the municipality's CCA enabling local law, Administrator information, and specifics on Outreach and Education.

[27] The timing for when in the program an Administrator will be required to file a Municipal Implementation Plan is under Commission consideration in response to the comments received on the CCA Whitepaper. The reporting of CDG specific information (i.e, actual data compared to estimated or projected data) will be dictated by the timing of the Municipal Implementation Plan filing.

- Demographic information of municipality, including percentages of ESL customers; and
- Final draft of opt-out letter and Frequently Asked Questions (FAQs).

## Reporting

CCA program reporting is necessary to ensure program transparency and oversight. The CCA Framework Order requires an Administrator to file annual reports with the Secretary to be filed by March 31 of each year and cover the previous year.[28] As recommended in the CCA Whitepaper, Staff endorsed the expansion and modification of the existing annual reporting requirements to include standardized and detailed reporting requirements, categories, clear guidelines, and the incorporation of additional reporting requirements established after the CCA Framework Order. Staff also recommends the development and implementation of a reporting mechanism that would allow for quarterly opt-out CDG reporting.

The following items should be reported quarterly and specific to each municipality's opt-out CDG program:

- Details on participating CDG projects including all CDG projects' size, location, utility service territory, and number of participating members for each project;
- Description of phased-in memberships, including number of members by service class;
- Net-credited rate savings for CDG subscribers;
- Administrator fees, including Community Benefit Fund contributions, collected during the reported period and cumulatively;
- Number of customers who opted out in response to the initial opt-out letter;
- Number of customers who cancelled during the year; and

[28] Annual reports include, at a minimum: number of customers served; number of customers cancelling during the year; number of complaints received by the CCA liaison; 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 customers who opted out in response to the initial opt-out letter or letters.

- Number of complaints received by the Administrator, type of complaint received, and how the complaint was resolved.

With the requirement of quarterly reporting, the Commission – along with CDG market participants – will be able to accurately measure the program in a transparent fashion to ensure that the intended policy goals of the program are met.

## Conclusion

As the State continues to transform its power system into one that is cleaner by integrating more DERs into the electric grid, CCA opt-out CDG programs provide a unique chance to both further clean energy goals through local economic development as well as provide guaranteed CDG savings on energy bills for those New Yorkers who need them most. Opt-out CDG encourages municipal governments – and their constituents – to take control of their energy future through locally driven CDG participation. In addition to the CCAs role of educating communities about their energy needs and energy choices, a program like this could prompt the acceleration and development of CDG projects and assist the State in meeting its clean energy goals and CLCPA targets.

Staff is confident that a robust opt-out CDG program will encourage a multitude of new Administrators to join the CCA market, including public and non-profit organizations, leading to an increase in market competition which could spur innovation by means of the CCA model. Through the stakeholder collaborative process conducted over the past several months, and with the assistance of NYSERDA, Staff has identified proposed opt-out CDG program recommendations that could shape potential program rules and requirements going forward. If adopted, opt-out CDG could serve as a powerful tool for local communities, as well as the State as a whole. CCA programs presently have an opportunity to provide benefits for local, community, and individual engagement, and with the opportunity to add, or offer, an opt-out CDG component with sufficient program structure, New York will continue to be a leader in the clean energy movement.