

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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

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**Comments of Natural Resources Defense Council, New Yorkers for Clean Power,  
Environmental Advocates of New York, The Alliance for Clean Energy New York, and  
Sierra Club on the Department of Public Service Staff Straw Proposal on Opt-out  
Community Distributed Generation**

The Natural Resources Defense Council, New Yorkers for Clean Power, Environmental Advocates of New York, Alliance for Clean Energy New York, and Sierra Club (together the “Clean Energy Parties”) submit these comments in response to a March 29, 2022, straw proposal issued by the New York State Department of Public Service entitled “Department of Public Service Staff Straw Proposal on Opt-out Community Distributed Generation” (the Proposal).<sup>1</sup> The Proposal, which seeks to establish a statewide Community Distributed Generation (CDG) program on an opt-out basis under the Community Choice Aggregation (CCA) model, is a critical part of achieving New York’s ambitious climate and clean energy goals under the CLCPA and to the success of municipal efforts to address climate change.

As noted in the Proposal, 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

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<sup>1</sup> Case 14-M-0224, In the Matter of Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Department of Public Service Staff Straw Proposal on Opt-Out Community Distributed Generation (issued March 29, 2022) (Proposal).

energy goals. In addition, the CDG subscriber model allows renters, homeowners, low-income residents, and businesses to access the many benefits of CDG. In November 2021, the Public Service Commission (Commission) issued an Order concluding that, once the proper rules are in place, an opt-out CDG program will provide Low- and Moderate-Income (LMI) and mass-market customers energy savings on their bills and help spur the development of CDG projects across the State, which will help New York reach its ambitious climate and clean energy targets under the Climate Leadership and Community Protection Act (Climate Act).<sup>2</sup>

The Climate Act commits New York to a just and equitable clean energy transition. To this end, the Proposal seeks to require that low-income customers who receive utility assistance program, or Assistance Program Participants (APPs), be prioritized in opt-out CDG program enrollment and receive a minimum discount on their monthly utility bills. Clean Energy Parties agree with both proposals and urge the Commission to modify or eliminate the requirement that all APPs be served within 12 months from the time the first phase of APP customers begin receiving CDG credits on their utility bills to ensure that larger municipalities are able to identify and serve these APP customers. In addition, Clean Energy Parties urge the Commission not to impose a cap on the amount of opt-out CDG that CCAs can utilize at this time to allow this still-nascent market to grow, and to avoid a situation where municipalities are in competition with each other for these programs. Clean Energy Parties also make recommendations regarding opt-out CDG customer eligibility, administrative fees, and utility billing.

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<sup>2</sup> Case 14-M-0224, In the Proceeding on Motion of the Commission to Enable Community Choice Aggregation Program, *Order Identifying Further Procedural Steps Regarding the Development of Opt-out Community Distributed Generations* (issued and effective November 22, 2021).

## **1. Clean Energy Parties Support the Proposal as an Important Part of Meeting the Climate Act's Ambitious Clean Energy Goals**

New York's landmark Climate Act requires that the state's power sector achieve 70% carbon-free electric generation by 2030 and 100% emissions-free electric generation by 2040, and sets targets for specific resources that include six gigawatts (GW) of distributed solar energy by 2025. Recently, the Commission set an even more ambitious target 10 GW of distributed solar by 2030.<sup>3</sup> Opt-out CDG through a CCA program can play a key role in meeting this target by greatly expanding the market for CDG and expeditiously enrolling large numbers of customers in a portfolio of projects. Importantly, such a program can also facilitate buy-in regarding the siting of projects at a time when community opposition to renewable development has been growing. If the projects serve local energy needs and provide guaranteed savings to residents and businesses, those projects are more likely to be embraced and less likely to be the target of NIMBYism.

Opt-out CDG programs are also more inclusive than either opt-in CDG or CCA commodity supply options because they guarantee a bill discount and extend these savings to all low-income members of participating communities. Currently, credit check requirements present a serious obstacle to opt-in CDG participation for many low-income households, and low-income customers cannot participate in CCA supply programs as Assistance Program Participants (APPs) because of the possibility of higher supply prices relative to the utility. Enabling opt-out CDG through a CCA program addresses these barriers to low-income participation and broadly extends the benefits of participation to all LMI households in a community, advancing the equity goals of the Climate Act, which prioritizes Disadvantaged Communities for reductions of emissions of greenhouse

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<sup>3</sup> 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* (issued December 17, 2021) (Roadmap).

gasses and co-pollutants and requires that these communities receive a minimum of 35 percent of the benefits of clean energy investments, with the goal of 40 percent.

## **2. Clean Energy Parties Support the Recommendation for Stand-Alone Opt-Out CDG Programs**

The Clean Energy Parties strongly support Staff's recommendation to enable a stand-alone opt-out CDG program rather than requiring that a CCA also offer a commodity supply program. The option of a stand-alone program may be preferable for municipalities that are hesitant to lock residents and businesses into a fixed supply contract that cannot guarantee savings. Municipalities may choose a stand-alone program simply because they prefer only to support projects on the local grid that support the local economy. In some circumstances a CDG-only CCA may be the only viable option for a community energy program: A community may be too small to win a competitive contract for supply and may not have adequate or desirable intermunicipal aggregation options in its service territory. Adding the option of a stand-alone CDG program will likely spur more communities to consider a CCA program that supports 100 percent renewable energy.

Clean Energy Parties strongly support Staff's recommendation to enable a stand-alone opt-out CDG program for CCAs, and not require that a CCA also offer a commodity supply program. Enabling a stand-alone program expands options for municipalities that are hesitant to lock residents and businesses into fixed supply contracts that cannot guarantee savings. In some circumstances a CDG-only CCA will be the preferred option—and, indeed, may be the only viable option, at least initially—for a community energy program. A community may be too small to win a competitive contract for supply and may not have adequate or desirable intermunicipal aggregation options in its service territory. A CDG-only CCA option will likely spur more communities to pursue a 100 percent renewable CCA program.

### **3. Eligible Participants Should Be Expanded to Include Customers Serving Only a Portion of Their Load With On-Site Renewable Energy and E-SFA Participants**

Clean Energy Parties also support Staff's recommendation to extend the benefits of opt-out CDG participation to certain types of customers that are excluded from the supply contract, including APP customers, time-of-use customers, and customers already served by an ESCO. We recommend that the Commission go further and also include: 1) customers serving only a portion of their annual load with on-site generation; and 2) low- and moderate-income customers participating in National Grid's E-SFA program. Many residents and businesses have properties that cannot accommodate a solar array that is large enough to meet all their energy needs, and have installed smaller systems that meet only a portion of their annual load. We have heard numerous complaints from these customers about current CDG rules prohibiting them sourcing the balance of their load from a CDG, and we recommend that the rules be modified to allow them to participate. From the vantage point of meeting the state's distributed solar targets, the benefits of enabling these customers to source all their supply from renewable resources is clear. We also strongly urge that LMI customers participating in National Grid's E-SFA program be permitted to receive the benefits of opt-out CDG through a CCA program in order to maximize the potential savings to the customers that need it most. The savings from the E-SFA program are likely to be modest, especially in the near-term, and enabling these customers to participate in both programs better aligns with the equity goals of the Climate Act.

### **4. Program Administrators Should be Able to Reinvest Savings in other CCA Programs**

An opt-out CDG framework promises substantial savings in customer acquisition costs that could be re-invested in building out CCA program offerings, including energy efficiency programs. Clean Energy Parties urge the Commission to permit CCA Administrators to invest a

portion of the savings in other programmatic activities of the CCA, provided that the proposed program(s) and budget are included in the Municipal Implementation Plan. CCA programs in New York have barely scratched the surface of their potential to increase penetration of distributed energy resources and should have the opportunity to invest a portion of savings in other programs that benefit customers and help reach other statutory targets of the Climate Act, including reducing energy consumption by 185 trillion British thermal units from the State's 2025 forecast through energy efficiency improvements. The Proposal will also make it easier for CCAs to include CDG programs in their offerings to residents. Opt-out CDG programs allow for efficiencies in terms of customer acquisition and billing. Further, opt-out CDG programs, unlike an opt-out supply contract, can provide guaranteed savings to customers.

#### **5. Opt-out CDG Programs Should Not Be Required to Serve APP Customers Within 12 Months**

Clean Energy Parties support Staff's effort to increase access to CCA programs to APP customers by integrating a statewide CDG program on an opt-out basis under the CCA model. As the Proposal notes, while APP customers can participate in opt-in CDG projects, there has been a low subscription rate to date. Low-income households have had difficulty participating in opt-in CDG programs due to lengthy contractual procedures and distrust between community members and sales representatives, as well as the demands and challenges of daily life, which limit capacity to investigate energy program choices. The additional paperwork and other barriers have resulted in highly unequal participation rates, with the savings and benefits of CDG accruing predominantly to more affluent households.

Clean Energy Parties agree with Staff that the roll out of opt-out CDG offerings through a CCA program should prioritize enrollment of APP customers to address the existing inequity in access to CDG and ensure broad participation by low-income households. However, the proposed

requirement of serving all APPs within a 12-month period will not meet the intended goal because only small municipalities or very economically well-off municipalities will be able to comply with this requirement, leaving opt-out CDG off the table for other municipalities and the low-income households in their jurisdictions. For example, as noted in comments filed by the Community Choice Aggregation Administrators of New York (CCAANY), the City of Yonkers has 13,000 APP households, which would require approximately 50 MWdc—a capacity that would be very difficult, if not impossible, to secure within a 12-month period. CCAANY also notes that if this 12-month service requirement for AAP customers remains, the result will be APPs with minimal allocations saving only a few cents on each electricity bill. Clean Energy Parties recommend that the Commission require municipalities to include their methodology of prioritizing APP customers in enrollment, and report to the Commission every six months on progress in enrolling these customers prior to opening enrollment to the wider community.

#### **6. The Commission Should Not Impose a Cap on the Amount of CDG at this Time**

Clean Energy Parties recommend that the Commission refrain from imposing a cap on the amount of opt-out CDG available for CCA programs. The NY-Sun Expansion Order sets a goal of 800MW of direct, guaranteed bill savings for LMI residential customers, and imposing a cap on these programs would make this goal difficult to meet. Currently, only two small municipalities in one utility territory have used opt-out CDG to offer solar credits to a several thousand customers. Placing an artificial cap on a developing market is likely to stall the growth of this still-nascent market and limit the number of APP customers who can benefit from an opt-out CDG program. In addition, limiting access for these programs could create a situation where municipalities are in competition for limited resources.

## **7. The Commission Should Establish a Deadline for Automating Net-Crediting, with Meaningful Penalties for Failure to Comply**

Clean Energy Parties are deeply concerned about the egregious billing problems adversely affecting customers and urge the Commission to ensure prompt and immediate redress for these customers. The utilities have, moreover, dragged their feet in implementing automated net-crediting billing as required by the Commission in its Order Regarding Consolidated Billing for Community Distributed Generation, issued nearly three years ago. Clean Energy Parties urge the Commission to require that all utilities fully implement net-crediting billing by August 2022 or face monetary penalties. There is no excuse for delaying implementation any longer. We support Staff's recommendation for quarterly performance reporting by utilities on CDG billing and crediting, and strongly support Staff's recommendation for establishing Negative Revenue Adjustment Mechanisms tied to utility performance. Utilities' track record to date has made clear that the threat of penalties is required to improve compliance.

Clean Energy Parties recommend that customer service related to CDG participation also be subject to negative revenue adjustment mechanisms. In the Proposal, Staff recommends that "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."<sup>8</sup> However, the Proposal offers no means for ensuring that utilities follow through with this. The parties urge Staff to recommend time-bound accountability measures to ensure that follow-through on utility responsibility and customer service training for crediting and billing mistakes

Clean Energy Parties support the recommendation that a minimum discount be established for APP customers using the Net-Credit rate savings methodology. However, more data is needed to determine whether the proposed minimum discount of 10% for APP customers is appropriate.

Clean Energy Parties agree with Staff's recognition that there is a need for increased flexibility for savings levels to allow projects to serve more than one savings rate and customer type. While multiple savings rates are beneficial, Staff should wait to determine whether the proposed 10% minimum discount is appropriate when there is more information available to determine whether projects can remain economically viable while offering this level of savings to APP customers.

Respectfully submitted on June 6, 2022,

**Natural Resources Defense Council**

Cullen Howe, Senior Attorney  
Lucas Patterson Lopes, Legal Intern

**New Yorkers for Clean Power**

Jen Metzger  
Senior Policy Advisor

**The Alliance for Clean Energy New York**

Deb Beck Kelleher, Director, Policy Analysis

**Sierra Club**

Josh Berman, Senior Attorney

**Environmental Advocates of New York**

Conor Bambrick, Director of Climate Policy