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August 5, 2024

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Via Electronic Filing
Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Petition of the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College, and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation; **Petition to Intervene and Comments**
Docket No. P-2024-3049623

Dear Secretary Chiavetta:

Enclosed for electronic filing please find a **Petition to Intervene and Comments** filed on behalf of NRG Energy, Inc. with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ *Karen O. Moury*

Karen O. Moury

Enclosure

cc: cc: Office of Competitive Market Oversight (ra-ocmo@pa.gov)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Petition to Intervene and Comments** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

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/s/ *Karen O. Moury*

Date: August 5, 2024

Karen O. Moury, Esquire
Counsel for NRG Energy, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College, and Swarthmore for a Declaratory Order regarding the Implementation of Community Choice Aggregation	:	Docket No. P-2024-3049623

PETITION TO INTERVENE
OF
NRG ENERGY, INC.

Pursuant to 52 Pa Code §§5.61 and 5.74 and the notice published on July 6, 2024 in the *Pennsylvania Bulletin*,[1] NRG Energy, Inc. ("NRG" or "Company") submits this Petition to Intervene in the proceeding initiated by the filing of a Petition for Declaratory Order ("Declaratory Order Petition" or "Petition") by the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College, and Swarthmore (the "Boroughs"). By the Declaratory Order Petition, the Boroughs seek an order from the Commission approving the establishment of a Community Choice Aggregation ("CCA") Program.

In their Petition, the Boroughs are seeking to remove uncertainty concerning the lawfulness under Pennsylvania law and Commission precedent to enable each borough of an opt-out CCA program whereby the boroughs would act as aggregators of the electricity demand of their residents and procure power supply from licensed retail suppliers on their behalf. They propose to engage licensed Electric Generation Suppliers ("EGSs") through a Request for Proposals ("RFP") process to participate in their proposed CCA Program, whereby all existing

[1] 52 Pa.B. 3859.

default service residential and small business customers automatically will be served by the CCA unless they take affirmative action to opt-out.

As discussed further below, NRG meets the standards for intervention in this proceeding and requests that its Petition to Intervene be granted. Pennsylvania's competitive retail energy market has served and is serving customers well. If authorized by the Public Utility Commission ("PUC" or "Commission"), CCAs can provide an additional option for Pennsylvania energy customers, as long as they are well structured and contain proper safeguards. NRG hopes that its long-standing experience in Pennsylvania's retail energy market and PUC policy development combined with the Company's expansive success serving CCAs would help to inform the Commission's deliberation on the Boroughs' Declaratory Order Petition. NRG appreciates the opportunity to share its perspective on the Boroughs' CCA proposal, and we look forward to participating in any future proceedings the PUC may decide to initiate on this topic.

Through its Comments, NRG offers its perspective on Pennsylvania's competitive retail market and shares its experience serving as EGSs in CCAs in other markets where they exist. In addition, should the PUC determine the proposed CCA is lawful under Pennsylvania law and Commission precedent, then NRG urges the Commission to adopt a set of standard guidelines, consistent with those governing CCAs in other markets, to ensure that the CCAs are designed in the best interests of the public. Our message to the Commission is two-fold: 1) Pennsylvania has one of the best functioning competitive retail energy markets in the nation. Pennsylvania customers have benefited for more than two decades from the many options available in the market which, to date, have not included municipal aggregation programs. 2) If the Commission determines the CCAs as proposed are lawful, NRG's experience with them in other markets has

shown that – properly structured – they can co-exist with the existing energy choice market to provide additional competitive opportunities for consumers.

I. BACKGROUND

1. On June 20, 2024, the above captioned Petition for Declaratory Order was filed requesting authorization from the Commission to implement a Community Choice Aggregation ("CCA") Program within the territories of the named Boroughs.

2. According to the Petition, the CCA Program would enroll all default service customers[2] within each borough on an opt-out basis to receive "low, stable prices for renewable energy" from licensed electric generation suppliers ("EGSs") chosen through a Request for Proposal ("RFP") process.[3] The contracts entered into between the retail end users and the selected EGSs would be "subject to the supervision and final approval of the Borough" as a way to provide "the Boroughs' assurance of fair contract terms."[4] The Boroughs would engage a "CCA Administrator" to "advise [the Borough] and act as its agent in connection with the CCA Program"[5] by performing "outreach and education of eligible customers, management of bidding and contracting processes, increasing renewable energy in supply contracts, supporting the EGS in enrollment and billing processes and customer service for participants, and requests to EDC for information."[6] The CCA Administrator would be funded by retail end users through a surcharge added to the EGS electricity power charge.[7] The Petition specifically requests the

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2 Petition at 3, paragraph 6.

3 Petition at 42, paragraph 77-78.

4 Petition at 22 and 24, paragraphs 46 and 49.

5 Petition at 6, paragraph 14.

6 Petition at 16, paragraph 32.

7 Petition at 24, paragraph 48.

Commission to issue an order declaring that neither the Borough nor the CCA Administrator are required to obtain an EGS license from the Commission.[8]

3. The Petition alleges that the CCA Program is necessary for the Boroughs to "act as trustees for the preservation of the environment" and that neither electric distribution company ("EDC") provided default service nor EGS provided competitive supply service have resulted in the procurement of significant amounts or renewable energy or produced competitive prices for renewable energy.[9]

4. The Petition also discusses the need for EDCs to share with the CCA Administrator significant customer information to include personally identifiable information, historical usage, contact information, account number and EDC communication preferences (i.e. customer has accepted electronic notices from EDC).[10] The Petition further seeks assurances "that in providing the information to the Boroughs, [EDCs] would not become obligated to provide similar information to for-profit entities such as EGS."[11]

5. By public notice published in the *Pennsylvania Bulletin* on July 6, 2024, the Commission established August 5, 2024 as the filing due date for any protests or petitions to intervene.[12]

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8 Petition at 48.

9 Petition at 31.

10 Petition at 19-21, paragraphs 39-42

11 Petition at 47, paragraph 84.

12 52 Pa.B. 3859.

II. PETITION TO INTERVENE

6. With more than twenty-five years of experience serving retail customers in competitive markets across the U.S. and as a leading supplier of CCAs in multiple states, NRG is uniquely qualified to offer its perspective on the petition filed by the Boroughs.

A. Leading Essential Home Services Company

7. NRG is the leading essential home services company offering a unique whole-home experience to millions of North American customers. Our family of brands brings the connected future into reality through a unique value proposition centered around smarter energy, innovative services, and essential connections with the home. As a Fortune 500 company, NRG has provided leadership in competitive energy markets by creating a platform that offers consumers more control over their energy use and home automation and protection, especially with its newly acquired tech-forward smart home solutions. NRG serves 8 million customers across North America, including a significant share of retail energy customers in Pennsylvania. Our market share in Pennsylvania is so significant that NRG has three offices – in Philadelphia, Pittsburgh and Wyomissing – staffed with hundreds of employees that support its business. NRG's retail energy subsidiaries include EGSs and Natural Gas Suppliers ("NGSs"), which serve customers which serve customers of all sizes across the Commonwealth.[13]

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13 NRG's licensed retail companies include: Direct Energy Business, LLC (Docket No. A-11025 and A-125072); Direct Energy Business Marketing, LLC (Docket No. A-2013-2368464 and A-2013-2365792); Direct Energy Services, LLC (Docket No. A-110164 and A-125135); Energy Plus Holdings LLC (Docket No. A-20092139745); Gateway Energy Services Corporation (Docket No. A-2009-2137275 and A-2009-2138725); Green Mountain Energy Company (Docket No. A-2009-2139745 and A-2017-2583732); Independence Energy Group LLC d/b/a Cirro Energy (Docket No. A-2011-2262337 and A-2013-2396449); Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business/NRG Retail Solutions (Docket No. A-2010-2192350 and A-2015-2478293); Stream Energy Pennsylvania, LLC (Docket No. A-20102181867 and A-2012-2308991); and XOOM Energy Pennsylvania, LLC (Docket No. A-2012-2283821 and A-2012-2283967).

B. Municipal Aggregator

8. In addition to being one of the largest suppliers of retail energy supply for customers exercising their individual right to choose, NRG also serves numerous municipal/community choice aggregations in several states where they are permitted by law. Primarily through its retail subsidiary Direct Energy Services, LLC ("Direct Energy"), NRG has served municipal aggregations for over 13 years. NRG has been awarded contracts to serve electricity and natural gas to municipalities with customer counts ranging from 1,000 to 200,000 for terms from 12 to 36 months. In the early 2000s NRG's subsidiary Green Mountain Energy Company served more than 90 communities and approximately 400,000 customers in the Northeast Ohio Public Energy Council (known as "NOPEC") community aggregation program.

9. Since 2018, NRG has been awarded contracts to serve electricity and natural gas to over 500,000 aggregation customers in over 100 aggregation programs and municipalities, with some programs including multiple municipalities. The municipalities NRG has been awarded to serve are located in Massachusetts (including the City of Boston), New Hampshire, New Jersey, New York and Ohio. These contracts include multiple product offerings which allow participating customers to choose an electricity or natural gas plan according to their needs and preferences. Our product offerings have included renewable energy from a specified classification or source in the form of renewable energy credits ("RECs").

C. Applicable Legal Standards

10. NRG's attorney in this matter is:

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11. The Commission's regulations allow intervention where a person has an interest in the proceeding which may be directly affected and which is not adequately represented by existing parties, and as to which the person may be bound by the action of the Commission in the proceeding. 52 Pa. Code § 5.72(a)(2). Intervention is also permitted where participation of the person may be in the public interest. 52 Pa. Code § 5.72(a)(3). A "person" includes a corporation and an association. 52 Pa. Code § 1.8.

D. NRG Meets the Applicable Intervention Standards

12. NRG meets the standards for intervention set forth in 52 Pa. Code § 5.72(a). As an entity whose subsidiaries include competitive EGSs and NGSs licensed to do business in the EDC service territories serving the Boroughs, and given the Company's active and award-winning participation in municipal aggregation programs, NRG has interests that will be directly affected by this proceeding.

13. Granting the Petition will allow the proposed CCA Program to go forward which will have a direct and substantial impact on NRG subsidiaries. The CCA Program would operate to serve all the default service customers in a particular geographic area which would fundamentally alter the current state of the competitive market in which all EGSs are on equal footing regarding their opportunity to serve retail customers. There are no Commission approved aggregation programs in Pennsylvania today guaranteeing any particular EGS residential default service customers. Permitting the CCA Program to go forward by issuing the requested declaratory order would have a significant impact on EGS operations in the affected areas. As such, NRG subsidiaries will be directly impacted by the outcome of this proceeding.

14. NRG's interests in this proceeding are unique from and not adequately represented by other parties that may seek to intervene, including individual EGSs or other

organizations interested in electric competition in Pennsylvania in general and in the EDC service territories of the Boroughs. This is because NRG has lengthy experience as a full service home energy services company and has developed significant expertise participating in municipal aggregation programs.

15. NRG's subsidiaries will be bound by the action of the Commission in this proceeding, as implementation of either the CCA Program as proposed or as may be modified by the Commission will change the nature of NRG subsidiaries' activities regarding customers in those service territories. Also, any changes or modifications to current EDC processes necessary to accommodate the CCA Program may also have a substantial impact on current EDC-EGS operational and technical processes.

16. NRG's intervention is in the public interest. The participation by NRG will enable the Company to contribute to the unique perspectives and insights of a leading energy services company representing multiple subsidiaries operating as EGSs in various markets which have a vast array of experience regarding opt-out aggregations and the impact of such aggregations on their ability to compete in the retail market for energy.

17. For all these reasons, NRG submits that granting its Petition to Intervene in this proceeding is in the public interest.

III. ISSUES IDENTIFIED BY NRG'S COMMENTS

18. NRG recognizes that municipal aggregations can provide another pathway to engage customers in the competitive market and be another tool working alongside the existing market structure in Pennsylvania. NRG recommends that any adoption of the CCA proposal be carefully crafted with guidelines to ensure that its implementation does not discourage the existing retail competitive market from offering products and services to Pennsylvania customers. Accordingly, upon review of the CCA Program as set forth in the Borough's

Petition, NRG has identified several significant areas of concerns that it urges the Commission to address if it determines that it has the authority to permit the program to go forward. Additional details about each recommendation are set forth in NRG's Comments.

A. Uniform CCA Guidelines

19. NRG recommends that, at a minimum, the PUC establish statewide CCA guidelines to ensure a level of consistency and minimum requirements for CCA structure, administration, accountability, and customer interaction. Such guidelines will ensure customers are protected, that the Boroughs themselves have a minimum level of requirements they must follow in forming a CCA and that hold them accountable to the PUC, and that suppliers who endeavor to serve them are able to do so efficiently and in compliance with the Commission's regulations.

B. Additional Modifications Beyond Borough's High Level Proposed Guidelines

20. NRG recommends that any CCA program approved by the PUC make clear that shopping customers must be excluded from the CCAs solicitations, and most importantly from receiving any opt-out notifications, and further, that EDCs may not provide data to the Boroughs, its administrator or its chosen EGS about customers receiving supply service from EGSs

21. NRG recommends that the PUC make clear that the CCA will execute a single Service Agreement that includes all the requirements and obligations that both the CCA and the EGS will meet in service of the CCA.

22. NRG recommends that any CCA program approved by the PUC make clear that the seamless moves/instant connect market functionality must be honored. The EDCs must be directed to process seamless moves and instant connect requests ahead of any "default" to the CCA.

C. Recommended Policy Objectives of PUC

23. It is likewise important for the Commission to direct the Boroughs to implement the CCAs in conformance with various policy objectives including:

- Customer Choice and Empowerment.
- Clean Energy Technology Adoption.
- Cost Savings.
- Resilience and Reliability.
- Personal Power.
- Customer Engagement.

D. Boroughs' Implementation Plan

24. Based on NRG's extensive experience serving numerous CCAs across the country, NRG has concerns with several components of the CCA implementation plan in the Borough's Petition – some of which have the potential to render the program unworkable – and others that would present significant challenges for EGSs interested in serving them and therefore warrant clarification and oversight by the PUC. If the Commission determines that the Boroughs may form a CCA and that EGSs are authorized to serve them, in addition to creating statewide guidelines governing CCAs more broadly, the Commission should also require the following clarifications/ modifications to the implementation plan:

- Defined Terms.
- Request for Information.
- Notification and Opt-Out Process.
- Opt-out Structure and Renewable Energy.
- Data Transfer.

- Consumer Protections.
- Transparency of Contract with Third Party Supplier.
- Billing and Reporting.
- CCA Procurement Strategy.

IV. CONCLUSION

WHEREFORE, NRG Energy, Inc. respectfully requests its Petition to Intervene be granted. NRG further recommends that if the Commission determines that it has the authority to approve implementation of the CCA Program that it take into consideration the various modifications and recommendations set forth by NRG's attached Comments and resolve these important issues designed to ensure the proper functioning of a municipal aggregation program.

Respectfully submitted,

/s/ Karen O. Moury

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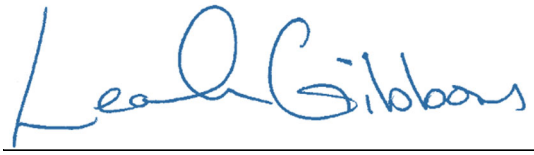
Date: August 5, 2024

Attorney for NRG Energy, Inc.

VERIFICATION

I, Leah Gibbons, state that I am Senior Director, Regulatory Affairs, NRG Energy, Inc. I hereby verify that I am authorized to do this Verification for NRG Energy, Inc. and that the facts set forth in the foregoing **Petition to Intervene** are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at any hearing in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: August 5, 2024



Leah Gibbons
Senior Director, Regulatory Affairs
NRG Energy, Inc.

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College, and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation	:	Docket No. P-2024-3049623

COMMENTS OF NRG Energy, Inc.

Date: August 5, 2024

Comments of NRG Energy, Inc.

NRG Energy, Inc. ("NRG") respectfully submits these Comments in response to the Petition of the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College, and Swarthmore ("the Boroughs") for a Declaratory Order regarding the Implementation of Community Choice Aggregation ("CCA") filed with the Public Utility Commission ("Commission" or "PUC") on June 20, 2024.[1] In their Petition, the Boroughs are seeking to remove uncertainty concerning the lawfulness under Pennsylvania law and Commission precedent to enable each borough of an opt-out CCA program whereby the boroughs would act as aggregators of the electricity demand of their residents and procure power supply from licensed retail suppliers on their behalf. They propose to engage licensed Electric Generation Suppliers ("EGSs") through a Request for Proposals ("RFP") process to participate in their proposed CCA Program, whereby all existing default service residential and small business customers automatically will be served by the CCA unless they take affirmative action to opt-out. Through these comments, NRG will offer its perspective on Pennsylvania's competitive retail market and share its experience serving as EGSs in CCAs in other markets where they exist. In addition, should the PUC determine the proposed CCA is lawful under Pennsylvania law and Commission precedent, then NRG urges the Commission to adopt a set of standard guidelines, consistent with those governing CCAs in other markets, to ensure that the CCAs are designed in the best interests of the public.

Our message to the Commission is two-fold: 1) Pennsylvania has one of the best functioning competitive retail energy markets in the nation. Pennsylvania customers have benefited for more than two decades from the many options available in the market which, to date, have not included municipal aggregation programs. 2) If the Commission determines the CCAs as proposed are lawful, NRG's experience with them in other markets has shown that – properly

[1] Published in the Pennsylvania Bulletin on July 6, 2024, 54 Pa.B. 3859.

structured – they can co-exist with the existing energy choice market to provide additional competitive opportunities for consumers.

Who We Are

NRG is the leading essential home services company offering a unique whole-home experience to millions of North American customers. Our family of brands brings the connected future into reality through a unique value proposition centered around smarter energy, innovative services, and essential connections with the home. As a Fortune 500 company, NRG has provided leadership in competitive energy markets by creating a platform that offers consumers more control over their energy use and home automation and protection, especially with its newly acquired tech-forward smart home solutions. NRG serves 8 million customers across North America, including a significant share of retail energy customers in Pennsylvania. Our market share in Pennsylvania is so significant that NRG has three offices – in Philadelphia, Pittsburgh and Wyomissing – staffed with hundreds of employees that support its business. NRG's retail energy subsidiaries include EGSs and Natural Gas Suppliers ("NGSs"), which serve customers of all sizes across the Commonwealth.[2]

In addition to being one of the largest suppliers of retail energy supply for customers exercising their individual right to choose, NRG also serves numerous municipal/community choice aggregations (CCA) in several states where they are permitted by law. Primarily through its retail subsidiary Direct Energy Services,

[2] NRG's licensed retail companies include: Direct Energy Business, LLC (Docket No. A-11025 and A-125072); Direct Energy Business Marketing, LLC (Docket No. A-2013-2368464 and A-2013-2365792); Direct Energy Services, LLC (Docket No. A-110164 and A-125135); Energy Plus Holdings LLC (Docket No. A-20092139745); Gateway Energy Services Corporation (Docket No. A-2009-2137275 and A-2009-2138725); Green Mountain Energy Company (Docket No. A-2009-2139745 and A-2017-2583732); Independence Energy Group LLC d/b/a Cirro Energy (Docket No. A-2011-2262337 and A-2013-2396449); Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business/NRG Retail Solutions (Docket No. A-2010-2192350 and A-2015-2478293); Stream Energy Pennsylvania, LLC (Docket No. A-20102181867 and A-2012-2308991); and XOOM Energy Pennsylvania, LLC (Docket No. A-2012-2283821 and A-2012-2283967).

LLC ("Direct Energy"), NRG has served municipal aggregations for over 13 years. We have been awarded contracts to serve electricity and natural gas to municipalities with customer counts ranging from 1,000 to 200,000 for terms from 12 to 36 months. In the early 2000s NRG's subsidiary Green Mountain Energy Company served more than 90 communities and approximately 400,000 customers in the Northeast Ohio Public Energy Council (known as "NOPEC") community aggregation program.

Since 2018, we have been awarded contracts to serve electricity and natural gas to over 500,000 aggregation customers in over 100 aggregation programs and municipalities, with some programs including multiple municipalities. The municipalities we have been awarded to serve are located in Massachusetts (including the City of Boston), New Hampshire, New Jersey, New York and Ohio. These contracts include multiple product offerings which allow participating customers to choose an electricity or natural gas plan according to their needs and preferences. Our product offerings have included renewable energy from a specified classification or source in the form of renewable energy credits (RECs).

With more than twenty-five years of experience serving retail customers in competitive markets across the U.S. and as a leading supplier of CCAs in multiple states, NRG is uniquely qualified to offer its perspective on the petition filed by the Boroughs.

NRG has a long history in Pennsylvania of advocating for policies in support of competitive retail markets, dating back before Pennsylvania's retail energy market opened in 2000. We have advanced reforms aimed at creating a more robust, fully competitive market structure capable of delivering the innovative solutions that consumers demand and that can only be provided by competitive entities with the economic incentive and entrepreneurial drive to deliver value to consumers

economically.[3] We have also supported the PUC's efforts to ensure that consumers are adequately protected as they engage with retail suppliers. And, in the spirit of "see something, say something," we have encouraged the Commission to exercise its enforcement powers to restrict or eliminate non-compliant behavior by suppliers who step out of bounds.

Notwithstanding the broad-brush assertions of the petitioners that paint a less than favorable view of EGSs and the retail choice market in Pennsylvania, NRG strongly supports the power of individual choice and favorable conditions for the broad availability of multiple competitive products, where every customer has the ability to choose the product, price, and supply plan that meets her own unique preferences and needs.

Pennsylvania's Competitive Retail Market Delivers Value to Consumers

With the restructuring of Pennsylvania's electricity market in 1997, consumers were empowered to choose the provider of their electricity supply for their homes and businesses. While the number of customers opting to shop has fluctuated over time, as of the end of May 2024, 1.6 million customers are currently exercising their right to choose. Licensed Electric Generation Suppliers ("EGSs") serve almost two-thirds of all electricity load across the Commonwealth. EGSs serve just under one third (27%) of all residential customer load, while three quarters of all commercial load (74%) and almost all industrial load (96%) is served by EGSs.[4]

Based on NRG's experience in Pennsylvania where no municipal aggregations currently exist, retail choice does indeed work to effectively benefit smaller retail

[3] NRG has participated in numerous PUC proceedings, including: the PUC's Retail Market Enhancement proceeding where structural changes to default service, supplier consolidated billing, seamless moves and instant connects, accelerated switching, among other policies were either adopted or considered; utility default service proceedings; Commission rulemakings related to consumer protections, customer notices and disclosures, among others. NRG also petitioned the PUC to deliver more transparency to consumers by adopting supplier consolidated billing; and NRG has intervened in utility rate cases to ensure appropriate cost allocation and transparency of the utility default service rates.

[4] PAPowerSwitch Monthly Update as of 5/31/24.

customers. For more than two decades, customers have been choosing electricity plans that offer renewable energy, long term price stability, cash or travel rewards, dynamic pricing options, and charitable giving, to name just some of the options available. Customers make their shopping decisions based on what is important to them and what delivers value to them. Price alone is not the deciding factor for many customers who are willing to pay more to achieve their own goals.

In addition to the option to shop for electricity supply, customers also have the ability to remain on default service provided by the regulated monopoly utilities who offer a default service rate that is regulated by the PUC. The existence of utility provided default service in Pennsylvania's retail market necessarily impacts the proper functioning of the competitive retail market, as the regulated monopolies control every aspect of every customer's journey to switch suppliers. For example, the regulated monopolies control the flow of all customer data. They control every market transaction to enroll, drop and bill every customer, and they control how quickly those transactions occur. They run the systems that suppliers must navigate to transact in the retail market, and they have the exclusive right to issue consolidated bills to every residential customer that includes supplier charges. Even though the current market structure today makes the regulated utilities the gatekeepers of Pennsylvania's retail choice market and this must be considered by any EGS wishing to make competitive offers available, at least 100 EGSs are actively participating in the market offering innovative and consumer driven products.[5]

The Boroughs assert that their CCA proposal will solve their perceived problem that "neither retail choice nor default service has been effective in expanding availability of renewable energy." They point to a decrease in shopping rates between 2016 and 2023 and highlight the dramatic differences between shopping rates of residential customers versus large commercial and industrial customers as

[5] Pennsylvania Public Utility Commission, *Retail Electricity Choice Activity Report,* 2022, p. 17.

evidence of this problem. To be clear, voluntary purchases of renewable energy include percentages of renewable energy above and beyond the renewable energy content required to meet the AEPS statewide target, which is mandated by state law and which all utilities and EGSs must meet. The PUC's own data shows that fully a third of shopping residential customers have chosen to buy renewable energy, demonstrating that a significant number of customers are indeed making the choice to go green – all on their own.[6] In fact, even in the earliest days of shopping for electricity, demand for renewable energy by customers of Green Mountain Energy Company led to the development of the first utility-scale wind power project east of the Mississippi in southwestern Pennsylvania in 1999. The issue is not the *availability* of renewable products in the competitive market but rather how to encourage customers to shop for them.

In fact, it is the underlying market structure, briefly described above, that inherently restrains the evolution of Pennsylvania's competitive retail market into one in which a majority of residential customers are receiving competitive supply products and EGSs are more encouraged to offer a greater diversity of such products. As previously noted, NRG has long advocated for structural changes to the market that will spur increased competition among EGSs for residential customers, leading to increased innovation, and a greater variety of options – including renewable energy options – for Pennsylvania consumers to choose. In NRG's view, changes related to the utility provided default service product can be implemented by the Commission and would have a far greater impact on a far

[6] As of July 18, 2024, the PAPowerSwitch site listed more than 40 renewable energy offers ranging from 25% - 100% renewable energy content available to customers located in the West Penn Power service territory serving the Boroughs, including from NRG's retail companies. Searches of the PUCs shopping site for the MetEd, Penelec, Peco and PPL service territories serving the Boroughs' zip codes produce similar results. Such options have been available to customers for decades and according to the PUC's own reporting, green shopping rates increased by 6% between 2020 and 2022. See Pennsylvania Public Utility Commission, *Retail Electricity Choice Activity Report*, 2022, p. 28.

greater number of residential customers than implementing numerous municipal aggregations in various small areas throughout the Commonwealth.

While NRG recognizes that municipal aggregations can provide another pathway to engage customers in the competitive market and be another tool working alongside the existing market structure in Pennsylvania, because they have not yet been implemented in Pennsylvania, NRG recommends that any adoption of the CCA proposal be carefully crafted with guidelines to ensure that its implementation does not discourage the competitive market from offering products and services to Pennsylvania customers.

CCA Guidelines

Should the PUC determine that CCAs present a unique instance where affirmative consent from individual customers is not required to be initially enrolled in the program, and allows EGSs to serve CCAs, NRG recommends that, at a minimum, the PUC establish statewide CCA guidelines to ensure a level of consistency and minimum requirements for CCA structure, administration, accountability, and customer interaction. Such guidelines will ensure customers are protected, that the Boroughs themselves have a minimum level of requirements they must follow in forming a CCA and that hold them accountable to the PUC, and that suppliers who endeavor to serve them are able to do so efficiently and in compliance with the Commission's regulations. These suggestions and proposals are consistent with NRG's experience serving as EGSs in other states' community aggregation programs.

The Boroughs' petition describes the proposed CCA program and offers a brief set of high-level guidelines within which it commits to operate. These guidelines include public education, respect for customer choice, competitive procurement of EGS services, transition to renewable energy, and retaining EDCs as default suppliers. While many of the proposed guidelines are fairly standard terms for CCAs nationwide, at least three require clarification to ensure a successful

program that does not interfere with the smooth functioning of the competitive retail market. The PUC should establish clear standards that protect both CCA customers and the competitive retail market that are under its care. If the Commission determines that the Boroughs may form CCAs and that EGSs are authorized to serve them, NRG recommends the following modifications be made to the guidelines offered by the Boroughs:

- The Boroughs propose to respect customer choice and only transfer customers "currently receiving default service, Customers who have already selected service from an EGS, who have elected to be served under a special tariff offered by the EDC, or who are otherwise excluded . . . *will not be transferred*".[7] While the acknowledgement that customers' affirmative choices will be honored is absolutely essential, NRG requests the Commission make clear that shopping customers may not be solicited by their local governments to participate. In other jurisdictions that have implemented CCAs, shopping customers may be made aware as residents in a town of the local government's plans to create a CCA, but they are typically excluded from communications aimed at *opting out* of the CCA program because these customers have already made an affirmative choice to enroll with their chosen supplier. In Massachusetts for example, a municipality may send educational material to all residents, but the guidelines prohibit the town, its consultant, or their energy supplier from sending shopping customers. Ohio similarly prohibits aggregation programs from sending opt-out notices to customers being served in the competitive market. Opt-out communications only serve to confuse shopping customers who would be told that inaction on their part results in a change in their electricity supply service – which in their case is simply not true. **NRG**

[7] Petition of the Boroughs of Carlisle, Hatboro, Lansdowne, Media, Narberth, State College, and Swarthmore ("the Boroughs") for a Declaratory Order regarding the Implementation of Community Choice Aggregation ("CCA"), June 20, 2024, p.3

recommends that any CCA program approved by the PUC make clear that shopping customers must be excluded from the CCAs solicitations, and most importantly from receiving any opt-out notifications, and further, that EDCs may not provide data to the Boroughs, its administrator or its chosen EGS about customers receiving supply service from EGSs.

- The Boroughs propose that all electric power and the services of EGSs will be competitively procured. The petition appears to contemplate additional obligations or requirements for its chosen EGS that appear to fall outside of a "Service Agreement". For example, the petition states that the chosen EGS must "agree that its customer service contract is subject to review and approval by the Boroughs."[8] NRG has two concerns. First, all supplier obligations must be spelled out in the "Service Agreement" executed between a municipality and its chosen EGS. CCAs do not typically have a separate "customer service contract" or any other side contracts or requirements. Second, the Service Agreement must have flexibility to accommodate the unique business practices of individual EGSs. In NRG's experience, these are negotiated agreements that meet the needs of both parties. **NRG recommends that the PUC make clear that the CCA will execute a single Service Agreement that includes all the requirements and obligations that both the CCA and the EGS will meet in service of the CCA.**

- The Boroughs propose that the CCA become the new "default" option for customers moving into their jurisdiction.[9] As the Commission is aware, the RMI End State Final Order directed the implementation of seamless moves

[8] Petition at para. 7, p. 4.
[9] Petition at para. 9, p. 4.

and instant connects.[10] These programs enable a customer to move to a new address within the same utility service territory and retain her current EGS without interruption. Similarly, instant connects enables a customer to begin service with a new EGS on "day one" of new utility service by providing affirmative consent to their chosen supplier – without the customer first having to go on utility default service. The PUC affirmed that implementation of 3-day switching did not obviate the need for these programs, which were implemented in July 2016 and which customers have availed themselves of them ever since.[11] **NRG recommends that any CCA program approved by the PUC make clear that the seamless moves/instant connect market functionality must be honored. The EDCs must be directed to process seamless moves and instant connect requests ahead of any "default" to the CCA.**

In addition to the guidelines proposed by the Boroughs, NRG recommends that the PUC require any CCA program it may approve to also include several additional guidelines aimed at delivering energy-related services to CCA customers. NRGs proposed guidelines are intended to foster innovation, customer engagement and the transition to a more sustainable energy future. In fact, the Massachusetts Department of Public Utilities (MA DPU) recently issued an Order adopting revised CCA guidelines that include language to effectuate the proposals described below.[12] NRG's proposals also have the added benefit of aligning with the stated goals outlined by the Boroughs.

The Boroughs should be encouraged to use the CCA opportunity to deliver real value to their consumers *beyond* renewable energy supply. CCA guidelines should encourage suppliers to offer a variety of energy-related services as part of any

[10] Public Utility Commission *Retail Market Investigation End State of Default Service Order*, February 14, 2013, p. 74.
[11] Public Utility Commission *Secretarial Letter, EDC plan filings for Seamless Moves and Instant Connects*, March 20, 2015.
[12] Massachusetts Department of Public Utilities (MA DPU) 23-67-A Order, July 9, 2024.

CCA program, and they should permit EGSs to communicate directly with CCA customers, which is often a necessary means to obtaining demand-related behavior that can mitigate supply costs. The products and tools that could be made available cost-effectively to customers range from the simple, such as online account management apps on their mobile devices to hardware-based Virtual Power Plants (VPPs) – options that align very well with the Boroughs' stated goal to encourage the development of distributed energy resources, building energy efficiency, EV charging and VPPs.[13] More broadly, this approach can offer numerous benefits to both consumers and the Commonwealth's overall energy policy goals, including:

- Customer Choice and Empowerment: Local governments that provide a variety of energy services within CCA programs empowers consumers by giving them more choices. Beyond renewable energy sources this can include energy efficiency programs, and even community solar initiatives. When consumers have more options, they can make choices that align with their values and priorities, fostering a sense of empowerment rather than as passive participants.

- Clean Energy Technology Adoption: Local officials who opt to participate in a CCA can prioritize the adoption of multiple clean and renewable energy options, especially emerging technologies, with the added benefit of reducing greenhouse gas emissions.

- Cost Savings: Innovative rate design, bundled options with on-bill financing, and energy efficiency measures and incentives offered through CCA programs can help consumers reduce their energy consumption and lower their bills, with the potential for alleviating financial burdens for lower-income households. For example, NRG subsidiary Vivint offers smart home technology that enables customers to reduce their overall energy usage and

[13] Petition at para. 26, p. 14

energy spend. That technology can be offered in tandem with energy supply rates that are time-varying in nature, or which offer rewards to customers for avoiding consumption when supply costs are high.

- Resilience and Reliability: By diversifying energy resources and services, communities can increase their resilience in the face of energy disruptions. Virtual power plants can aggregate distributed energy resources like battery storage and actionable usage management devices such as smart thermostats to enhance grid resilience by peak shaving and load balancing.
- Personal Power: Certain towns may also want to offer affordable backup power solutions that enhance reliability during extreme weather events or emergencies. As an example, Goal Zero, a subsidiary of NRG Energy, Inc., offers a variety of personal power products that can be included in program options.
- Customer Engagement: Opening the lines of communication for energy providers to communicate directly with CCA customers fosters greater customer engagement. Consumers can provide feedback, ask questions, and actively participate in shaping the energy services available to them.

The potential scale of customer participation in CCAs creates a built-in base for a "climate action marketplace." CCA programs have the potential drive innovation in the energy sector by encouraging the adoption of cutting-edge and cleaner energy technologies. By adopting CCA guidelines that make these services available through local government aggregations, residents and small businesses have direct access to information, support, and incentives. This can lead to higher customer engagement and participation in energy conservation efforts.

The Boroughs' Implementation Plan

The petition describes the CCA program implementation timeline, including adoption of Borough Resolutions, a description of the program administrator they

have selected, planned education and outreach to borough residents, requests to the EDCs for customer information, procurement of EGSs to serve the CCA, a customer notification and opt-out process, and the customer transfer process. In addition, the Boroughs have identified various implementation and operational considerations. These include the opt-out structure, data transfer, data security, consumer protections, billing and reporting, administrator agreements, and low-income customer benefits. They also describe in some detail how they envision managing the procurement of supply from EGSs.

Based on NRG's extensive experience serving numerous CCAs across the country, NRG has concerns with several components of the CCA implementation plan – some of which have the potential to render the program unworkable – and others that would present significant challenges for EGSs interested in serving them and therefore warrant clarification and oversight by the PUC. If the Commission determines that the Boroughs may form a CCA and that EGSs are authorized to serve them, in addition to creating statewide guidelines governing CCAs more broadly, the Commission should also require the following clarifications/ modifications to the implementation plan:

- Defined Terms: the implementation plan fails to define terms that would facilitate clear understanding of what is being proposed. For example, in the request for customer information section, the plan indicates that it will ask for specific customer information about *default service* customers, but elsewhere in the plan such references to customers and/or their data are entirely vague. For example, the notification and opt-out process section could be read to indicate that opt-out notices could go to *any* customer – not just customers on default service, making the intent hard to discern. Similarly, in the program administrator and opt-out structure sections (among others), the plan indicates that "opt-out enrollment" will be limited to "*Eligible Customers* who are currently receiving default service", however, the term "Eligible Customers" is not used consistently when referencing

customers throughout the plan.[14] Similarly, definitions could be adopted for "Service Agreement," "aggregated customer data," "customer contact data". For the purpose of ensuring clarity and transparency, **the PUC should require the Boroughs to add a definition section to their implementation plan that includes the terms identified here, as well as any others the PUC or the Boroughs deem appropriate, and to revise the plan to reflect those defined terms.**

- Request for Customer Information. The proposed implementation plan includes a description of the Boroughs' plans to seek customer information about residential and small business customers from the EDCs.[15] It is unclear from the description what kind of "aggregate prior-year information" the Boroughs will seek. EGSs interested in bidding to serve the CCA require detailed information about individual customer usage to provide the best and most accurate pricing, and to reduce any risk premiums associated with estimates that can be associated with aggregated data. Any concerns over sharing customer data are easily addressed, as EGSs routinely observe customer confidentiality and data security requirements when they participate in CCA RFP processes. **NRG recommends that the Commission require the implementation plan to be clarified to ensure EGSs bidding to serve the CCA have access to default service customer information at the account level.**

- Notification and Opt-Out Process. While this section lays out the process for notification, it does not provide any information on how the notice will be created nor what opportunity for input from stakeholders, including the PUC, there will be. This is important given the impact on the overall competitive market that the CCA will have. The Commission should have confidence that

[14] Petition at para. 38, p. 19.
[15] Petition at para. 34, p. 17.

these communications are clear and not misleading. NRG recommends that t**he Commission require the CCA to work with its chosen EGS to develop customer communications and to submit its notifications to the PUC for compliance review**.

- Opt-out Structure and Renewable Energy. The Boroughs propose to send Program communications to customers using the EDC email list used for customer billing. The proposal states that "Customers that receive paper bills will receive a program communication in the mail and customers that receive their bills online will receive a digital communication."[16] NRG opposes this proposal as blatantly anti-competitive. The EDCs currently do not share customer email lists with EGSs and they should not be permitted to share them with the CCA who would be entering the market as a significant competitor to EGSs participating in the individual choice market. **NRG recommends that if the Commission reject the Boroughs' proposal to use EDC customer email lists to communicate with their residents. Alternatively, if the Commission determines that the EDCs can share email addresses with the CCA, then the Eligible Customer List (ECL) available to all license suppliers through the secure utility supplier portals should be updated to include this data field.**

- Data Transfer. For the reasons noted above, customer email address should be stricken from the customer contact data[17] to be provided after the EGS is selected. Alternatively, if the Commission determines that email addresses can be shared with the CCA's EGS, then all EGSs should similarly be provided this information, which can be achieved by adding a new field in the ECL. Equal access (or equal denial of access) to customer email

[16] Petition at para 39, p 20.
[17] Petition at para. 41, p. 21.

addresses maintains a level playing field and does not tilt the scales in favor of any market participant.

Furthermore, customer contact data for customers moving into the municipalities or starting new service with the EDC should not be shared if said customers are part of a seamless move or instant connect transaction with their chosen supplier.

In addition, the Boroughs propose that two types of data are needed for a CCA Program, "aggregated data" and "customer contact data". They suggest that only aggregated data is needed prior to the RFP, and that "customer contact" data is required only *after* the EGS is selected. In NRG's experience, and as noted above, aggregated data is insufficient to develop the best and most accurate pricing for CCA customers. EGSs require detailed data by customer account to efficiently price their offers and avoid unnecessary risk premiums associated with estimates derived from aggregated information. The "customer contact data" identified in para. 41 of the proposal must be shared with suppliers participating in the Boroughs' RFP process. Any concerns over sharing customer data are easily addressed, as EGSs routinely observe confidentiality and data security requirements and EGSs are required to provide the confidentiality of customer data pursuant to 52 Pa. Code § 54.8 of the Commission's regulations. **NRG recommends that the Commission require the Boroughs to modify this element of their implementation plan to reflect these concerns.**

- Consumer Protections. The boroughs' proposal seeks clarification from the PUC that neither the CCA nor it's chosen Program Administrator are required to be licensed by the PUC. This is common in other jurisdictions where CCAs are permitted. Importantly, the jurisdictions that permit CCAs generally have explicit statutory authority to enable their formation and they also have adopted robust sets of rules and guidelines governing the operation of those

CCAs. These jurisdictions also have a formal regulatory process for PUC oversight of those programs. Pennsylvania has no such regulatory structure with express requirements for the operation of CCAs. Instead, the Boroughs' have committed to "follow existing protections for customer served by EGSs" – a commitment that is nonbinding nor subject to the oversight of the PUC or any other regulatory body. In contrast, the chosen EGS has the knowledge and expertise to develop and provide a PUC compliant Disclosure Statement for CCA customers, as well as follow all other PUC requirements governing its service to the CCA, including contract expiration communications. The chosen EGS is subject to the PUC's oversight when it comes to compliance with these requirements. As such, the chosen EGS must have the final say on what can and cannot be included in these important customer communications, as it alone is subject to penalties for any violation of the PUC's requirements. Of course, any EGS selected to serve the CCA will work with the CCA Administrator to accommodate their needs. But the CCA should be clear that the PUC has designed robust rules to ensure that EGS terms of service are fair to customers and EGSs are required to follow them. **The PUC should require revisions to this section of the Borough's implementation plan to reflect these concerns.**

Most concerning, the Boroughs also propose that all supply contracts executed by the EGS with third party supplier to serve the CCA must be "transparent to the Borough."[18] **NRG believes such a requirement has the potential to make the program unworkable. Our concerns are elaborated on below.**

- Billing and Reporting. The Boroughs propose to inform CCA customers that their EGS supply contract is assignable if the Boroughs decide to switch

[18] Petition at para. 46, p. 23.

suppliers prior to contract expiration.[19] EGS contracts typically include assignment provisions that allow the EGS to sell a book of business to another supplier. However, in the context of the CCA, such assignability brings a higher level of complexity, particularly given the Boroughs proposal that suppliers be prepared to novate their supply contracts (discussed below) in the event the Borough acts to switch suppliers prior to contract expiration – a proposition with the potential to make the entire program unworkable. **Given the complexity of such agreements, NRG recommends the PUC decline to approve a specific procurement approach and instead direct the Boroughs to work with EGSs to develop Service Agreement terms that are more workable.**

- CCA Procurement Strategy. In their Petition, the Boroughs affirm that "no EGS has been involved in the formulation of the [CCA] program".[20] Nowhere is this more evident than in their proposed procurement strategy. As described, the procurement plan is at best highly complex and at worst potentially unworkable. Most concerning are the requirements that 1) EGS supply contracts be subject to novation, and 2) the EGS "must provide complete visibility to the Boroughs on every product purchased on behalf of Borough customers, including product price, size, and duration, . . ."[21] First, it is highly unlikely that any third-party providing supply to the winning EGS would agree that the EGS could novate their agreement, let alone to an unknown third party. Counterparties have strict risk management protocols that govern counterparty credit risk among other criteria. Second, EGSs are precluded from revealing the details of their supply agreement under the strict confidential terms of the agreements executed with their supply counterparties, and they cannot not be required to do so.

[19] Petition at para. 46, p. 23.
[20] Petition at para. 7, p. 4.
[21] Petition at para. 53, p. 26.

Additionally, the desire to have retail suppliers negotiate with resources in the PJM queue seeking viable offtake contracts imposes its own set of risks that may render the proposal unworkable. While such agreements are certainly possible, they are rare in PJM, ISO-NE and NY ISO. As a case in point, in 2019 NRG entered into power purchase agreements with an average tenure of 10 years for 1.6 GW of solar generation in ERCOT to satisfy the growing demand for renewable resources from retail customers in that market.[22] Such an approach is highly complex and not typical in Pennsylvania or any eastern market. With few exceptions, the primary source of support for renewable resources in Pennsylvania and the rest of the PJM market has come through relatively short-term purchases of Renewable Energy Credits (RECs), rather than from direct investment in renewable generation by retail market participants.[23] NRG applauds the Boroughs' aspirations but cautions that such an endeavor adds significant complexity and cost with no guarantee of success. **NRG urges the PUC decline to approve the procurement strategy proposed by the Boroughs and instead direct the Boroughs to work with EGSs to gather feedback on workable procurement strategies and to revise their proposal accordingly.**

Conclusion

As discussed in the preceding comments, Pennsylvania's competitive retail energy market has served and is serving customers well and with the limited exception of Pike County, municipal aggregation has not been implemented anywhere in

[22] NRG Energy, Inc. 2019 Form 10K, p. 10. http://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_NRG_2019.pdf

[23] RECs are used to satisfy both voluntary renewable energy purchases by customers as well as Pennsylvania's Alternative Energy Portfolio Standard (AEPS) requirements. This is not to say direct investments by EGSs never happen. For example, NRG retail subsidiary, Green Mountain Energy Company ("GME"), built the first utility scale wind project in the Eastern United States—the Green Mountain Energy Wind Farm in Garrett, Pennsylvania, in 2000. GME was the first retail supplier in the country to offer green power products to residential customers and has offered renewable options to mass market customers longer than any other retail supplier.

Pennsylvania to date.[24] If authorized by PUC, CCAs can provide an additional option for Pennsylvania energy customers if they are well structured and include proper safeguards. NRG hopes that our long experience in Pennsylvania's retail energy market and PUC policy development combined with the company's expansive success serving CCAs in other jurisdictions helps to inform the Commission's deliberation on the Boroughs petition. NRG appreciates the opportunity to share its perspective on the Boroughs' CCA proposal, and we look forward to participating in any future proceedings the PUC may decide to initiate on this topic.

Respectfully submitted,

/s/ Leah Gibbons

August 5, 2024

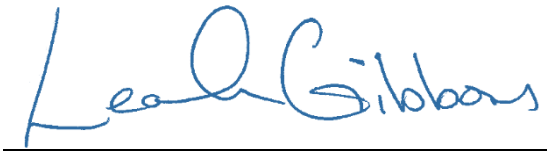
Leah Gibbons
Senior Director, Regulatory Affairs
NRG Energy, Inc.

[24] Pike County was not a municipal aggregation. Pike County Light and Power sought bids for its Provider of Last Resort service in accordance with Commission rules.

VERIFICATION

I, Leah Gibbons, state that I am Senior Director, Regulatory Affairs, NRG Energy, Inc. I hereby verify that I am authorized to do this Verification for NRG Energy, Inc. and that the facts set forth in the foregoing **Comments** are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at any hearing in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: August 5, 2024



Leah Gibbons
Senior Director, Regulatory Affairs
NRG Energy, Inc.