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By Electronic Mail

Hon. Kathleen A. Burgess
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

**Re: Case 14-M-0101- Proceeding on Motion of the Commission in
Regard to Reforming the Energy Vision.**

Dear Secretary Burgess:

In accordance with the schedule adopted in this proceeding, enclosed for filing with the Commission please find the *Reply Comments of the Retail Energy Supply Association*, in response to the Staff Straw Proposal on Track I issues.

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 14-M-0101

Proceeding on Motion of the Commission in
Regard to Reforming the Energy Vision.

REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

I. PRELIMINARY STATEMENT

A. Introduction

In accordance with the *Ruling Modifying Process for Filing Comments on Track One Staff Straw Proposal*, issued on August 25, 2014, by Hon. Julia Smead Bielawski and Hon. Eleanor Stein, Administrative Law Judges (“Ruling”), the Retail Energy Supply Association (RESA)¹ submits these reply comments in response to the initial comments filed by parties in connection with the *Developing The REV Market In New York: DPS Staff Straw Proposal On Track One Issues* dated August 22, 2014 (“Straw Proposal”).²

¹RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

² In these reply comments, RESA addresses certain issues deemed important to its concerns. Our silence on any particular issue shall not be construed as acceptance or agreement.

II. RESA REPLY COMMENTS

A. Utility Ownership of DER

In our Initial Comments, RESA recommended that the regulated utilities should not be authorized to own or sponsor DER.³ The Joint Utilities (“JU”) take issue with this position and contend that⁴ “utilities must be allowed to participate in the development of localized energy resources, including the ability to own DERs behind-the-meter.” In support of this view, the JU argue:

Utilities have an important role to play in triggering growth in retail markets due to their singular knowledge and understanding of their respective distribution systems as well as their existing relationships with electricity and gas customers. Utilities are uniquely positioned to help customers engage in REV technologies and to expand interest of all customers in DER whether through the utility or through a third party. The efforts of utilities to increase DER will facilitate the state's ability to meet its near-term objectives of enhancing resilience, promoting clean energy adoption, increasing system efficiency, and building robust competitive markets.⁵

The JU further observe that any “potential market power concerns should be addressed through mitigation measures developed as part of continuing discussions.”⁶ The JU do not present a persuasive case for allowing utilities to own DER.

It is recognized as JU asserts that utilities do have an important role to play in engendering growth of the use of DER products and services and they do in fact have important and unique knowledge and perspectives of the needs of the system and customers.

However, these factors associated with the status of the utility can be put to good use without the utility owning the DER products and services behind the meter.

³ See, Case 14-M-0101 Proceeding on Motion of The Commission In Regard To Reforming The Energy Vision, *Initial Comments of the Retail Energy Supply Association*, dated September 22, 2014 at p. 3 and 14-20.

⁴ Joint Utilities Initial Comments, P. 3.

⁵ JU, p. 3.

⁶ *Id.*

The utility's singular knowledge and capabilities can all be applied to positively impact upon achieving the Commission's vision without the utility actually owning the DER products and services. It is worth underscoring that the utility in its role as DSP can work cooperatively and comprehensively with the anticipated plethora of competitive DER providers to meet the DER goals. The utility can use its large footprint to help educate customers and work with vendors to increase penetration of DER in accordance with the goals developed by the utility in its DSP role. These efforts do not in any way require that the utility ultimately own or operate the DER product or service.

It is also important to emphasize that there will be numerous independent vendors capable and willing to offer DER products, and that the utility will not be filling a market gap. As Staff concluded:

DER providers may include a broad range of entities that have the potential to reach multiple end use customers, have the technical capacity to manage installation or financing of DER assets, and the ability to aggregate DER services and plans for purposes of market participation. These may include energy management companies, regulated utilities (subject to market power restrictions described below), solar providers and energy efficiency companies, local governments entities, not-for-profit corporations, housing associations, banks and registered financial institutions, energy improvement districts, telecommunications companies, real estate developers, and others.⁷

The level of interest and engagement in this proceeding as well as Staff's assessment of the energy landscape indicate that DER providers, Energy Service Companies (ESCOs), and customers are ready in large numbers to participate in emerging DSP markets.⁸

In such a highly competitive environment there is no need or compelling reason to allow the utility, already embedded as the DSP, to also market own and operate the DER products and services.

⁷ *Id.*, pp. 32-3.

⁸ *Id.*, p. 4.

Further, a more careful reading of the JU comments intimates that the utilities actually seek to displace competitive vendors from the DER market.

An important element of the retail access vision promoted by the Commission is the placement and expanded use of microgrid systems.⁹ As Staff explained:

Microgrids are a special class of distributed energy resource that have been targeted for promotion in New York State for the robust services they offer above and beyond other DERs.¹⁰

In connection with this important DER product, the utilities make clear that they seek to use their utility status and footprint to preclude independent vendors from playing a meaningful role in this important market.

Initially, the utilities aver that microgrids “may be appropriate, if properly planned, to address resiliency and reliability needed for continuity of service”, and that microgrids serving a single customer could be owned by a customer or a third party.¹¹ However, the utilities further opine that “when a microgrid serves more than one customer...and operates within the surrounding electric distribution infrastructure, utilities are in the best position to own and properly operate such distribution infrastructure when it involves systems within the utility franchise area.¹² From the perspective of the utilities, in any market or service territory where a microgrid system serves more than one customer, ownership and operation of the microgrid should be solely reserved to the utility. In other words, the utilities seek to extend their existing monopoly to an important segment of the emerging microgrid market.

⁹ Straw Proposal. Pp. 59-60.

¹⁰ *Id.*, p. 59.

¹¹ JU, p. 3.

¹² *Id.*, pp. 3-4

Further, the various rationalizations and justifications offered by the JU to support monopolization of the microgrid market can just as easily be trotted out to undergird utility dominance in other critical markets for DER products and services.

The JU offer a fig leaf of protection by broadly asserting that any “potential market power concerns should be addressed through mitigation measures developed as part of continuing discussions.”¹³ However, in reality, the market will be dominated by the utilities.

The regulated utility as the DSP will now control every aspect of the DER program, including the utility’s direct commercial ownership of distributed energy resources. In this model, the position of the utility will be dominant and overwhelming from a competitive standpoint.¹⁴

In addition to its dominant market position, the utilities already have direct access to customers, credibility as a familiar energy provider, and knowledge about their distribution systems to identify where and where and how DER can be integrated with the greatest effect.¹⁵ Given these factors, even if the utility does *not* attempt to misuse its monopoly position, it is clear that the utility will still be able to stifle competition simply by exercising the powers it is provided as the DSP and due to its inherent position as a regulated distribution utility.

In this environment, the DER market will be fundamentally and entirely tilted in material favor to the utility. It will in fact become the domain of the utility thereby stifling increased customer choice and opportunity. No amount of concern over “market power” concerns will mitigate this result.

¹³ JU, p. 3

¹⁴ In view of the effort by the JU to essentially monopolize the microgrid market combined with its overwhelming market presence, the Commission should rethink the recommendation by Staff to allow the utility rather than an independent entity to act as the DSP. There is sufficient basis for concern that allowing the utility to control every aspect of the process as well as own and operate the individual measures will simply lead to a structure which bears no resemblance to a competitive market but is simply a reinstatement of the existing utility centric monopoly model in new clothing.

¹⁵ *Id.*, p. 68

B. Data Exchange

Staff emphasized the importance of advancing data access in order to support the introduction of DER, and noted in this regard that access to system and customer data “is a prerequisite to successful DER provider development of innovative products and services.”¹⁶ In their comments, JU assert that they “support the Straw Proposal's objective to advance data access to enable markets while meeting reasonable privacy and security expectations.”¹⁷ However, upon further review, the JU do not support dissemination of important and crucial data and related information to DER providers.

The JU state that they “disagree with the Straw Proposal's suggestion that “DER providers require standardized, time-stamped customer energy usage information where technically available to develop business cases, attract investment, and quickly bring DER products and services to market.”¹⁸ Specifically, the JU object to providing DER providers “customer-specific information”, and instead request that such vendors only be provided aggregated load information for certain market segments.

Competitive service providers across a wide spectrum of industries find ways to market to and attract customers without customer-specific information. As an alternative, the Joint Utilities suggest that providing aggregated load information for various customer market segments would assist in the development of product offerings while maintaining protections on providers could use this information to engage potential customers and secure individual customer authorization to access additional usage information.¹⁹

This proposal to limit access by DER providers to data is ill-founded and unreasonable. DER providers must be provided with timely and meaningful access to customer specific data.

¹⁶ *Id.*, p. 24.

¹⁷ JU, p. 9.

¹⁸ JU, p. 10.

¹⁹ JU, pp.10-11.

The purpose of this initiative is to establish a customer centric model where markets will address the particular needs and goals of individual customers. As the Commission previously noted:

The Commission's April 2014 Order Instituting Proceeding proposes a platform to transform New York's electric industry, for both regulated and non-regulated participants, with the objective of creating market-based, sustainable products and services that drive an increasingly efficient, clean, reliable, and customer-oriented industry. Under the customer-oriented regulatory reform envisioned here, a wide range of distributed energy resources will be coordinated to manage load, optimize system operations, and enable clean distributed power generation. Markets and tariffs will empower customers to optimize their energy usage and reduce electric bills, while stimulating innovation and new products that will further enhance customer opportunities.²⁰

The key feature is the emphasis on addressing the interests of consumers on an individual basis in such a manner as to induce them to manage and optimize the efficient use of energy resources. This can only occur if detailed information concerning the energy usage patterns and other related factors of individual customers is made known to the customer and potential vendors of DER products and services. Although aggregated data among customer classes may be of some use, vendors must develop products and services that meet the needs of a particular customer and address the particular and potentially unique needs of the customer. Similarly, in reviewing potential DER options, the customer is concerned with how the DER product will impact the individual customer not some nebulous aggregated standard. To put in bluntly, a customer is interested in identifying the benefits of DER for the particular customer not what the benefits may be on an aggregated basis for the class.

²⁰ Straw Proposal, p. 1.

Furthermore, even within a service classification there can be wide variations in the usage patterns of individual customers. Obviously, the DER measure will need to focus and capture the individual usage patterns and needs of the customer not the class as a whole. This is a central tenet of a robust competitive market wherein vendors will target their products and services to individual customers in such a manner as to demonstrate the unique and individualized benefits the customer will achieve by purchasing the product offered by the vendor.

In view of the foregoing, the proposal of JU to only provide aggregated rather than individual customer data should not be adopted.

III. CONCLUSION

RESA appreciates the opportunity to submit these comments and assist the Commission in its efforts to address the needs and concerns of ratepayers.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel, Counsel*
Usher Fogel, Counsel

Dated: October 24, 2014