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March 8, 2012

By Electronic Mail:
secretary@dps.ny.gov

Hon. Jaclyn Brilling
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Matter No. 12-00314 – LIPA Management & Operations Audit

Dear Secretary Brilling:

In accordance with the schedule adopted in this matter, enclosed for filing with the Commission please find the *Comments of the Retail Energy Supply Association.*

Thank you for your assistance in this matter.

Respectfully submitted,

Retail Energy Supply Association

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

New York State

Public Service Commission

Matter No. 12-00314 – LIPA Management & Operations Audit

COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

The Retail Energy Supply Association ("RESA"), a trade association of 20 energy service companies ("ESCOs") engaged in the provision and sale of electricity and natural gas at retail to residential and commercial customers throughout all of the service territories in the State of New York and in other jurisdictions nationwide,[1] submits these comments in response to the Commission's February 17, 2012 Notice issued in the above-referenced proceeding.[2] RESA, whose members have been active in the provision of competitive retail energy services throughout New York State and on Long Island for many years, appreciates the opportunity to submit these comments and provide assistance to the Commission in its consideration of the management and operations of the Long Island Power Authority ("LIPA").

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[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2] PSC Matter No. 12-00314, "Notice of Public Information Forums and Public Statement Hearings Concerning A Management and.Operations Audit of the Long Island Power Authority" (Feb. 17, 2012) ("Notice").

II. PRELIMINARY STATEMENT

On February 1, 2012, Governor Cuomo signed into law the Long Island Power Authority Oversight and Accountability Act,[3] which requires a review and evaluation by the Commission of LIPA's overall operations and management practices. The operations and practices subject to evaluation include, but are not limited to, an examination of overall efficiency, construction and capital program planning, the Fuel and Purchased Power Cost Adjustment, the annual budgeting process, debt service obligations and the status of LIPA's compliance with its debt covenants. As part of its audit process, the Commission by the Notice has invited interested members of the public to submit comments on these aspects of LIPA's operations that will be used by the Commission in formulating its audit conclusions and recommendations.

The Commission for more than a decade has championed the provision of robust competitive choice to retail electric consumers throughout the State and within all utility service territories subject to its jurisdiction. As a result of this policy, a significant portion of the State's electric load and retail electric consumers are now provided commodity service by a plethora of ESCOs vigorously competing with one another to win the consumers' business.

As will be described in greater detail below, RESA requests that this audit process include an investigation of the operational steps and constructive policy actions LIPA should implement to restructure and reinvigorate its moribund "LI Choice" Program ("Program"). This program was originally designed and intended to introduce competitive choice in the provision of electric commodity service in Long Island, including the ability for customers to choose both between competitive suppliers and different product offerings. In practice however, the Program

[3] See, Chapter 8 of the Laws of 2012

offers little in the way of choices for Long Island consumers and lags far behind the successes that have been achieved in the rest of the State resulting from Commission policies.

Unlike the rest of New York State, meaningful competitive choice for all consumers on Long Island does not presently exist. Allowing choice and competition to flourish will, in our view, greatly enhance the efficiency of LIPA's operations and the provision of electric commodity service to consumers, just as it has with the other electric utilities of New York State subject to the Commission's jurisdiction.

In connection with LIPA's electric commodity cost pricing mechanism, the following enhancements should be evaluated for integration into the LI Choice program:

- Full inclusion of all cost components of commodity supply;
- Cost allocation;
- Unbundling; and
- Capacity access.

With respect the LIPA's retail access infrastructure, the following market enabling measures should be evaluated for integration into the LI Choice program:

- Consumer Outreach & Education;
- Retail Billing Options;
- Purchase of Receivables Billing Option,
- Timely Access to Customer Usage Information, and
- Electronic Data Interchange.

III. RESA COMMENTS

A. Historical Discussion

LIPA implemented the Program with the aim of offering retail access over three phases. Initially, as of August 1999, 400 MW of load was made available for competitive choice. Thereafter, in May 2000, another 800 MW was released for competition and in February 2002, retail access was at least formally opened to all customers on the LIPA system. In addition, LIPA issued corresponding tariff changes, developed various agreements with ESCOs and established operating standards for ESCOs and participating customers. Although the Program at least on paper has been in existence for more than a decade, in reality the Program has remained moribund without any material impact in the LIPA service territory.

Currently, based on the LIPA website there are only three ESCOs authorized to operate in LIPA and it is our understanding that there has been a relatively insignificant level of migration of load to independent ESCOs. And with respect to small customers, retail access is basically non-existent. Thus, in more than a decade there has been virtually no progress in bringing retail access to the LIPA consumer.

In contrast, during the same period under the Commission's policy initiatives, retail access has grown markedly throughout the rest of the State. As of August 2011, 50.7% of the electric load of all utilities under the jurisdiction of the Commission has migrated to ESCOs.[4] According to the 2011 Annual Baseline Assessment of Choice in Canada and the United States ("ABACCUS") report ("2011 ABACCUS Report"), New York scores 2nd nationwide for the

[4] http://www.dps.ny.gov/Electric_Migration_aug_11.pdf.

residential market and 3rd nationwide for the commercial and industrial ("C&I") market in terms of robustness and vibrancy of its competitive retail market structure.[5] Supporting these high rankings, the 2011 ABACCUS Report cites data demonstrating that as of November 2011 there are 55 distinct ESCOs marketing product offerings to C&I customers, 35 distinct ESCOs marketing product offerings to residential customers, and 74 distinct varieties of product offerings available to residential customers alone.[6]

In addition to the Commission's successful implementation of retail choice outside of Long Island – in terms of level of customer switching, ability to attract robust ESCO participation throughout New York and the breadth and depth of product offerings available to customers, the strong potential for choice in the LIPA service territory can be gleaned by reviewing the growth in retail access for gas consumers. In the counties of Nassau and Suffolk and the community of Far Rockaway in Queens, electricity is supplied by LIPA. However, natural gas is provided by KeySpan-Long Island which is subject to the jurisdiction of the Commission and has actively pursued retail access for its consumers. As of March 2011, 51.9% of natural gas load delivered by KeySpan-Long Island is supplied by ESCOs.[7] Interestingly, this is comparable to the statewide level of electric migration. In addition there are more than 45 ESCOs active in the gas service territory.[8] The results achieved in KeySpan-Long Island highlight the extent to which retail access can grow in the Long Island community.

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[5] 2011 ABACCUS Report at 8, 13.

[6] 2011 ABACCUS Report at 56.

[7] http://www.dps.ny.gov/Gas_Migration_Web_Report_mar11.pdf

[8] http://www2.nationalgridus.com/energy/purchase/suppliers_ny_kedli.jsp

In view of the trajectory of electric retail access growth and development in the rest of the State and natural gas customer choice on Long Island, it is imperative that constructive policies be implemented on an expeditious timetable by LIPA to make retail access a reality for its electric consumers.

B. <u>The Commission Should Include in the Audit a Review of LIPA's LI Choice Program To Identify Enhancements To Reinvigorate Retail Access for Long Island Ratepayers.</u>

It is well established that the evolution of a robust choice program requires more than simply formally stating that customers have the ability to choose their supplier of choice. As, if not, more important is the application of the requisite effort to eliminate barriers to entry for competitive ESCOs, removing structural impediments that preclude ESCOs from competing effectively and efficiently, and ensuring that ESCOs are positioned on an even competitive playing field with respect to the incumbent utility and other ESCOs. How a retail market is structured is critical to its ability to foster ample, meaningful and value-added choice to consumers.

The Commission in its effort to implement retail access programs throughout the State has long recognized this salient point. As the Commission has repeatedly underscored stimulating the retail access market requires the application of various programs that create and support a robust competitive market. These type of efforts include such activities as outreach and education programs; unbundling of utility commodity and delivery rates; establishing workable Electronic Data Interchange ("EDI") protocols; introducing consolidated billing; purchasing accounts receivables; enhancing ESCO access to customer data; migration incentives and unbundling of utility bill formats.[9] Unless and until all participants were positioned to compete on an even playing filed, retail access could not grow and succeed.

In the case of the Program, the paucity of progress in this market is not in any way associated with the lack of ability or desire by ESCOs to actively compete in this market. To the contrary, the more than 1.1 million customers located in the LIPA service territory represent a tremendous market opportunity for the ESCO community. Therefore, ESCOs are extremely desirous of and interested in bringing this market to fruition just as they have done throughout the balance of New York State. Nonetheless, they have been stymied by a combination of systemic structural deficiencies in the Program which have, in our view, created an impenetrable barrier to effective competition. It is now time for LIPA, following the precedent of the Commission policies that have led to vibrant retail markets throughout the State, to identify and implement policies and practices that will improve the elements of the Program and create a vibrant competitive retail market.

The Program requires significant modification and improvement in two general key categories: electric commodity cost pricing and the retail access infrastructure platform. A brief discussion of the improvements needed in these areas is presented below.

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[9] See, Case 00-M- 0504 - Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets* (issued August 25, 2004); Case 07-M-0458 - Proceeding On Motion Of The Commission To Review Policies And Practices Intended To Foster The Development Of Competitive Retail Energy Markets, *Order On Review Of Retail Access Policies And Notice Soliciting Comments* (Issued April 24, 2007).

C. Electric Commodity Cost Pricing

In the competitive dynamic of the retail energy market, all ESCOs compete with each other and also compete against the incumbent regulated monopoly that has been the existing provider of service and remains the default service provider. The prices charged by each ESCO are, as it should be, determined by competitive market forces, internal operating costs and need to make a profit. Ultimately, the strictures of the market will monitor and modulate competitive pricing.

The rates charged by LIPA, the incumbent provider and the main competitor of the ESCO, are not governed or determined by market forces. The rates for commodity and delivery service are determined by the application of traditional rate making principles that govern the provision of service by a monopoly provider. They may take costs into account, but ratemaking will also allow for subsidization, equity, fairness, cost mitigation and many other factors that may mask or distort the true costs of providing a particular service. This did not present a problem in in the pre-deregulation structure where the only provider of energy services was the local utility. However, in a post-restructuring, competitive retail market where the local utility remains the dominant provider, failure to provide consumers with accurate price signals can and does act as an inhibitor to the development of meaningful competition.

In the nascent phase of restructuring when most customers are served by LIPA, the commodity price charged by LIPA becomes the bell weather of customer reaction and the ability of ESCOs to achieve market penetration. As the commodity supply costs charged by ESCOs will inevitably be reflective of the real time market cost of electricity, the retail market will be highly distorted if not undermined to the extent the commodity charges of LIPA diverge from such a cost standard.

Furthermore, for competition to prosper, the LIPA rate structure must accurately reflect all the costs that will be avoided by the customer migrating to an ESCO. If such avoided costs are not accurately developed the untenable situation is created whereby a customer will be double charged for various services and not achieve the true cost benefit of taking service from an ESCO.

In light of these considerations, RESA encourages the Commission via the audit process to identify and recommend that LIPA -consider the implementation of the following programs and policies in connection with setting its electric commodity charges and its entire rate structure.

Full Cost Inclusion. LIPA must ensure that its commodity costs incorporate all applicable commodity charges, including but not limited to energy, capacity, ancillaries, financing and other charges.

Cost Allocation. LIPA should properly allocate costs between delivery and generation/commodity functions to ensure that the ESCO is competing against all applicable commodity functions and related costs.

Unbundling. Through the rate making process various costs are included in certain rate elements such as delivery charges that may not be properly reflective of that category. In addition, there may be costs included in non-commodity rate elements that LIPA will no longer incur if a customer goes to an ESCO. By way of example, usually the administrative costs associated with supply acquisition may be retained within the delivery rate. If this occurs the retail access customer who still takes delivery service will still pay for the administrative costs of LIPA's supply acquisition group even though the customer is taking competitive supply service from the ESCO.

Similarly, the delivery rate usually incorporates LIPA's cost of uncollectibles for commodity and delivery. However, a customer taking service from an ESCO is not responsible for LIPA commodity uncollectible costs as the customer is taking service from the ESCO.[10]

It is thus imperative for LIPA to commence the rate unbundling process as soon as possible. This will ensure that all costs are properly allocated in their correct rate component and that the true avoided cost associated with migration to retail access service is presented to the consumer and reflected in LIPA's charges.

Capacity Access. LIPA operates in a load pocket area that experiences various transmission constraints. In this environment, LIPA should consider allowing for equitable access by ESCOs to the limited in pocket capacity assets.

D. Retail Access Infrastructure and Market Enabling Measures.

The ability of ESCOs to meet the needs of customers in an efficient manner is dependent on the existence and maintenance of a robust retail access infrastructure by the local utility. As the incumbent provider such as LIPA currently has full access to all customers,

[10] It is for this reason, the Commission has established a separate Merchant Function Charge to properly account for those costs previously included in the delivery rate that are d if the customer moves to an ESCO. See, Case 00-M-0504 - Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities – Unbundling Track, *Statement Of Policy On Unbundling* And *Order Directing Tariff Filings*, Issued August 25, 2004.

customer data, and metering information, it is vitally important that protocols be established whereby ESCOs can access such data in a timely and comprehensive manner, and issue customer bills that easily understood and accessed by the customer. Further, as all customers must be enrolled in the Program with LIPA, the enrollment process must also be supported by a workable interactive infrastructure that links the ESCO with LIPA.

In view of these considerations, RESA encourages the Commission via the audit process to identify and recommend that LIPA consider the implementation of the following programs and policies in connection with its retail access infrastructure.

<u>Consumer Outreach & Education.</u> An integral element in the growth and development of choice programs is the application of an effective customer awareness program by the local provider such as LIPA. Knowledge is power and customers will only gravitate to retail access if they are apprised of its existence. Although ESCOs can and do engage in vigorous individual promotional and customer education activities, LIPA has a vitally important role to play as it is the monopoly provider with access to the entire customer base. LIPA's efforts to properly inform its customers about choice are vitally important to overcome customer inertia and fears that customers may have about a new energy environment. Currently, however, LIPA does not engage in any material outreach and education effort to advise customers of the existence of the Program. A perusal of its website reveals no direct reference to the Program on its home page and there is minimal, if any mention of the Program in its regular communications with customers. Consequently, LIPA should develop and implement an aggressive and comprehensive outreach and education program informing its customers of the Program.

Retail Billing Options. At the retail level it is important to provide ESCOs and mass market customers with the flexibility to apply billing formats that are easily understood by the customer, are coordinated with the utility's billing cycle and reflects the same level of usage as incorporated in the bill for delivery service. The absence of these elements engenders significant customer confusion and complaints and ultimately rejection by the consumer of competitive supply service. In this regard, LIPA should also allow and support the use of utility consolidated billing for mass market customers through which the customer receives one bill each billing cycle that reflects the utility's delivery charges and the ESCO's supply charges. This increased billing flexibility ensures that the mass market customer is provided with a single bill that separately identifies all charges, reflects the same billing period and level of usage, and allows the customer to remit one payment for all usage. As LIPA currently only allows ESCOs to use a dual or two bill system wherein LIPA and the ESCO issue separate bills for the service provided to the customer, the Program should be modified to allow for the use of utility consolidated billing for mass market customers.

To further enhance the retail billing process, especially for the mass market segments, RESA urges the Commission to recommend that LIPA also consider introducing the purchase of the ESCO receivables without recourse ("POR"). Under this process, which is the accepted format throughout New York, LIPA would issue a consolidated bill for the LIPA and ESCO charges, and thereafter purchase the ESCO's receivables that were included in the consolidated bill. LIPA would apply a discount rate to the receivable comparable to its uncollectable experience. After payment to the ESCO, LIPA would undertake responsibility for collection of all charges. The use of a POR format further acts to streamline the entire billing process by ensuring that the customer faces only one collection entity and that only one entity would effectively have the ability to suspend distribution service. Moreover it would engender a more effective approach to assure compliance with the Home Energy Fair Practices Act ("HEFPA") applicable to all residential customers.[11]

The customer billing process would also benefit by the granularity provided by a comprehensive unbundling of the components of the customer bill. This would entail specifically delineating the separate commodity, delivery and other individual elements incorporated in the customer bill, with the aim that each customer will be apprised of the specific rate components that will be avoided if the customer chooses to take service from an ESCO.

Electronic Data Interchange ("EDI") Improvements and Timely Access to Customer Data. The retail access infrastructure can only be effective if it is supported by a robust and comprehensive EDI system. EDI is the lifeblood by which ESCOs will communicate with LIPA in all manifestations and functions. The ability of ESCOs to access vital customer data requires the requisite EDI protocol. Application of consolidated billing and POR cannot be accomplished without the underlying EDI structure that facilitates the transmission of usage data, billing rates and other important data points between LIPA and the ESCO. Further, the enrollment of customers by ESCOs in the Program relies heavily on the use of EDI. Given its critical role, the EDI structure should be enhanced to properly serve the needs of the retail access infrastructure.

[11] KeySpan-Long Island, which has provided billing services on behalf of LIPA currently employs utility consolidated billing with POR.

IV. <u>CONCLUSION</u>

RESA appreciates the opportunity to submit these constructive comments and looks forward to working with the Commission and LIPA to bring meaningful retail choice to Long Island ratepayers.

Respectfully submitted,

Retail Energy Supply Association

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

Dated: March 8, 2012
Cedarhurst, N. Y.