

**STATE OF NEW YORK**  
**PUBLIC SERVICE COMMISSION**

---

Proceeding on Motion of the Commission	⋮	
Regarding Strategic Use of Energy	⋮	Case 20-M-0082
Related Data	⋮	

---

**RETAIL ENERGY SUPPLY ASSOCIATION’S COMMENTS RE  
JOINT UTILITIES’ PETITION FOR REHEARING REGARDING ORDER ADOPTING  
A DATA ACCESS FRAMEWORK AND ESTABLISHING FURTHER PROCESS**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby submits its comments regarding the Joint Utilities’ Petition for Rehearing Regarding Order Adopting a Data Access Framework and Establishing Further Process.<sup>2</sup>

**I. PROCEDURAL BACKGROUND**

On April 15, 2021, the Public Service Commission (“Commission”) issued an Order Adopting a Data Access Framework and Establishing Further Process.<sup>3</sup> In the Order, the Commission directed, *inter alia*, “all distribution utilities [to] modify their current tariffs to remove all established fees associated with the release of customer data, including CCA [community choice aggregation] data, and system data.”<sup>4</sup> On May 17, 2021, the Joint Utilities<sup>5</sup>

---

<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Joint Utilities’ Petition for Rehearing Regarding Order Adopting a Data Access Framework and Establishing Further Process (May 17, 2021) (“Petition”).

<sup>3</sup> Order Adopting a Data Access Framework and Establishing Further Process (Issued Apr. 15, 2021) (“Order”).

<sup>4</sup> *Id.* at 43.

<sup>5</sup> The Joint Utilities are: Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; National Fuel Gas Distribution Corporation; Liberty Utilities (St. Lawrence Gas); The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Niagara Mohawk Corporation d/b/a National Grid; New York State Electric & Gas Corporation; and Rochester Gas and Electric Corporation. *See* Petition, at 1 n.2.

filed the Petition requesting rehearing of this requirement “because the premise that this information is automated is an error of fact.”<sup>6</sup>

On June 9, 2021, the Commission issued a notice offering interested stakeholders an opportunity to comment on the Petition.<sup>7</sup> In response to the Notice, RESA now hereby submits its comments regarding the Petition.

## II. COMMENTS

RESA supports the Commission’s directive in the Order and opposes the Petition. In the Petition, the Joint Utilities argue that rehearing is warranted “because the premise that this information is automated is an error of fact.”<sup>8</sup> However, this misstates the Order’s findings. The Order states: “Utility system capabilities have evolved over time and *are now able* to automate data processing, eliminating the basis for utilities being permitted to charge fees for energy-related data.”<sup>9</sup> Moreover, to the extent such processes cannot be automated, the Order permits the utilities to continue to charge for the data.<sup>10</sup> Thus, RESA agrees with the City of New York:

The fact that some (or all) of the utilities have not taken the steps to update their systems to provide such data in a more streamlined and automatic manner should not inure to the detriment of those who are seeking access to data, particularly when such access is needed to advance public policies.<sup>11</sup>

The Commission has long recognized that access to customer and system data is necessary for customer engagement and the development of efficient markets, including markets

---

<sup>6</sup> Petition, at 1.

<sup>7</sup> See Notice Concerning Petitions for Rehearing (Issued Jun. 9, 2021) (“Notice”).

<sup>8</sup> Petition, at 1.

<sup>9</sup> Order, at 43 (emphasis added).

<sup>10</sup> *Id.* at 43-44 (“[T]he Commission hereby limits requests for free-of-charge historical energy usage data to the most recent 24 months of customer usage. The utilities are permitted to charge cost-based fees for provision of historical energy usage data in excess of 24 months, if the process to complete that request is *not able* to be automated.”) (emphasis added).

<sup>11</sup> City of New York Response to Petition (Jun. 1, 2021).

for product offerings that further the State’s climate goals.<sup>12</sup> Data access fees impede access to this data. Conversely, eliminating access fees removes barriers to data access and encourages broader use of energy data and, potentially, broader participation in the market, while creating a more vibrant, dynamic energy landscape in New York.<sup>13</sup>

The Joint Utilities also assert that data access fees “should remain in effect until such time as the mechanisms for providing these data are addressed in a Commission order on DPS Staff’s CCA Whitepaper.”<sup>14</sup> However, the Commission has explicitly determined “that addressing data across numerous proceedings is not the optimal way to develop a unified treatment of data issues.”<sup>15</sup> In fact, that is the reason the Commission opened this “comprehensive proceeding to address the strategic use of energy related data.”<sup>16</sup> Furthermore, by requiring the utilities to eliminate data access fees as required by the Order, the Commission can immediately further its “long-standing goal” of “[e]nabling access to system data and customer energy related data.”<sup>17</sup>

In further support of the Petition, the Joint Utilities argue “[e]limination of CCA data access fees now will only serve to shift these costs to utilities and non-participating customers.”<sup>18</sup>

---

<sup>12</sup> Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (Issued May 19, 2016), at 23 (“Efficient markets will require more precise value signals and access to system and customer data.”).

<sup>13</sup> See Retail Energy Supply Association Comments re Data Access Framework Whitepaper (Aug. 24, 2020), at 16; see also Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Instituting Proceeding (Issued Apr. 25, 2014), at 41 (“[E]xpanded access to customer-specific energy usage data is of particular importance in designing innovative energy management services.”).

<sup>14</sup> Petition, at 4.

<sup>15</sup> Order Instituting Proceeding (Issued Mar. 19, 2020), at 6-7.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 3. Although the Joint Utilities focus on CCA data access fees, the Order’s directive regarding the elimination of data access fees is not limited in that way. See Order, at 43 (directing “all distribution utilities [to] modify their current tariffs to remove all established fees associated with the release of customer data, **including** CCA data, and system data”) (emphasis added).

However, CCAs have moved beyond pure commodity supply to product offerings, such as renewable energy and community distributed generation (“CDG”),<sup>19</sup> that advance the State’s clean energy goals for the benefit of all ratepayers.<sup>20</sup>

Moreover, the benefits of enabling access to system data and customer energy related data “are numerous and encompass all levels of the market, from the customer up, and support New York State’s clean energy and energy efficiency goals.”<sup>21</sup> This is true even for ratepayers that do not directly take advantage of these types of products and service offerings. For instance, when one customer installs energy efficiency improvements, demand response or distributed energy resources (“DER”), those installations reduce overall demand and peak loads; thereby, reducing costs for all ratepayers.<sup>22</sup> Indeed, “[r]educing peak loads offers numerous potential

---

<sup>19</sup> See, e.g., Case 14-M-0224, *Proceeding on the Motion of the Commission to Enable Community Choice Aggregation Programs*, Department of Public Service Staff Whitepaper on Community Choice Aggregation Programs (Apr. 14, 2021) (“DPS Staff’s CCA Whitepaper”), at 7 (identifying number of municipalities with renewable product offerings); Case 14-M-0224, *Proceeding on the Motion of the Commission to Enable Community Choice Aggregation Programs*, Declaratory Ruling on Opt-Out Community Distributed Generation Implementation (Issued Jul. 16, 2021), at 4 (“In this Declaratory Ruling, the Commission clarifies that, consistent with the CCA Framework Order and the Joule Order, the Statewide rules allow a CDG product to be integrated into a CCA program on an opt-out basis where the CDG product is offered in connection with a CCA supply product.”).

<sup>20</sup> Case 14-M-0224, *Proceeding on Motion of the Commission to Enable Community Choice Aggregation Program*, Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications (Issued Mar. 16, 2018), at 15 (“The integration of CDG on an opt-out basis has the potential to create similar benefits, as well as support local and state clean energy goals.”).

<sup>21</sup> Order Instituting Proceeding (Issued Mar. 19, 2020), at 6; see also Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Instituting Proceeding (Issued Apr. 25, 2014), at 33 (“Access to energy consumption data is important to all sectors.”); Department of Public Service Staff Whitepaper Regarding a Data Access Framework (May 29, 2020), at 1 (“Useful access to useful energy related data is key to implementing REV [Reforming the Energy Vision] and the Governor’s clean energy policies.”) (footnote omitted).

<sup>22</sup> See, e.g., Case 04-E-0572, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Order on Demand Management Action Plan (Issued Mar. 16, 2006), at 33 (finding “demand management programs reduce demand and, therefore, can assist in reducing energy prices.”); Case 07-M-0548, *Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard*, Order Instituting Proceeding (Issued May 16, 2007), at 2 (finding the “benefits of energy efficiency include: reduced bills reflecting energy conserved; projected lower average market prices for energy resulting from reduced demand; savings in capacity charges resulting from peak load reductions; reduced emission of pollutants, including greenhouse gases, resulting from reduction in fossil fuel combustion; and economic development and job creation”); Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Instituting Proceeding (Issued Apr. 25, 2014), at 54 (“One of the values of DER, however, is to reduce utilities need for capital expenditures. Another objective – reducing peak demand on the bulk system – may have the incidental effect of reducing utility investment.”).

benefits, including: deferring the need for new generating capacity; deferring the need for new delivery infrastructure; reducing the need to operate older peaking generation facilities, thus improving overall generator efficiency and reducing emissions; and reducing energy and capacity costs for consumers.”<sup>23</sup> Thus, even if the Commission determines that the utilities still incur costs to provide data access, it should require that the distribution utilities recover those costs in their base distribution rates<sup>24</sup> as has been done in other jurisdictions; rather than through fees that are not cost-based<sup>25</sup> and that only serve to impede the development of product and service offerings that advance the State’s climate and clean energy goals.

### III. CONCLUSION

For all the foregoing reasons, the Commission should deny the Petition .

---

<sup>23</sup> Case 09-E-0115, *Proceeding on Motion of the Commission to Consider Demand Response Initiatives*, Order Instituting Proceeding (Issued Feb. 17, 2009), at 3.

<sup>24</sup> *Cf.* Case 95-G-0761, *Petition of The Brooklyn Union Gas Company for (a) Commission authorization pursuant to §70 of the Public Service Law to form a holding company; (b) Commission approval pursuant to §§66 and 72 of the Public Service Law of the company’s accounting and rate treatment, and (c) for an amendment to the Commission’s Order issued May 5, 1995, in Case 94-G-0973*, Order on Review of Rate Plan Filing (Issued Sep. 22, 1997), at 15 (“Unlocking a new heating account is a value-added activity benefitting all ratepayers, and its cost could justifiably be rolled into base rates.”).

<sup>25</sup> Petition, at 1 (“[T]hough there is a cost to compile and transfer this data, the fees were *not* purely premised on the cost of providing data, but also on the value provided.”) (emphasis added).

Respectfully submitted,

By: \_\_\_\_\_

Megan E. Baroni  
Robinson & Cole LLP  
1055 Washington Boulevard  
Stamford, CT 06901  
Phone: (203) 462-7528  
Fax: (203) 462-7599  
E-mail: [mbaroni@rc.com](mailto:mbaroni@rc.com)

*Attorney for Retail Energy Supply  
Association*

Dated: August 9, 2021