STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On its Own Motion	)	Docket No. 18-0375
	)	
Proceeding under Section 2-202 (i-5)	)	
Of the Public Utilities Act	)	

BRIEF ON EXCEPTIONS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA") hereby submits its Brief on Exceptions to the Administrative Law Judge's Proposed Order ("ALJPO") dated May 2, 2018, in this proceeding, the Illinois Commerce Commission's ("Commission") proceeding to consider the allocation of special assessments to fund its utility operations. RESA is a non-profit trade association of independent corporations that are involved in the competitive supply of electricity and natural gas.[1]

I. BACKGROUND

Effective June 1, 2017, the Future Energy Jobs Act revised Section 2-202 (i-5) of the Public Utilities Act to, among other things, direct the Commission to **consider** whether entities other than electric and gas utilities, such as Alternative Retail Electric Suppliers ("ARES") and

[1] 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 twenty 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.

Alternative Gas Suppliers ("AGS") should be required to pay assessments or fees to cover the difference between deposits to the Public Utility Fund and expected Commission expenditures. On February 20, 2018, the Commission, as required by Section 2-202 (i-5) of the Public Utilities Act, entered its order in Docket 18-0375 to initiate a proceeding to consider, among other things, the payment of assessments or fees by ARES and AGS. On February 22, 2018, the Commission Staff circulated its "Strawman Proposal" in Docket 18-0375. Staff's Strawman's Proposal would allocate 1% of the Section 2-202 (i-5) supplemental assessments to ARES and AGS, with 0.68% allocated to 15 ARES (which meet a one billion kWh threshold) and 0.32% allocated to 11 AGS (which meet a one million dekatherm threshold). On March 21, 2018, Staff filed a Statement of Facts further explaining its Strawman Proposal. On May 2, 2018, the ALJPO was issued, accepting in its entirety Staff's position.

II. SUMMARY OF ARGUMENT

RESA notes, at the outset, that Section 2-202 (i-5) does not **require** the Commission to order "other regulated entities" such as ARES and AGS to pay assessments or fees; the Commission is only required to **consider** whether such entities should be required to pay such assessments or fees. However, the ALJPO starts from the incorrect premise that the Commission is required to order ARES and AGS to pay assessments or fees. For this reason and the other reasons set forth in RESA's Initial Comments and Reply Comments in this proceeding, ARES and AGS should not be required to pay assessments.

While RESA recognizes that the Commission has discretion in this matter, RESA urges the Commission to utilize that discretion to reject the allocation of any supplemental assessments to ARES and AGS for the following reasons. First, the amounts proposed to be assessed to ARES and AGS would be *de minimis* and would not justify the expense and work involved in

collecting them. Second, the reality is that ARES and AGS' customers will ultimately have to pay the assessments; assessments which they would already be paying as customers of gas and electric utilities. Third, even though the amounts are *de minimis*, the imposition of such costs on ARES and AGS would only serve to exacerbate the existing competitive parity situation in the Illinois retail marketplace. Fourth, unlike gas and electric utilities, ARES and AGS do not have mechanisms in place to recover the assessment and may not have the right to recover such assessments under existing contracts; at a minimum, any assessments from ARES and AGS should be delayed.

III. CONTRARY TO THE ALJPO, THE COMMISSION IS NOT REQUIRED TO IMPOSE SUPPLEMENTAL ASSESSMENTS ON ARES AND AGS.

The ALJPO states, incorrectly, that the "Commission is nonetheless required to apportion the assessment upon 'the costs to the agency of the exercise of its regulatory and supervisory functions with regard to the different industries and service providers subject to the proceeding'". (ALJPO, p. 19) On the contrary, the Commission is only required to **consider** the imposition of supplemental assessments on regulated entities other than the utilities. Section 2-202 (i-5) states, in pertinent part:

> Within 6 months after the first time assessments are made under this subsection (i-5), the Commission shall initiate a docketed proceeding in which it **shall consider**, in addition to assessments from electric and gas utilities subject to this subsection, the raising of assessments from, or the payment of fees by, water and sewer utilities, entities possessing certificates of service authority as alternative retail electric suppliers under Section 16-115 of this Act, entities possessing certificates of service authority as alternative gas suppliers under Section 19-110 of this Act, and telecommunications carriers providing local exchange telecommunications service or interexchange telecommunications service under Sections 13-204 or 13-205 of this Act. (emphasis added)

The Commission should utilize its discretion to consider the imposition of special assessments on ARES and AGS and then decide not to impose such special assessments for the following reasons.

First, unfortunately it is not clear what the level of supplemental assessments will be for fiscal year 2019, the year covered by the Strawman Proposal, or for any subsequent years. Staff's Statement of Facts assumes a "hypothetical deficiency" of $12 million for purposes of illustration:

> It should be further noted that this sum may not accurately represent the shortfall between the PUF and agency costs in any other year, since that shortfall, assuming that there is one, will be based on the difference between the Commission's legislative appropriation in future years and the Commission's future year operating costs, neither of which can be known with precision.

(Staff's Statement of Facts, p. 4) Applying this $12 million hypothetical deficiency and the floor of 1 billion kWh for ARES and 1 million DTH for AGS, an ARES at that minimum level would be assessed approximately $1045 and an AGS at that minimum level would be assessed approximately $800. While the ALJPO says that Staff proposes "reasonable *de minimis* levels" (ALJPO, p. 19), it is difficult, if not impossible, to determine reasonableness without knowing the cost of collection. Frankly, the work involved in assessing, billing, and collecting the amounts appears counterproductive, not reasonable.

Second, in reality, the utilities and ARES and AGS ultimately do not pay the assessment; their customers do. Under Staff's proposal, ARES' and AGS' customers effectively pay twice or even three times, if they are receiving electric supply from an ARES and gas supply from an AGS. For example, a customer of an ARES will pay his or her electric utility the same amount for his or her share of the assessment as a customer who is purchasing his or her supply from the electric utility. Then that same customer will pay his or her share of the assessment

imposed on the ARES. Given that every ARES customer is a customer of an electric utility and every AGS customer is a customer of a gas utility, requiring such customers to pay more than customers buying their supply from a utility is unfair. This inequity is not addressed in the ALJPO's analysis.

Third, even though the amounts of the supplemental assessments to individual ARES and AGS appear to be *de minimis*, assessment of such amounts on those entities would aggravate the competitive parity situation in Illinois. When considering imposing additional costs on ARES and AGS, it is important to consider the effect such requirements have on the competitive parity between supplier products and default supply service. The costs of regulatory requirements that apply to utilities are recovered by them through their distribution rates, not their supply charges, in contrast to RESs which must recover their costs through their supply prices. This is a further distortion of the Price-To-Compare, which is already distorted because, among other reasons, electric and gas utilities' distribution charges include costs that should be, but are not, included in their supply charges. This problem is also not addressed in the ALJPO's analysis.

Fourth, unlike ARES and AGS, electric and gas utilities already have mechanisms to recover the costs of the supplemental assessments from their customers. Suppliers do not have automatic recovery mechanisms. They have to recover all of their costs through their supply charges. Moreover, depending on the contracts that ARES and AGS have with their customers, they may not be able to recover the cost of supplemental assessments under the terms of existing contracts; they may have to wait until contracts are renewed with their customers. At a minimum, the imposition of supplemental assessments on ARES and AGS should be delayed for a year in order for them to revise their contracts to allow for recovery of supplemental assessments. (Note that even with a one-year delay, ARES and AGS would not be able to revise

contracts for those customers having multi-year contracts.) Regarding this point, the ALJPO does not address this as a reason not to impose special assessments on ARES and AGS, but rather responds to RESA's fallback position that any special assessments on ARES and AGS should be delayed for at least one year, claiming that "the Commission is disinclined to delay implementation of what RESA itself concedes to be the collection of modest sums on the assumption that some ARES or AGS might be better equipped to collect them from customers at the end of the year". (ALJPO, p. 19) Again, the ALJPO misses the point that the lack of a recovery mechanism for ARES and AGS is a reason not to impose special assessments on them at all.

IV. EXCEPTIONS

In conclusion, for the reasons stated in this Brief on Exceptions, the Commission should use its discretion not to impose supplemental assessments for any deficiency on ARES and AGS. This can be accomplished as follows. First, delete the carryover paragraph on pages 18-19 and the first paragraph on page 19 of the ALJPO and substitute the following:

The Commission agrees with RESA that Section 2-202 (i-5) does not **require** the Commission to order "other regulated entities" such as ARES and AGS to pay assessments or fees; the Commission is only required to **consider** whether entities other than electric and gas utilities, such as ARES and AGS, should be required to pay assessments or fees to cover the difference between deposits to the Public Utility Fund and expected Commission expenditures. Section 2-202 (i-5) states, in pertinent part:

> Within 6 months after the first time assessments are made under this subsection (i-5), the Commission shall initiate a docketed proceeding in which it shall consider, in addition to assessments from electric and gas utilities subject to this subsection, the raising of assessments from, or the payment of fees by, water and sewer utilities, entities possessing certificates of service authority as alternative retail electric suppliers under Section 16-115 of this Act, entities possessing certificates of service authority as alternative gas suppliers under Section 19-110 of this Act, and telecommunications carriers providing local exchange telecommunications service or interexchange telecommunications service under Sections 13-204 or 13-205 of this Act. (emphasis added)

The Commission agrees with RESA that the Commission has discretion in this matter. The Commission is using that discretion to reject the allocation of any supplemental assessments to ARES and AGS for the following reasons. First, the amounts proposed to be assessed to ARES and AGS would be *de minimis* and would not justify the expense and work involved in collecting them. Second, the reality is that ARES' and AGS' customers will ultimately have to pay the assessments; assessments which they would already be paying as customers of gas and electric utilities. Third, even though the amounts are *de minimis*, the imposition of such costs on ARES and AGS would only serve to exacerbate the existing competitive parity situation in the Illinois retail marketplace. Fourth, unlike gas and electric utilities, ARES and AGS do not have mechanisms in place to recover the assessment and may not have the right to recover such assessments under existing contracts.

Contrary to Staff's implication, the Commission is not required to impose supplemental assessments on ARES and AGS. For the reasons stated above, the Commission will utilize its discretion to not impose 1% of the supplemental assessments on ARES and AGS. This 1% shall be assessed upon electric and gas utilities in the same proportion as proposed by Staff for their own supplemental assessments.

Second, delete Findings (3) and (4) of the ALJPO (renumber Finding (5) as Finding (4)) on page 20 of the ALJPO and substitute the following:

3) The Staff Proposal to allocate and collect the special assessments provided for by Section 2-202(i-5), should be modified to eliminate the imposition of supplemental assessments on ARES and AGS and to reallocate their assessments to electric and gas utilities as explained in the Commission's Analysis and Conclusions; and

Third, delete the first and second ordering paragraphs on page 21 of the ALJPO and substitute the following:

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Staff Proposal to allocate and collect the special assessments provided for by Section 2-202(i-5), as set forth in greater detail herein, is adopted as modified in the Commission's Analysis and Conclusion section and in the Commission's Findings.

Respectfully submitted,

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Retail Energy Supply Association

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NOTICE OF FILING

Please take note that on May 11, 2018, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exceptions of the Retail Energy Supply Association in this proceeding.

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Brief on Exceptions of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 18-0375 via electronic delivery on May 11, 2018.

/s/ GERARD T. FOX
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