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	)	

INITIAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA") hereby submits its Initial Comments on the "Strawman" Proposal submitted in this proceeding on February 22, 2018 by the Staff of the Illinois Commerce Commission ("Commission"). RESA is a non-profit trade association of independent corporations that are involved in the competitive supply of electricity and natural gas.[1] RESA and its members are actively involved in the development of retail and wholesale competition in electricity and natural gas markets throughout the United States.

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 Alternative Gas Suppliers ("AGS") should be required to pay assessments or fees to cover the

[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 more than 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.

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)

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.

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. For the reasons set forth in its Initial Comments, ARES and AGS should not be required to pay assessments, as proposed by Staff.

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.

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. Frankly, the work involved in assessing, billing, and collecting the amounts appears counterproductive. Moreover, while the Staff's proposal for billing and collecting assessments has not been established, it appears that it may require the disclosure of confidential information—the kWh sales of ARES and the DTH sales of AGS. Consequently,

ARES and AGS would have to file petitions seeking confidential treatment of that information from the Commission in order to avoid public disclosure, creating additional expenses for Staff, as well as for ARES and AGS.

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.

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.

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.)

In conclusion, for the reasons stated in these Initial Comments, the Commission should use its discretion not to impose supplemental assessments for any deficiency on ARES and AGS. At a minimum, supplemental assessments on ARES and AGS should be delayed for at least one year.

Dated: April 5, 2018

Respectfully submitted,

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Retail Energy Supply Association

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NOTICE OF FILING

Please take note that on April 5, 2018, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Initial Comments 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 Initial Comments 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 April 5, 2018.

/s/ GERARD T. FOX
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