

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

In the Matter of Examining the Potential	:	
Benefits of Retail Competition for Long	:	Matter 15-02754
Island Electric Customers	:	
	:	

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Public Service’s (“Department”) October 16, 2020 Notice Requesting Comments.²

I. BACKGROUND

On December 31, 2015, the Department issued a Notice Requesting Comments and Establishing Participatory Process in which it invited comments on the potential benefits to customers of retail competition in the Long Island electricity market.³ The Department observed that “[w]hile the rest of New York State electric customers already have the option to participate in a competitive retail electric market, retail customers in the LIPA [Long Island Power Authority] service area face barriers that have prevented competition from developing.”⁴

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 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.

² Notice Requesting Comments (Oct. 16, 2020) (“Notice”).

³ Notice Requesting Comments and Establishing Further Process (Dec. 31, 2015) (“2015 Notice”).

⁴ *Id.* at 1-2.

Consequently, the Department noted that its “objective in this proceeding is to investigate potential benefits to customers and examine what reforms, if any, are needed to achieve them.”⁵

In response to a request from RESA to extend the comment period to allow comments to address matters raised in the Order Resetting Retail Energy Markets and Establishing Further Process (“2016 Reset Order”), issued by the Public Service Commission (“Commission”) on February 23, 2016 in Cases 15-M-0127, 12-M-0476, and 98-M-1343,⁶ the Department extended the comment period established by the 2015 Notice.⁷ The Department subsequently further extended the comment period until thirty days after the resolution of matters raised in the 2016 Reset Order.⁸ The Commission resolved those matters in those proceedings in its September 17, 2020 Order on Rehearing, Reconsideration and Providing Clarification.⁹ Subsequently, the Department issued the Notice seeking comments on six specifically enumerated questions and offering an opportunity to comment on any other issues stakeholders deem important for consideration.¹⁰ RESA now hereby submits its comments in response to the Notice.

II. COMMENTS

LIPA’s ratepayers have nominal access to a competitive retail electric market through the Long Island Choice Program.¹¹ In fact, the competitive retail electric market on Long Island suffers from decidedly limited participation by energy service companies (“ESCOs”) and customers alike. This limited participation in the Long Island Choice Program stands in stark

⁵ 2015 Notice, at 2.

⁶ See RESA Correspondence (Mar. 22, 2016).

⁷ See Notice Extending Comment Period (Mar. 29, 2016).

⁸ See Notice Further Extending Comment Period (May 18, 2016).

⁹ See Notice, at 1.

¹⁰ See *id.* at 1-2.

¹¹ See Long Island Power Authority Tariff for Electric Service (“Tariff”), § IX; Long Island Choice Operating Procedures (“Operating Procedures”).

contrast to the flourishing competitive retail electric market available to customers in most of the rest of New York State. In that market, ESCOs compete with each other and innovate to offer compelling products that meet customers' needs and interests, from products that optimize customers' usage and/or provide opportunities for savings to products that complement customers' other energy-related investments, whether in distributed generation, energy efficiency measures, or electric vehicles. LIPA ratepayers should have access to a competitive retail market no less vibrant than utility ratepayers in other parts of New York State. To accomplish this, the Department should recommend and LIPA should implement enhancements to the Long Island Choice Program and more fundamental reforms to Long Island's energy markets.

A. Competitive Retail Electric Markets Provide Customers With Significant Benefits

In the Notice, the Department sought comments on the benefits of competitive retail electric markets, whether such benefits are universal, and whether they are present and/or specifically applicable to the Long Island service area.¹² Fundamentally, wherever they are established, competitive retail electric markets empower customers to choose products that meet their own individual needs. For example, customers can choose products based on price, the length of a contract term, or renewable energy content. Regardless of the particular factors that motivate customers, by being afforded the option to choose, they are able to ensure that products are well-suited to their specific requirements and preferences. Indeed, the ability to choose an ESCO, like the ability to choose freely among other consumer goods and services, is highly

¹² See Notice, at 1 (“What are the benefits to customers of competitive retail electric markets? Are such benefits universal, and are they present and/or specifically applicable to the Long Island electric service area?”).

valued by consumers. In fact, a recent RESA survey found that seventy-four percent (74%) of those surveyed believe that consumers should be able to shop for an ESCO.¹³

Moreover, providing customers the ability to choose retail electric supply products provides additional benefits beyond empowering customers. Competition among ESCOs for customers' business drives ESCOs to offer the most compelling products possible. For example, ESCOs compete with each other, and with utility default service, on price. They offer lower prices to attract and retain customers.¹⁴ They also increase transparency into the components of electric supply so that customers can manage their consumption more effectively. Such competition has afforded customers significant opportunities for savings compared to default service¹⁵ and has avoided the substantial price increases associated with the traditional, cost-of-service-regulated, monopoly utility model.¹⁶ Further, ESCOs compete by offering products with other distinctive features, such as renewable energy content beyond required minimum

¹³ See RESA's Survey of Americans Finds 74% of Consumers Want to Select Their own Energy Supplier, <https://www.resausa.org/news-events/resa%E2%80%99s-survey-americans-finds-74-consumers-want-select-their-own-energy-supplier> (Jun. 24, 2020) ("The survey found a strong sense of importance for choice (76%) when deciding on consumer products such as cell phone or ISP plans. This sentiment is carried over to a near equal number of voters who agree (74%) that consumers should be able to shop for energy suppliers in the same way.") (last visited Dec. 16, 2020).

¹⁴ See, e.g., NYS Power To Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (showing thirty-nine (39) ESCO offers below the utility default rate, of which two provide guaranteed savings, for Zip Code 10023) (last visited Dec. 16, 2020).

¹⁵ See, e.g., *id.*

¹⁶ Restructuring Recharged: The Superior Performance of Competitive Electricity Markets 2008-2016, https://www.resausa.org/sites/default/files/RESA_Restructuring_Recharged_White%20Paper_0.pdf (Apr. 2017) (last visited Dec. 16, 2020), at 16 ("Weighted average prices in the group of 35 monopoly states have risen inexorably. By contrast, in the 14 competitive markets, commercial and industrial weighted average prices have trended significantly downward as residential prices have flattened.").

amounts.¹⁷ In fact, by providing such products to customers, ESCOs have a significant role in increasing the consumption of renewable energy content and furthering the State’s clean energy goals.¹⁸

More broadly, competition among ESCOs for customers spurs innovation. To remain competitive in the marketplace and to continue to attract and retain customers, ESCOs, like market participants in other sectors of the economy, must continually review and enhance their product offerings. This process frequently leads to new, innovative products and services. For example, this process has produced extraordinary innovation in telecommunications since the breakup of the AT&T monopoly in the early 1980s.¹⁹ Indeed, since that time, telecommunications technology has moved from rotary telephones²⁰ to 5G²¹ and enabled such innovations as TikTok.²² As competitive electric markets continue to develop, comparable levels of innovation and technological progress will occur. In fact, ESCOs already offer a variety of

¹⁷ See, e.g., NYS Power To Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (showing fifty-seven ESCO renewable energy offers for Zip Code 10023) (last visited Dec. 16, 2020); see also Restructuring Recharged: The Superior Performance of Competitive Electricity Markets 2008-2016, https://www.resausa.org/sites/default/files/RESA_Restructuring_Recharged_White%20Paper_0.pdf (Apr. 2017) (last visited Dec. 16, 2020), at 25 (“Customers in competitive states can usually choose the portion of supply that is produced by renewable (green) resources, rather than being limited to minimum levels mandated by state government policies that may prevail in some monopoly or competitive states.”).

¹⁸ See Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Case 12-M-0476, *Proceeding on the Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Direct Testimony of Frank Lacey on Behalf of The Retail Energy Supply Association (Sep. 15, 2017; Rev. Dec. 1, 2017) (“Lacey Testimony”), at 49.

¹⁹ See, e.g., Could The Old AT&T Break-Up Offer Lessons For Big Tech Today?, <https://www.npr.org/2019/06/26/736344175/could-the-old-at-t-break-up-offer-lessons-for-big-tech-today> (Jun. 26, 2019) (“It was necessary to get AT&T out of the way to create the space for the great renaissance in technology that has driven a lot of the U.S. economy since the 1980s.”) (quoting Steve Coll) (last visited Dec. 16, 2020).

²⁰ Model 500, Cooper Hewitt, Smithsonian Design Museum, https://www.si.edu/object/model-500:chndm_2009-50-1-a_c (last visited Dec. 16, 2020).

²¹ See, e.g., What is 5G, <https://www.verizon.com/about/our-company/5g/what-5g> (last visited Dec. 16, 2020).

²² See TikTok, <https://www.tiktok.com/en/> (last visited Dec. 16, 2020).

innovative products in more well-developed, competitive markets.²³ Further, because this innovation occurs in a competitive context, ESCOs and their shareholders bear the risk of the necessary investment. Customers support this innovation only when they determine that ESCOs' new products and services are compelling and choose to purchase them. ESCOs that develop compelling products will be able to use them to win market share. ESCOs that develop products that prove not to be compelling will bear the consequences, in, for example, lost market share.

In addition to these general benefits of competitive retail electricity markets, an enhanced competitive market will offer particular benefits to customers on Long Island. Like other parts of New York State, Long Island is a highly developed area. Many regional and national businesses have operations on Long Island. Such businesses often contract for electric supply on a portfolio basis, rather than on a location-by-location basis. Today, a business, such as a retailer, with operations throughout New York State might enter into a single contract for electric supply for all of its New York operations *except* those on Long Island because of the current state of the Long Island competitive retail market. With expanded competitive supply options on Long Island, such a retailer may be able to include its Long Island locations in its single New York retail supply contract. This may allow the business to address its electricity supply needs more efficiently. Further, because the retailer will seek to arrange electric supply for more load in the aggregate, ESCOs may compete more aggressively for the retailer's business, which could reduce the ultimate cost to the customer.

²³ See, e.g., Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Case 12-M-0476, *Proceeding on the Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*, Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Direct Testimony of Frank Lacey on Behalf of The Retail Energy Supply Association, Exhibit 4 (Sep. 15, 2017) (available at: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-M-0127&submit=Search#>) ("Lacey Exhibit 4") (providing examples of innovative product offerings available from ESCOs).

Further, ESCOs are ready and able to enter the Long Island market and to provide customers there with the products they desire without ratepayer subsidies or other monetary inducements to enter this market. Rather, they are willing to invest the funds needed to provide service on Long Island, as long as choice is meaningfully, not just nominally, available to customers.

B. Attainable, Yet Unrealized, Opportunities For Retail Competition Exist In The Long Island Electric Market

The Notice also asked whether there are “attainable but not yet realized opportunities for retail competition in the Long Island electric market.”²⁴ In short, the answer is a resounding yes.

The Long Island retail electric market is currently served by only four (4) ESCOs.²⁵ Just one (1) of those ESCOs is licensed to serve residential customers; the other three (3) ESCOs are only licensed to serve commercial customers.²⁶ By contrast, the Department’s website identifies one hundred forty-eight (148) ESCOs regulated by the Commission that provide electric service; of those, one hundred nine (109) are serving residential customers.²⁷ Further, very few Long Island customers are enrolled with ESCOs. As of March 2020, of the 1.1 million LIPA customers,²⁸ only 7,413 received service from an ESCO under the Long Island Choice

²⁴ Notice, at 2.

²⁵ See Long Island Choice, <https://www.psegliny.com/myaccount/serviceandrates/lic> (listing the ESCOs licensed to serve the LIPA service territory) (last visited Dec. 16, 2020).

²⁶ See *id.* (listing the ESCOs licensed to serve residential and commercial customers in the LIPA service territory).

²⁷ See Listing of ESCO Companies Regulated by the NY PSC, <http://documents.dps.ny.gov/public/common/EscoSearch.aspx> (last visited Dec. 16, 2020).

²⁸ Annual Disclosure Report of the Long Island Power Authority (Fiscal Year 2019), <https://www.lipower.org/wp-content/uploads/2020/06/Final-LIPA-ADR-FY-2019.pdf> (last visited Dec. 16, 2020) (“2019 Annual Report”), at 16 (“As of December 31, 2019, the Authority served approximately 1.1 million customers in its service area”).

Program,²⁹ fewer than fifty (50) of which were mass market customers.³⁰ By contrast, in large investor-owned utility service territories elsewhere in New York State, a significantly higher proportion of customers receive electric supply from ESCOs.³¹

Further, on Long Island, there is already a robust competitive market for natural gas. However, natural gas is provided by KeySpan-Long Island, which is subject to the jurisdiction of the Commission, not the LIPA Board. As of December 2019, 46.1% of gas volume delivered by KeySpan-Long Island was supplied by ESCOs.³² Additionally, according to the Department's website, seventy-one (71) ESCOs are eligible to supply natural gas in the KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I. service territory; sixty-four (64) of which are serving residential customers.³³ Because of this general familiarity with competitive commodity supply, and the small number of customers currently receiving electric supply from an ESCO, there are similar significant opportunities for retail competition in the Long Island electric market.

Further, LIPA's relatively high average retail rates compared to investor-owned utility average retail rates suggest that there may be opportunities for competition to reduce costs.³⁴ For example, in other parts of New York State, ESCOs offer products with prices less than the rate of

²⁹ 2019 Annual Report, at 38.

³⁰ Proposal Concerning Modifications to LIPA's Tariff for Electric Service, <https://www.lipower.org/wp-content/uploads/2020/03/Tariff-Proposal-February-2020-LI-Choice.pdf>, at 2 (last visited Dec. 16, 2020) ("Currently, LIPA has fewer than 50 mass market customers on Long Island Choice.").

³¹ See New York Electric Retail Access Migration Data for Dec-19 (Mar. 11, 2020) (identifying the New York migration percentage as 19.6 as of December 2019).

³² See New York Natural Gas Retail Access Migration Data for December-19 (Mar. 11, 2020).

³³ Listing of ESCO Companies Regulated by the NY PSC, <http://documents.dps.ny.gov/public/common/EscoSearch.aspx> (last visited Dec. 16, 2020).

³⁴ See 2019 Utility Bundled Retail Sales- Total, https://www.eia.gov/electricity/sales_revenue_price/xls/table10.xlsx (last visited Dec. 16, 2020) (showing that, for 2019, LIPA's average retail rate was higher than all New York investor-owned utilities' average retail rates except those of Consolidated Edison and Fishers Island Utility Co. Inc.).

utility default service or with guaranteed savings compared to utility default service.³⁵ ESCOs may be able to offer such opportunities for savings to Long Island customers, if barriers to participating in the Long Island market are removed. As a consequence, there are significant opportunities for ESCOs to provide these savings to customers in the Long Island electric market.

C. Significant Downstream Benefits Will Be Available For Long Island Customers With A Vibrant Competitive Retail Market

The Notice also requested comments on the potential downstream benefits for customers in the Long Island electric market that would be available with a competitive retail market.³⁶ A vibrant competitive electric retail market will provide significant downstream benefits to customers.

One of the core benefits of a well-developed competitive retail market is the ability to enable customers to realize savings by optimizing their consumption. To date, optimization efforts have focused on generation, transmission, and distribution to increase efficiency and reduce line losses. However, with ready access to granular detail about customer consumption patterns (through AMI metering, data sharing, and analytical tools) and the ability to base customer bills on this granular consumption detail, ESCOs can work with customers to design solutions best suited to meet each customer's needs and preferences. For example, ESCOs can design products for customers that encourage and enable customers to capture the value of shifting consumption to the most economical times and away from times when the cost of power

³⁵ See, e.g., NYS Power To Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (showing thirty-nine (39) ESCO offers below the utility default rate, of which two provide guaranteed savings, for Zip Code 10023) (last visited Dec. 16, 2020).

³⁶ See Notice, at 2 (“Are there potential downstream benefits for customers in the Long Island electric market that would be available with a competitive retail market, e.g., relating to community choice aggregation?”).

is higher.³⁷ Similarly, ESCOs can design products that combine electric supply with distributed generation or energy efficiency solutions or that tailor electric supply options to work in concert with distributed generation or energy efficiency solutions that the customer has in place or is procuring from another source (in a manner akin to telecommunications providers' providing television or other entertainment services with telephone or internet service).³⁸ In doing so, ESCO offerings may be able to decrease demand at peak times. This could reduce constraints on transmission and distribution systems and mitigate the need for infrastructure enhancements to accommodate higher peak demand; thereby, reducing the need for utility distribution and transmission system investment that would be borne by all ratepayers.

Further, by encouraging the voluntary consumption of renewable energy content, and by pairing competitive supply with distributed generation solutions, competitive supply options will support and foster the development of renewable generation. Doing so will support the clean air and other emissions related benefits of renewable generation.³⁹ It will also enhance the direct and indirect economic effects of renewable energy generation, which include creating and sustaining jobs and supporting municipalities, landowners, and service providers.⁴⁰

The Notice specifically identifies community choice aggregation (“CCA”) as a potential downstream benefit of a competitive retail market.⁴¹ A vibrant competitive market could produce additional benefits related to CCA, which LIPA authorized recently for eligible mass market

³⁷ See, e.g., Lacey Exhibit 4.

³⁸ See, e.g., *id.*

³⁹ Cf. Lacey Testimony, at 49.

⁴⁰ Cf. NYSERDA Renewable Portfolio Standard Main Tier 2013 Program Review, <https://www.nyseda.ny.gov/-/media/Files/EDPPP/Energy-and-Environmental-Markets/RPS/RPS-Documents/2013/2013-RPS-investments-NYS.pdf> (Sep. 5, 2013) (last visited Dec. 16, 2020), at S-8 (discussing the economic effects of renewable generation investment).

⁴¹ See Notice, at 2.

customers through tariff changes.⁴² Because ESCOs participating in LIPA’s CCA program generally must follow all applicable rules of the Long Island Choice Program,⁴³ enhancing the Long Island Choice Program will have downstream benefits for the Long Island CCA program. For example, enhancements to the Long Island Choice Program that encourage additional ESCOs to become licensed to serve customers in the LIPA service territory will expand the number of ESCOs that could serve aggregations, which will increase competition among ESCOs that wish to serve such aggregations.

D. Various Barriers Impede The Development Of A Vibrant Competitive Retail Market

The Notice requested comments on “the barriers to creating a competitive retail market in the Long Island service territory” and the way in which those barriers should be addressed.⁴⁴ The state of the Long Island wholesale market, the pricing structure of the Long Island Choice Program, and the lack of a robust retail access infrastructure discourage participation in the competitive electric retail market currently.

Fundamentally, the lack of a vibrant competitive wholesale market on Long Island impedes the viability of retail choice on Long Island.⁴⁵ The wholesale market is not vibrant

⁴² Approval of Modification to LIPA’s Tariff Related to Community Choice Aggregation, <https://www.lipower.org/wp-content/uploads/2020/06/2020-05-20-Approval-of-Tariff-Changes-CCA.pdf> (May 20, 2020) (last visited Dec. 16, 2020).

⁴³ Tariff, § IX(B)(2)(c).

⁴⁴ See Notice, at 2 (“What are the barriers to creating a competitive retail market in the Long Island service area? How should these barriers be addressed?”).

⁴⁵ See Matter No. 15-00262, *In the Matter of a Three-Year Rate Proposal for Electric Rates and Charges Submitted by the Long Island Power Authority and Service Provider, PSEG Long Island LLC*, Direct Pre-Filed Testimony of the Power Supply Panel (Jan. 30, 2015), at 20; Matter No. 15-00262, *In the Matter of a Three-Year Rate Proposal for Electric Rates and Charges Submitted by the Long Island Power Authority and Service Provider, PSEG Long Island LLC*, Direct Pre-Filed Testimony of Joseph Trainor on Cost of Service, Rate Design, and Tariff Issues (Jan. 30, 2015), at 55.

because most Long Island-based generation is under contract with LIPA⁴⁶ and because the LIPA service territory is subject to various transmission constraints.⁴⁷ Addressing these underlying issues and creating a competitive wholesale market on Long Island may require fundamentally rethinking LIPA's approach to power supply and a concerted effort over a long period of time, given the length of some of LIPA's power purchase agreements ("PPAs").⁴⁸ This might include allowing LIPA's PPAs to expire, terminating LIPA's PPAs, and divesting LIPA of its generating assets. RESA appreciates the significance of such actions and recognizes that, particularly given LIPA's financing arrangements,⁴⁹ this is not a near-term solution to increasing competition in the Long Island wholesale and retail electricity markets. Indeed, LIPA's financing structure may operate as a disincentive to promoting a vibrant competitive market. Nevertheless, as has been demonstrated elsewhere in New York State and in other jurisdictions, transitioning from a fully regulated, cost-of-service-based framework is achievable over a reasonable timeframe with sufficient planning and mechanisms designed to facilitate the transition (such as surcharges to address stranded costs).⁵⁰ RESA urges LIPA and the Department to institute collaborative processes, allowing for input from all affected stakeholders, for considering how best to achieve this transition. As an end result of this process, regardless of how long a transition will take, clear timeframes should be identified to provide market participants with certainty.

⁴⁶ See Matter No. 15-00262, *In the Matter of a Three-Year Rate Proposal for Electric Rates and Charges Submitted by the Long Island Power Authority and Service Provider, PSEG Long Island LLC*, Direct Pre-Filed Testimony of the Power Supply Panel (Jan. 30, 2015), at 20.

⁴⁷ See *id.* at 10.

⁴⁸ 2019 Annual Report, at 31 (listing the expiration dates of LIPA's PPAs).

⁴⁹ *Id.* at 16-20 (describing LIPA's financing arrangements).

⁵⁰ See, e.g., PSC Opinion & Order 96-12 (available at: <http://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=910&MatterSeq=6564>).

Beyond these fundamental matters, various features of the Long Island Choice Program generally discourage participation in it. More modest changes to the Long Island Choice Program could be made to these features to increase interest in that market to provide consumers with the benefit of competition even as more fundamental reforms are being considered. For example, the commodity pricing structure in the Long Island Choice Program is overly complex and may be difficult for customers, particularly residential customers, to follow. Instead of being exempt from a default service charge and paying a per kilowatt-hour price for electricity supply to the ESCO (in addition to delivery charges paid to the utility), Long Island Choice Program customers are not exempt from LIPA's Power Supply Charge. In fact, in addition to ESCO charges and utility delivery charges, Long Island Choice Program customers must still pay \$0.0392 per kilowatt-hour of the LIPA Power Supply Charge,⁵¹ but also receive various credits.⁵² This system of charges and credits is complex. As a consequence, comparing competitive supply options with default service requires detailed, tariff-based calculations. Some customers, particularly mass market customers, may have little appetite for calculating the applicable charges and credits to determine the ultimate price that they would pay to exercise their right to choose.

Further, this system of charges and credits could cause customers to be confused about what the charges and credits represent and what precisely they are buying. Customers understanding that competitive supply options generally reflect wholesale power costs, renewable portfolio standard costs, and other ESCO expenses, may nevertheless be confused about how competitive supply compares to or replaces the Power Supply Charge.

⁵¹ Tariff, § IX(D)(3) (“\$0.0392 per kWh of the Power Supply Charge will apply to the Participating Customers”).

⁵² Tariff, § IX(D)(1).

To address these issues, and to ensure that customers can compare competitive supply options with default service readily, LIPA should redesign its approach to the Power Supply Charge. It should treat the Power Supply Charge as a default service option (like distribution utility default supply options in other parts of New York State). Long Island Choice Program customers should not be subject to any portion of this charge, nor should they receive any credits for components of this charge that are not applicable to them. Instead, the Power Supply Charge should contain the same components as competitive supply products. Cost components that are currently included in the Power Supply Charge but that are not properly understood as energy supply costs should be removed from the Power Supply Charge and recovered through separate mechanisms, such as distribution rates or separate riders or surcharges. Concomitantly, any energy supply costs improperly captured in delivery rates should be allocated to the Power Supply Charge. This process will require careful analysis of the various costs that comprise each of LIPA's rates to determine which components should be collected through LIPA's Power Supply Charge and which are appropriately collected through delivery rates.⁵³ This can best be accomplished through a collaborative process in which all stakeholders are given the opportunity to provide input on this important issue.

Other aspects of the Long Island Choice Program further discourage participation. For example, with a few limited exceptions, customers are charged a ten dollar (\$10.00) fee every time that they switch providers.⁵⁴ Additionally, while residential customers typically prefer to

⁵³ See, e.g., Lacey Testimony, at 68-69 (discussing importance of proper cost allocation); see also Who's The Buyer? Retail Electric Market Structure Reforms in Support of Resource Adequacy and Clean Energy Deployment" (March 2020) (available at: <https://windsolaralliance.org/wp-content/uploads/2020/03/WSA-Retail-Structure-Contracting-FINAL.pdf>) (last visited Dec. 16, 2020); The Electricity Journal 32, F. Lacey, "Default service pricing – The flaw and the fix: Current pricing practices allow utilities to maintain market dominance in deregulated markets" (Feb. 2019).

⁵⁴ Tariff, § IX(A)(5)(b).

receive one bill consolidating distribution utility and ESCO charges, the Long Island Choice Program does not offer a consolidated billing option.⁵⁵ Further, while elsewhere in New York State, utilities offer a purchase of receivables program, under which utilities purchase ESCO receivables at a discount and assume full responsibility for collections, LIPA does not have such a program.⁵⁶ Such programs encourage ESCO participation in competitive markets because they allow ESCOs to focus on other activities instead of collections. All of these issues can be addressed with tariff changes and/or system or operational improvements. Specifically, LIPA should adopt tariff changes to remove the ten dollar (\$10.00) switching charge, create mechanisms for customers to receive consolidated bills, and establish a purchase of receivables program.

Finally, the operator of LIPA's transmission and distribution system, PSEG Long Island LLC ("PSEG LI"), should enhance its efforts to promote the availability of competitive supply options to customers. For example, while PSEG LI maintains a webpage devoted to the Long Island Choice Program,⁵⁷ the webpage is not immediately accessible from the main PSEG LI webpage.⁵⁸ As a consequence, ratepayers may have difficulty locating information about the program. Similarly, the PSEG LI webpage devoted to the Long Island Choice Program provides very limited information about the program and customer options. In fact, the webpage does not

⁵⁵ See Long Island Choice, <https://www.psegliny.com/myaccount/serviceandrates/lic>, ("You will receive one bill from your ESCO for energy supply and another from us for delivery.") (last visited Dec. 16, 2020). By tariff, a customer desiring to make a single payment for electric service, "may arrange to have its ESCO pay the [LIPA] charges." Tariff, § IX(D)(d)(3).

⁵⁶ See, generally, Operating Procedures.

⁵⁷ See Long Island Choice, <https://www.psegliny.com/myaccount/serviceandrates/lic> (last visited Dec. 16, 2020).

⁵⁸ See PSEG Long Island, <https://www.psegliny.com/> (last visited Dec. 16, 2020).

even provide links to licensed ESCO websites; it simply provides the ESCOs' telephone numbers.⁵⁹ These issues could be addressed with modest enhancements to the PSEG LI website.

E. RESA Supports Best Practices That Will Enhance Retail Electric Choice On Long Island

The Notice requested comments on insight from best practices that might be available to inform discussions on the issue of retail electric markets.⁶⁰ As a general matter, best practices are those that help educate consumers about the competitive retail electric market and enable them, without difficulty, to make informed decisions about the products and services that best fit their needs. As the Department is aware, the way in which consumers buy and use electricity has changed. With the development of competitive retail markets, as well as with the increasing availability of behind-the-meter options, such as distributed generation, consumers have become increasingly active in making decisions about how to meet their energy needs. Consumers, even those who ultimately choose not to avail themselves of more innovative energy solutions, value information and education about the energy markets and the options available to them.

Because of the experience that other parts of New York State and other jurisdictions have had with competitive retail electric markets, examples of the implementation of such best practices are readily available. For example, websites, such as the New York Power to Choose website,⁶¹ that allow customers to compare and evaluate various ESCO offers provide customers with a convenient way of shopping for electric supply.⁶² In fact, customers are able to sort available offers based on features that they find most important, such as price and renewable

⁵⁹ See Long Island Choice, <https://www.psegliny.com/myaccount/serviceandrates/lic> (last visited Dec. 16, 2020).

⁶⁰ See Notice, at 2 (“What insight from best practices are available to inform discussions on the issue of retail electric markets, positive or negative?”).

⁶¹ NYS Power to Choose, <http://documents.dps.ny.gov/PTC/home> (last visited Dec. 16, 2020).

⁶² *Id.*

energy content.⁶³ Such websites may be particularly valuable to customers when they also include information about other energy related options and services that may be of interest, such as distributed generation resources,⁶⁴ because they can be a convenient, single location for information and access to energy-related options.

Similarly, practices that streamline the billing and payment process, enhance customer experiences, and otherwise provide customers with expanded access to data and related analytical tools are best practices. For example, consolidated billing options allow customers to limit the number of bills that they receive by including utility charges and ESCO charges on a single bill. Residential customers seeking to streamline their financial payment obligations find such options particularly helpful. Further, when ESCOs issue consolidated bills, and have access to granular consumption data, ESCOs are able to offer products that are optimized to customers' particular usage patterns and allow customers to obtain savings associated with their own unique consumption. Programs in which distribution utilities purchase ESCO receivables (at a discounted rate) and then assume full responsibility for collections of unpaid bills streamline the collections process and provide a more effective approach to assure compliance with the Home Energy Fair Practices Act. Moreover, removing artificial barriers to customers' efforts to switch between ESCOs also enhances the competitive supply market by improving customers' ability to choose the supply options that they want.⁶⁵ Likewise, allowing ESCO customers to move to other locations while maintaining their existing ESCOs and energy supply arrangements also

⁶³ *Id.*

⁶⁴ NYS Power to Choose, <http://documents.dps.ny.gov/PTC/home> (last visited Dec. 16, 2020) (allowing customers to learn more about distributed energy resources); *see also* EnergizeCT, <https://www.energizect.com/> (last visited Dec. 16, 2020).

⁶⁵ Currently, Long Island Choice Program customers are only permitted to switch ESCOs, or return to utility service, on the first day of the month, after providing at least ten (10) days' notice. *See* Tariff, § IX (D)(11)(a)(2).

enhances the customer experience. In addition to these items, it is also important to ensure that robust systems allow for seamless communication between ESCOs and distribution utilities to ensure that enrollments, switches, pricing changes, billing information, and the like are communicated timely and accurately.

Additionally, it is a best practice to have distribution utilities focus on ensuring the safe and reliable delivery of electricity and to allow the competitive market to focus on delivering the innovative products and services that customers want and demand. Indeed, especially at a time when storms have shown clearly the effects of deficiencies in utility preparedness,⁶⁶ distribution utilities should not devote their limited financial resources or the attention of their personnel to matters outside their core functions of safely and reliably delivering power. The task of innovation should be left to competitive market participants investing their own capital, at their own risk.

Further, it is also a best practice to review ESCO license applications rigorously. The applicable licensing authority should ensure that applicants are well-capitalized and have the resources and experience necessary to manage all potential risks associated with electricity supply. To do this, a rigorous review of license applications is a best practice. Similarly, the licensing authority should take appropriate action to ensure that licensed entities participate in the market appropriately. This can be accomplished by imposing sanctions, including severe penalties for repeated offenses, on bad actors and by requiring training (such as training of ESCO sales personnel) to occur regularly.

⁶⁶ See, generally, Case 20-E-0586, *Proceeding on Motion of the Commission of an Investigation into the Utilities' Preparation for and Response to August 2020 Tropical Storm Isaias and Resulting Electric Power Outages*, Interim Investigation Report on Tropical Storm Isaias (Nov. 19, 2020).

Ultimately, the most efficient and robust means to establish best practices is through a collaborative process in which stakeholders can come together to explore the practices adopted in other restructured markets and identify those that are best suited for the Long Island market. Thus, RESA encourages the Department and LIPA to engage in such a collaborative process as a means of developing a market structure that is both customer-focused and vibrant.

F. The Long Island Choice Program Contains Robust Consumer Protections

The Notice also sought comments on protections for mass market and low income customers in the Long Island competitive retail market.⁶⁷ As an initial matter, LIPA already has established important consumer protections⁶⁸ and has the authority to enforce them.⁶⁹ Among other things, LIPA established a script and protocols that must be followed by independent third parties verifying customer enrollments.⁷⁰ In fact, if the customer does not satisfactorily complete the independent third party verification, the “customer cannot be enrolled.”⁷¹ Further, customers have a five-day period within which to change their mind about an enrollment.⁷² Residential customers are to receive a product label that identifies generation price and a summary of contract terms.⁷³

Additionally, LIPA has specific requirements designed to protect consumers from slamming.⁷⁴ Among other things, LIPA sends enrolling customers and ESCOs verification letters

⁶⁷ See Notice, at 2.

⁶⁸ See, e.g., Operating Procedures, § 3.8.

⁶⁹ Tariff, § IX(A)(c).

⁷⁰ Operating Procedures, Attachment H.

⁷¹ *Id.*

⁷² Operating Procedures, § 3.6.2; *id.*, Attachment H.

⁷³ Operating Procedures, § 12.0; *id.*, Attachment G.

⁷⁴ Operating Procedures, § 3.8.

to confirm enrollment.⁷⁵ Further, ESCOs are required to self-report all unauthorized switches to LIPA.⁷⁶ Additionally, ESCOs must preserve, for specified timeframes, customer authorization and enrollment records (among other records).⁷⁷ LIPA's existing consumer protections are robust and supported by strong enforcement authority.⁷⁸

To the extent that LIPA or the Department believes further protections are warranted, additional protections should be aimed at ensuring that mass market customers, including low-income consumers,⁷⁹ are able to make informed decisions about electric supply options. For example, requiring ESCOs to provide customers notice of upcoming contract expirations or renewals would enhance customers' ability to make informed decisions about supply options. Similarly, enhancing the customers' ability to switch providers quickly is an important consumer protection, particularly for mass market and low income customers, because it allows customers to immediately effectuate their choices and switch to product and pricing offers that best suit their needs. For example, such switches could be allowed to occur on days beyond just the first day of the month and on fewer than ten (10) days' notice.⁸⁰ Similarly, the fee for switching

⁷⁵ Operating Procedures, § 3.8.4.

⁷⁶ *Id.* § 3.8.6.

⁷⁷ *Id.* § 3.8.7. ("ESCOs must preserve records as follows: 1) for at least one year from the date of receipt thereof, all written, electronic, taped verbal or third-party verification records of customer authorizations of access to the customer's historical billing information; 2) for at least 2 years from the ESCO's discontinuance of service to the LI Choice Customer, all other records pertaining to the customer, including written, electronic, taped verbal, and third-party verification records of all customer authorizations for eligibility and enrollment, changes in Agreement terms, customer information and billing data, and change of ESCO records.").

⁷⁸ *See, e.g.*, Operating Procedures, § 3.8.9 ("An ESCO responsible for a request to change an Eligible Customer's or a LI Choice Customer's provider of Electric Generation Service without such customer's written authorization must pay all costs and fees incurred by such customer and LIPA arising from or related to the unauthorized change. In such cases, the ESCO's license also may be suspended or revoked by the Chairman."); *id.* at § 4.7 ("The Chairman of the Authority may suspend or revoke an ESCO's or DRC's license to participate in the Program for violating Program requirements.").

⁷⁹ In order for ESCOs to apply heightened consumer protections specifically to low income customers, ESCOs must be able to identify which customers are low income customers.

⁸⁰ *See* Operating Procedures, § 3.6.5; Tariff, § IX(D)(11)(a)(2).

ESCOs should be eliminated. In fact, mass market and low income customers are the ones most likely to benefit from elimination of the ten dollar (\$10.00) switching fee.

G. Opportunities For Stakeholder Interaction And Collaboration Will Advance Efforts To Enhance Long Island Retail Electric Choice

The Notice also requested comments on “other issues deemed important for consideration.”⁸¹ Ensuring a vibrant competitive retail electric market in Long Island is an important matter that will benefit significantly from the insight of various stakeholders based on their experience elsewhere in New York State and in other jurisdictions. A technical meeting at which such stakeholders can discuss their experiences and input with the Department will advance these goals. Indeed, the dialogue that can take place at a technical meeting may enable the Department to streamline the recommendations that it makes to LIPA for enhancements to the Long Island retail electric market.

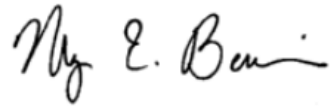
Additionally, scheduling an open meeting where stakeholders can interact directly with LIPA will be an additional, important step in enhancing the Long Island retail electric market. In such a meeting, LIPA board members will be able to engage in a dialogue with stakeholders to understand more fully stakeholders’ positions and the Department’s recommendations.

III. CONCLUSION

RESA appreciates the opportunity to offer comments on these important matters and looks forward to working with stakeholders to improve the Long Island competitive retail electric market.

⁸¹ Notice, at 2.

Respectfully submitted,



By: _____

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