



August 1, 2022

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Assembly Committee on Corporations, Authorities and Commissions
Room 520
New York State Capitol
Albany, NY 12248

Sent via committee email: henningm@nyassembly.gov

Dear Chairs Paulin, Cusick, and Englebright:

On behalf of its membership, the Retail Energy Supply Association (RESA) offers this written testimony for the New York State Assembly's hearing regarding *The Role of State Authorities in Renewable Energy Development*.

Founded in 1990, and headquartered in Harrisburg, Pennsylvania, RESA is a non-profit, trade association that represents the interests of its members, who are active participants in the retail competitive markets for electricity in New England, New York, the Mid-Atlantic, and the Great Lakes regions. As such, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. The association is devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for residential, commercial and industrial consumers. RESA member companies are approved by the New York State Public Service Commission (PSC) to serve community choice aggregations, residential, commercial and industrial customers in New York with numerous electric supply products, including renewable electricity.¹

RESA'S POSITION

- Retail energy competition stimulates innovation and empowers consumers to seek value for their energy dollars. Competitive energy markets are better for consumers. Unlike public authorities and monopoly-protected utilities, competition among energy suppliers provides products and services tailored to individual customer needs while providing access to competitively priced electricity and natural gas. Competition drives cost efficiency and increasing numbers of residential, business and industrial customers recognize the benefits of competition and choose to shop for electricity and natural gas.
- RESA is dedicated to protecting consumers and maintaining a sustainable competitive market while preserving all consumers' right to choose their own supplier. RESA welcomes the opportunity to engage in an open and transparent process where all stakeholders

¹ RESA members currently offering competitive energy supply offerings in New York include AEP Energy, Aggressive Energy, APG&E, Calpine, Constellation, ENGIE Resources, Just Energy, NextEra Energy Services, Shell Energy, Spark Energy, and Vistra Energy.

work together to improve the future of the competitive market in New York.

- Allowing the New York Power Authority (NYPA) to serve community choice aggregations, commercial and industrial, municipal, and residential customers is not the answer to furthering the state’s laudable renewable energy goals. Unfortunately, New York already has experience with the Power Authorities’ customers being subject to the stranded costs of failed power projects. For example, Long Island Power Authority (LIPA) ratepayers pay some of the highest utility rates in the country largely attributed to LIPA’s failed power projects. This phenomenon is not limited to LIPA, as NYPA also has evidence of failed power projects including its Hudson Transmission Partners project which now represents an approximate liability of \$645 million for NYPA.² “It is estimated that the Authority’s under-recovery of costs... could be in the range of approximately \$90 to \$110 million per year over the next five years of commercial operation, according to NYPA’s 2015 report.”³ Further, according to New York State Comptroller Thomas P. DiNapoli’s recent audit of electric vehicle charging infrastructure deployment, “...despite millions invested, NYPA’s Evolve NY charger deployment threatens the state’s ability to meet the Climate Act’s 2030 deadline.”⁴

Since New York deregulated its energy markets in the late 1990s, any financial risk associated with the development of a generation project lies with the developer, thereby insulating ratepayers from potential stranded costs of failed projects. If NYPA were allowed to expand its customer base and serve community choice aggregations, commercial and industrial, municipal, and residential customers, the financial risk associated with NYPA’s failed power projects would shift to those additional customer classes.

- New York’s ratepayers should not have to bear the risk of NYPA’s past, present or future failures. Competitive retail suppliers are subject to the jurisdictional oversight of the New York State PSC (addressed *infra*) and NYPA is not. RESA supports transparency and ensures consumers have the accurate information they need to make informed decisions when it comes to their energy provider.
- Competitive retail suppliers help advance New York’s renewable energy goals embodied in the Climate Leadership Protection Act (CLCPA) by supplying consumers with mandatory renewable products related to the states Clean Energy Standard and additionally offering voluntary renewable products such as Environmental Disclosure Program-certified Renewable Energy Credits, electric vehicle (EV) charging solutions and energy efficiency measures in support of state’s corresponding policy initiatives.
- RESA members firmly believe that robust competition among retail companies brings benefits and value to consumers not readily provided through traditional utility and power

² Krapels, Edward N. Triple Jeopardy: “How ISOs, RTOs and incumbent utilities are killing interregional transmission.” *The Electricity Journal* 31.3 (April 2018): 47-51 - [Triple jeopardy: How ISOs, RTOs and incumbent utilities are killing interregional transmission - ScienceDirect](#)

³ Giambusso, David. “Underperforming NJ-NY transmission line becomes money pit for state authority.” *Politico* 27 June 2016 - [Underperforming NJ-NY transmission line becomes money pit for state authority - POLITICO](#)

⁴ DiNapoli, Thomas P. New York State Comptroller. *New York Power Authority – Selected Management and Operations Practices*. New York: February 2022 ([New York Power Authority: Selected Management and Operations Practices \(state.ny.us\)](#)).

authority offerings. These benefits include setting efficient market-based prices, the development of innovative products and services, and the ability to efficiently meet clean energy policy objectives. For competition to be effective, all consumers must be given the right to shop for competitively priced energy products and services, the same way they shop for other products and services.

CUSTOMER PROTECTIONS

The New York PSC opened the State’s electric and natural gas industries to competition in the 1990s providing consumers the ability to choose their energy supply provider – either via their local utility or a third-party competitive retail supplier known as an Energy Services Company (ESCO).⁵ To govern interactions between the utilities, ESCOs, and customers, the New York PSC adopted rules and guidelines for ESCOs to adhere to, known as the Uniform Business Practices.⁶ Throughout the 2010s, the New York PSC took a variety of actions directed at improving the retail markets and removing bad actors in the state’s competitive retail market. In December of 2019, the New York PSC issued an Order limiting the types of products ESCOs may offer to residential and small commercial customers including: (1) guaranteed savings products, (2) fixed products that are capped at a certain price, or (3) products that provide added value to customers.⁷ The Order explains that “value-added” means “something more than the standard; something that exceeds the expectations associated with the provision of what is otherwise an undifferentiated commodity.”⁸ In particular, products that “further the state’s energy policy goals and provide meaningful value to the customer” are explicitly recognized in the Order as value-added products and services.⁹

In fact, the New York PSC is currently reviewing additional value-added products and services to approve for ESCOs to offer their customers and further the state’s policy initiatives.¹⁰ Throughout the course of the PSC 15-M-0127 docket, RESA has been engaged and remains fully supportive of the New York PSC’s stewardship of such enhancements. RESA maintains that it would be most appropriate to allow the New York PSC, as the subject matter overseer and regulator, to continue its work and efforts to enhance that marketplace for consumers who seek an alternative to the standard offer.

The New York PSC is also responsible for addressing consumer complaints and ensuring that competitive supply companies comply with the state’s regulations. Additionally, the New York PSC is authorized by statute to investigate and take any necessary licensure action or levy civil penalties against a competitive supply company that has significant consumer issues or has committed violations of New York PSC regulations.

⁵ Case 93-G-0932, Proceeding on Motion of the Commission to Address Issues Associated with the restructuring of the Emerging Competitive Natural Gas Market, Opinion 94-26, Opinion and Order Establishing Regulatory Policies and Guidelines for Natural Gas Distributors (issued December 20, 1994) (Opinion 94-26).

⁶ Case 98-M-1343, In the Matter of Retail Access Business Rules, Order Adopting Uniform Business Practices and Requiring Tariff Amendments (issued January 22, 1999).

⁷ Case 15-M-0127, *et al.*: In the Matter of Eligibility Criteria for Energy Service Companies, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (Issued December 12, 2019).

⁸ *Id.* at 51.

⁹ *Id.* at 52.

¹⁰ Case 15-M-0127, *et al.*, Order Addressing ESCO Petitions Requesting Authorization to Provide Additional Products and Services (issued January 25, 2021).

All ESCOs authorized to operate in the state of New York are approved by the New York PSC and required to adhere to myriad consumer protections ordered by the Commission. As such, ESCOs who are unable to provide value to their customers are prohibited from serving New York consumers.

RESA strongly believes that customers should be protected against bad actors in the market and consumer protections should be structured in such a way that does not inhibit innovation, prevent fair business practices, or punish suppliers operating in good faith. RESA's position is not intended to imply that improvements to the competitive retail marketplace cannot or should not be undertaken. RESA and its members have been actively engaged in proceedings before the New York PSC to improve the state's competitive retail marketplace and any entity proposed to serve customers should fall under the jurisdictional purview of the New York PSC.

RESA'S COMMITMENT TO CUSTOMER CHOICE

RESA is dedicated to preserving customer choice in states, such as New York, that provide a competitive market structure. The New York state legislature passed landmark CLCPA legislation in 2019, setting nation-leading renewable energy, energy efficiency and economy-wide decarbonization goals to combat the devastating effects of climate change. RESA supports these admirable goals, and its members are key partners in expanding the use of renewable energy and energy efficiency technologies throughout state. Because experience shows that retail competition results in better value for consumers and innovative products and services provided by competing suppliers are more apt to meet consumers' individual needs than a monopoly-protected utility company or a quasi-governmental power authority. Allowing NYPA to expand its customer base to serve community choice aggregations, commercial and industrial, municipal, and residential customers would have a chilling effect on the state's competitive retail market resulting in fewer customer choices, increased costs for consumers, and impediments to achieving the state's CLCPA public policy objectives.

We thank you for the opportunity to submit our written testimony for your review and consideration.

Sincerely yours,



Tracy McCormick Executive Director, RESA

cc: Assembly Corporations, Authorities and Commissions Chairwoman, Amy Paulin; Assembly Energy Committee Chairman Michael Cusick; Assembly Environmental Conservation Committee Chairman Steve Englebright