



September 21, 2023

Representative Jeffrey N. Roy  
House Chair  
Joint Committee on Telecommunications, Utilities and Energy  
Room 43, State House  
Boston, MA 02133

Dear Chairman Roy:

On behalf of its membership, the Retail Energy Supply Association (“RESA”)<sup>1</sup> offers this written testimony in **strong support** of one measure before the Joint Committee on Telecommunications, Utilities and Energy (“Committee”) today: [House Bill H.3155](#), presented by Representative Tackey Chan. We also express our respectful opposition to [House Bill H.3196](#) and [Senate Bill S.2106](#) as the proposed legislation from Representative Chan directly addresses the concerns that rightly have been raised with the retail energy market in Massachusetts without resorting to a total elimination of customer choice.

RESA is a non-profit organization and trade association that represents the interests of its members, who are active participants in the competitive retail 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 16 retail energy suppliers dedicated to promoting efficient, sustainable, and customer-oriented competitive retail energy markets. Several RESA member companies are licensed by the Massachusetts Department of Public Utilities (“DPU”) to serve residential, commercial, and industrial customers in Massachusetts and are presently providing electricity service in the Commonwealth.<sup>2</sup>

### **Retail Energy Supply in the Commonwealth**

As the Committee is aware, for most of the 20<sup>th</sup> century, homeowners, businesses, and industrial manufacturers had only one choice when purchasing electricity and natural gas for their homes, businesses, and factories. That sole source option was largely the result of policy determinations that it was more efficient, and energy consumers would benefit from economies of scale if utilities made the retail sales of electricity and natural gas with monopoly-protected service

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<sup>1</sup> The comments expressed in this testimony represent the position of RESA as an organization but may not represent the specific views of any of its individual members. More information on RESA and its members can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> RESA members currently licensed in Massachusetts include Calpine Energy Solutions, CleanSky Energy, Constellation NewEnergy, ENGIE Resources, First Point Power, IGS Energy, Just Energy, NextEra Energy Services, Shell Energy, Spark Energy and Vistra Energy.

territories at regulated rates. Utilities were provided rates that guaranteed they recouped their investment and earned a reasonable profit as determined by state regulators.

Over time, however, economists and energy policy experts concluded that monopoly-protected price regulation was an inefficient model that needlessly imposed additional costs on consumers and instead began to realize that consumers would be better served if regulated industries were exposed to competitive forces providing strong incentives for efficiency and cost savings.

Beginning in the 1990s, the federal government acted to inject competition into markets for wholesale power production and bulk sales of electricity. At the same time, many states, including Massachusetts,<sup>3</sup> acted to end monopoly protections for retail sales of electricity and natural gas. Gradually, competitive wholesale power markets overseen by large regional grid operators – like ISO-New England – were enabled by federal regulation.

Today, consumers in more than a dozen states benefit from retail energy competition. Retail energy customers who opt to participate in competitive supply receive a bill for electricity that consists of three main costs: **(1)** transmission (electricity) or transportation (gas), **(2)** distribution, and **(3)** supply (which is typically the largest contributor to the ultimate price customers pay). In states that allow customer choice for electricity and natural gas, the pipes, poles, and wires that deliver energy to retail customers (the transmission, transportation, and distribution costs) are still owned and operated by traditional monopoly-protected utility companies. Those costs are still price-regulated, and the utilities receive rates reflecting their costs plus a reasonable profit. The utilities can also recoup any costs from ratepayers, unlike retail energy suppliers that do not have guaranteed rates of return.

It is the energy commodity – electricity or natural gas – that is competitively priced. In states with retail competition, such as the Commonwealth, most residential customers still receive one bill for their electricity and natural gas, but they have a choice of competing retail energy suppliers vying for their business. This is driving both economic values for the customer's energy dollar and innovation in pricing and services that did not occur under monopoly-protected price regulation.

RESA and its members hold fast to several core principles that are critical to understanding the place of retail energy markets. RESA believes that competition, not regulation, is the most effective means for efficiently allocating resources, similar to the market dynamics for other goods and services. Our members maintain that competition among retail companies benefits consumers that are not readily provided through traditional utility regulation. These benefits include the setting of efficient prices, the development of innovative products and services, and the ability to meet clean energy policy objectives efficiently. For competition to be effective, all consumers must be afforded the right to shop for competitively priced energy products and services, just as they shop for other products and services.

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<sup>3</sup> Massachusetts enacted legislation that restructured the provision of electric service to customers, introducing competition into the supply component of retail electric service in 1997. An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein, St. 1997, c. 164, § 37.

### **Massachusetts Consumers Want Choice and Benefit From It**

The demand for retail energy competition is evident in Massachusetts, as demonstrated by the 1.6 million residential customers<sup>4</sup> who were served by a retail electricity supplier last year. This is also supported by CleanChoice Energy’s 2021 poll by SurveyUSA,<sup>5</sup> which found that 79% of Massachusetts respondents want an alternative to the incumbent utility service. Additionally, it coincides with RESA’s National Survey in 2020,<sup>6</sup> which said 74% of consumers want the ability to select their energy supplier. The desire for clean, renewable energy is also high, with 83% of Massachusetts customers indicating a preference for it, according to the SurveyUSA poll.

Additionally, RESA’s monthly market savings reports, based on data from the DPU’s [energyswitchma.gov](http://energyswitchma.gov) website, show significant cost savings were available in April for consumers shopping for the best deal for electricity. Our calculations indicate that Massachusetts consumers could have saved more than \$194 million in April 2023<sup>7</sup> and benefited from a wide range of value-added products and services by switching to competitive suppliers.

### **Strong Support for House Bill H.3155**

While RESA believes that the competitive retail market has been a successful value creator for customers, we recognize that improvements can be made to ensure the marketplace continues to operate effectively while also protecting the rights and interests of consumers.

With this in mind, we wish to express our strong support for House Bill H.3155, presented by Representative Chan.

We believe the bill strikes an appropriate balance between consumer protection and market enhancements that will work synergistically to reduce the opportunity for bad behavior by rogue actors and make the shopping process more seamless for customers.

I would like to highlight several consumer protection and market improvements today.

#### *Consumer Protection*

First, on consumer protection, the bill would set a high standard for new entrants before they even begin marketing to consumers by requiring suppliers applying for a license with the DPU to post a \$5 million bond. This would immediately deter “fly-by-night” operators from even attempting to apply for a license. Incidentally, this would also put Massachusetts in the pole position on security requirements among all states with retail energy markets. Relatedly, the bill would also require suppliers and brokers to pay an annual licensing fee of \$10,000 (as opposed to the current fee of \$100) to support the work of the DPU in regulating the market, including by establishing a new Office of Retail Market Oversight at the agency.

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<sup>4</sup> Department of Public Utilities, “Electric Choice Customer Data,” <https://www.mass.gov/info-details/electric-gas-customer-choice-data>

<sup>5</sup> SurveyUSA, “Market Research Study,” <https://www.surveyusa.com/client/PollReport.aspx?g=80ba68b1-e967-4ebb-a0e3-cecdc5272928>

<sup>6</sup> Ragnar Research Partners, RESA-commissioned survey, <https://www.resausa.org/resas-survey-of-americans-finds-74-of-consumers-want-to-select-their-own-energy-supplier/>

<sup>7</sup> RESA, Massachusetts Market Savings Report for April 2023, [https://www.resausa.org/wp-content/uploads/2023/05/Massachusetts-MSR\\_April2023.pdf](https://www.resausa.org/wp-content/uploads/2023/05/Massachusetts-MSR_April2023.pdf)

The bill makes clear that third-party marketing companies and contractors are agents of the supplier, and the supplier will be held responsible for any consumer protection violations of these companies while marketing the supplier's products. Additionally, the bill requires all agents to go through a DPU-designed training program to ensure that ignorance of the rules is not an excuse for any potential violations.

H.3155 also adds new rules governing the sales, marketing, and enrollment processes. In-person residential agents would need to wear visible ID badges at all times so that customers know exactly who they are talking to about their energy options. Moreover, it would require terminating the interaction if the agent does not speak or understand the language used by the agent. The bill would also require third-party verification for all in-person sales (including door-to-door) to ensure supplier switches are valid and authorized by the customer.

The bill also allows suppliers to be held accountable after a sale has occurred, by increasing the window for customers to file a formal complaint against a supplier for an unauthorized switch from 30 days to two years. It also raises the penalty levied on a supplier for an authorized switch from \$3,000 to \$10,000 per violation.

#### *Low-Income Customers*

I also want to highlight, in particular, the proposed legislation's new way to serve low-income customers. We know this has been a particular area of concern for the General Court, the DPU, the Attorney-General and other stakeholders. We agree that extra attention must be given to how these customers are treated while ensuring they have access to the retail market.

This legislation prohibits retail suppliers from contracting directly with customers who use low-income distribution rate discounts or LIHEAP. At the same time, the bill directs the DPU to establish a competitive procurement process for retail service to low-income customers with additional guardrails in place for consumer protection.

This approach ensures low-income customers are protected from enrolling on offers that would not necessarily meet their needs while giving them access to a market-supplied product.

#### *Market Enhancements*

The consumer protection elements of the bill are timely and significant. RESA believes, however, the retail market is not something that consumers need to be shielded from but rather that it can drive innovation and economic growth and help lead consumers toward the clean energy future on which the Commonwealth has boldly set its sights.

First, the bill would require the utilities to implement accelerated switching of energy suppliers within three (3) business days of enrollment – in other words, if a customer chooses a supplier product, they should not have to wait an extended period of time to be served on that product. Additionally, the utilities would be required to provide seamless move, allowing customers who move within the utility territory to remain with their current supplier (rather than returning to utility Basic Service or gas supply service and then returning to the supplier of their choice). These are straightforward enhancements that other states have implemented successfully,

providing consumers with a more positive, responsive shopping experience in line with how markets operate in every other sector.

Second, H.3155 would direct the DPU to implement supplier consolidated billing. In other words, customers would still receive one bill for their transmission/transportation, distribution, and commodity charges, but that bill would come from the supplier, not the utility. All of the current disclosure and information requirements could remain in place, and the utilities would be made whole for their distribution charges (just as they pay suppliers now for their receivables).

What is the benefit of this approach? First, it appropriately makes the supplier more visible to consumers and puts them in the driver's seat of the service relationship. Customers will know exactly who their supplier is and who to get in touch with when there is a problem or concern. Second, it will enhance customer service and the customer experience by allowing suppliers to offer innovative approaches to displaying energy information and providing additional value-added products and services. Finally, it will incentivize suppliers to provide even better customer service: they will be in the hot seat, not utilities.

Supplier consolidated billing allows the utilities to focus on what they do best – delivering electricity and natural gas to customers safely and reliably – while putting the onus on suppliers to provide the best possible customer service and value to energy consumers.

### **A Lesson from Telephony**

I want to close by offering an example of how retail markets have driven growth and innovation beyond the expectations of consumers and stakeholders: the telephone.

A few decades back, the only choice for phone service was the copper wires provided by the Bell System. When choice was introduced in long-distance calls beginning in the 1980s, the main driver for consumers was the attainment of savings on long-distance calls measured in cents per minute. Critics of competition pointed to rate comparisons between new entrants like Sprint and MCI versus the rates offered by Ma Bell – the focus was solely on price.

At the time, critics failed to grasp how competition would drive innovation in products, technology, and consumer behavior. Early value-added services like call waiting, call answering, and caller ID might have seemed underwhelming. Over time, however, competition in telephony has produced remarkable change, with products and services like email, texting, GPS navigation, internet search, music, video streaming and more that were beyond the imagination of early critics – and, frankly, beyond the imagination of just about everyone. The iPhone was not even a glimmer in Steve Jobs' eye in the 1980s, but the introduction of competition after a century of the telephonic status quo made it possible.

We no longer calculate the value of phone contracts based on cents per minute for long-distance voice calls anymore: our phones provide so much more in terms of communications, information, and entertainment. Choice made this possible.

### **Conclusion**

We recognize that the competitive energy market is not perfect, just like other markets in consumer goods and services are imperfect. RESA is strongly in favor of the strengthened consumer protections in the bill introduced by Representative Chan because we know we can and must do better for the Commonwealth's customers.

At the same time, we firmly believe that choice and competition are vital to delivering innovation, economic benefits, consumer value, and a clean energy future to the citizens of Massachusetts.

Thank you for the opportunity to present testimony today in support of H.3155. RESA looks forward to continued opportunities to discuss the promise of retail energy choice with the Committee.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Frank Caliva III', with a stylized flourish at the end.

Frank Caliva III  
National Spokesperson  
Retail Energy Supply Association