STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to	**:**	**Case 14-M-0224**
Enable Community Choice Aggregation Programs	**:**	

COMMENTS OF NRG RETAIL

I. Introduction

The retail companies of NRG Energy, Inc. ("NRG Retail")[1] submit these comments to help inform the Public Service Commission's ("Commission") examination of Community Choice Aggregation ("CCA").

NRG Retail's experience with and knowledge of the subject is threefold. NRG Retail supplies electric and natural gas service to residential and commercial customers throughout New York. NRG Retail affiliates have served government aggregation programs in Massachusetts, New Jersey and Ohio. The NRG Retail companies have also competed for customers in communities served by aggregation programs.

II. A Hybrid Approach

Government aggregation, as currently structured in several states, is not real competition or a true retail market. Government officials and their consultants choose suppliers for customers. Customers are unlikely to know the company supplying their electricity. Further, aggregated customers are unable to avail themselves of additional value-added products because the supplier is most often limited contractually from communicating and establishing a direct relationship with customers. Finally, the traditional opt-out government aggregation model results in fewer options for customers, as one monopoly (the local distribution company) is substituted by another (the winning aggregation supplier). To amplify the point, in Illinois where

[1] NRG Retail companies operating in New York include Reliant Energy Northeast LLC d/b/a NRG Home, Green Mountain Energy Company, Energy Plus Holdings LLC and Energy Plus Natural Gas LLC.

approximately 600 communities have implemented aggregation for their residents, 81 percent of the programs are concentrated among three suppliers, of whom two companies are affiliates of the in-state Local Distribution Companies (LDC), and the third is an affiliate of the LDC in a nearby state. [2]

Despite the shortcomings of traditional government aggregation, CCA, properly structured, can be a catalyst to greater competition as well as more choices and benefits for New York residential energy customers.

This docket provides the Commission an opportunity to boldly propel New York to a fully competitive retail energy market unrivaled anywhere in the Eastern U.S., while also engaging customers en masse in the Reforming the Energy Vision (REV)[3] movement, by using CCA as the transition mechanism.

NRG Retail encourages the Commission to adopt a clear Policy Statement that the objective of CCA is to facilitate the transition to full retail energy competition in New York by engaging mass market customers in the energy market, migrating residential customer load to qualified Energy Service Companies (ESCOs), transitioning LDCs from the role of providing default generation supply service, and animating the market to deliver a wide array of distributed energy resources, renewable energy and innovative energy management products to residential customers.

NRG proposes the following Guiding Principles for achieving this objective.

- CCA should only be implemented as a temporary bridge for transitioning the New York market from LDC-provided default service to full retail competition.
- The residential customer market should be declared "fully competitive" when a majority of the customers and load is being served by ESCOs.
- LDC-provided default service should be replaced with Provider of Last Resort (POLR) service, provided by qualified ESCOs as a temporary backstop for customers.

[2] Illinois Commerce Commission, http://pluginillinois.org/MunicipalAggregationList.aspx
[3] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision. (issued February 26, 2015)

- ESCOs serving CCA should be provided the opportunity to establish a direct relationship with participating customers.
- To spur mass market customer adoption of REV-related products and services, CCA programs should be required to furnish distributed energy resources (DER) and services for the benefit of participating customers, from either the winning ESCO or other competitive DER providers.
- Electricity and natural gas are essential services that should be entrusted to qualified ESCOs possessing the financial and operational capability to manage all aspects of the process, including the ability to issue bills.

III. Discussion

- **CCA should only be implemented as a temporary bridge for transitioning the New York market from LDC-provided default service to full retail competition.**

Since 1996 the Commission has conceived of energy services and products being provided by competitive energy suppliers and not by regulated utilities.[4] In 1998 the Commission issued a Natural Gas Policy Statement which envisioned gas utilities exiting the merchant function.[5] The Commission's 2004 "Statement of Policy on Further Steps Toward Competition in Retail Energy Markets" included the Staff recommendation, "The most direct way to establish a robust competitive market is for utilities to cease buying and selling commodity."[6]

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[4] Case 94-E-0952. Opinion No. 96-12 Opinion and Order Regarding Competitive Opportunities for Electric Service (May 20, 1996)
[5] Case 97-G-0600, In the Matter of the Commission's Request for Gas Distribution Companies to Reduce Gas Cost Volatility and Provide Alternative Pricing Mechanisms, Statement of Policy Regarding Gas Purchasing Practices (April 28, 1998)
[6] CASE 00-M-0504- Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Markets and Fostering Development of Retail Competitive Opportunities. (August 25, 2004). The Order included preconditions to the utilities exiting the default supply function, including:

a) "Workably competitive wholesale markets" exist;
b) New York State registered ESCOs/marketers are collectively able and willing to provide reliable service to the appropriate market;
c) Mechanisms are in place to provide access to electric and gas service to all consumers who need service but are unable to secure it in the competitive markets;
d) There is general public acceptance of energy market restructuring and a reasonable expectation that greater levels of customer migration to competitive providers will create additional opportunities for all customers to save and to benefits; and
e) Potential legal impediments are addressed.

NRG Retail supports CCA as a temporary vehicle for achieving the Commission's historical vision of a robust competitive market.

To that end, NRG Retail proposes that CCA programs sunset four years after a Commission Order enabling government aggregation programs. This presumes that in four years' time a majority of New York residential customers and load will have migrated to ESCOs, either through organic switching or aggregation. Four years also allows ample time for LDCs to phase out of the default supply service role.

At the end of the four-year transition period, customers served under CCA may choose to accept an offer from their aggregation program ESCO or switch to another ESCO. Default supply service from the distribution companies would not be an available option.

The end of the CCA period, corresponding with the exit of distribution companies from default supply service, will launch an era of vigorous competition as aggregation-serving ESCOs compete to retain their customers while other ESCOs vie for market share, with New York customers as the beneficiaries of a plethora of service offers and products.

- **The residential customer market should be declared "fully competitive" when a majority of the customers and load is being served by ESCOs.**

During the CCA period, upon 51 percent of residential customers being served by ESCOs, through a combination of organic switching and government aggregation, the Commission should declare the residential customer class "fully competitive." This milestone would trigger the commencement of a defined process for relieving the distribution companies of the obligation to provide default service for residential customers, to be completed at the end of the CCA period.

With a majority of customers and the bulk of load migrated to ESCOs, it will no longer be economic or efficient for the distribution companies to maintain resources for procuring and managing default supply.[7] Further, as the Commission notes in the recent REV Order, migration of the distribution companies' customer base places the burden of the utilities' costs on a shrinking pool of customers.[8]

Contemporaneous with an Order enabling CCA, NRG recommends that the Commission order the distribution companies to file plans for transitioning from default service upon a competitive declaration.[9]

- **LDC-provided default service should be replaced with Provider of Last Resort (POLR) service, provided by qualified ESCOs as a temporary backstop for customers.**

With the transition of distribution companies from the default supply role, Provider of Last Resort (POLR) would ensure continuity of service in the event of an exit by a supplier.

The POLR model of ERCOT in Texas provides an example of a successful POLR structure for the Commission's consideration.[10]

Texas POLR establishes voluntary POLR providers in accordance with certain eligibility standards, and non-volunteering POLR providers whose function is to assume responsibility for any mass migration customers in excess of what the voluntary POLR provider is capable of serving.

The POLR rate in Texas is indexed to real-time market prices to cover the POLR provider's costs as well as to incent customers to shop. When customers are transitioned to a POLR provider, the POLR provider has an opportunity to market to the transitioned customers and

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[7] A similar determination may be made for non-residential customer classes. Currently 83% of large commercial customer electric load/70.7% of gas volume and 67.6% of small and medium commercial electric load/62.4% of gas volume is being served by ESCOs according to the latest available migration data published by the NY State Department of Public Service (Electric: December 2014; Gas: April 2014).

[8] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Instituting Proceeding, at 28.

[9] The Commission may find authority in *The Matter of Energy Association of New York State v. Public Service Commission of the State of New York.* Supreme Court, Albany County. November 25, 1996. The Court upheld PSC's jurisdiction to require utilities to file plans outlining how they would adapt to a competitive electric industry.

[10] Docket 31416, Public Utility Commission of Texas. Evaluation of Default Service For Residential Customers and Review of Rules Relating to the Price to Beat and Provider of Last Resort. (June 29, 2006)

enroll them in competitively-available products and services, thus reducing or eliminating exposure to the POLR rate. The potential to gain customers at a relatively low acquisition cost provides incentive to retail suppliers to volunteer to become POLR providers.

Since adoption of the Texas POLR rule in 2006 there have been eight mass transitions affecting fewer than 100,000 customers in total. The single largest event occurred in 2008 involving approximately 14,000 customers (0.2% of ERCOT meters); however approximately 6,000 of those customers were assigned to another supplier as the result of an acquisition transaction prior to the mass transition

Universal Service: Qualified ESCOs should take up the obligation of ensuring that affordable energy service is available to all customers without regard for economic status. Upon the transition of distribution companies from the provision of default supply, ESCOs should assume the responsibility for providing the assistance programs and payment arrangements currently administered by the distribution companies.

- **ESCOs serving CCA should be provided the opportunity to establish a direct relationship with participating customers.**

The phrase "customer engagement" appears multiple times in the Staff White Paper, and is an important theme throughout the REV proceeding and Commission decisions. [11] Staff's expectation that customers will be engaged in energy markets and be able to purchase distributed energy resource products or other home energy management products as a result of CCA cannot occur under the traditional government aggregation model. In that model, customers neither engage with the program supplier nor learn about or purchase other value-added energy-related products and services from the supplier.

The effect of the firewall between aggregation suppliers and participating customers that is typical of most government aggregation programs is reflected in the 2014 retail energy markets customer satisfaction study by J.D. Power.[12] According to the study, satisfaction among customers who switched from their local electric utility via aggregation in Illinois and Ohio was

[11] Case 14-M-0224. Appendix A, "Staff White Paper on Community Choice Aggregation."
[12] J.D. Power 2014 Retail Electric Provider Residential Customer Satisfaction Study. August 13, 2014.

substantially lower than among those who chose a retail energy provider on their own. Conversely, the study concluded that "satisfaction with retail electric providers has improved dramatically from 2013, **driven in part by improved communications**." [emphasis added]

Staff's vision of CCA engaging customers in energy markets and "accelerating the deployment of value-added services such as home energy management"[13] can only be realized when the supplier is able to communicate freely with customers in order to build a relationship. Investment in innovative products results from an extended tenure between customer and ESCO. ESCOs are more likely to develop and offer value-added products such as fixed commodity pricing, DER contracts, demand response, and efficiency programs when the customer relationship lasts more than a few months.

NRG Retail strongly recommends the Commission allow aggregation suppliers to conduct routine customer communications with customers including newsletters, bill inserts, response to customer service inquiries, and promoting offers of energy management and distributed resources services and other products (excluding commodity supply products during the term of the aggregation program).

Allowing aggregation suppliers access to program customers may pay the additional dividend of incenting prospective CCA bidders to bid aggressively in the hope of gaining a lasting customer relationship that has the potential to extend beyond the end of the CCA period.

- **To spur mass market customer adoption of REV-related products and services, CCA programs should be required to furnish distributed energy resources and services for the benefit of participating customers, from either the winning ESCO or other competitive DER providers.**

The Commission should require government entities contracting for CCA to furnish REV-related products and services for the aggregation program. The products or services would be for the exclusive benefit of or use by only the customers participating in the program. These

[13] Staff White Paper at 6.

products or services would be obtained from the ESCO selected to supply the aggregation program or other competitive DER providers - - or a combination of both.

Products or services may range from community-scale projects such as shared solar, to the individual customer level, such as home energy management services.[14] These benefits to program participants may be financed through the collection by the municipality (or other government aggregator) of a portion of customer payments for the creation of a fund to be used for initiatives such as building DER and local renewable resources, or supporting community-wide energy efficiency programs, as conceived in the Staff White Paper. Products or services the aggregator wishes to make available to individual participating customers would be included in the bid price. This latter category may include such services as home energy efficiency audits, online or mobile energy management tools, or exclusive pricing to program participants for home energy management products such as "smart" thermostats or other hardware.

This program requirement will help achieve the Commission's REV goal of promoting acceptance by mass market customers for distributed energy resource products. Such a requirement may also help ensure that CCA programs are based on value-added services that benefit customers and the environment rather than strictly on commodity price. Further, the procurement requirement will have the effect of fulfilling another of the Commission's REV goals by making the benefits of distributed resources available to low and moderate income customers.[15]

- **Electricity and natural gas are essential services that should be entrusted to qualified ESCOs possessing the financial and operational capability to manage all aspects of the process, including the ability to issue bills.**

For the New York retail energy market to mature as part of a transition to full competition, the eligibility standards for ESCOs must rise correspondingly with the additional responsibility for all non-delivery aspects of energy supply service. Only financially stable retail suppliers that meet meaningful financial fitness requirements along with possessing experience such as

[14] See Markets Committee inventory of DER products and services, WG 1 DSPP Markets, "Final Report and Attachments," July 8, 2014.
[15] REV Order, February 26, 2015, at 87:

commodity market risk management and customer operations should be eligible to step into the LDC's shoes.

A core capability is the ability to bill for delivery and supply charges.

With a combined 28 years of experience serving residential energy customers, the NRG Retail companies can state with authority that consumers strongly prefer the convenience of a single bill for their electric or gas service. Supplier Consolidated Billing establishes and maintains the relationship between customer and ESCO by providing a platform for continuous communication. Further, Supplier Consolidated Billing allows for billing of non-commodity energy services.

Supplier Consolidated Billing and the customer relationship it creates are key to achieving a successful competitive retail market and to implementing REV goals that should, with very few if any exceptions, be delivered by the competitive market. The success of REV will depend in large measure on the ability of customers to pay on one bill for innovative, new energy products in addition to monthly distribution and generation charges.

Section 9 of the Uniform Business Practices (UBP) provides for ESCOs to bill utility delivery charges, albeit with limitations insofar as enforcing bill payment.[16] UBP Section 9 should be revised to transfer to ESCOs <u>all</u> billing related responsibilities and rules, including the right to terminate delivery service for nonpayment.

NRG Retail applauds the Commission's endorsement of Consolidated ESCO Billing (CEB) in the recent REV Order.[17] The scope of the collaborative ordered by the Commission should include, but not be limited to, ESCO rights to terminate and reconnect delivery service, and billing for non-commodity charges.

[16] Case 98-M-1343, <u>Uniform Business Practices</u>. Section 9.
[17] REV Order, February 26, 2015, at 61.

IV. Participation in CCA by Assistance Program Participants

The participation and treatment of customers who participate in a low-income energy assistance program administered by a utility or receive Home Energy Assistance Program (HEAP) benefits ("Assistance Program Participants") requires additional consideration in light of recent actions by the Commission.

Staff recognized in the CCA Order that Assistance Program Participants present issues that must be addressed in relation to CCA. For example, in Appendix A to the Order, Staff asks whether Assistance Program Participants be included in CCA on an opt-out or opt-in basis.[18]

Subsequent to the CCA Order, the Commission issued an Order on February 6, 2015 in Case 12-M-0476 imposing certain conditions on ESCO provision of service to Assistance Program Participants.[19] The conditions include among other items, guaranteed savings to the distribution company default service rate or in the alternative, energy-related value-added products or services that save customers money over time or reduce usage, and processes for determining the status of Assistance Program Participants at the time of enrollment as well as throughout the term of service. The Commission Ordered a Collaborative to address several policy, process and technology issues concerning the treatment of Assistance Program Participants in the retail energy markets.[20] The Collaborative is directed to "consider how best to protect these customers and include appropriate proposals in its report." [21]

NRG Retail recommends the charge of the Collaborative be expanded to take up issues related to inclusion of Assistance Program Participants in CCA.

[18] Case 14-M-0224, Solicitation of Comments, at 18, Question No. 3.
[19] Case 12-M-0476, et al. Order Granting And Denying Petitions For Rehearing In Part. (February 6, 2015)
[20] Id. order no. 4, at 18.
[21] Id. at 8.

V. Staff Solicitation of Comments

In Appendix A to the White Paper, Staff invites comments on issues raised in the Order and White Paper.[22] NRG Retail supports the responses to Staff's questions filed by the Retail Energy Supply Association (RESA) in Case 12-M-0224.[23]

VI. Conclusion

NRG Retail supports CCA as a temporary vehicle for transitioning to a fully competitive retail energy market in which ESCOs provide all non-delivery services. NRG encourages the Commission to issue a Policy Statement defining the objective of CCA as transforming the New York retail energy market to a future state by migrating customers and load to competitive suppliers and relieving the distribution companies of the obligation to provide default commodity supply service. NRG Retail recommends the Commission convene a collaborative process to define the details and develop solutions for implementing a transitional CCA structure. In support of the transition to full retail energy competition, NRG Retail further recommends the Commission initiate new proceedings to address Supplier Consolidated Billing, to set enhanced eligibility standards for ESCOs, and to require LDCs to develop plans for transitioning default service to ESCOs within four years of an Order enabling CCA. Finally, issues concerning participation and treatment in CCA of customers eligible for low-income energy assistance programs should be assigned to the Collaborative established in the Commission's February 6, 2015 Order in Case 12-M-0476.

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[22] Case 14-M-0224, at 17.
[23] "Comments of the Retail Energy Supply Association," February 17, 2015

Respectfully submitted,

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