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Joint Legislative Hearing on the Governor's 2019-2020 Executive Budget

For Taxation

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On behalf of the New York Retail Choice Coalition, thank you for providing the New York Retail Choice Coalition the opportunity to testify here today. My name is Natara Feller and I serve as the General Counsel to the Coalition. The New York Retail Choice Coalition is a group of medium and small size retail choice energy providers serving the energy needs of both residential and commercials customers throughout New York State. Our members not only supply power and natural gas, they also offer commercial customers personalized customer service, options for fixed rate, green and other value-added services. Such benefits are only available through ESCOs – not utilities.

We are testifying today to express concern over the Governor's Executive Budget Proposal, Part H of the Revenue Bill (S.1509/A.2009), that would eliminate the sales tax exemption for the delivery of natural gas and electric service purchased from an energy service company (ESCO) by commercial customers. If enacted into law, this would effectively be an approximate $256 million state and local tax increase for energy businesses across the State.

Since New York State first opened up its retail energy markets to offer energy consumers the choice to purchase energy from entities other than public utilities, the state sales tax exemption for commercial customers has been an important policy tool used to even the playing field between retail choice providers and the public utilities that hold a monopoly on transmission service. The tax exemption has successfully spurred more competition within the energy market. This exemption was, and still is, necessary because the public utilities have a monopoly on the transportation, transmission, and delivery of taxable natural gas or electricity to customers regardless of who the customer purchases its energy from.

Many ESCOs, including several members of the Retail Choice Coalition, are small businesses local to New York, and serve small to mid-size commercial entities. The tax exemption has been successful in encouraging relationships between local businesses and strategic ventures, ultimately to the benefit of New York's communities. The elimination of the commercial sales tax exemption would harm the small business customers of ESCOs by increasing their energy taxes paid and decreasing competition in New York's retail energy markets. This is because the elimination will increase the tax on consumers, thus making energy more expensive and removing the incentive to use a retail choice energy provider over a public utility. The incumbent public utilities already have an advantage because they are the only entities that can deliver energy to customers.

In addition, the tax increase on these commercial customers will undoubtedly increase their energy costs and have negative ramifications on their businesses. This is especially true for those businesses that have entered into long term contracts and already budgeted not having to pay the sales tax as part of their costs. In addition to raising the cost of doing business in New York State, it is likely these increased costs will be passed on to the communities in which these businesses reside.

Furthermore, this proposal is happening at a time when consumers' businesses have recently experienced additional changes due to the Executive's Clean Energy Standard program, which has raised the cost of energy for New York's commercial and residential consumers significantly. Those charges alone have had a significant impact on the cost of doing business; the sales tax will be an additional financial burden.

Another topic we would like to bring to the attention of the Legislature is the issue of regulating market participants in the New York State retail energy market – which includes energy service companies, brokers and agents. Specifically, we encourage the legislature to consider legislation that outlines responsibilities and penalties for non-compliance on all market participants; for example, any proposed additional penalties for ESCOs should also be applied to brokers and agents. In the current retail choice marketplace, energy service companies are regulated by the Uniform Business Practices Rules (UBP) implemented by the Public Service Commission. However, energy brokers and energy consultants who act as independent third parties for the purposes of procuring energy for the end use customer from the energy service company are not regulated by the Commission. This has allowed some unscrupulous actors to enter the marketplace and led to deceptive marketing practices, slamming and undisclosed fee splitting and rebates between brokers and third parties. While not addressed in the Governor's Executive Budget proposal, the Coalition strongly urges the Legislature to pass legislation that would force energy brokers and other third parties to register with the Public Service Commission, prohibit fee splitting and force disclosure of any brokerage fees that currently do not show up on a consumers energy bill. We believe regulating this industry and practice will make the retail energy markets a more safe and efficient marketplace for energy consumers.

Thank you again for allowing me the opportunity to testify before you today. I would be happy to answer any questions that you may have today or at any later time.