

Retailers win temporary reprieve from New York rules

Court issues restraining order, sets April 14 for next round

Retailers won a temporary reprieve from regulations that were to go into effect in New York Friday afternoon and which their representatives said would effectively kill the market. National Energy Marketers Assn (NEM), Direct Energy and others sued the PSC at the state Supreme Court for a temporary restraining order to keep those rules from going into effect (PMT, [March-4](#)) and they won that motion – stopping the rules from going into effect until next month at least.

The PSC order, issued a couple weeks ago, required any contracts offered to the mass-market either guarantee savings from the utility rate or include 30% green power (PMT, [Feb-24](#)).

Retailers and the PSC will face April 14 in a hearing at the Supreme Court to decide whether a lengthier stay on the rules will be imposed. The court also still has to decide whether retailers' arguments that the PSC lacks the authority to cap their prices are valid and whether the commission acted too quickly in imposing the rules.

The ruling was merely procedural and did not address the merits of the PSC's order, PSC spokesman James Denn said in prepared remarks. "The PSC has the absolute authority to regulate the industry and root out deceptive business practices.

"We are confident we will prevail in our effort to safeguard consumers against unscrupulous consumer practices, which have cost consumers millions of dollars in overcharges."

The Retail Energy Supply Assn (RESA) argued with NEM

for the temporary restraining order and welcomed the news of the temporary stay in a statement from spokesperson Bryan Lee Friday. "This is great news for consumers as it protects their right to freely decide for themselves what energy products offer value," Lee said.

"However, ongoing legal review of the PSC's order will continue. RESA looks forward to working collaboratively with the commission regarding its concerns in a productive way so that consumers retain the right to choose their energy provider and the value-added products and services that come along with such a choice."

RESA filed a brief, which argued that the PSC was acting largely in response to a [critical article](#) on Ambit Energy and the broader retail market published online early last month by the *Village Voice*.

"Either the commission was so fixated on taking swift action with respect to the bad press coverage that it failed to recognize it lacks authority to regulate ESCO prices or it is attempting to stealthily expand its authority," RESA said in its filing last week. "Though the commission may have broad powers under Article 4 of the Public Service Law... to regulate prices offered by regulated, monopolistic public utilities, the legislature has never granted it the power to regulate prices offered by private competitors in a free retail market."

PSC Chair Audrey Zibelman responded to those claims on a recent conference call with reporters, saying the commission had been looking at the retail market for small consumers for several years (PMT, [Feb-25](#)). The main reason it acted was because the commission found retailers were largely unable to beat utility prices in the mass-market, meaning the majority of customers served by them were paying more than they would on utilities' standard service, she said.