

April 8, 2005

Hon. Jaclyn A. Brillling
Secretary
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223-1350

Re: Case 05-M-0090 – In the Matter of the System Benefits Charge III
Case 03-E-0188 – Proceeding on Motion of the Commission Regarding a Retail
Renewable Portfolio Standard

Dear Secretary Brillling:

The undersigned groups submit this letter in response to the Commission's Notice Seeking Additional Comments, dated April 1, 2005, with respect to the impact of the proposed budget amendment, S.3669/A.6843, Part I Section 2, ("Budget Amendment") language on the continuation and scope of the Systems Benefit Charges ("SBC") Program and on the implementation and administration of the Renewable Portfolio Standard ("RPS") program.

The Budget Amendment provides that "commencing with the 2006-2007 state fiscal year, and each fiscal year thereafter, the governor shall, in his or her executive budget... provide appropriations for currently non-appropriated monies received by the New York State energy research and development authority, under the direct oversight of the department of public service, related to assessments collected for the purpose of public policy energy programs." If the amendment becomes law, the exact meaning and scope of this language will have to be carefully parsed. Moreover, there are significant issues concerning its constitutionality and enforceability that will require resolution.

New York State is currently a leader on clean energy issues. We continue to vigorously oppose the Budget Amendment since, if it is enforceable and applies to these programs, it would inevitably complicate and interfere with the New York State Energy Research and Development Authority's (NYSERDA) currently excellent administration and implementation of both the Systems Benefits Charge (SBC) program and the Renewable Portfolio Standard (RPS), which are both functioning extremely well under the current framework. These strong programs are crucial to New York's future. Requiring annual appropriations, with the potential for funding variability on a year-to-year basis or other interferences with the use of these dedicated revenue streams, will deter investment by clean energy industries and will make planning and implementing effective programs difficult and challenging, to say the least. The Budget Amendment could significantly damage the effectiveness of the programs as currently designed.

It is premature at this time to state precisely how implementation of the SBC and the RPS programs may need to be changed, or whether supplementary measures may be needed in response to the Budget Amendment, since it has not yet become law. But the Commission is correct to consider the impact of the Amendment on these programs at this time. The need for the environmental, consumer and electric reliability benefits of energy efficiency and renewable energy in New York State will continue to grow, regardless of the outcome of the debate over the budget language as written, for all the reasons stated in our previous comments in the SBC III proceeding, *Initial Comments of Clean Energy Advocates on the Extension and Expansion of the System Benefits Charge*.

Hence, we urge the Commission to remain fully committed to energy efficiency and renewable energy, and to full and effective implementation of the SBC and RPS programs, with whatever supplementary provisions or changes are necessary, regardless of the outcome of the current budget language debate. The Commission and NYSERDA should take any necessary and appropriate actions, including limited revision of the funding mechanism and procurement process in the September 24, 2004 RPS Order, to ensure that investment in renewable energy and energy efficiency technologies in New York State continues unhampered by funding uncertainty. We also urge that the Commission proceed with implementation of the RPS and issuance of the SBC III order as scheduled.

We thank the Public Service Commission for its strong leadership on clean energy issues and for creating the successful and effective SBC and RPS programs. We look forward to working with the Commission, Staff, NYSERDA, and other active parties to overcome this new challenge and to ensure that strong energy efficiency and renewable energy programs will continue to provide energy, environmental and consumer benefits.

Respectfully submitted,

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