

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK, NY 10036-6689

COMMITTEE ON ENERGY

RICHARD S. GREEN
CHAIR
875 THIRD AVENUE
NEW YORK, NY 10022-6225
(212) 603-2202
FAX # (212) 829-2006
rgreen@thelenreid.com

ROSA PIETANZA
SECRETARY
605 THIRD AVENUE
NEW YORK, NY 10158
(212) 455-5501
FAX # (212) 661-5759
rpietanza@huberlaw.com

April 11, 2005

Hon. George E. Pataki
Governor
Executive Chamber
State Capitol
Albany, New York 12224

Hon. Sheldon Silver
Speaker of the Assembly
932 Legislative Office Building
Albany, NY 11248

Hon. Joseph L. Bruno
Senate Majority Leader
909 Legislative Office Building
Albany, NY 11248

Re: Budget Amendment impact on the New York System Benefit Charge and Renewable Portfolio Standard

Dear Governor Pataki, Speaker Silver and Majority Leader Bruno:

The Energy Committee of The Association of the Bar of the City of New York ("Committee") provides in this letter its comments on the impact of the proposed budget amendment, S.3669/A.6843, Part I Section 2, ("Budget Amendment") 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. Members of the Committee are drawn from the private, government and public interest sectors, and represent diverse viewpoints with respect to energy matters in the State. Moreover, members of the Committee have worked with the New York State Energy Research and Development Authority ("NYSERDA") on numerous projects and have a keen appreciation of the vital role that these programs play both in New York State and nationally.

The Budget Amendment specifically 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”. The Committee is of the view that the Budget Amendment is ill advised, will undermine NYSERDA’s energy efficiency, energy conservation, energy management and renewable energy initiatives, and risks transforming New York from being one of the more attractive states for investments in energy efficiency and management measures and in renewable energy resources to being one of the least attractive states for such investments. The policy reasons that inspired the creation of the SBC and the RPS are even more crucial today than they were at their inception. The highly successful SBC programs and the RPS mechanisms that have been established and are being developed by NYSERDA should be safeguarded.

The Budget Amendment Would Undermine NYSERDA Programs and Participation in Those Programs.

Successful energy efficiency and renewable energy programs under the SBC require secure multi-year budgets, since programs and major projects typically have multi-year development cycles and require long term certainty for planning and implementation. Moreover, long-term predictability is critical to attract investment by the financial community and to develop the skilled work force needed to support the manufacture, installation and maintenance of new energy technologies. One of NYSERDA’s greatest successes has been its ability to encourage private investment and leverage public dollars. This ability, however, will be undermined severely by the Budget Amendment, which will force the funding for SBC programs into an annual appropriations cycle. Such a cycle, with its inherent uncertainty regarding the timing and level of funding, plainly will discourage the development of energy efficiency and renewable energy programs.

The Budget Amendment could similarly have an adverse effect on the newly developed Renewable Portfolio Standard (“RPS”) program. The RPS program requires massive investment by renewable energy developers which can only be justified if long term purchase contracts are available. For example, one of the wind farms recently contracted for by NYSERDA pursuant to the RPS program is reported by its developer, PPM Energy, to cost over \$300 million. This investment was to be made possible by the ten-year purchase contract NYSERDA awarded. Business will not invest capital in renewable energy projects of any scope in New York if the funds required for such projects are subjected to the vagaries and political uncertainties inherent in the annual budget appropriations process.

If SBC funds were included in the general budget, there would be a real possibility, notwithstanding any asserted intentions to the contrary, that the funds would be diverted to other purposes. In other states, which have adopted this approach to funding energy efficiency programs, energy efficiency program funding has in fact been diverted. Wisconsin diverted almost half of the public benefit energy efficiency fund to help with a state budget deficit in 2004 with a lesser amount taken in 2003. Connecticut also began diverting funds in 2002 and, as a

settlement of an attempt to divert its entire energy efficiency public benefits fund in 2003, will be diverting approximately one-third of its energy efficiency funding for the next several years.

The SBC Programs are of Special Importance to New York City

Transmission constraints, siting difficulties and the need to meet continually growing demand in New York City require that emphasis be placed on energy efficiency, energy conservation, distributed generation and load management. These are precisely the kinds of programs supported by the SBC programs administered by NYSERDA. Diminishing the efficacy of NYSERDA's programming by forcing funding into the general budget for annual appropriation, jeopardizes New York City's ability to continue to reduce and manage energy demand and develop the additional distributed generation capacity that is essential to the City's energy needs.

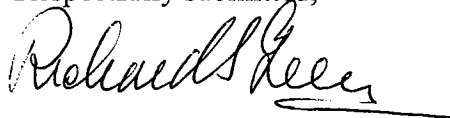
The Budget Amendment Implements a Sweeping Change in Policy Unsupported by Any Showing of Need or Analysis of Impact

If the Budget Amendment is intended simply to provide a new mechanism for delivering identical sums for identical purposes to NYSERDA as are currently provided under the SBC programs and contemplated under the RPS program there is no need for the Budget Amendment. Rather, its potential for discouraging long-term planning and investment should be eliminated. If the intention is to use these funds for other purposes, the Budget Amendment is plainly misguided.

The Committee is not aware of any analysis by the Legislature of the possible impact of the Budget Amendment on energy efficiency efforts and the RPS. Such a lack of analysis is particularly disturbing given the risk that the Budget Amendment presents to the State's ongoing energy efficiency and conservation efforts as well as the new RPS. By contrast, the New York Public Service Commission has spent years reviewing, considering, taking and considering public comments from a broad range of informed voices, implementing and monitoring SBC programs offered by NYSERDA and reviewing how best to implement a RPS in New York. A budget amendment by the legislature is not an appropriate vehicle to effect such a substantial and potentially damaging change in policy.

The energy efficiency measures facilitated by SBC and NYSERDA funding and the proposed RPS program to increase the market share of renewable energy have benefited all New Yorkers by relieving power infrastructure congestion, capacity restraints, avoiding the need for additional power generation and providing environmental benefits. The Budget Amendment should not be permitted to disrupt these model programs.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard S. Green". The signature is written in black ink and has a horizontal line underneath the name.

Richard S. Green,
Chair
Committee on Energy
Association of the Bar of the
City of New York