NEW YORK CITY BAR

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January 21, 2009

VIA FACSIMILE

Hon. Charles E. Schumer
313 Hart Senate Office Building
Washington, DC 20510

Dear Senator Schumer:

This letter is respectfully submitted on behalf of the Energy Committee of the New York City Bar Association to inform you and your colleagues of our view that the Federal tax code ought to be modified to permit the renewable energy industry to continue to help drive US economic and job growth. As Congress struggles with the task of determining the right investments for sustainable, skilled jobs, we urge you to restructure these programs that allow *private sector* funds to drive job creation and reduce carbon emissions.

As technology has improved and public acceptance has increased in the face of climate change concerns, the renewable energy industry has grown sharply. U.S. wind power generation capacity has more than tripled in just 4 years, growing from 6.7 GW in 2004 to approximately 24 GW at the end of 2008. This proliferation of wind farms represents private-sector investment of approximately $30 billion and has employed thousands in planning, construction and operations jobs, plus thousands more in jobs indirectly created by this economic activity. New York has directly benefited, with 658 MW of wind power installed between January 2004 and September 2008—by far the most of any State in the Northeast. Wind turbine manufacturers and their suppliers have opened more than 50 U.S. manufacturing facilities since 2007, creating tens of thousands of high wage jobs. Solar, geothermal, and other forms of renewable power have also enjoyed strong growth and contributed to job creation. With 29 states and the District of Columbia already enacting aggressive renewable power mandates, there is now a compelling need to continue to develop and construct wind-powered electric generation across the U.S.

At this critical time, however, the tax credit programs that serve as the primary Federal incentive for renewable power are no longer adequate, or even helpful, in encouraging private investment. Simply put, tax credits only provide an effective incentive if investors are profitable enough to have taxes they can offset. Due to the current unprecedented economic crisis, many investors have no foreseeable tax payments and even well-capitalized investors find it difficult to predict their profitability over the period during which the tax credits would be used. We are lawyers who represent the power industry, investors, financiers and regulators, and serve in state and local government, academia and NGO's. We have seen this uncertainty translate to good projects undone.

We urge you to consider modifying Federal law as follows:

1. **Grants**. In lieu of the Internal Revenue Code Section 45 production tax credits related to a qualified wind generation project (PTCs), an investor should be able to claim an investment tax credit (ITC) equal to 30% of the project's cost (defined in a manner similar to the Internal Revenue Code Section 48 solar energy ITC program). The investor could then elect to receive a non-taxable grant amount equal to the full value of the ITC in lieu of claiming the credit on its tax return. This grant program should be administered by the Department of the Energy (DOE), on a non-discretionary basis to permit timely availability of the grant, and the IRS should have the power to audit the grants through the recipients' tax returns. Proposed adjustments in the grant amount after audit can be subject to the rules applicable to adjustments of tax (including the imposition of interest, penalties, taxpayer rights, and court jurisdiction and procedures) and the grant must be subject to anti-abuse rules, including the recapture (i.e., repayment) of the grant in the case of certain dispositions of the wind project. The proposal should be effective for facilities originally placed in service in 2009 and 2010, with additional flexibility for geothermal, biomass, and utility-scale solar projects that require more than 2 years to construct.

2. **Depreciation, leasing and partnerships**. Current tax law includes a number of provisions that unnecessarily constrain the use of renewable energy tax credits. We support modifications to the leasing and partnership rules applicable to renewable energy facilities to allow leasing to State and local governments and cooperatives without a reduction in tax benefits. We also support lengthening the window for executing sale-leasebacks to 12 months from the 90 days now permitted and clarifying that depreciation is not part of cost of goods sold for renewable energy projects.

We also support bonus depreciation for qualified wind generation projects irrespective of when component parts were ordered.

3. **Additional utilization**. Because an investor's ability to utilize PTCs to reduce taxes in future years are difficult to quantify, it would also be helpful to extend the period in which the PTCs could be used. We support allowing extended carrybacks of credits generated in 2008 and 2009 (up to 10 years), and use of PTCs generated in any year to offset the alterative minimum tax of the taxpayer. Further, we believe that renewable energy assets should be exempted from Internal Revenue Code Section 199 to enhance manufacturing firms' and utilities' ability to use the tax credits.

4. **Program Extension.** Finally, as lawyers we understand that the continuing risk of non-renewal of the PTC program chills investment and urge Congress to now extend the Internal Revenue Code Section 45 program, as modified, for a period of at least 3 years past its scheduled December 31, 2009 expiration date to provide one source of stability in these turbulent times.

Respectfully submitted,

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January 21, 2009

VIA FACSIMILE

Hon. Anthony Weiner
2104 Rayburn House Office Building
Washington, DC 20515

Dear Representative Weiner:

This letter is respectfully submitted on behalf of the Energy Committee of the New York City Bar Association to inform you and your colleagues of our view that the Federal tax code ought to be modified to permit the renewable energy industry to continue to help drive US economic and job growth. As Congress struggles with the task of determining the right investments for sustainable, skilled jobs, we urge you to restructure these programs that allow *private sector* funds to drive job creation and reduce carbon emissions.

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January 21, 2009

VIA FACSIMILE

Hon. Charles Rangel
US House of Representatives
2354 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rangel:

This letter is respectfully submitted on behalf of the Energy Committee of the New York City Bar Association to inform you and your colleagues of our view that the Federal tax code ought to be modified to permit the renewable energy industry to continue to help drive US economic and job growth. As Congress struggles with the task of determining the right investments for sustainable, skilled jobs, we urge you to restructure these programs that allow *private sector* funds to drive job creation and reduce carbon emissions.

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January 21, 2009

VIA FACSIMILE

Hon. Eliot L. Engel
2161 Rayburn House Office Building
Washington, DC 20515

Dear Representative Engel:

This letter is respectfully submitted on behalf of the Energy Committee of the New York City Bar Association to inform you and your colleagues of our view that the Federal tax code ought to be modified to permit the renewable energy industry to continue to help drive US economic and job growth. As Congress struggles with the task of determining the right investments for sustainable, skilled jobs, we urge you to restructure these programs that allow *private sector* funds to drive job creation and reduce carbon emissions.

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January 21, 2009

VIA FACSIMILE

Hon. Joseph Crowley
2404 Rayburn House Office Building
Washington, DC 20515

Dear Representative Crowley:

This letter is respectfully submitted on behalf of the Energy Committee of the New York City Bar Association to inform you and your colleagues of our view that the Federal tax code ought to be modified to permit the renewable energy industry to continue to help drive US economic and job growth. As Congress struggles with the task of determining the right investments for sustainable, skilled jobs, we urge you to restructure these programs that allow *private sector* funds to drive job creation and reduce carbon emissions.

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