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Hon. David Paterson
Governor
Executive Chamber
State Capitol
Albany, New York 12224

Hon. Joseph L. Bruno
Senate Majority Leader
909 Legislative Office Building
Albany, NY 11247

Hon. Sheldon Silver
Speaker of the Assembly
932 Legislative Office Building
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Hon. Malcolm A. Smith
Senate Minority Leader
907 Legislative Office Building
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Hon. James Tedisco
Assembly Minority Leader
933 Legislative Office Building
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Re: Assembly Budget Provisions Impacts on the New York System Benefit Charge and Renewable Portfolio Standard

Dear Governor Paterson and Legislative Leaders:

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 provisions in Assembly Budget Bills A.9805-B at p. 66 et. seq. and A.9809-B at Parts U and HH ("Assembly Bills Provisions") on the funding of the state's energy efficiency and renewable energy programs through the Systems Benefit Charge ("SBC") Program and the Renewable Portfolio Standard ("RPS"). 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.

We commend the Legislature for its long support of energy efficiency and clean energy programs. However, we believe that the Assembly Bills Provisions, which would subject funds generated through the SBC and RPS to the annual state appropriation process, would be detrimental to the long-term success of the programs supported by the SBC and RPS. The Committee is of the view that this change is ill-advised, will undermine NYSERDA's energy efficiency, energy conservation, energy management and renewable energy initiatives, and risks impairing New York's favorable investment environment for energy efficiency and renewable energy projects. The policy reasons that inspired the creation of the SBC and the RPS are even more crucial today than they were at their inception. Fossil fuel prices have skyrocketed, energy independence and security concerns have become even more pressing and the man-made causes and impacts of climate change have been forcefully recognized by the National Academy of Sciences and the Intergovernmental Panel on Climate Change. The highly successful SBC programs and the RPS mechanisms that have been established and are being developed by NYSERDA should be safeguarded not jeopardized.

The Committee submitted comments twice before on legislative attempts to incorporate the SBC and RPS funds into the budget appropriation cycle and sought gubernatorial vetoes which were issued and not overridden by the Legislature. The Committee again urges that the Assembly Bills Provisions which raise the same serious concerns be deleted from the final budget bill.

The Assembly Bills Provisions 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. Indeed, NYSERDA's programs have been so successful, they have earned many national awards. NYSERDA's ability to attract private investment, however, would be undermined severely by the Assembly Bills Provisions, which would force the funding for SBC programs into the annual appropriations cycle. This cycle, with its inherent uncertainty regarding the timing and level of funding, plainly would discourage the development of energy efficiency and renewable energy programs.

The Amendment could similarly have an adverse effect on the RPS program. The RPS program requires massive investment by renewable energy developers which can only be justified if long term purchase contracts are available and reliably funded. Such investment is only possible if the investment community has in hand not only long-term contracts but also confidence in assured long-term funding. 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, delays and political uncertainties inherent in an annual legislative budget appropriations process.

If SBC and RPS funds were included in the budget for the appropriation process, there would be a risk perceived by the business community that the funds would be diverted in the future to other purposes. In other states which have adopted a similar 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. Those considering investing in New York are likely to be concerned about the possibility of similar diversions here and look to investing in more hospitable states where long-term sources of funding are more assured.

The Committee recognizes that the Assembly Bills Provisions expressly provide that the provisions should not be construed "to interfere with the ability of the State of New York to enter into long-term contracts for the development of renewable energy." However, the Committee believes that there is a serious risk that the marketplace will be dissuaded from investing in New York State if an annual budget appropriation process, a process fraught with difficulties in New York as well as in many other states, is required to release funds for payment.

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 Assembly Bills Provisions Implement a Sweeping Change in Policy Unsupported by Any Showing of Need or Analysis of Impact

If the Assembly Bill Provisions are intended simply to provide a new mechanism for delivering identical sums for identical purposes to NYSERDA as are currently provided under the SBC and RPS programs there is no need for them. Rather, their potential for discouraging long-term planning and investment should be eliminated. Given the urgency of addressing energy issues today, this is simply not the time to take chances with an established and highly successful program delivery mechanism. If the intention is to use these funds for other purposes, the Assembly Bill Provisions are plainly misguided.

The Committee is not aware of any analysis by the Legislature of the possible impact of the Assembly Bills Provisions on energy efficiency efforts and the RPS. Such a lack of analysis is particularly disturbing given the risk that the Assembly Bills Provisions present to the State's ongoing energy efficiency and conservation efforts as well as the RPS. By contrast, the New York Public Service Commission has spent years taking and considering public comments from a broad range of informed voices on how best to implement SBC and RPS programs in New York and reviewing and monitoring NYSERDA's programs and administration. In the face of such exhaustive public review and analysis by the Public Service Commission as to how best to meet the energy challenges before us, provisions in a budget bill by the Legislature are 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 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 Assembly Bills Provisions should not be permitted to disrupt these model programs.

Respectfully submitted,

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Chair
Committee on Energy
Association of the Bar of the
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