The Business Council

DARREN SUAREZ

Director of Government Affairs

November 12, 2013

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223

Re:

- Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.
- Case 03-E-0188 - Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard.
- Case 13-M-0412 - Petition of NYSERDA to Provide Initial Capitalization for the New York Green Bank.
- Case 05-M-0090 - On the Matter of the System Benefits Charge III.

Dear Secretary Burgess:

I write on behalf of The Business Council of New York State, Inc. to express our comments regarding the proceedings, cited above, that are now before the Commission.

The Business Council is the leading business organization in New York State, representing the interests of large and small firms throughout the state. Its membership is made up of thousands of member companies, as well as local chambers of commerce and professional and trade associations. Though 72 percent of its members are small businesses, it also represents some of the largest corporations in the world. All told, its members employ more than 1.2 million New Yorkers. The primary function of The Business Council is to serve as an advocate for employers in the state political and policy-making arena, working for a healthier business climate, economic growth, and jobs.

The Business Council strongly encourages the Commission to use these collective proceedings to reduce and move towards the elimination of the current assessments that collectively burden New York's energy customers. The Business Council is committed to the development of long term policies that encourage sustainable economic growth. The Business Council has long held that affordable energy rates are vital to the growth of New York's economy, particularly the manufacturing sector. A 2010 report by the Public Policy Institute, the research arm of The Business Council, stated: "Energy is one of the major cost factors that make New York one of the least favorable locations in which to start or expand a business. Taxes imposed on the state's electric industry, which far and away surpass the levies imposed by any other state, have contributed to the relative decline of New York State's economy."[1]

The Business Council strongly encourages the Commission to consider that, due in large part to New York's energy market design, New York electric customers have benefited from clear, more reliable generation as well as historically low wholesale electricity costs. The current wholesale electric market has provided consumers with significant wholesale savings. The average 2012 electricity price was $45.28 per megawatt-hour, the lowest price in the last 12 years. The 2012 price was the third

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[1]"Short-Circuiting New York's Recovery - How Energy Taxes Contribute to High Electric Rates in New York, Public Policy Institute of New York (March 2010)

straight year of decline.[2] However, consumers have not realized the full benefits of these market savings, due to increased assessments and taxes.

The Business Council is strongly encouraged by NYSERDA's petition, which repeatedly, articulates a desire to transition away from a reliance on mandatory customer-funded subsidies to support clean energy initiatives. The Business Council will support the development of the Green Bank, if the State moves away from a reliance on customer assessments to support clean energy programs, provided however, the current petitions fail to address many questions regarding future assessments.

The Business Council supports statements that are contained in the Petition similar to the following:

> *The Green Bank presents a market transformative opportunity for New York through its introduction of a self-sustaining financial model. New York spends roughly $1.4 billion each year to promote and advance energy efficiency and renewable energy, yet the State is still falling short of achieving its clean energy goals. As the Governor highlighted in January [2013], nearly 80% of this annual budget is currently provided in the form of one-time subsidies and grants. This system has been effective in kindling the State's clean energy market, but has proven unsuccessful in achieving real market scale. (Petition at 1.)*

The Business Council strongly supports the development of a self-sustaining financial model for advanced energy efficiency and renewable energy, with the goal of achieving real market scale. The current form of one-time subsides and grants are unsustainable.

Article I. Cost to Customer

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[2] "Power Trends 2013" NYISO

The Business Council supports efforts to end the advancement of energy policy initiatives that are dependent upon surcharges, and recommends the adoption of a schedule or commitment to reducing existing surcharges, while encouraging the development of policies to address market barriers to the deployment of additional renewable energy resources and energy efficiency.

The Business Council unequivocally supports the following comments by Multiple Interveners (MI):

> *Multiple Intervenors strongly opposes, inter alia, the magnitude of the existing EEPS, RPS and SBC surcharges (individually and collectively), as well as the highly-inequitable manner in which such surcharges are recovered from customers (i.e., volumetrically, based solely on energy consumption, which results in enormous and inequitable impacts on large high-load-factor customers).*[3]

The Business Council agrees that the existing EEPS, RPS, and SBC surcharges, which are currently at a damaging level, jeopardize business expansion and job retention efforts of incumbent businesses.

The initial comments filed by MI illuminate the impact of EEPS, RPS and SBC, which collectively exceed the cost of "traditional" delivery service for many large non-residential customers. Specifically, MI found the following:

> *First, consider a hypothetical, large non-residential electric customer taking delivery service from Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk") under S.C. 3-A, transmission voltage. The customer has a steady 20 MW electric demand and operates at an 85% load factor. The annual cost of "traditional" delivery service for such customer under Niagara*

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[3] MI Green Bank Page 2

Mohawk's existing rates is \$680,400[4]. In comparison, the combined annual cost of the EEPS, RPS and SBC surcharges for the same hypothetical customer is \$1,071,926.16.[5] Thus, the three surcharges more than double the hypothetical customer's cost of "traditional" delivery service.[6]

It is inexplicable how EEPS, RPS, and SBC surcharges could be more costly than traditional delivery service. As such, The Business Council strongly supports the general goal of reducing reliance on customer-funded subsidies and requests the development of a schedule or commitments for decreasing existing surcharges.

Understanding, that shifts in energy policy do not occur overnight, The Business Council supports taking near-term steps to reduce the burden of capital depleting assessments on high-load-factor customers. In recent years, the Commission has witnessed the departure of many large and small manufacturers, who have been the anchor of many communities across the State. The Commission can make New York more inviting for capital investment by reducing the current assessments.

The Business Council encourages the Commission to establish alternatives to volumetric assessments, which are inequitable and unduly onerous for large, high-load-factor customers. The Commission could return funds to customers and/or

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[4] S.C. 3-A transmission customers pay two charges for "traditional" delivery service (i.e., excluding various reconciliations and surcharges). The first charge, the Customer Charge, is \$3,500 per month, or \$42,000 annually. The second charge, the Demand Charge, is \$2.66 per kW. A customer with a steady 20 MW demand would pay a Demand Charge of \$53,200 per month (i.e., 20,000 kW x \$2.66 per kW), or \$638,400 annually. Combining those two charges (i.e., \$42,000 + \$638,400) produces an annual cost of "traditional" delivery service of \$680,400. See Niagara Mohawk Electric Tariff, PSC No. 220, Leaf 391.

[5] A customer with a 20 MW demand and an 85% load factor consumes 148,920,000 kWh annually (i.e., 20,000 kW x 8,760 hours x .85). Niagara Mohawk's existing EEPS, SBC and RPS surcharges are \$0.002433 per kWh, \$0.001775 per kWh, and \$0.002990 per kWh, respectively. See Niagara Mohawk Electric Tariff, PSC No. 220, SBC Statement (depicting the EEPS and SBC surcharges) and RPS Statement (depicting the RPS surcharge). Applying combined surcharges of \$0.007198 to 148,920,000 kWh results in total annual surcharges of \$1,071,926.14.

[6] Comments of MI Page 2

reduce projected future assessments. The Commission could immediately reduce the assessments through the adoption of the maximum amount of assessments on individual customer accounts.

Although the Business Council recommended that the Commission return funds to customers and end future collections, The Business Council recognizes such recommendation may meet with some inertia. As such, The Business Council provides the following recommendations regarding EEPS, RPS, and the Green Bank.

Article II. EEPS

The Business Council understands the interest in restricting EEPS. Historically, the utility-customer relationship is a safe and reliably means of delivery of programs to customers. The Restructuring Proposal's recommendation that utilities play a key role in marketing, outreach and developing leads is well grounded. Utilities are positioned to integrate an overall customer solution package. The Business Council asks that the Commission avoid any framing of the Program Administrator roles that would relegate utilities to a role that would not take advantage of their strengths or that would remove the utility from the customer interface.

The Business Council reiterates its concerns regarding the size of the current EEPS assessments and the means for collecting such assessments. The Council supports a movement away from volumetric cost recovery, because of the reasons outlined by the MI:

> *First, the costs are not incurred, nor are they intended to produce benefits, on a purely volumetric basis. Consequently, the current volumetric cost recovery methodology does not match the intent of the EEPS and conflicts with cost causation principles. Second, said methodology is inequitable to, and penalizes, large high-load-factor customers, who, ironically, tend to be the*

most efficient consumers of energy in the State. Third, from an economic development perspective, it is counterproductive to unduly burden large employers – such as manufacturers – that are struggling to remain competitive in New York notwithstanding the State's material energy price disadvantage.[7]

The Business Council urges the Commission to immediately modify the methodology for recovering EEPS costs from customers in a manner that is consistent with cost causation principles and is fair to customers. Additionally, the Commission should adopt a cap or ceiling on the amount of EEPS surcharges that can be imposed on individual customer accounts.

The Business Council strongly recommends that that the Commission review and consider the MI recommendation to adopt a self-directed or "banking" approach, described herein, for large non-residential customers. The self-directed or banking approach would maximize investments in energy and system efficiency and infrastructure projects while at the same time, moderating moderate detrimental rate impacts and reduce competitive inequities.

Under a banking approach an eligible customer not utilizing their "banked" funds within a specified period of time would lose exclusive access; and eligible customers would be allowed to access funds not utilized by other eligible customers.

The Business Council agrees with MI's comments that such a "banking" approach has considerable merit:

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[7] Multiple Intervenors Comments on EEPS Page 19

> *First, because large non-residential customers are accorded a reasonable opportunity to recoup their money, the ultimate cost to such customers should be more manageable than currently is the case.*
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> *Second, by allowing customers to self-direct or "bank" the EEPS surcharges for their future use (for some reasonable amount of time), the issues of interclass subsidies and intraclass subsidies (e.g., businesses being forced to subsidize their competitors' projects) are addressed satisfactorily. EEPS surcharges paid by large non-residential customers would be used for the benefit of that customer segment; other customer segments would neither subsidize, nor be subsidized by, large non-residential customers. Additionally, individual large non-residential customers initially would have sole access to the surcharges that they paid, thereby according them an opportunity to utilize such funds for eligible projects before they can be diverted to other large non-residential customers (some of which may be business competitors).*
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> *Third, because customers' ability to recoup money paid in response to EEPS surcharges is contingent upon them completing energy efficiency projects (and, Multiple Intervenors advocates, system efficiency and infrastructure projects) at their own facilities, customers should be strongly motivated to undertake such projects.*
>
> *Fourth, inasmuch as this approach would provide large non-residential customers with broad discretion to implement energy efficiency projects – as well as system efficiency and infrastructure projects – that may be specific to their industries, facilities and/or processes, maximum flexibility is achieved.*[8]

The Business Council urges the Commission to continue ensuring that State utilities serve a valuable role in EEPS and to implement a self-directed or "banking" program for large non-residential customers.

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[8] Multiple Intervenors EEPS Comments Page 30

Article III. RPS

The Business Council encourages NYSERDA to conduct regularly scheduled solicitation, because such predictability provides renewable investors with necessary guidance.

The Business Council agrees with Independent Power Producers of New York, Inc. (IPPNY) that:

> *Project developers need to know well in advance when the next procurement will be. Otherwise, New York incurs the risk of having investments made in other markets instead of in this state.*[9]

The Business Council shares IPPNY's statement:

> *Eligibility under the RPS should be consistent with this definition in existing law, which requires eligibility of all of the resources specifically mentioned by the definition and allows for the expansion of eligibility of additional resources as envisioned by the definition's broad scope.*

Provided, however, that the inclusion of new eligible resources should never warrant an increase in RPS collections. The Business Council strongly supports the movement towards a time when the RPS assessments will no longer be needed.

Article IV. Green Bank

The Business Council will support the development of the Green Bank if the State moves away from a reliance on customer assessments to support clean energy programs. The Business Council is concerned that NYSERDA is correct that "(a)lthough the results to date for the Main Tier program have been achieved more cost effectively than originally projected, current market conditions and future

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[9] Independent Power Producers of New York, Inc. Comments Page 3

projections suggest that the remaining authorized Main Tier funding doesn't appear sufficient to achieve the 2015 program targets that were established in 2009/2010."[10] It is evident that various factors influence the premium required to support renewable energy project development in New York State, and those factors are unlikely to get better in the short term. New York must look to ending direct subsidies and develop a bridge to sustainable independent private financing markets, and the Green Bank is rightly designed to be that bridge.

Although The Business Council acknowledges the potential of the Green Bank, we support a stepped approach to its development. The Business Council believes NYSERDA should develop a timeframe for the capitalization of the Green Bank. Additionally, after the initial capitalization of the bank, there should be no further capitalization of the Green Bank unless and until there is a demonstrated needed.

The Business Council agrees with MI that additional details are needed regarding the development of the Green Bank:

> *The Petition fails to explain in adequate detail: (a) the Green Bank's policies on risk and risk management; (b) whether the Green Bank would be subject to the State and Federal laws that typically would apply to a financial institution such as the Green Bank; and (c) how projects would be selected for financial support. These deficiencies are material and require remediation.*[11]

The Business Council is extremely concerned regarding the prospective funding requirement and the projected funding gap of $789.7 million. The Business Council's support of the Green Bank is moderated by concern of additional future collections to replace repurposed EEPS, RPS and/or SBC monies, or possibly an additional

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[10] NYSERDA Renewable Portfolio Standard Main Tier 2013 Program Review

[11] MI Page 15

assessment. The Commission should reject NYSERDA's Green Bank petition if it would result in additional collections.

The Green Bank should be transparent and accountable and include the adoption of specific performance indicators. NYSERDA should provide the Green Bank with the necessary expertise to operate a banking-type institution without a significant increase in administrative costs.

The Business Council urges the Commission to reject comments filed by H.Q. Energy Services (HQUS) that call upon the Commission to consider the subsidization of hydropower imports in the RPS. . The developer of Champlain Hudson Power Express (CHPE) had earlier committed to develop the project without subsidy, during its transmission siting application. If the developer of the CHPE project needed State incentives, it should have been clear during its application. Additionally, New York does not offer incentives to large scale hydropower; it would be a perverse outcome to provide assistance to a non-domestic source of renewable power. New York State ratepayers should not provide subsidies to Canadian government entity to build hydroelectric plants. New York should continue to focus on removing barriers to the deployment of New York based renewables.

Article V. Conclusion

The Business Council is strongly encouraged by NYSERDA's petition, which repeatedly articulates a desire to transition away from a reliance on mandatory customer-funded subsidies to support clean energy initiatives. The Business Council will support the development of the Green Bank if the State moves away from a reliance on customer assessments to support clean energy programs. However, the current petitions fail to address many questions regarding future assessments.

Respectfully submitted,

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