Dormitory Authority
State of New York

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Gail H. Gordon, Chair
David D. Brown, IV, Executive Director

October 15, 2007

VIA COURIER

Hon. Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Empire State Plaza
Agency Bldg. 3
Albany, New York 12223-1350

Re: Case 07-M-0548 – Energy Efficiency Portfolio Standard
DASNY Comments on "Fast Track" Programs

Dear Secretary Brilling:

Pursuant to ALJ Eleanor Stein's *Ruling Setting Collaborative Agenda and Modifying Comment Schedule*, issued September 13, 2007, the Dormitory Authority of the State of New York ("DASNY") submits this letter and five copies hereof as and for its Comments regarding "fast track" programs. These Comments are intended to be responsive to the specific issues identified by the ALJs in their letter of October 1, 2007.

DASNY is seeking Commission authorization for utilities to partner with DASNY for the purpose of expanding existing private financing offered by DASNY to its public and not-for-profit institutional clients for the implementation of energy efficiency projects. This program, which DASNY hereby requests be fast tracked, was described in the following submissions by DASNY:

- DASNY's original September 10, 2007 proposal (attached hereto as Attachment "1");
- DASNY's October 2, 2007 Working Group 1 presentation (attached hereto as Attachment "2"); and
- DASNY's October 9, 2007 Memorandum to the Working Group 1 Memorandum (attached hereto as Attachment "3")

As is explained in the above materials, costs would be borne solely in the first instance by DASNY loan recipients. An "exit fee" would provide for the repayment of any outstanding indebtedness in the event that the recipient was to exit a utility's delivery system. Similar to the operation of the current SBC/RPS surcharge mechanism, utilities could remit the total amount of loan recipient indebtedness to DASNY pursuant to a schedule of payments, and collect any revenue shortfalls from a larger class of customers to be determined by the Commission.[1]

[1] Alternatively, remittance could be on an as-collected basis. Pending final determination of these surcharge design issues, the Commission could authorize utilities to act as billing agents and include DASNY charges on the bills of loan recipients, similar to the Commission's authorization of the inclusion of ESCO commodity charges on utility-issued bills. In that event, payment allocation protocols would appear to be necessary.

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Dormitory Authority
State of New York

No additional statutory authorization is required for DASNY to implement proposed "Green Tariff" program. Only Commission authorization is necessary for the utility billing of DASNY charges.

DASNY believes that, under such a utility billing program, more institutions would choose to utilize the private tax-exempt financing offered by DASNY and that the burdens on the utilities would be relatively small. At this time, Staff's preliminary estimate is that ratepayers could be required to pay as much as $8 billion in EPS program funding. The private financing that DASNY can contribute will reduce the costs required to be borne by ratepayers.

For the reasons set forth in these Comments, DASNY respectfully requests that the Commission grant the authorizations requested herein.

Pursuant to ALJ Eleanor Stein's *Ruling on Scope and Schedule*, issued June 15, 2007, copies of this filing are being served electronically upon the Active Parties in this proceeding. Kindly date-stamp as received the enclosed duplicate copy of this letter and return it to our courier.

Respectfully submitted,

Jeffrey M. Pohl
General Counsel

JMP/dlf

Enclosures: Attachment 1 – DASNY September 10, 2007 Proposal
Attachment 2 - DASNY October 2, 2007 Working Group 1 Presentation
Attachment 3 – DASNY October 9, 2007 Working Group 1 Memorandum

cc: ALJ Eleanor Stein (via e-mail)
ALJ Rudy Stegemoeller (via e-mail)
Active Parties (via RPS listserver)

Dormitory Authority

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Gail H. Gordon
David D. Brown, IV

September 10, 2007

VIA EMAIL

The Honorable Eleanor Stein
New York State Department
Of Public Service
Three Empire State Plaza
Albany, New York 12223

Re: Case 07-M-0548 - Energy Efficiency Portfolio Standard

Dear Ms. Stein:

On September 7, 2007, the Dormitory Authority of the State of New York ("DASNY") intervened in the above captioned proceeding to consider the adoption of an Energy Efficiency Portfolio Standard (EPS) in New York.

Attached hereto is a brief statement which provides some background information on DASNY. This statement also outlines a proposal that would enable the public and private institutions traditionally served by DASNY to finance energy efficiency projects on a tax-exempt basis.

DASNY looks forward to working with the other participants in this Proceeding.

Very truly yours,

Jeffrey M. Pohl
General Counsel

Attachment
cc: Service list via EPS listserver

Case 07-M-0548

Interest of the Dormitory Authority of the State of New York in this Proceeding

The Public Service Commission, by an Order dated May 16, 2007, established a proceeding to design an Energy Efficiency Performance Standard or "EPS". The goal of the EPS is to reduce the State's projected electricity usage by 15% by 2015 and to reduce the State's reliance on fossil fuels. One element of the EPS is the implementation of programs that encourage the consumers of energy in this State to undertake capital improvements that result in increased energy efficiency and achieve other important public policy goals ("Green Projects").

The Dormitory Authority of the State of New York, often referred to as DASNY, is well positioned to assist several large groups of energy consumers to develop, finance and undertake energy efficiency projects. DASNY would like to help these groups undertake Green Projects for which the estimated annualized energy savings are expected to exceed the annual debt service necessary to finance the Projects over their useful lives. In this fashion, customers should see their overall utility bills go down even though some portion of the savings is being applied to finance the cost of the energy efficient improvements. The savings would be enhanced where DASNY could provide financing for eligible Green Projects on a tax-exempt basis.

DASNY would work with its clients to undertake Green Projects that cover the full array of energy efficiency initiatives regardless of the energy resource from which the savings are to be derived. Savings opportunities for DASNY clients are not limited to just electricity savings. Some projects will also realize significant reductions in gas, fuel oil, water consumption and other operations and maintenance costs. By including these savings in an energy audit to evaluate which measures to undertake, more projects will qualify as Green Projects, including those projects which primarily save resources other than electricity and which require bundling efficiency improvements with other improvements to be cost effective

Background on DASNY

DASNY is a public benefit corporation established by the State of New York in 1944 originally for the purpose of financing and constructing facilities for the colleges and universities that are part of the State University of New York. Today, DASNY serves a much broader group of public and private not-for-profit entities and its financing activities on behalf of these institutions have, for many years, made DASNY one of the largest issuers of tax-exempt municipal bonds in the United States. As such, DASNY is uniquely situated to help its state-wide constituency undertake Green Projects that will further the goals of the EPS.

At the present time, DASNY's public clients include the State University of New York, the City University of New York, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, the City of New York and various local governments and school districts. Its private clients include universities, colleges, hospitals, nursing homes and various other not-for-profit organizations that are specifically enumerated in DASNY's enabling legislation.

DASNY currently has outstanding approximately $16 billion of bonds for its private clients and $18 billion for its public clients. DASNY has financed many different types of capital projects for its clients and recently issued $20,275,000 of its Personal Income Tax Revenue Bonds, Series 2007B (SUNY Green Initiatives) for the purpose of financing green retrofit projects at various SUNY campuses. DASNY also has the technical expertise to assist both its public and private clients in the design and construction of energy retrofit projects and is actively developing programs to make this expertise more readily available to them. DASNY has also advised all of its public clients that any project on which DASNY starts construction after 2007 shall be LEED Silver certifiable.

The service that DASNY most frequently provides to its private not-for-profit clients is the issuance of tax-exempt bonds to fund low interest rate loans for their capital projects. Bonds issued by DASNY are "special obligations" of the Authority. This means that the bonds are payable only from loan payments made by a borrower under a loan agreement with DASNY, any other property pledged by the borrower to secure its loan repayment obligation to the Authority, funds held by a bond trustee as security and in certain instances, credit enhancement.

DASNY's current financing guidelines permit it to issue bonds for a private client if the client has an underlying rating of A- or better or if the bonds are to be secured by credit enhancement, such as a policy of municipal bond insurance, a letter of credit or federal (FHA) or State (SONYMA) mortgage insurance. Although these guidelines do provide for exceptions, there are a significant number of potential DASNY clients that are unable to finance through DASNY's bond financing programs because of their inability to meet DASNY's credit requirements.

DASNY also has a tax-exempt equipment leasing program under which its clients finance equipment and related property under a three-party financing lease to which DASNY, its client and a lender are parties. DASNY's TELP financings are done as private placements to sophisticated institutional lenders and it is those lenders who determine whether a borrower has the necessary credit standing. DASNY's clients get the benefit of lower tax-exempt rates irrespective of whether the projects are financed with the proceeds of bonds or through TELP.

Many clients and potential clients of DASNY are often unable to finance relatively small projects with DASNY because the cost of financing would be prohibitive. Additionally, some clients cannot or are unwilling to take on new debt. Some of the financing initiatives that DASNY hopes to pursue through this Proceeding will help DASNY serve institutions with less financial strength. For example, DASNY is exploring opportunities to "pool" a number of Green Projects for different clients regardless of the projects' size so that all may benefit from the lower cost of tax-exempt financing.

Clients and potential clients of DASNY may also be discouraged from investing in Green Projects because of their fear of the risks involved, including that the installation might not be appropriate for their facility or that it will fail and not produce the needed savings to cover the payments without costly repairs. DASNY believes that its up-front involvement in Green Projects, such as by providing customers with technical expertise evaluating proposals and overseeing installations, will help reduce some of the perceived risks associated with Green Projects and thereby make them more attractive to the institutions served by DASNY. To help ensure that DASNY clients will have confidence in savings estimates, DASNY expects to have independent energy analyses performed by experts with no financial stake in the measures. DASNY is also exploring possible mechanisms to assist its clients in covering the costs of the energy audit to the extent that these costs are not able to be rolled into the overall project cost and paid for out of the project's savings.

DASNY's Green Improvement Tariff Proposal

DASNY believes that an EPS provides an excellent opportunity for DASNY to enhance its ability to promote and finance energy efficient "Green Projects". DASNY desires to work with the PSC and the various stakeholders to develop a program that will give DASNY the ability to provide access to capital and reduce the real and perceived barriers and risks of investment for all of its clients who wish to undertake qualifying Green Projects. These Green Projects will lower DASNY's clients' energy consumption and associated energy costs and, at the same time, reduce the burden on the State's electric facilities, decrease the production of greenhouse gasses and reduce the State's reliance on fossil fuels. The energy cost savings will leave DASNY's clients with greater resources to perform their own important public missions.

One proposal being considered by DASNY is to partner with the PSC and utilities for the imposition of a tariffed utility charge on customers who (1) are eligible to borrow from DASNY and (2) seek to undertake a Green Project that will achieve the energy conservation goals of the EPS (the "Green Improvement Tariff"). The Green Improvement Tariff charge could be a component of any EPS surcharge adopted by the PSC, or it could be embedded in other utility charges, or it could be a separate surcharge, as the PSC may determine.

The amount of the Green Improvement Tariff charge for any customer during a payment period would equal the scheduled payment due to DASNY for that period on account of the indebtedness incurred to finance the cost of the customer's Green Project, as agreed to between DASNY and the customer. DASNY would use these Green Improvement Tariff charges to pay debt service on the tax-exempt obligations issued by DASNY to finance the cost of the customer's Green Project.

Assuming the PSC grants authorization for the imposition of a Green Improvement Tariff charge, DASNY would expect to issue bonds that would be secured primarily by a pledge of the Green Improvement Tariff charges payable to DASNY by the utility, rather than the payments required to be made by the client under a loan agreement. Bonds secured by a properly constructed Green Improvement Tariff charge should provide a creditworthy structure that has the benefit of credit support from the utilities and their rate payers. Consequently, more hospitals, nursing homes, colleges and other clients of DASNY will more readily undertake energy efficiency projects because this structure means less risk and easier access to capital for the client. Also, because DASNY's client constituency is unlikely to default on their utility bills, the potential financial exposure for other rate payers should be minimal.

Implementation of a Green Improvement Tariff would allow participation by most, if not all, DASNY clients and not just the lowest risk customers to whom capital providers are interested in making funds available. Also, more favorable financing terms would mean more energy efficiency measures would qualify for financing under this Green Improvement Tariff program.

Remittance Protocol for Green Improvement Tariff

Given the proposed financing structure, it would be preferable for the utility to remit the amount of the Green Improvement Tariff charge to DASNY pursuant to an agreed-to schedule regardless of the utility's collection of the charge. As stated, the agreed-to schedule would correspond to the debt service payments required to be made on the indebtedness incurred to finance the cost of the client's Green Project. On the strength of such a remittance protocol, DASNY would be able to make loans to its clients on more favorable terms. This is the same rationale as that behind the SBC and RPS surcharges -- sharing costs for benefits that accrue to all ratepayers in order to make efficiency measures more likely to be installed.

To minimize the potential burden on other ratepayers, consideration should be given to inclusion of an "exit fee" in the Green Improvement Tariff payable by any DASNY loan recipient (i) who ceases to be a delivery customer of the utility either by "islanding" or connecting to the distribution system of an entity whose rates and charges are not subject to PSC regulation; and (ii) for which DASNY indebtedness is still outstanding. The exit fee should be due upon exit from the utility system in an amount sufficient to allow DASNY to retire the debt incurred to provide financing for the customer's Green Project and should be passed through to DASNY upon receipt. Such an exit fee would reflect the continuing benefits that the Green Project will provide to the customer. On the other hand, if the client transfers ownership of the benefited property to a new owner, the seller could either pay the exit fee as outlined above or, if the transferee is also eligible for tax-exempt financing from DASNY, transfer the obligation to pay the Green Improvement Tariff to the new owner.

A less advantageous remittance protocol from a financing standpoint would require the utility to remit Green Improvement Tariff charges to DASNY only on an as-collected basis. Such a protocol would require the development of payment allocation procedures for situations where customers fail to pay the full amount of the utility charges and should provide that unpaid Green Improvement Tariff charges are the subject of the full range of utility collection remedies, including disconnection for non-payment. An exit fee similar to that previously discussed would also be essential. However, because DASNY's bondholders (rather than the utility) would assume the risk of late or uncollectible tariff payments, it is not clear whether DASNY could successfully market bonds secured solely by a Green Improvement Tariff payable to DASNY on an as-collected basis. As a result, if the Green Improvement Tariff is to be payable to DASNY on this basis, consideration may also need to be given to the imposition of an additional tariffed utility charge on a broader base of customers to help DASNY build a pool of funds to reduce the impact of defaults by customers, including any failures to pay any exit fees, on bonds issued by DASNY under its Green Improvement Tariff financing program.

Regardless of whether the Green Improvement Tariff is structured so that the utility must remit the amount of the Green Improvement Tariff charge to DASNY pursuant to an agreed-to schedule regardless of the utility's collection of the charge or on an as-collected basis, no customer would be provided with a free ride under the Green Improvement Tariff. Under DASNY's proposal, the DASNY client benefiting from the improvements would be responsible, in the first instance, for the Green Improvement Tariff charges. Thus, the client would be motivated to actively participate in the design, installation and operation of energy efficiency improvements so that it will be assured of energy and cost savings sufficient to cover its repayment obligation. We believe that, to the extent that the efficiencies achieved by a Green Project can conservatively be projected to reduce the client's energy-related costs, including its utility bill, to less than they were before completing the project, the operational savings alone should provide an incentive for responsible participation in this new financing program.

Billing Agency Model

Recognizing that it may take some time to implement a financing program that relies on a Green Improvement Tariff, DASNY is also considering developing a utility billing agency model (similar to that currently used to bill ESCO commodity charges) as an interim step. Under this approach, DASNY would continue to fund loans to an institution with the proceeds of tax-exempt bonds or through a lease/lease-back structure. The institution, however, would pay the loan or lease payments as part of its regular utility bill instead of making them directly to DASNY or its designee. In the event of non-payment by the client, DASNY remedies would remain the same as they are if the payments were made directly to DASNY. Utilities would simply be billing agents and remitters of as-collected sums. Invoiced charges would be those of DASNY, and not the utility.

The simplicity of such a payment approach should make DASNY's financing programs more attractive to some customers. It should also help our clients appreciate the economic benefits of Green Projects because their utility bills will likely be less than they were before. There also may be credit advantages, which could lower the cost of financing, to using a utility as DASNY's billing agent depending upon the payment and allocation protocols that are negotiated with the utility by DASNY.

DASNY understands that the successful implementation of this utility billing model depends on the support of one or more utilities and the receipt of any necessary waivers from the PSC. We also recognize that appropriate payment allocation procedures would need to be developed to address the situation where a customer fails to make full payment of the entire bill. Therefore, we have started discussions with utilities and other interested parties regarding how implementation of this model could help DASNY clients complete green initiatives.

Conclusion

In short, DASNY is committed to working with the Governor, PSC and other stakeholders to develop energy efficiency proposals that will promote the goals of the ESP. We believe that implementation of the proposed Green Improvement Tariff would help fulfill these goals by providing a new opportunity for eligible public and private entities, working with DASNY, to invest in Green Projects in their facilities with less risk and with easier access to capital. DASNY is also committed to pursuing the enactment of State legislation that would enable public and private not-for-profit entities not currently authorized to use DASNY's financing services to participate in this new financing program.

Dormitory Authority

Public Service Commission Working Group #1

DASNY Financing Proposal

October 2, 2007

DASNY Financing as Alternative to Ratepayer Charges

- 15x15 is a very aggressive goal and the Commission's Order directs the Administrative Law Judge and the parties to take a holistic approach to the development of an Energy Efficiency Portfolio Standard.
- Two principal ways in which DASNY believes that it can assist:
  - Providing a source of tax-exempt capital to fund energy-efficiency projects undertaken by hospitals, universities, schools and municipalities.
  - Focusing the attention of management of these organizations on the importance of incorporating best practice energy management techniques into their regular capital programs.
  - DASNY has $16 billion of bonds outstanding for its many health care and higher education clients.
- Every dollar raised by DASNY will reduce the cost required to be borne by ratepayers.

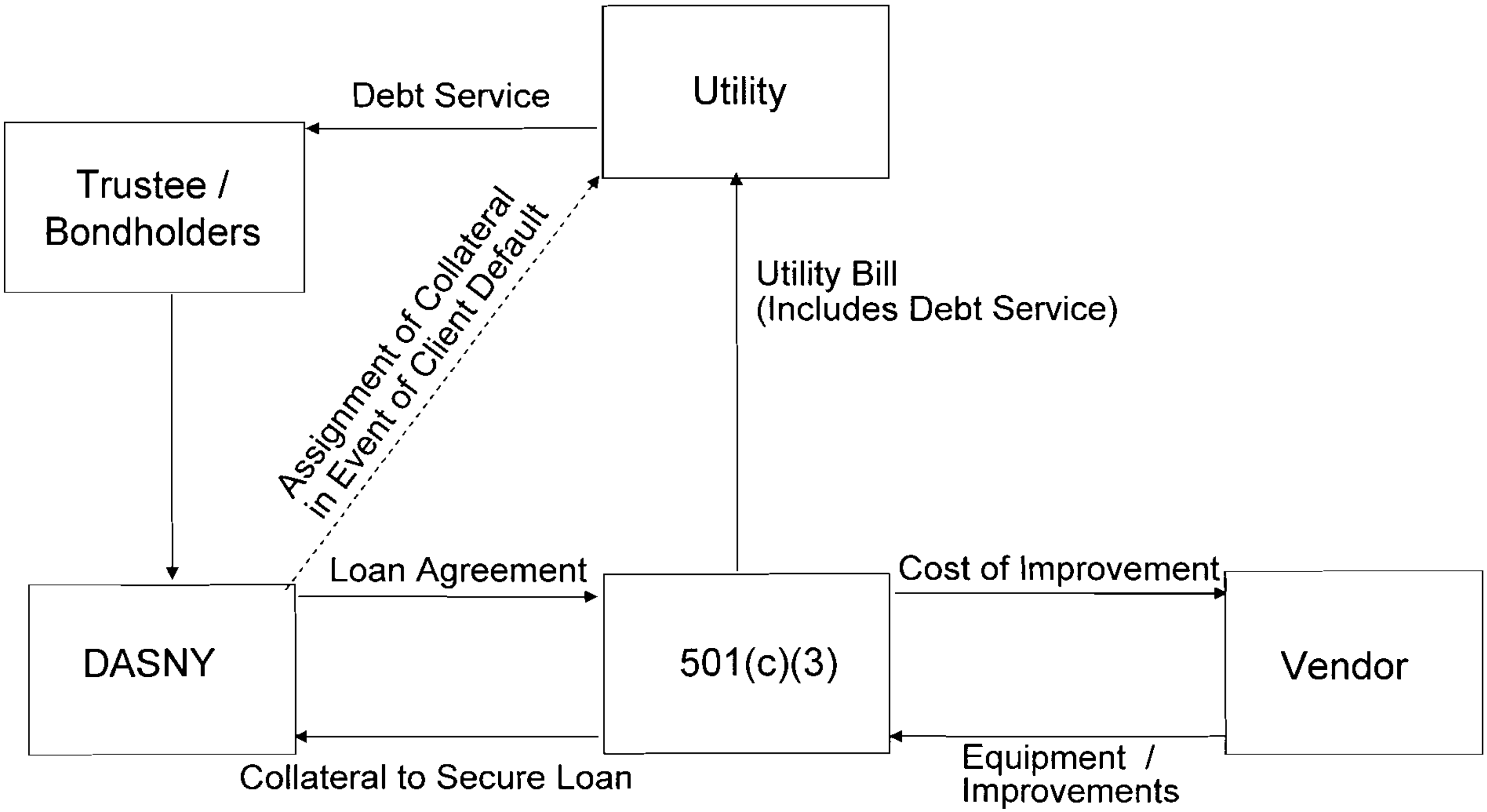
DASNY Proposes to Partner with Utilities, ESCOs and Tax-Exempt Institutions

- DASNY proposes a partnership with utilities, ESCOs and tax-exempt institutions to finance projects that will help achieve the goals of the EPS.
- Under this partnership:
  - Projects are funded from private sources of capital in the tax-exempt capital markets.
  - The amounts borrowed are repaid by the end-user institution that benefits from the energy efficiency improvements.
  - The projects being financed should meet the objectives of the utility or ESCO for achieving demand side reduction.

DASNY Financing Proposal

- DASNY's clients will repay the cost of financing these projects through their utility bills.
- DASNY would work with all interested parties to establish financial criteria for participation in the program.
- Eligible hospitals, nursing homes, colleges, universities and school districts are unlikely to default on an obligation that would result in the loss of essential utility services.

DASNY Financing Proposal



DASNY Financing Proposal

- DASNY is flexible and wants to work with utilities and ESCOs to design a program that meets the needs of each of the participants.
- The tax-exempt institutions will be responsible for payment in the first instance. In the event of bad debt, there are a number of program options:
  - Spread the cost among the entire rate base;
  - Spread the cost to a smaller class of rate payers;
  - Establish a special fund to absorb these limited costs.
- DASNY supports programs that provide financial incentives to utilities to achieve load reduction for DASNY-financed projects.

Benefits of DASNY Financing Proposal

- Many tax-exempt institutions are already eligible for tax-exempt financing from DASNY.
- "What's in it for them?"
  - Lower utility bills;
  - Lower financing costs;
  - Financial incentives for energy efficiency projects;
  - Possible development of financing structures that may not be treated as debt on their balance sheet.
- Utilities and ESCOs would benefit from a new financing source that would help achieve the goals of the EPS and minimize the impact on the general ratepayer.

DORMITORY AUTHORITY OF THE STATE OF NEW YORK
MEMORANDUM

Date October 9, 2007

To Working Group 1

From: Jeffrey Pohl
Portia Lee

Re DASNY's Green Tariff Proposal

At last week's presentation regarding the above, it was asked whether DASNY's proposal would require utilities to assume responsibility on their balance sheet for debt obligations associated with energy efficiency improvements financed under this proposal In response to this question, Portia and I indicated that there was a range of options, some of which might implicate the credit of the utilities and others which would not. The purpose of this memorandum is to further elaborate on this point and seek further input from the Working Group

As we understand it, in the case of the SBC/RPS surcharge, the PSC has ordered that a defined class of utility customers (all delivery customers) pay the SBC charge as it appears on the utility bill for the funding of NYSERDA-administered PSC programs. The utility prepays NYSERDA on a quarterly basis To the extent that the utility does not collect sufficient surcharge to cover the amounts required to be paid to NYSERDA in any year, shortfalls are recovered through annual true-ups in which the next year's surcharge rates are increased for the affected customer class in amount sufficient to recover the shortfall We are advised that, even though the utility prepays the SBC/RPS surcharge, the utility's balance sheets are not affected because the surcharge is, from the utility's perspective, deemed to be a pass-through

Assuming the above assumptions regarding the SBC/RPS surcharge are correct. DASNY would propose adopting this model for its Green Tariff Program Thus, as discussed, DASNY would make a loan to the eligible 501(c)(3) organization that would be funded from the proceeds of tax-exempt bonds issued by DASNY. The organization, however, would agree to pay any amounts due under the loan agreement through the Green Tariff surcharge as part of its utility bill. As with the SBC/RPS model, the utilities would simply be the collector of a tariff charge imposed by the PSC upon an end-user customer in the first instance and upon a broader class of customers with respect to bad debts. The ultimate beneficiary of the payments would be DASNY and its bond trustee, just as PSC/NYSERDA is currently deemed the beneficiary of the SBC/RPS surcharge.

In short, so long as the utility's role under DASNY's proposed Green Tariff Program is similar to that performed under the SBC/RPS programs, it would seem that it would not impact the balance sheet of the utilities and that the impact would not change irrespective of whether the utility prepays the proposed Green Tariff surcharge or pays it as it is collected. DASNY fully appreciates the need to minimize potential cost impacts and to closely examine which class of customers should be subject to the annual true-up mechanism. However, as stated at last week's Working Group meeting, a strong true-up mechanism should result in stronger credit for the bonds and result in more of DASNY's clients undertaking energy efficiency improvements thereby reducing the amount that must be derived from other sources to achieve the energy efficiency goals established by the EPS proceeding.

We look forward to having further discussion with you on our proposal.