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May 1, 2014

Office of the Secretary

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350
Email: secretary@dps.ny.gov

**RE: PETITION TO NY STATE PUBLIC SERVICE COMMISSION
RE SYSTEM BENEFITS CHARGE AND
RENEWABLE PORTFOLIO STANDARDS SURCHARGE**

Dear Secretary Burgess:

This letter is a petition to the New York Public Service Commission (PSC) submitted by the undersigned on behalf of certain municipal customers of the New York Power Authority (NYPA).

Background

The System Benefits Charge (SBC) was established in 1996 to fund public policy initiatives that were not expected to be adequately addressed by New York's competitive electricity markets.¹ The program is funded through a surcharge on the electricity bills of utility customers. This successful program, administered through the New York State Energy Research and Development Authority

¹ New York PSC Opinion No. 96-12 (Cases 94-E-0952 *et al.*), at p. 60.

(NYSERDA), has been extended multiple times since inception and is currently slated to continue through the end of 2016. In 2004, New York adopted a renewable portfolio standard (RPS) to hasten the growth of renewable energy in the state's energy mix.² The RPS program is also funded through a surcharge on each kilowatt-hour sold by utilities.

The PSC reaffirmed its commitment to the SBC program most recently on October 24, 2011, when it issued its "Order Continuing the System Benefits Charge and Approving an Operating Plan for a Technology and Market Development (T&MD) Portfolio of System Benefits Charge Funded Programs."³ This order approved NYSERDA's proposed T&MD Operating Plan "as a means for testing, developing and introducing 'new technologies, strategies and practices that build the Statewide market infrastructure to reliably deliver clean energy to New Yorkers.'"⁴

Many municipalities in New York have chosen to procure their electricity supply from an entity other than the incumbent utility. Some have chosen a third party supplier, but many in Westchester County have chosen NYPA as their electricity supplier. Since 1998, municipal customers of NYPA have been exempt from paying the SBC, because NYPA's "primary statutory mission . . . is to provide low cost power to business and industry, municipal and rural cooperatives, and governmental entities in order to assist economic development in New York State and reduce the cost of government,"⁵ and imposition of the SBC "would be counterproductive to achievement of these objectives."⁶ The PSC order establishing the RPS program also exempted NYPA municipal customers from paying the RPS surcharge.⁷ Because of their exemption from the SBC/RPS surcharge, these municipalities are not eligible for NYSERDA funding for clean energy projects funded through the SBC and RPS programs.

Part of the PSC's rationale for exempting NYPA municipal customers from paying the SBC/RPS surcharge was that NYPA itself already offered, and would continue to offer, its customers public benefit programs similar to those offered by NYSERDA with SBC/RPS funds. However, the programs offered by NYSERDA and NYPA to support the development of photovoltaic (*i.e.*, solar) technology reflect very different approaches. While NYPA's photovoltaic programs seek to foster technological improvements and increase public awareness and acceptance of the technology, NYSERDA's programs are designed to

² New York PSC Order (Case 03-E-0188).

³ New York PSC Order (Case 10-M-0457).

⁴ *Id.*, at p. 3, quoting from NYSERDA, "System Benefits Charge in New York: Vision for the Future," September 20, 2010, p. 2.

⁵ http://www.dps.ny.gov/05m0090_10-17-05_comments/NYPA_10-17-2005_comments.pdf.

⁶ *Ibid.*

⁷ New York PSC Order (Case 03-E-0188), at p. 10.

make the cost of electricity generated by photovoltaic systems competitive with electricity generated by conventional sources, which it does by providing cash incentives directly to the developers to reduce the cost of these systems. For example, NYPA's Solar Market Acceleration Program (Solar MAP) provides funding for "research for innovative solar technology; demonstration projects; and soft-cost reduction strategies."⁸ Similarly, Program Opportunity Notice (PON) 2672, sponsored jointly by NYSERDA and NYPA, seeks to reduce "Balance-of-System" costs in photovoltaic systems. These NYPA programs seek to improve photovoltaic technology, increase the efficiency with which it can be delivered and broaden public awareness of the technology. Unlike NYSERDA programs, however, they do not provide incentives that reduce the cost of installing photovoltaic systems so that electricity generated by these systems is competitive with electricity generated from conventional sources. In short, at this time, NYPA customers lack access to the kinds of installation-sized or performance-based incentive programs that are available to other utilities' customers, who do pay the SBC/RPS surcharge.

When the SBC program began in 1998, New York's energy marketplace did not include private third-party participants offering clean energy and energy efficiency technologies. As the energy markets have evolved, many private sector firms with clean energy and energy efficiency expertise are eager to partner with New York municipalities, school districts and other local government entities to provide affordable, clean energy alternatives. Such partnerships would ultimately promote the goals identified in the PSC's October 2011 order approving NYSERDA's T&MD Operating Plan. As New York residents and municipalities seek to follow the lead of Governor Cuomo's December 2012 \$800 million commitment to expanding the use of solar technology, NYSERDA programs funded by the SBC and RPS surcharge offer attractive opportunities for municipalities to partner with these private clean energy companies. Such partnerships benefit the municipalities and foster the growth of clean energy. NYSERDA has made diligent efforts to include a wide array of customer groups in its funding programs, including the customers of certain local power authorities which otherwise would not have access to this funding.

The Need for Municipalities that are NYPA Customers to Have Access to NYSERDA Programs

There are many municipal customers of NYPA who wish to partner with private clean energy companies and lock in long-term lowest cost electric rates by installing renewable energy systems.⁹ In

⁸ <http://www.nypa.gov/Press/2012/120327b.html>.

⁹ Numerous NYPA customers in Westchester County in the Consolidated Edison service territory have already taken advantage of prior NYPA programs to install very small photovoltaic systems on public buildings, such as

order to secure these low electric rates, however, a photovoltaic project must be properly structured, with equity or tax equity financing to take advantage of federal investment tax credit and depreciation incentives and SBC/RPS funded incentives. These NYSERDA incentives cover roughly 30% of the cost of installing a photovoltaic system, and without them the cost of photovoltaic electricity would be higher. Thus, the inability to access SBC/RPS funded incentives, and the absence of suitable NYPA programs, makes photovoltaic projects prohibitively expensive for local governments and school districts who are NYPA customers. As a result, under the current regulatory scheme, an exemption from the SBC/RPS surcharge that is designed to “assist economic development in New York State,” in certain circumstances arguably inhibits such development.

Where opportunities exist for NYPA municipal customers to participate in clean energy projects, some of these municipalities would like to be able to access SBC/RPS funding through NYSERDA, and are willing to relinquish their exemption from paying the SBC/RPS surcharge in order to do so. These municipalities typically have several and often many facilities that purchase power from NYPA. As a result, they often have many different meters and many different accounts. Not all of these facilities will be good candidates for clean energy projects, at least not with current clean energy technologies. For facilities that are good candidates, these municipalities would like to have a mechanism that allows them to choose to pay the SBC/RPS surcharge on those electricity accounts and thereby have access to NYSERDA funding for those facilities.

Under such an “SBC/RPS Opt-In” mechanism, municipalities would be able to choose which facility or facilities (and therefore which meters and accounts) would be subject to the SBC/RPS surcharge, and which would remain exempt. If a municipality were to exercise its SBC/RPS Opt-In with respect to a particular meter/account, it would waive the exemption it would otherwise be entitled to

Town of Cortlandt’s Youth & Recreation Center, and Village of Croton-on-Hudson’s Grand Street Firehouse. These installations have whetted their appetite for much larger systems. In addition, the Northern Westchester Energy Action Consortium (NWEAC), a New York 501(c)(3) comprised of 16 municipalities, in late 2012 launched the Municipal Solar Buyers Group initiative to foster the installation of photovoltaic systems on public buildings and facilities. See more at <http://www.nweac.org/2012/10/05/nweac-municipal-solar-buyers-group/>. NWEAC opened participation in the Municipal Solar Buyers Group to municipalities and school districts throughout Westchester County. In addition, in late 2013 NWEAC amended its charter to open its membership to municipalities throughout Westchester County. This amendment is currently awaiting the approval of the New York Attorney General, a formality that is expected to be completed shortly, and will become effective upon filing with the New York Secretary of State. Once it becomes effective, NWEAC’s name will change to “Sustainable Westchester,” and it expects its membership to grow to 35 or more municipalities out of the 45 municipalities in Westchester County. Many of Sustainable Westchester’s new members will be municipalities that are NYPA customers who are eager to gain access to NYSERDA programs.

with respect to the SBC and RPS surcharge with respect to that meter/account, and would not be able to opt out at a later date.

For example, a town with a town hall and a library, each under a separate utility meter and account, would be able to decide whether to opt-into the SBC/RPS surcharge for each of these individually. It might decide that, because the roof of the library had been replaced within the past 12 months, a 30 kilowatt photovoltaic installation should be built on the library.

In order to qualify for NYSERDA's applicable photovoltaic incentive of \$1.00 per watt for this library project, the town would be able to opt-in to paying the SBC/RPS surcharge on the meter for the library.¹⁰ Because the town hall roof is older, it would choose to retain the SBC/RPS exemption on the meter for the town hall. If the town hall roof were replaced three years later, at that point the town could opt into the SBC/RPS surcharge on the meter for the town hall. Conversely, if during those three years NYPA were to institute a photovoltaic incentive similar to NYSERDA's, but available to NYPA customers, the town would be able to use the NYPA incentive for the town hall and retain its SBC/RPS surcharge exemption. And once the town exercised its SBC/RPS Opt-In with respect to the library meter, it would be knowingly foreclosed from opting-out in the future.

The PSC Seeks to Increase the Participation of Municipalities and School Districts that are NYPA Customers in Solar PV Programs

On September 5, 2013, NYSERDA filed a petition in Case 03-E-0188, the PSC's docket for New York State's Renewable Portfolio Standard. In its petition NYSERDA asked for the PSC's guidance regarding the funding of its standard-offer PV program. In particular,

"NYSERDA requests authorization to work with [the PSC] and [Long Island Power Authority] staff to identify the potential benefits of establishing a Statewide solar PV incentive program, including LIPA customers, to better facilitate the goals of NY-Sun. NYSERDA notes that there may be greater efficiencies to combining efforts for the residential and smaller commercial customer incentive program, *perhaps under its administration*"¹¹ (emphasis added).

¹⁰ See PON 2112 - Solar PV Program Financial Incentives (<http://www.nyserda.ny.gov>).

¹¹ Case 03-E-0188 – *Retail Renewable Portfolio Standard*, Order Authorizing the Redesign of the Solar Photovoltaic Programs and the Reallocation of Main-Tier Unencumbered Funds (issued December 19, 2013), at p. 5.

In response to NYSERDA's petition, the PSC received comments from the Solar Coalition¹² urging the PSC and NYSERDA to explore mechanisms for increasing NYPA's contribution to advancing solar installations in the state. The PSC summarized the Solar Coalition's comments thus:

"It notes that while NYPA's municipal and school district customers do not pay the electric SBC and RPS surcharge, many taxpayers in those communities do and would directly benefit from a NYPA program that reduced energy costs for those municipalities and school districts."¹³

In its discussion, the PSC agreed with NYSERDA that "there may be greater efficiencies for the solar industry, program administrators, and customers if State incentives for solar technology were better coordinated."¹⁴ It further stated:

"We also agree with the Solar Coalition that there is merit in exploring mechanisms to address *increasing the participation of municipalities and school districts that are customers of the New York Power Authority to allow more direct participation by those entities in solar PV programs*"¹⁵ (emphasis added).

The PSC order concluded by encouraging NYSERDA "to work with LIPA and NYPA to identify the potential merits of a Statewide approach"¹⁶ to solar incentives, and to develop a proposal that incorporates the benefits of a statewide approach in the administration of the solar incentives program.

The "SBC/RPS Opt-In" mechanism proposed in this petition is precisely the sort of statewide approach to NYSERDA's solar incentives program that the PSC is asking NYSERDA and NYPA to develop in order to increase the participation of municipalities and school districts that are NYPA customers in NYSERDA's solar PV programs.

PSC Regulatory Authority Over Local Utility Companies

When NYPA sells electricity to a municipal customer, the electricity is delivered, not by NYPA, but by the local utility, and the utility is entitled to compensation for its delivery services as well as costs associated with the operation and maintenance of its distribution system. Under current arrangements,

¹² Id., see footnote 6 at p. 6.

¹³ Id., p. 12.

¹⁴ Id., p. 15.

¹⁵ Ibid.

¹⁶ Ibid.

the utility bills NYPA for these costs, and then the municipality receives a single bill from NYPA, covering the electricity NYPA has supplied to the municipality, the utility's distribution and delivery charges and transmission and other charges. When the municipal customer pays NYPA, NYPA remits to the utility its portion of the payment. If a municipality purchases its electricity, not from NYPA, but from the local utility, it is the utility that bills the municipal customer for all of these charges.

Under the SBC and RPS programs, it is New York State's six investor-owned electric utilities that are responsible for collecting the SBC/RPS surcharge. For municipalities that purchase electricity from the local utility, the surcharge is included in the utility's bill to the municipality.

Section 5(1)(b) of the Public Service Law provides, "The jurisdiction, supervision, powers and duties of the public service shall extend . . . [t]o the manufacture, conveying, transportation, sale or distribution of . . . electricity for light, heat or power . . . and to electric plants and to the persons or corporations owning, leasing or operating the same." That is, the PSC has regulatory authority over the local utility that delivers electricity to the municipality, even if the municipality is a NYPA customer.

Thus, the PSC has the authority to require that the "SBC/RPS Opt-In" mechanism proposed in this petition be implemented through the local utility that delivers electricity to municipalities and school districts that are NYPA customers.

Specific Proposal for "SBC/RPS Opt-In" Mechanism

Under the "SBC/RPS Opt-In" mechanism proposed herein, a municipality that is a NYPA customer would be able to contact the local utility that delivers its electricity, and –

- i. identify the meter for which it wishes to opt-in to the SBC/RPS surcharge;
- ii. instruct the utility to include the SBC/RPS surcharge for that meter in the bill it sends to NYPA;
- iii. further instruct the utility, when it receives payment from NYPA, to remit the amount of the SBC/RPS surcharge to NYSERDA; and
- iv. notify the utility that it is irrevocably waiving its right to claim exemption from the SBC/RPS surcharge with respect to that meter.

When NYPA receives the bill from the utility for that municipal customer, it would simply do as it has always done: include the utility's charges on its bill to that customer, including the SBC/RPS surcharge. The municipal customer would continue to do as it has always done: pay NYPA the full amount of the bill, including the SBC/RPS surcharge. When the utility begins remitting the amount of

the SBC/RPS surcharge to NYSERDA, the utility, and perhaps the municipality as well, would need to ensure that NYSERDA is aware that the SBC/RPS surcharge is being paid for the account of that municipality, at that meter, and that, as a result, at that meter the municipality is now eligible for NYSERDA's programs. The utility and the municipality would also need to ensure that NYSERDA is aware that the municipality has irrevocably waived its right to claim exemption from the SBC/RPS surcharge with respect to that meter.

Conclusion

Many municipalities and school districts are eager to install renewable energy systems on municipal facilities. In order for such installations to be financially viable, these municipalities and school districts need access to NYSERDA funding programs; but, because these municipalities are NYPA customers, they are exempt from paying the SBC/RPS surcharge and are therefore foreclosed from NYSERDA's programs. Many of these municipalities would be willing to relinquish their exemption by "Opting-In" to paying the SBC/RPS surcharge for meters where it would make sense to install a renewable energy system.

The PSC, in its order of December 19, 2013 in Case 03-E-0188, indicated that it already supports increasing the participation of municipalities and school districts that are NYPA customers in NYSERDA's solar PV programs. Because the PSC has regulatory authority over local utility companies, this "Opt-In" mechanism could be handled through a cooperative arrangement between the municipality and the utility that delivers its electricity, without ever disturbing the municipalities' relationship with NYPA.

Such an "SBC/RPS Opt-In" mechanism would benefit all interested parties. In the example described earlier, the town would be able to secure long term lowest-cost electric rates for the library and NYPA rates for the town hall. The utility serving the town would benefit from the increase in distributed generation, which incrementally reduces demand on its distribution system. The State would benefit from advancing toward its stated Renewable Portfolio Standard goals. And, in addition, the installation of renewable energy systems benefits the New York economy by creating well-paying local jobs. Finally, although this petition has focused on NYSERDA funding for photovoltaic systems, if NYPA municipal customers were able to opt-in to paying the SBC/RPS surcharge, they would be able to access all NYSERDA programs funded by the SBC/RPS, not merely those that benefit photovoltaic systems.

For the reasons set forth above, the municipalities and school districts listed on Exhibit A hereto¹⁷, all of whom are located in either the Consolidated Edison or New York State Electric and Gas utility franchise territories, all of whom are NYPA customers, and all of whom are exempt from paying the SBC/RPS surcharge, hereby petition the New York State Department of Public Service to create a voluntary “SBC/RPS Opt-In” mechanism for all NYPA municipal customers, such that these customers would be able to elect to pay the SBC/RPS surcharge for any meters and NYPA accounts they deemed appropriate, and thereby become eligible to participate in NYSERDA public benefit programs with respect to the facilities associated with those meters and accounts.

Respectfully submitted,

E.R. (Ted) Jenkins

Gabriel Phillips

On behalf of the school districts and municipalities listed on Exhibit A hereto.

¹⁷ All of the municipalities listed on Exhibit A are located in Westchester County and are current members of NWEAC or expect to become members of Sustainable Westchester; all wish to participate in the Municipal Solar Buyers Group; and all have communicated to NWEAC their support for this petition. The school districts listed on Exhibit A are located in Westchester County, but are not eligible for membership in NWEAC; all wish to participate in the Municipal Solar Buyers Group; and all have communicated to NWEAC their support for this petition.

**Westchester County School Districts and Municipalities
Supporting “SBC/RPS Opt-In” Mechanism**

Westchester County Municipalities

1. Town of Cortlandt
2. Village of Croton-on-Hudson
3. Town of Greenburgh
4. Village of Hastings-on-Hudson
5. Village of Mount Kisco
6. Town of Mount Pleasant
7. Town of North Castle
8. Town of Ossining
9. Village of Ossining
10. City of Peekskill
11. Village of Tarrytown
12. City of Yonkers

Westchester County School Districts

13. Board of Cooperative Educational Services (BOCES)
14. Bedford Central School District
15. Pelham School District
16. Tarrytown School District
17. Yonkers School District
18. Yorktown Central School District