Independent Power Producers
of New York, Inc.
Gavin J. Donohue
President & CEO

April 18, 2008

VIA ELECTRONIC MAIL

Honorable Eleanor Stein
Honorable Rudy Stegemoeller
Administrative Law Judges
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

Re: Case 07-M-0548 – Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard

Dear Judges Stein and Stegemoeller:

On behalf of the Independent Power Producers of New York (IPPNY), I submit this letter of comment, as our Reply Brief in relation to the April 10 filings of Initial Briefs by the parties in this case. IPPNY replies to the comments of state agencies and utilities in relation to the use of monies from the Regional Greenhouse Gas Initiative (RGGI) in this proceeding and the need to focus on emission reductions from energy efficiency measures as a way to avoid emissions from power plants.

I. <u>Use of RGGI Monies</u>

A. Comments of Parties in Initial Briefs

In this proceeding, the parties below continue to bring forth the issue of using monies from the yet-to-be-conducted carbon dioxide (CO_2) allowance auction under the RGGI program. In fact, the auction has yet to be designed and adopted by New York. Specifically, these parties make the following statements highlighted below:

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1. DEC's Office of Environmental Justice

The comments of the NYS Department of Environmental Conservation's (DEC) Office of Environmental Justice indicate that:

> "The DEC believes that an overall energy strategy must be developed in layers and must take into account the myriad levels of other state initiatives (such as) the Regional Greenhouse Gas Initiative (RGGI)… We especially call attention to RGGI and its creation of the Energy Efficiency and Clean Energy Technology Account (See Proposed Regulations, 21 NYCRR, Part 507.4(e)) with its potential yearly revenues of $300,000,000 and the mandate given to NYSERDA to use the proceeds 'to promote and implement programs for energy efficiency and renewable or non-carbon emitting technologies with significant carbon reduction potential….' "

2. Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities

The comments of Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities state that:

> "Even if there were a need to expand NYSERDA's programs in the Companies' service territories, evidence has not been provided that NYSERDA is in need of additional funding to expand its programs. First, the State will commence this year its first auctions under the Regional Greenhouse Gas Initiative ("RGGI"), under which the State is currently proposing to auction 100% of allowances to emit carbon dioxide and then allocate virtually all of the funds from those auctions to NYSERDA for energy efficiency and renewable energy programs. If the State adopts this rule, no additional money should be allocated for energy efficiency to NYSERDA until it provides this proceeding with an estimate of the revenues that it expects to receive from the RGGI auctions and its plans for expenditures of those funds. The first RGGI allowance sales yielded a price of $7.00/ton. Given that New York State carbon emissions will be in the range of 50 to 60 million tons, NYSERDA would most likely receive over $300 million annually with an auction price in that range. This amount would be in addition to the $175 annually in SBC funds that NYSERDA already collects.
>
> There should be no need for NYSERDA to receive additional ratepayer money to fund energy efficiency programs if NYSERDA will be receiving over $300 million, and possibly substantially more than that, annually from the RGGI auctions. Indeed, the Commission should also be opening a proceeding on the continued need for SBC collections if NYSERDA is allocated all of the RGGI auction revenues as the State proposes. If the SBC collections were to continue, between SBC and RGGI, NYSERDA will receive approximately $500 million annually and potentially significantly more than that. Increased funding for low income energy efficiency is a laudable goal that the

Companies fully support, but they do not believe that the Commission should set a precedent at this time that provides for ratepayer funding of additional programs for agencies other than NYSERDA. The DHCR program has been funded by the general budget to date, which is the appropriate mechanism for funding a housing program. To the extent that the DHCR program requires additional funding, the funding should come from RGGI auction revenues or the State budget and should not be supplemented by additional ratepayer money.

Staff recommends that collaborative discussions among partners in this effort (e.g., Staff, NYSERDA, community colleges and universities, trade associations, etc.) should begin within 30 days of a Commission decision on the fast track programs. The Companies support this recommendation but note that Staff proposes to allocate $16.4 million for workforce development over the fast track period (contained in Staff April 1, 2008 Revised Proposal). The Companies support NYSERDA's role in this effort and believe that funds should be authorized for this effort to the extent that they are not available from RGGI."

3. New York State Electric and Gas (NYSEG) / Rochester Gas &Electric (RGE)

The Initial Brief of NYSEG / RGE notes that:

"Alternative sources of funding (e.g., RGGI, forward capacity market, tax credits) could reduce both the direct cost of the EEPS and its bill impacts, as could energy efficiency activities funded in other ways."

4. Multiple Intervenors

Interestingly, the written statement of Multiple Intervenor's indicates that:

"In evaluating proposed EPS costs to customers, it also is imperative that the Commission consider this initiative not only individually, but also in the aggregate with other initiatives. For instance, the SBC costs customers $175 million per year. The Renewable Portfolio Standard ("RPS") also has proven to be very expensive, and absent material changes in circumstances or to the underlying goal, is likely to be even more expensive for customers than had been anticipated when approved by the Commission. Additionally, the Regional Greenhouse Gas Initiative is certain to increase retail electricity prices once implemented, and possibly by a substantial amount. In sum, the Commission should not evaluate the potential costs of the EPS in a vacuum — the State is in danger of losing many more energy-intensive businesses if prices do not become more competitive."

B. IPPNY's Discussion of Parties Comments in Initial Briefs

1. Cost of the RGGI

According to the excerpts from Initial Briefs filed in this proceeding as noted above, parties in this proceeding mistakenly believe that RGGI monies currently are a viable source of funding for energy efficiency measures and that their use is a cost-effective option in place of System Benefits Charge (SBC) monies. However, as we point out below, rising energy-related costs diminish any attractiveness of RGGI auction monies as a means to supplant SBC monies.

Remarkably, on Wednesday, April 16, 2008, the price of oil reached a new record high above $114 per barrel, and natural gas cost more than $10 per mmBtu. Also, current coal prices delivered are in the range of $100 -$120 per ton. These prices are well above those assumed by the modeling that is the basis for the RGGI, based upon a review of the most recent publicly available modeling information. According to ICF Consulting's February 2005 description of the assumptions that underlie the RGGI modeling, oil prices of less than $45 per barrel in 2005 were used, and then the price was predicted to decline to just over $30 per barrel around 2012 and remain fairly constant through 2025. Natural gas prices of $7 per mmBtu in 2005 were incorporated into the basic model, and then the price was assumed to decline to less than $5 per mmBtu around 2010 and then remain fairly steady through 2025. Most of the modeling work assumed that natural gas prices would be in the $4 per mmBtu range.

In addition, ICF Consulting's modeling results from April 2006 indicated that CO_2 allowance prices are projected to range from about $2 per ton in 2009 to approximately $5 per ton in 2024. However, parties' comments in this proceeding point to the fact that a first forward sale of RGGI allowances was traded at $7.00 per allowance, in anticipation of the program being finalized and starting in 2009. This initial sale price is $2 per ton higher than the most expensive allowance price envisioned by the RGGI modeling, which alarmingly, was not predicted to occur until sixteen years from now. This price equates to a 350 percent increase over initial forecasted estimates, even before the program is implemented in January 2009. If anything, it is time to step back and determine, in light of the high current fuel prices for oil, natural gas, and coal and with the completely inaccurate ICF CO_2 modeling results as compared to actual market results, whether new forecasting should be conducted to ensure that business and consumer interests are protected adequately.

According to the REMI modeling conducted by the Economic Development Research Group in November of 2005, retail electric prices were projected to change by a range of less than 1 percent to as much as almost 9 percent, depending in the scenarios examined. These cost impacts on consumers only can be considered to be conservatively on the low end, given the much higher than predicted prices for oil, natural gas, coal, and CO_2 allowances that currently are being experienced.

Indeed, given the fact that the RGGI program has yet to include a price cap on the cost of allowances in the RGGI auction (despite IPPNY's repeated urging), the cost of the RGGI program for consumers cannot be known. In concurrence with the points alluded to by the comments of Multiple Intervenors, IPPNY cautions the parties in this proceeding that it would be foolhardy for them to think that access to revenues from the sale of RGGI allowances would not result in large costs for energy consumers, given that higher costs for power production lead to increased consumer costs. As a result, the use of RGGI monies cannot be considered a cost-effective substitute for the use of SBC monies because both sources of monies will increase costs for energy consumers.

2. PSC Orders on SBC and NYSERDA

The factual record of decisions by the New York State Public Service Commission (PSC) contravenes the statements made by the Initial Brief of Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities. The PSC already has made the following policy decisions: energy efficiency measures since the restructuring of the energy industry should be funded by the SBC, and the New York State Energy Research and Development Authority (NYSERDA) should be the administrator of energy efficiency programs to be funded by the SBC.

The PSC's Order may be viewed at:
http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/86EBE0283819224285256DF100755FE5/$File/doc3640.pdf?OpenElement

Indeed, in this Opinion and Order dated January 30, 1998, the PSC found the following:

> "The SBC is a funding mechanism to support the following categories of activities that may not be adequately addressed by competitive markets … (such as) energy efficiency programs and services approved by the Commission;
>
> We expect the use of a third party fund administrator will produce economies in fund management by eliminating duplicative tasks and cumbersome decision making and will ensure that the funds are administered in a competitively neutral manner. Administrative costs should further be reduced by using an entity that already has a structure in place for implementing such programs. New York State Energy Research and Development Authority (NYSERDA) stands foremost among existing entities in having an established organization that is experienced in delivering public benefit energy efficiency, environmental and R&D programs on a statewide basis. As a non-profit entity, NYSERDA can further maintain neutrality in administration of SBC funds. We therefore designate NYSERDA as the SBC fund administrator."

Clearly, the PSC has indicated that NYSERDA should operate energy efficiency programs to be funded by the SBC. For the above referenced utilities to demand that NYSERDA no longer receive SBC funds for energy efficiency purposes and instead rely on yet-to-be-available RGGI monies ignores the obvious directive of the PSC. In addition, the suggestion of these utilities would forego the best opportunity for energy efficiency projects to be implemented promptly with a funding source that already is available and under the absolute jurisdiction of the PSC.

3. NYSERDA's Pending CO_2 Allowance Auction Rule for the Use of RGGI Monies

As IPPNY has consistently argued in this proceeding, RGGI monies are not yet available to fund energy efficiency measures under this proceeding. It remains to be seen when and if they will become available, given that New York has never auctioned allowances as a means to distribute them to power plant owners under a cap and trade program. According to NYSERDA, the authority still is in the process of reviewing the comments that it received on its Draft RGGI Allowance Auction Rule. It may be the case that the DEC, NYSERDA, or both entities will re-propose its RGGI-related Rules for further public comment, after having made changes to the draft rules to address input that they have received. The announced RGGI allowance auction dates in September and December of this year are arbitrary, and we urge the DEC and NYSERDA to ensure that their rulemaking processes are not rushed to be completed by these optimistic auction timelines at the expense of New York's businesses and energy consumers having a fair, cost-effective, and well-functioning RGGI program.

Given the state of flux of potential RGGI monies, the PSC only can decide responsibly to allocate SBC funds for energy efficiency programs under this proceeding. If and when RGGI monies become available, NYSERDA's Draft Allowance Auction Rule envisions that NYSERDA will conduct a stakeholder process (separate from this proceeding) to decide how RGGI monies should be allocated among the three purposes specified in the Draft Rule: (1) energy efficiency programs, (2) renewable and non-carbon emitting technologies, and (3) innovative carbon emissions abatement technologies with significant carbon reduction potential.

Since the PSC already has made the policy decision in its prior Order to allocate SBC funds for energy efficiency, it should continue to do so. As IPPNY consistently has argued in this proceeding, RGGI monies (if and when available) may supplement and not supplant SBC monies that are available or can be made available under the PSC's existing jurisdiction for energy efficiency programs in this proceeding. After New York adopts its RGGI-related Rules, conducts the CO_2 allowance auction, and NYSERDA completes its stakeholder process to determine the uses of RGGI monies, additional funds may be made available to supplement SBC funded programs in a cost-effective manner. However, given that a dedicated source of monies currently is not available for innovative carbon emissions abatement technologies with significant carbon reduction potential (especially the essential development of carbon capture and sequestration technologies), IPPNY underscores the need to have sufficient RGGI monies available to forward activities in areas such as this effectively.

II. <u>Environmental Justice and Power Plants</u>

A. Comments of Parties in Initial Briefs

1. DEC's Office of Environmental Justice

The comments of the DEC's Office of Environmental Justice indicate that:

> "The Staff Report notes that New York's dirtiest power plants, which burn oil and tend to be located in poorer neighborhoods and operate just about 100 hours a year during the summer's hottest periods, account for a significant portion of the city's greenhouse gas emissions because they release three to five times more pollution than gas-fueled units.
>
> The DEC has identified these 'dirtiest facilities' as they relate to potential environmental justice areas. To the extent that PSC needs to identify strategies to work with these areas, the DEC is ready now to work with PSC, NYSERDA and others in developing a bridge program immediately that would reduce the demand for power from those sources."

2. Staff of the Department of Public Service (DPS)

The Initial Brief of the DPS Staff states that:

> "Regarding environmental justice, it should be noted that New York City's dirtiest power plants, which burn oil and tend to be located in poorer neighborhoods and operate just about 100 hours a year during the summer's hottest periods, account for a significant portion of the City's greenhouse gas emissions because they release three to five times more pollution than gas-fueled base units. Staff met with representatives of environmental justice communities in New York City at a Regional Customer Roundtable in this proceeding. Those representatives emphasized the need to eliminate use of these dirty plants. From this perspective, flattening the City's load shape would be a highly desirable achievement. Parties should work to target energy efficiency and demand reduction efforts that can realize that objective. Also, it may be possible to focus programs to those communities most affected by the adverse environmental effects of electricity and natural gas production, delivery, and use. To do so, however, study is needed to identify the most appropriate strategies and approaches. The Commission directed that environmental justice be considered in the development of the EEPS program. Staff recommends that this issue be fully investigated in the longer-term EEPS program planning process."

B. IPPNY's Discussion on Parties Comments in Initial Briefs

The comments above of the DEC and the DPS focus on the need to reduce demand and avoid emissions from certain electric generating facilities. As IPPNY continuously has stated in this proceeding, we urge state agencies and other parties in this proceeding to give highest priority to aggressively examining energy efficiency and demand-side management programs as a means to reduce emissions without requiring additional emission reductions at facilities that could result in electric system reliability problems.

III. IPPNY's Conclusion and Recommendation

As a result of our discussion of the comments above made by parties in Initial Briefs, IPPNY requests that Your Honors acknowledge to the PSC that:

- RGGI monies are not yet available to fund energy efficiency measures under this proceeding.
- RGGI monies cannot be considered a cost-effective substitute for the use of SBC monies.

In addition, we urge Your Honors to recommend to the PSC that:

- Given the state of flux of potential RGGI monies, the PSC only can decide responsibly to allocate SBC funds for energy efficiency programs under this proceeding.
- Since the PSC already has made the policy decision in its prior Order to allocate SBC funds for energy efficiency, it should continue to do so.
- RGGI monies (if and when available) may be made available through a NYSERDA stakeholder process at a later time and may supplement and not supplant SBC monies that are available or can be made available under the PSC's existing jurisdiction for energy efficiency programs in this proceeding.

Furthermore, we encourage Your Honors to urge state agencies and other parties in this proceeding to give highest priority to aggressively examining energy efficiency and demand-side management programs as a means to reduce emissions without requiring additional emission reductions at facilities that could result in electric system reliability problems.

This proceeding is a perfect example of why balance between key energy, environmental, and economic policies is essential. Any decisions made ultimately will impact business and consumer pricing, the environment, system reliability, and the long-term economic health of New York. Furthermore, since the RGGI modeling conducted is so out-of-touch with current market reality, it is critical that these differences be considered to understand fully the real total impact on New York's businesses and energy consumers. To proceed forward without this analysis is not in the best interests of any stakeholders.

IPPNY appreciates that Your Honors are listening to our concerns and asks Your Honors to continue to incorporate our recommendations into your decision-making process under this proceeding. IPPNY looks forward to continuing to work with Your Honors and the parties within this proceeding, and we appreciate your taking the time to review and act on our comments. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

Radmila P. Miletich
Legislative & Environmental
Policy Director