



March 10th, 2021

The Honorable Andrew M. Cuomo
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Dear Governor Cuomo,

We applaud your environmental leadership, and we support Part R of the FY 2022 New York State Budget Transportation, Economic Development and Environmental Conservation Article VII Legislation. The New York Energy Consumers Council (“NYECC”) is one of the largest regulatory interveners representing large energy end users in Con Edison’s service territory. The Building Owners and Managers Association of Greater New York (“BOMA/NY”) represents more than 750 owners, property managers, and building professionals who either own or manage 400 million square feet of commercial space in NYC, and it is an association in BOMA International, a federation of 90 US associations and 19 international affiliates that own and operate approximately 10.5 billion square feet of office space in the United States. The organizations commenting herein are referred to collectively as the “Joint Organizations.”

Most of our members’ properties are subject to Local Law 97 legislation. Members’ properties include LEED Platinum buildings, and many of our member representatives are sustainability experts. They have invested heavily in improvements to lighting, HVAC and overall energy efficiency. Despite this, many efficient buildings will not comply with Local Law 97, and will likely be subject to significant fines. Buildings that are densely occupied and house tenants 24/7 will find it difficult to impossible to comply, even though on a per occupant basis, they are likely much more efficient than other buildings. For example, under the current law, One Bryant Park, a 2.2 million square foot building, completed in 2010, which achieved a LEED Platinum rating, will be forced to pay \$2.4 million in fines starting in 2024. In addition, during the COVID pandemic, improved indoor air quality requirements, including enhanced ventilation and filtration that increase energy use, are adding further challenges to compliance and penalty avoidance goals.

Building owners are allowed to comply with Local Law 97 through the purchase of certain Renewable Energy Credits (RECs); however, those RECs will not be available for many years. Allowing building owners to purchase Tier 2 RECs until offshore wind and Tier 4 RECs are available would be a better funding mechanism from a climate change perspective than simply levying penalties that would go into NYC’s general fund. Such an approach would also afford building owners with the necessary time to pursue further energy efficiency measures needed to reach longer-term NYS climate change objectives.

For many owners, this will require planning with, and cooperation from, their large tenants, who are typically responsible for the lion's share of a building's energy usage and consequent emissions.

Tier 2 RECs support New York renewable energy generators. The financial support will help keep more renewables running and provide more green power in state while New York also pursues much-needed additional generation. This will also serve to keep the clean environmental attributes of those generators in New York State, which aligns with the goals of the Climate Leadership and Community Protection Act. Some will argue that our State is not in danger of losing the environmental attributes to out-of-state purchasers, but the State's Public Service Commission's October 15, 2020 Order Adopting Changes to the Clean Energy Standard (the "PSC Order"), notes that from 2016 to 2019, exports of renewable generation increased 50% -- from approximately 654,000 Mwhts to 1.27 Million Mwhts. This trend is detrimental to our State and fortunately can be ameliorated by the use of Tier 2 REC allowances.

There has been confusion surrounding the understanding of Tier 2 RECs. Tier 2 generators are renewable energy generators that were in operation prior to January 1, 2015. RECs from renewable generators that were operational subsequent to January 1, 2015 will not be added into this pool; therefore, use of Tier 2 RECS is finite. It is our understanding that the entire market is approximately 7 to 8 million megawatt hours. The NYSERDA Solicitation of Tier 2 RECs in the above referenced PSC Order is a limited solicitation. The budget is \$200 million, and the funding for this program will be through a new Tier 2 REC obligation imposed on Load Serving Entities in the State. The Tier 2 RECs available to building owners would be those in the voluntary market that might otherwise be sold to neighboring states.

During the discussion of the use of Tier 2 RECs as an additional means of LL 97 compliance, some have argued an all-or-nothing scenario, namely, that if buildings can use these RECs as a means of compliance, they will do so at the expense of implementing energy efficiency efforts. This is a false equivalence. The purchase of these RECs is meant solely as a short-term, limited means of compliance in the early stages of LL 97 mandates for buildings that are demonstrably efficient but burdened by dense tenant use, high-energy tenant use, and similar problems outside of the building owner's control. As stated elsewhere, the point is to bridge the time it takes both to plan for and execute deeper energy efficiency projects, and to allow for a significant greening of the grid from other large-scale renewable projects, which is needed if buildings want to electrify certain systems in a way that actually reduces emissions.

For these reasons, the Joint Organizations support adoption of Part R of the FY 2022 New York State Executive Budget Transportation, Economic Development and Environmental Conservation Article VII Legislation.

Respectfully yours,



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Executive Director



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Cc:

Andrea Stewart-Cousins, New York State Senator, President Pro Tempore and Majority Leader

Carl E. Heastie, Assemblymember, Speaker of the New York State Assembly

Todd Kaminsky, New York State Senator, Chair of the Environmental Conservation Committee

Kevin S. Parker, New York State Senator, Chairman of the Committee on Energy and Telecommunications

Michael Cusick, Assemblyman, Chairman of the Assembly Committee on Energy

Steve Englebright, Assemblyman, Chairman of the Assembly Committee on Environmental Conservation