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April 17, 2015

Members of the New York State Energy Research and Development Authority Board:

The recently adopted 2015-16 State Budget directs the Authority to transfer \$41 million to the state's General fund from fees collected via the Regional Greenhouse Gas Initiative (RGGI).¹ Though the Governor initially proposed a transfer on January 21, 2015, the transfer of funds was not anticipated or included in the Authority's Fiscal Year 2015-16 Budget,² which was approved by the NYSERDA Board pursuant to Resolution 1417 on January 26, 2015.³

We write today to urge you to consider your fiduciary duty of care to NYSERDA, and to take the time during your upcoming April 21, 2015 board meeting to carefully consider the implications of this budget action on the Authority and the programs supported through RGGI. We note that NYSERDA has taken the position that every \$1 invested in energy efficiency yields \$3 in cost savings. Accordingly, any transfer out of RGGI has a magnified impact on energy savings and green house gas reductions, and deserves to be fully and transparently discussed and reviewed.

We note that the adopted state fiscal year 2015-2016 budget also directed the New York Power Authority to transfer resources to the state's general fund, but only if such a transfer were deemed "feasible and advisable" by the Authority's trustees.⁴ While members of the NYSERDA board were not offered the same deference to their independence, we believe that it is your responsibility to the Authority, its bond-holders and the public — and required under Public Authorities Law — to also determine whether the transfer from RGGI was "feasible and advisable" before you authorize the transfer of RGGI proceeds to the state treasury.

According to NYSERDA's policies for board member duties and responsibilities⁵, members meet their fiduciary duty of care, and ensure accountability and transparency, through the oversight and approval of all of NYSERDA's rules and regulations, each fiscal year's proposed Budget, and the commencement of any significant legislation.

¹ Chapter 60 of 2015 (A6721-A / S6410-A Part I: § 20).

² New York Research and Development Authority: Fiscal Year 2015-16 Budget and Financial Plan <https://www.nyserda.ny.gov/-/media/Files/Publications/Annual-Reports-and-Financial-Statements/2015-Budget-Financial-Plan.pdf>

³ Revised Notice and Meeting Agenda <https://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/Board-and-committee-meetings/BoardAgendas/Board-Agenda-2015Jan-Revised2.pdf>

⁴ Chapter 60 of 2015 (A6721-A / S6410-A Part I: § 19).

⁵ NYSERDA Board Duties and Responsibilities: <https://www.nyserda.ny.gov/-/media/Files/About/Board-Governance/Board-duties-and-responsibilities.pdf>

The decision you will have to make regarding the RGGI fund transfer directly relates to all three of the aforementioned responsibilities, in that you will have to reconcile a legislative mandate that is inconsistent with NYSERDA's financial plan and the regulations dictating that RGGI proceeds be used by the Authority to administer energy efficiency, renewable energy, and/or innovative carbon abatement programs.

As members of the Authority's board, you have a fiduciary responsibility to adjust the previously adopted 2015-16 Authority Budget to reflect these new obligations to the state in a manner consistent with the regulations governing the expenditure of RGGI proceeds.⁶

Thank you for your consideration of this important matter.

Sincerely,

Susan Lerner
Executive Director
Common Cause/NY

Peter Iwanowicz
Executive Director
Environmental Advocates of New York

Blair Horner
Legislative Director
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John Kaehny
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cc: John B. Rhodes, President and CEO, NYSERDA
Jeff Pitkin, Treasurer, NYSERDA
Noah C. Shaw, General Counsel, NYSERDA

⁶ 21 NYCRR Part 507.4 (d)