SHORT-CIRCUITING NEW YORK'S RECOVERY

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HOW ENERGY TAXES CONTRIBUTE TO HIGH ELECTRIC RATES IN NEW YORK

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How Energy Taxes Contribute to High Electric Rates in New York

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The Public Policy Institute of New York State, Inc.

Founded in 1981, The Public Policy Institute is a research and educational organization whose purpose is to formulate and promote public policies that will restore New York's economic competitiveness. The Institute accomplishes this mission by conducting timely, in-depth research addressing key state policy issues.

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New York's electric power industry is far and above the highest taxed in the United States. State and local gross receipt taxes, sales taxes, fees to develop the "green economy", income taxes, taxes on capital, various other "assessments" and, above all, property taxes help make New York's electricity prices the third highest in the nation, according to an analysis by the Public Policy Institute using information from the Tax Foundation, various state revenue offices and the US Energy Information Administration.

In 2009, electrical generators and utilities in New York State paid more than $6 billion in state and local taxes, assessments and fees, most of which were passed on to residential, commercial and industrial customers. That equates to more than $500 million per month that government adds to New Yorkers' electric bills.

State and local governments have turned the energy industry in New York into a tax collecting operation leaving rate-payers with ever-growing bills even when energy commodity prices fall. On average, more than one-quarter of customers' electric bills in New York are made up of state and local taxes. Increased taxes and fees have more than made up for the 18 percent drop in wholesale electricity costs since 2000.

Staggering energy taxes create a myriad of negative consequences for the state. Energy is one of the major cost factors that make New York one of the least favorable locations in which to start or expand a business. Taxes imposed on the state's electric industry, which far and away surpass the levies imposed by any other state, have contributed to the relative decline of New York State's economy.

These high taxes and assessments make the state's business climate uncompetitive when compared to other states. They are a direct obstacle to business growth, capital investment and job creation. As a result, New York loses essential jobs, opportunities for entrepreneurship and the ability to attract major new investments and employment.

New York's out-of-line energy taxes and fees have a particularly deleterious effect on "new economy" industries in New York, including nano-scale and life sciences firms, and, ironically, alternative energy manufacturing and green tech research companies.

Many innovation economy firms, such as biotechnology firms that need constant air exchanges and strict temperature controls, are extremely energy intensive and thus energy cost-sensitive. They are also the very same firms with the high-paying jobs and positive local economic impacts that other states and nations aggressively seek to attract.

For New York State's manufacturers, exorbitant electric bills are an especially damaging blow. When officials in Albany increase energy taxes as they did with the six-fold increase in "18-a" assessments in 2009, local manufacturers -- especially large energy users -- become even more uncompetitive.

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Officials are quick to recognize manufacturers for providing good-paying jobs, but many of them seem to fail to acknowledge the connection between increasing energy taxes and energy costs and maintaining a competitive economic climate for manufacturing and other industries in New York.

Excessive energy taxes in New York absorb many of the private sector resources needed for important energy infrastructure improvements. New York's energy industry must provide safe and reliable service to nearly ten million households and businesses. Energy taxes should not limit the ability of New York's energy firms to invest in major cutting-edge capital upgrades, innovative technologies and alternative generation systems.

Rapidly increasing tax burdens, especially coming from new or greatly expanded sources, limit firms' abilities to provide investment certainty for capital expansion plans. This not only affects the electricity sector, but every major business capital expansion in the state. Power is a commodity no firm can do without and its price tag is one of the major cost comparisons every firm must judge when deciding where and when to invest.

New York's power industry paid an estimated $6.367 billion in state and local taxes, assessments and fees in 2009. The figure is $853 million higher than the total the amount industry paid in 2008. The increase is notable: in 2009 state and local governments in New York raised taxes on electricity by more than 15 percent -- and did this during the worst economic crisis since the Great Depression.

Unfortunately, these increased burdens hit the state's employers when many were struggling to survive and avoid putting thousands more New Yorkers out of work. High levels of energy taxes make it more difficult for the state's employers to create new jobs. These taxes contribute to New York's electric rates being 66 percent above the national average. Empire State manufacturers pay rates on average 52 percent above their competitors in other states, and the rest of New York's businesses pay on average 54 percent more than the rest of the nation.

Average Retail Price of Electricity to Ultimate Customers by End-Use Sector (in cents per kilowatt hour) by State, October 2009

State	All Sectors	Residential	Commercial	Industrial	Transport
Hawaii	23.57	26.45	24.35	20.49	--
Connecticut	18.38	20.78	16.53	18.03	10.53
New York	**16.24**	**19.17**	**15.68**	**10.13**	**14.43**
Massachusetts	15.23	16.36	19.12	10.29	5.49
New Hampshire	14.74	16.41	14.09	12.86	--
Alaska	14.73	16.75	14.06	13.16	--
Rhode Island	14.02	14.90	13.63	12.99	--
New Jersey	13.90	15.71	13.64	10.09	14.73
California	13.51	14.08	13.93	11.43	8.88

(chart continues on next page)

Average Retail Price of Electricity to Ultimate Customers by End-Use Sector (in cents per kilowatt hour) by State, October 2009

State	All Sectors	Residential	Commercial	Industrial	Transport
District of Columbia	13.42	14.00	13.35	12.00	13.78
Vermont	13.06	15.50	13.20	9.42	--
Maryland	12.80	14.90	11.81	9.61	10.30
Maine	12.36	15.30	11.82	9.65	--
Delaware	11.98	14.75	11.85	8.98	--
Florida	11.43	12.31	10.71	9.03	10.25
Nevada	10.25	13.53	10.42	7.96	10.79
Arizona	9.75	11.05	9.54	6.93	--
Texas	9.74	12.26	9.69	6.58	9.86
Michigan	9.57	12.56	9.33	6.97	10.45
Pennsylvania	9.52	11.93	9.60	7.09	7.88
Wisconsin	9.09	11.97	9.36	6.53	--
Illinois	8.95	11.42	8.09	7.48	9.81
Colorado	8.84	10.55	8.87	6.71	8.48
North Carolina	8.82	10.84	8.31	6.23	7.16
Virginia	8.79	10.95	7.98	6.80	8.37
Ohio	8.77	10.83	9.62	6.41	10.20
Georgia	8.77	10.20	9.18	6.05	6.86
Mississippi	8.61	10.21	9.42	6.19	--
South Carolina	8.37	10.80	8.89	5.76	--
Kansas	8.18	9.99	8.24	6.19	--
Tennessee	8.16	9.12	9.10	6.17	10.20
New Mexico	8.12	10.41	8.44	5.72	--
Alabama	8.03	10.25	9.53	5.12	--
Minnesota	7.84	10.05	7.63	6.01	7.82
Oregon	7.62	8.95	7.76	5.62	6.96
Arkansas	7.61	9.72	7.70	5.60	10.25
Oklahoma	7.44	10.35	6.97	4.64	--
South Dakota	7.41	8.97	6.97	5.64	--
Montana	7.38	9.07	8.41	5.45	--
Indiana	7.27	9.58	7.98	5.57	10.38
Iowa	6.95	9.91	7.07	4.95	--
Nebraska	6.95	8.54	7.17	5.46	--
Utah	6.94	8.43	7.33	5.10	8.45
Missouri	6.88	8.39	6.55	5.00	5.04
Louisiana	6.84	8.17	7.55	4.75	10.24
North Dakota	6.79	7.83	6.80	5.75	--
West Virginia	6.74	8.28	7.03	5.26	6.83
Washington	6.61	7.87	7.13	4.47	6.66
Idaho	6.54	8.15	6.72	4.74	--
Wyoming	6.26	8.91	7.63	5.10	--
Kentucky	6.06	8.44	7.31	4.65	--
United States Total	**9.81**	**11.76**	**10.22**	**6.68**	**11.28**

Source: Energy Information Administration, Form EIA-861. "Annual Electric Power Industry Report."

New York's power industry paid an estimated $6.367 billion in state and local taxes, assessments and fees in 2009. The figure is $853 million higher than the total the industry paid in 2008.

Fully 26.68 percent of New Yorkers' electric bills support state and local taxes and fees, and are a major factor in why New York's rates are so high.

According to the Ernst and Young analysis of state and local business taxes for 2008, New York, Texas and California far and away lead the country in energy tax burdens. New York's tax and fee total of approximately $5.5 billion in 2008 compared to roughly $3 billion in California and $2.5 billion in Texas. The cause of the big difference between the three states is New York's property tax levies on the industry. The state's electricity sector paid nearly $3.1 billion in property taxes for calendar year 2008. The corresponding figure in Texas for the same year was $1.018 billion, and for California it was $786 million.

The property tax disparity is actually getting worse. Ad valorem assessments and taxes for California are expected to decline slightly in 2009 and remain flat or fall slightly in Texas, while the burden on New York's industry increased by $180 million last year. What's more, these other states did not have anywhere near the over $700 million in other types of new gross receipt taxes and hidden assessments that New Yorkers have had to bear in their ever-increasing electric bills.

Fully 26.68 percent of New Yorkers' electric bills support state and local taxes and fees. This equates to an average of $614.48 that each household (single family homes, apartments, coops and condos) in New York pays in these taxes through their power bill. A family living in a detached single-family home shoulders a burden that is almost double. These families pay on average $1,140.38 per year in state and local energy related taxes, fees and assessments.

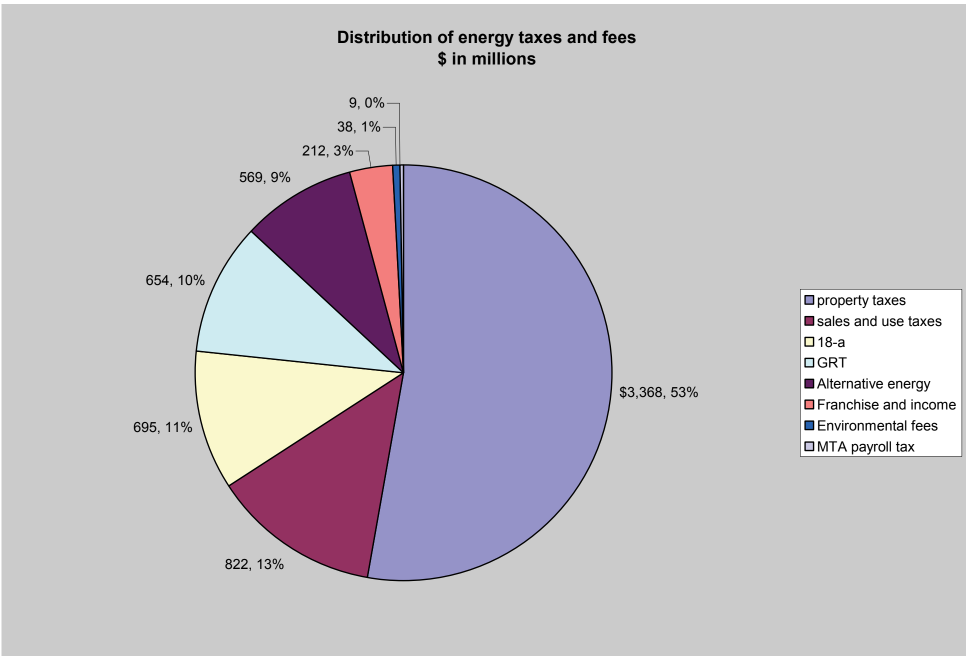
Both these overt and hidden taxes greatly restrict the consumer purchasing power of state residents and contribute to the sense that New York is approaching the "poorest" state in the nation in terms of cost of living compared to disposable income. There is a helpful analysis of the this disturbing phenomenon at www.costoflivingproject.org.

Table 2 provides the burden of taxes and fees by type for 2009.*

2009 New York State and Local Energy Industry Taxation Figures in $ millions	
property taxes	$3,368
sales and use taxes	822
18-a	695
GRT	654
Alternative energy	569
Franchise and income	212
Environmental fees	38
MTA payroll tax	9
Total state and local taxes	**$6,367**

Sources: New York State Comptroller, Department of Taxation and Finance, PSC filings and PPI analysis

The following chart presents a breakdown of the components of state and local taxes and fees:



Real Property Taxes: Over fifty percent of the state and local tax burden comes from local ad valorem taxes and special assessments. The energy industry alone paid 17 percent of the nearly $19 billion in property taxes that New York State businesses paid in 2009.

The second and third largest individual property tax payers in New York in 2009 were power transmission and delivery firms. The statewide total also includes payments in lieu of taxes paid by authorities, municipal corporations and private sector projects that have obtained financing help through aid provided by the state or local governments.

Sales and Use Taxes: The State and some localities exempt power costs from sales and use taxes for manufacturing firms and most residential properties. However, many localities and school districts do impose these taxes on all power sales. In fact, some school districts, such as Lackawana, with an imposition on energy sales of 7.75 percent, tax such sales at a rate much higher than the local sales taxes on other products. In addition, the Metropolitan Transit Authority also imposes a 0.375 percent levy on downstate power products.

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*Taxes include assessments on natural gas used for heating and other household and business purposes outside of electricity generation. The other state totals listed also do not carve out natural gas taxes used for non-generation.

PSC Assessments: Section 18-a of the Public Service Law authorizes the state to impose a fee on electric bills from public utilities to fund the operations of energy-related agencies and authorities. For over twenty years, these fees financed the operations of the Department of Public Service and covered some operational costs of the Energy Research and Development Authority.

This increase is nothing more than a new gross receipts tax to provide revenues for the State's general fund. This new State budget relief tax on energy yields an estimated $600 million a year.

The assessments were always capped at the lesser of no more than one-third of a percent of a monthly bill, or the operational costs of the agencies. However, in the 2009 legislative session, the state authorized the elimination of the operations cap and increased the fee from one-third of a percent to two percent, a six-fold increase, for most ratepayers. This increase is nothing more than a new gross receipts tax to provide revenues for the state's general fund. This new state budget relief tax on energy yields an estimated $600 million a year.

Gross Receipts Taxes: State and local governments also levy Gross Receipts Taxes (GRT) on energy revenues. The state's formal GRT is authorized through sections 186 and 186-a of the Tax Law and is now imposed at a rate of 2 percent, only on residential distribution. Local governments impose GRT's varying from 1 percent by most cities and villages, to 3 percent for the cities of Rochester, Buffalo and Yonkers. In addition, New York City imposes a GRT of 2.35 percent. The NYC GRT raised $422 million in 2009, the state GRT, including MTA surcharges, raised an estimated $145 million, and the local charges added another $87 million.

The New York State Fiscal Year 2010-11 Executive Budget proposes to allow all municipalities that presently can impose a GRT of 1 percent to increase that assessment to 3 percent. We estimate that this change, if adopted, will add at least another $100 million to the energy tax burden in New York State.

Despite the state's efforts during the late 1990's and the first half of the 2000's to reduce the effects of energy taxes -- in particular the then statewide GRT -- on the economy, when the existing GRTs are combined with the hidden levies enacted to support alternative energy initiatives and the recently increased 18-a assessments, current annual receipts are now higher -- at $1.918 billion -- than the approximately $1.850 billion that was raised at state and local levels in 1994, the former highpoint for energy tax revenue from GRTs in New York.

Comparative data on energy-based gross receipts taxes by state are sketchy. The best available data are for 2003, when New York trailed only three other states in total GRT levies on the electric power sector. Importantly, this data does not include the bulk of the enacted hidden fees and the 18-a increases. It appears that New York State has once again secured its place at the top of the wrong list.

State and Local Gross Receipt Taxes, 2003

State	Public Utilities with Generation	Transmission Only	State Total
CA	790,582,791	91,810,609	882,393,400
TX	725,876,729	40,348,413	766,225,142
WA	435,234,366	188,446,526	623,680,892
NY	**389,568,121**	**221,393,780**	**610,961,901**
FL	315,800,313	146,171,804	461,972,117
NC	291,398,095	50,717,444	342,115,539
AZ	172,318,281	88,366,237	260,684,518
SC	236,751,687	3,445,533	240,197,220
NE	159,978,825	38,484,324	198,463,149
MA	115,903,070	5,703,721	121,606,791

Source: EIA - DOE - 412

Environmental "Affinity" Assessments: There are four alternative energy fees presently imposed by the state of New York. These fees are all "off-budget" and show up nowhere in the state fiscal plan, making them difficult to tally accurately. PPI's estimates for these fees are based on previous level expenditures and announced targets.

The four charges are the Systems Benefit Charge (SBC), the Renewable Portfolio Standard (RPS), the Energy Efficiency Portfolio Standard (EEPS), and the Regional Greenhouse Gas Initiative (RGGI). The SBC is estimated to have raised $175 million, RPS $95 million, EEPS $174 million and RGGI $125 million in 2009. The 2009 total haul for the four programs was thus $569 million. Curious business and residential rate-payers deserve an accounting of how this staggering amount was assessed and spent – it certainly is not well explained in their electric bills.

These assessments are imposed to support the development of a green alternative energy economy in the state, but $112 million of the funds have recently been used to support job training for residential insulation work and other initiatives that seem to have little discernable connection to alternative energy generation. An additional $90 million was recently "swept" from the programs to balance the state budget, thus raising the question of whether or not these assessments are just a new and unaccountable general tax.

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A review of PSC planning documents suggests that these fees will grow at an annual rate of at least 20 percent per year. This means that New Yorkers by 2012 will be paying nearly $1 billion a year for these off-budget and, to some degree, unaccountable programs.

By 2012 New Yorkers will be paying nearly $1 billion a year in these off-budget and traditionally unaccountable programs.

Income and Franchise Taxes: New York State and New York City Business Income and Capital taxes are estimated to raise $148 million from electric energy corporations at the state level, $10 million from New York City General Corporation Tax, $18 million from New York City based unincorporated businesses, and $36 million from state business taxpayers paying under the state's Personal Income Tax.

Generator Assessments: These assessments include environmental air and water permits and hazardous waste generation fees. Some of the major fees imposed are for Title V Facility Air Emission Control, Solid Waste Management Facility, and State Pollution Discharge Elimination permits. The revenues collected from these permits are intended to cover the cost of State agency industry monitoring programs, primarily in the Department of Environmental Conservation, designed to maintain public health and protect the environment from emission impacts, but such funds have been increasingly used to cover other State government expenses.

Mobility Tax: The new MTA mobility tax is imposed at a rate of .34 percent on the wages of all employees primarily operating in the Mass Transportation Commuter District. This payroll tax, enacted in 2009, imposes a new $9 million burden on the energy industry. The Executive SFY 2010-11 21 Day Amendments include a provision to modify the payroll tax. This proposed change would provide much needed relief to suburban employers, but it would also result in a net additional $6 million per year tax on the energy sector because of higher assessments charged to New York City-based power company payrolls.

Recommendations

- The Legislature should reject any new taxes or fees on the energy industry including the proposed local GRT and MTA mobility tax increases.
- The 2009 18-a increases should be rolled back immediately; at the very least, the March 31, 2014 sunset date should not be extended so that additional resources can be freed up for a combination of infrastructure improvements and rate relief.
- The off-budget alternative fees, if they must be maintained, should be totally dedicated to developing the alternative energy industry and minimizing greenhouse gas generation. They should not be re-allocated to purposes different from the intent of their original authorization.
- The State should adopt a property tax cap to provide real property tax relief to all classes of taxpayers, including power generators and utilities. The state's largest non-federal tax burden – real property taxes that totaled more than $46 billion in 2009 -- is also the one that is growing at the fastest rate. Despite a decline in energy demand and usage and thus a drop in industry revenue in 2009, the energy sector paid an additional $180 million in ad valorem taxes compared to the prior year.

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