Independent Power Producers of New York, Inc. (IPPNY)

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Hon. Andrew Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor ~~Cuomo~~ Governor:

Governor's Program Bill #8 has been introduced as Assembly Bill 7511 in an attempt to provide an "as of right" tax abatement program for a certain electric generating facility technology newly constructed within New York City. This effort is driven largely by unsubstantiated and inflated claims of consumer price impacts resulting from a January order issued by the Federal Energy Regulatory Commission ("FERC") pertaining to the New York Independent System Operator ("NYISO") installed capacity demand curves for New York City. Independent Power Producers of New York ("IPPNY") consistently supports programs and legislation that create a more hospitable business climate in this state. Unfortunately, the proposed legislation serves more as an ill-advised manipulation of the market from which generating companies derive their revenues than as an incentive for companies to invest. Below are the critical flaws with the proposed legislation and improvements that will help the legislation serve as a driver of economic investment.

As noted above, FERC issued an order following the triennial review of the NYISO demand curves. The demand curves establish the price of capacity paid to generating resources by reflecting costs likely to be incurred by new entrants into the market. For the first time since the expiration of the Industrial and Commercial Incentive Program ("ICIP") in 2008, which provided tax abatement as of right to new generation resources on a fuel- and technology-neutral basis, the demand curves correctly and accurately reflect the fact that a new resource will face a substantial cost in the form of property taxes (e.g. existing In-City generating facilities pay nearly $100 million in property taxes annually). This fact should not come as a revelation as IPPNY predicted this would be the case when ICIP expired three years ago, and the failure over that period of time to enact a tax abatement program similar to ICIP left FERC with no logical option other than to include the cost of property taxes within the demand curves. Had ICIP not expired, or had new legislation similar to ICIP been enacted by the State, there would have been little reason for the NYISO to build those costs into the demand curves.

Unfortunately, this legislation is a flawed attempt to address the property tax issue, i.e. to get FERC to remove the cost of New York City property taxes from the demand curves. The legislation is drafted so narrowly in terms of eligible technology and duration of the program, it is abundantly clear that its intent is to manipulate the process at FERC in hopes of clearing a hurdle just high enough to convince FERC to reverse its decision on property taxes. It fails to provide actual incentives for an array of diverse and efficient resources to invest in New York City. Last year, the New York City Industrial Development Authority attempted a similar ploy by implementing a discretionary tax abatement program that applied to a very narrowly defined type of generating facility. FERC correctly identified the shortcomings of that program and dismissed it as a reason to eliminate property taxes from the demand curves. If left unchanged, it seems likely that FERC may come to the same conclusion about the recently introduced legislation.

The largest flaw in the proposed legislation is the fact that the program will expire in four years. The short four-year shelf life of this program is exactly the type of regulatory uncertainty that IPPNY has consistently opposed because it increases investor risks and adds costs to the development of new generation. FERC is sensitive to this issue as well. By implementing an abatement program that essentially spans just one three-year cycle of the demand curves, New York State is sending the signal that it is willing to take only the minimal steps necessary to reduce capacity prices without providing a long-term signal for investment. Considering that no action was taken until after FERC ruled on the NYISO's proposed demand curves, this flawed step is likely to be viewed by FERC as an attempt to manipulate the process. Case in point, the ICIP program, which also had a four-year term, expired and was not renewed shortly after FERC had approved the demand curves that have been in place for the previous three years. Since ICIP was in place when FERC issued its approval, FERC assumed it would be in place during the next three-year cycle and, therefore, did not include property taxes within those demand curves. The result was a three-year period where capacity payments did not account for property taxes even though no tax abatement program was in place during that time.

The proposed legislation could lead to exactly the same scenario, only this time FERC is acutely aware of the regulatory uncertainty attached to these abatement programs and is unlikely to perceive this legislation as anything other than an attempt to reduce capacity payments without providing any long-term certainty for investors. However, such concerns about manipulation of the process and regulatory uncertainty would be greatly alleviated, in part, for all parties if such a program does not include a pre-determined termination date.

An additional concern is that the bill narrowly defines eligible units as the peaking unit as defined within the NYISO tariff. In doing so, it gives the impression that the legislation is not intended to promote new investment in New York City but, instead, simply is seeking to reduce capacity prices by lowering the demand curves. In fact, language within the legislative findings states as much. The bill needs to mirror the qualifications provided under the now-expired ICIP program, i.e. be technology neutral. This is important because if tax abatement is provided to only peaking units, developers will be discouraged from building more efficient combined cycle plants because these plants will be subject to significant property taxes while peaking units will be exempt from taxes. In the long run, consumers will be harmed because energy prices would not be as low as they otherwise would have been if combined cycle plants had been built.

IPPNY is willing to work with you on developing a comprehensive tax abatement program that will provide a true signal to investors that New York is attempting to create an environment welcoming to business. However, unless such a program is technology neutral and does not contain a pre-determined termination date, IPPNY will be unable to offer its support.

Sincerely,

Gavin J. Donohue
President & CEO

CC: Senator Charles Schumer
Senator Dean Skelos
Assemblyman Sheldon Silver
Senator George Maziarz
Assemblyman Kevin Cahill
Mayor Michael Bloomberg
Chairman Garry Brown
Thomas Congdon, Assistant Secretary for Energy and Environment
Patrick Foye, Deputy Secretary to the Governor