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Gavin J. Donohue, *President &
Chief Executive Officer*

June 20, 2007

Peter Pope
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Pope:

The Independent Power Producers of New York, Inc. (IPPNY) is a trade association representing companies involved in the development of electric generating facilities; the generation, sale, and marketing of electric power; and the development of natural gas facilities in the state of New York. IPPNY members generate almost 75 percent of New York's electricity using a wide variety of generating technologies and fuels including hydro, nuclear, wind, waste, coal, natural gas, oil, and biomass. As the association representing the vast majority of companies operating within the competitive wholesale power supply industry in New York, IPPNY is quite aware of the importance of a power plant siting law to facilitate investment in much-needed electric generation for this state. IPPNY and its member companies have worked over the past four years to achieve consensus among all affected parties on a reenacted siting bill and remain willing and eager to get an acceptable bill adopted this year.

Although your office has drafted several versions of a siting bill, upon which IPPNY has submitted extensive comments, it is IPPNY's opinion that your most recent proposal (Governor's Program Bill 33 R-3, released 6/19) falls short of offering a comprehensive siting process that would foster new generation, diversify New York's energy portfolio, and secure reliable sources of power for years to come within a vibrant wholesale market. Specifically, opening the door for utility-built generation, the open-ended deadlines for the issuance of permits, and the exclusion of nuclear power all diminish drastically the value of the proposed law. As a result, IPPNY's Board of Directors today voted unanimously that our association would express the following concerns.

The concerns we express herein should not be interpreted as a lack of recognition of your office's efforts to promote Article X legislation. In fact, as your legislation has evolved, it has improved by making some provisions for new coal supplies; eliminating the population density restriction; exempting gas-fired facility repowerings from certain emission rate requirements; including peaking facilities; applying the carbon dioxide emission cap solely to the primary fuel

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use; removing the requirement for “lowest available emission rate” for emissions not otherwise subject to that standard; and adding some flexibility concerning cooling water control technologies. Such modifications to the bill were essential and actually brought the industry close to supporting an earlier version of your proposal (released on June 18). Yesterday, IPPNY’s Board of Directors were in the process of recommending refinements to that proposal in an attempt to bridge our differences when your office unfortunately released a revised proposal that contained new language making it unsupportable altogether. As a result, IPPNY has drafted this letter to present to you changes to the latest proposal that are essential if the power supply industry is to support subsequent proposals.

Program Bill 33 R-3 added new language to the definitions of certain qualified facilities – specifically the words “sale or” – that would authorize investor-owned utilities to qualify for Article X treatment. This significant new wording change would allow investor-owned utilities to resume building rate-based electric power plants. As you may be aware, regulatory policy dating back to the 1980’s steered utilities away from constructing rate-based power plants because of the significant adverse impacts on electricity rates. Two decades ago, the Public Service Commission required the utilities to file plans for competitive bidding to acquire new generating capacity before the utilities would embark upon new construction. The Commission reiterated that conclusion in 1996 when it initiated steps to have the utilities divest their generating assets.

Utility generating projects were built significantly over budget, resulting in excessive ratepayer impacts. Subsequently, the state turned to a competitive market for the construction and operation of power plants. One of the primary benefits of the competitive electric market is that power plant investment risks are shifted from captive utility ratepayers to private investors. Another important benefit of the competitive market is that it provides incentives, which rate-based generation does not, for competitive suppliers to make wise and efficient investments and operate efficiently. Furthermore, the Commission determined that divestiture of generation was a clear way to allay concerns about vertical market power and anti-competitive behavior that could be exercised by the investor-owned utilities.

It is with this background that IPPNY expresses deep concerns that Program Bill 33 R-3 would allow investor-owned utilities to use Article X to build new generation and, as a result, deter new investment within the wholesale market by creating uncertainty as to who will be permitted to build. **IPPNY’s proposed amendment for your consideration would authorize utilities to build or repower facilities only if they complete an open, fair, and non-discriminatory solicitation for proposals and no satisfactory market-based or alternative regulated projects were proposed by non-utilities.**

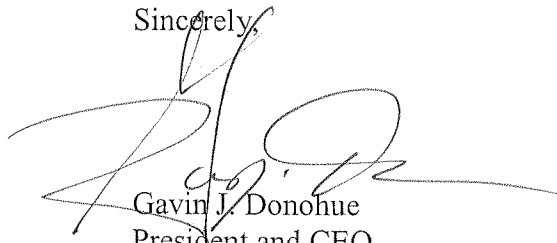
As to overarching issues, IPPNY contends that the final version of New York's next power plant siting law should contain the following elements:

- Prohibitions on the investor-owned utilities from building or repowering electric facilities without having first completed a fair, open, and non-discriminatory competitive solicitation for proposals
- Deadlines by which the Department of Environmental Conservation and the New York Department of State must act upon permits
- A provision allowing nuclear facilities to opt into the Article X process
- Language stating that facilities that do not qualify for Article X but will be reviewed under SEQRA may nevertheless help achieve goals articulated in Article X

In addition, there are proposed detailed changes to the bill that IPPNY has previously submitted to your office based on the experience of IPPNY's members under the expired Article X, for which we have not received your feedback. IPPNY is in the process of revising Program Bill 33 R-3 to incorporate those changes and will submit them to you as soon as possible.

Inclusion of these elements is essential for IPPNY's support of a siting law because they would best allow New York's wholesale competitive markets to flourish, thereby providing the state with clean, reliable, and diverse supplies of electricity for years to come. We are prepared to discuss further these proposals at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Gavin J. Donohue", is written over the printed name.

Gavin J. Donohue
President and CEO

Independent Power Producers of New York, Inc.

CC: Rich Baum
Drew Warshaw
Vincent Esposito
Judith Enck
Steven Mitnick
Jim Clancy