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

Gavin J. Donohue
President & CEO

A.10371-A

Memorandum in Strong Opposition

April 3, 2006

A.10371-A (Tonko) - AN ACT to amend the public service law, in relation to the siting of major electric generating facilities; to amend the public authorities law, in relation to making technical corrections thereto; to amend the state finance law, in relation to establishing an intervenor account; and providing for the repeal of such provisions upon expiration thereof

The Independent Power Producers of New York, Inc. (IPPNY) is a trade association representing more than 100 member 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 represents almost 75 percent of the electric generating capacity in New York.

IPPNY strongly opposes the passage of A.10371-A. New York State must reauthorize its power plant siting law (Article X of the Public Service Law) to increase electric system reliability. Since the law's expiration in 2002, New York has seen record-breaking electricity usage. However, the process envisioned in A.10371-A will prevent rather than facilitate the siting of needed power plants and will hinder the competitive power industry in New York rather than help it.

IPPNY and many other organizations have publicly supported the reauthorization of Article X on numerous occasions. Recently, the New York Independent System Operator issued a Reliability Needs Assessment (RNA), as part of its Comprehensive Reliability Planning Process. The RNA concluded an electricity supply shortage is looming in the next few years, especially in the Hudson Valley and downstate area. In New York, experience has shown that it can take over five years to site, permit, and construct power plants. However, A.10371-A would prevent the State and power plant developers from taking the steps needed to maintain the reliability of our energy system.

While IPPNY supports reauthorizing Article X, A.10371-A includes several proposals that are wholly inconsistent with the expeditious siting of power plants and competitive energy markets. The bill's provisions represent a return to the days of a non-competitive market, forcing regulators, rather than the competitive market, to make decisions about need, costs, timing, finances, fuel sources, and location. These provisions are especially problematic, since competitive developers do not receive the benefit of a regulated rate of return and a captive service territory, as utility developers once did.

The bill contains requirements that would set the siting process back thirty years to the original enactment of the first siting statute (former Article VIII of the Public Service Law); these provisions may have been suitable for regulated, vertically integrated electric utilities of the 1970's that charged captive ratepayers for all decisions, but these mandates are totally inapt for competitive, non-rate-based generators who absorb the cost consequences of power plant construction.

~more~

New York is meeting its energy needs by fostering competition. The State should not be involved in micro-managing the competitive process. Indeed, the Staff of the NYS Department of Public Service recently issued a report highlighting the benefits competitive markets have brought to New York. By effectively creating a return to a power plant regime that tightly fetters market forces, this bill would put those benefits at risk and endanger any new benefits that may accrue as competitive markets continue to develop.

Before it expired, the Article X process was the most comprehensive and expensive in the country. The law worked, scrutinizing the siting of proposed facilities 80 megawatts (MW) or larger and successfully certifying more than ten facilities totaling over 5,000 MW. The bill would raise Intervenor Fund fees by at least $200,000, a 66 percent increase. No Intervenor Fund ever was exhausted under Article X before it expired, and the provision to increase these fees puts an even larger up-front and unnecessary burden on companies willing to develop plants in New York. Furthermore, lowering the Article X review threshold from 80 MW to 30 MW would force smaller plants into this expensive process. As a result, New York will not be able to site the new generation it needs, and scarce supplies of electricity will, at best, drive prices up and, at worst, cause reliability problems or even blackouts.

Also, the bill would expand significantly the scope of the application and ensuing hearing processes and increase burdens on the DEC, NYSERDA and applicants, beyond the requirements of the State Environmental Review Act , the expired Article X law, and federal law. These new requirements are especially burdensome for smaller power plants, in relation to the potential for environmental impacts from these facilities.

Taken together, the additional burdens and intervenor fees required by the bill would increase significantly the cost of the application, discovery and hearing processes. If the average Article X licensing process costs about $5 million per applicant, additional requirements under this bill could easily add $3 million to that amount.

To complicate matters further, the bill also singles out a particular type of technology for different siting treatment. By excluding wind generating facilities from the Article X siting process, the bill would create competitive disadvantages among companies and between technologies. New York State's energy policy is to obtain and maintain safe, reliable, and diverse energy supplies and to accelerate the development and use of renewable energy resources. As an extension of that fuel diversity policy, the State has committed to increasing renewable energy supplies; yet, this bill would negatively impact fuel diversity. The Article X siting process should be fuel and technology neutral, in order for the competitive marketplace to determine which types of facilities will meet a given need most efficiently.

Additionally, the siting process envisioned in this legislation could complicate federal delegation to issue air and water permits. The bill would authorize the Siting Board to seek delegation of this authority from the Federal Government and to perform an independent evaluation of whether permits should be issued. These provisions seem to conflict with other parts of the bill that allow the DEC to make decisions about these permits. Currently, the DEC has exclusive federal approval to issue these permits.

In conclusion, A.10371-A represents a siting process that is inconsistent with competitive markets, that is simply not workable, and that will deter new entrants into New York State, undermining competition and jeopardizing reliability. **For the reasons stated above, IPPNY respectfully opposes A.10371-A.**

Independent Power Producers of New York, Inc.
19 Dove Street, Suite 302• Albany, New York 12210 • (518) 436-3749
Fax: (518) 436-0369 • www.ippny.org