Independent Power Producers Of New York

Memorandum in Strong Opposition A.7572/S.4315

January 08, 2010

A.7572 (Sweeney) / S.4315 (Thompson)- AN ACT to amend the environmental conservation law, in relation to global warming pollution control

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 represents almost 75 percent of the electric generating capacity in New York.

IPPNY opposes A.7572 / S.4315. The emission reductions required by this legislation cannot be achieved, because emission control technologies are not available commercially in a cost-effective manner. In addition, enactment of this legislation would create competitive disadvantages, in relation to other areas of this country, for New York's industries, workers, and consumers and would discourage investment and new job location within the state.

Additionally, this legislation is unnecessary and would pre-empt the outcome of a process to establish a Climate Action Plan, as required by Governor Paterson's Executive Order #24. The governor's order already establishes an ambitious goal to reduce greenhouse gas (GHG) emissions in New York State by 80 percent below the levels emitted in 1990 by the year 2050. The order creates a Climate Action Council, with a directive to prepare a draft Climate Action Plan by September 30, 2010. The Climate Action Plan will assess how all economic sectors can reduce GHG emissions and adapt to climate change, as well as identify the extent to which such actions support the governor's goals for a clean energy economy.

Furthermore, although addressing climate change is vitally important, this international issue requires more comprehensive solutions than New York may be able to provide. The bills should not be enacted and should not pre-empt actions by the United State Congress and the Environmental Protection Agency (EPA) to control GHG emissions at the national level on an even playing field. Indeed, it is generally agreed upon that efforts to make a substantive reduction in GHG emissions must take place at the national level, and IPPNY would support the development of a properly structured national GHG program. Absent a national program, the proposed legislation here in New York signals that investment should occur outside of our state and, instead, in other areas of the country where GHG reduction requirements are not in place.

Also, the legislation would increase costs on the state's residents and businesses during extremely trying economic times. The cost impact of this program on already overburdened energy consumers must be considered carefully, and the emission reductions proposed by the legislation must be studied from economic, cost, energy, and job impact perspectives. Among other matters, this analysis would need to identify how to mitigate specific county tax impacts for counties with higher industrial bases and impacts on local governments, local property tax, and other disproportionate impacts. New York currently has among the highest electricity prices, which are a hindrance to businesses that are trying to create jobs and to residents struggling to keep them. Any increase in the price of electricity, the fuels needed to generate electricity or additions to the cost to conduct other business processes would exacerbate this economic distress.

In addition, the bill should include provisions to track external emissions, so that New York can ensure that the legislation avoids negative economic, environmental, and competitive outcomes at the state's borders. To the extent that the bill merely shifts fuel usage from in-state to out-of-state facilities, the impact of this bill on reducing actual carbon dioxide (CO_2) emissions will be diminished greatly.

The bills would require the New York State Department of Environmental Conservation (DEC) to limit GHG emissions from all sources, seemingly without the flexibility of a cap and trade program. These limits would apply to all GHG emitters, including but not limited to any company generating or delivering electricity consumed in the state, natural gas pipelines, manufacturers and distributors of fossil fuels, oil refineries, and oil storage facilities. However, electric generating facilities already are required to comply with the Regional Greenhouse Gas Initiative (RGGI), and the cost impacts of the RGGI program on the state's residents and business are not fully known, given that emission allowances necessary for program compliance have been auctioned at prices that are higher than those predicted when the program first was established.

Yet, the bills now would require deeper emission reductions for all GHG emitting sources, even though emission control technologies are not available commercially in a cost-effective manner. Instead of requiring untenable emission reductions, the state should focus on developing technologies and processes that will avoid, abate, mitigate, capture and / or sequester CO_2 and other GHG in a viable and economic manner. Most importantly, the requirements of this legislation may reduce the availability of electric generating facilities in New York at the critical peak load times and thus could result in electricity reliability problems. The demand for electricity remains high in New York, even though we are one of the most efficient users of energy in the country, and there is no doubt that additional generating facilities are going to be needed in New York State. Strong concerns have been expressed by entities charged with ensuring the reliability of the electric system about the RGGI program, regarding its negative impact on the reliability of the energy system and the diversity of fuels that power plants use to produce the electricity that New Yorkers rely upon every day, and, certainly, those questions can be extended to this proposed legislation.

Interestingly, New York State power producers already are reducing the impact facility operations have on the environment. The DEC has adopted its Clean Air Interstate Rule to reduce significantly emissions of sulfur dioxide and nitrogen oxides, as well as its Clean Air Mercury Rule. The DEC also has policies on fine particulate matter (PM 2.5) and on environmental justice. Additionally, the New York State Public Service Commission and the New York State Energy Research and Development Authority (NYSERDA) are implementing the Renewable Portfolio Standard to increase the use of renewable energy sources and the Energy Efficiency Portfolio Standard to reduce electricity consumption. Also, on April 27, 2009, NYSERDA adopted a spending plan for the use of RGGI allowances auction proceeds to reduce GHG emissions across all economic sectors and fuel types.

An environmental benefit for New Yorkers that cannot be ignored is the significant reduction in carbon dioxide (CO_2), sulfur dioxide (SO_2) and nitrogen oxides (NO_x) emission rates. Since 1999, and the implementation of competitive electricity markets, CO_2 rates have dropped 28 percent, SO_2 rates have dropped 77 percent, and NO_x rates have dropped 61 percent in New York State. These reduced emission rates are a direct benefit of increased efficiencies spurred by the competitive energy market structure, in conjunction with increased environmental regulations.

For the reasons stated above, IPPNY respectfully opposes the passage of A.7572 / S.4315.

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