Independent Power Producers Of New York

Memorandum in Strong Opposition of A.11004 (Englebright) / S.7093-A (Thompson)

May 11, 2010

A.11004 (Englebright) / S.7093-A (Thompson) - AN ACT to amend the public service law and the public authorities law, in relation to the creation of the New York solar industry development and jobs act of 2010 and the procurement of solar renewable energy credits; 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 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.11004 (Englebright) / S.7093-A (Thompson). These bills would require utilities and energy service companies to procure annually solar renewable energy credits, according to a schedule to be established by the legislation. Among other provisions, the legislation would allow utilities, the New York Power Authority (NYPA), and the Long Island Power Authority (LIPA) to construct, own and operate qualified solar energy generation equipment for the purpose of complying with the legislation. IPPNY is opposed to these provisions of the bills, as they are inconsistent with the foundation of the states policy on restructuring of the electric industry, which applies to the ownership of generation by utilities, as well as public power authorities.

The adopted 2009 New York State Energy Plan re-affirmed a commitment to the competitive wholesale energy market structure, noting the state's preference is for new energy infrastructure to be built by merchant providers reacting to market forces. The document also indicates support for competitively issued solicitations for new capacity from private developers by utilities, NYPA and LIPA and does not encourage a role for these entities in the generation business.

Accordingly, the legislation should be amended to delete provisions that allow utilities, NYPA, and LIPA to construct, own and operate generation, and IPPNY has supplied such an amendment to the sponsors of the bills; however, our recommended changes still have not been incorporated into the bills. IPPNYs amendment would replace this utility and public authority ownership with a market-based role, in terms of the issuance of Requests for Proposals (RFP) for the procurement of solar energy, up to a cap. Rather than invent a new cap to limit the market impacts that arise even from this market-based approach, the cap, as appropriate, would be based upon the overall Net Metering Law (Section 66-j of the Public Service Law) cap, which is when the total rated generating capacity for such generation equipment in the electric distribution companys service area is equivalent to 1 percent of the electric distribution companys electric demand for 2005, as determined by the New York State Department of Public Service.

The state has long standing policies on the restructuring of and competition within the electric industry and the shift of investment risks away from captive ratepayers to private investors. No evidence exists that utility or public power authority ownership of renewable resources is necessary for the state to meet its renewable energy goals. Indeed, the state is well on its way to meeting its goals, without the participation of these entities in the development of new resources.

In its seminal order on competition, the New York State Public Service Commission (PSC) established its policy for the creation of a competitive wholesale generation market, finding that competitors would have a greater incentive to lower costs than utilities under cost of service regulation, which would inure to the benefit of New Yorks consumers. The PSC also recognized that the most efficient means of selecting new resources was via the competitive market. Furthermore, the PSC found that one of the primary benefits of competitive markets is that investment risks shift from captive utility ratepayers to private investors. In the case of a merchant generation facility, the developers shareholders bear the risk of loss, not consumers, and, since they must rely on the market to cover their costs and produce revenue, they are forced to be more efficient. Therefore, not only are independent developers better situated to construct facilities, it is less risky in the cost over-run area to consumers for them to do so.

More recently, the PSC issued its orders in the Renewable Portfolio Standard (RPS) proceeding and decided against having utilities in the generation ownership business. The Legislature should not overturn the PSC's sound reasoning. Importantly, the PSC recognized the concerns expressed by stakeholders regarding utility ownership of renewable generation and utility participation in the bidding process. The PSC agreed with stakeholder assertions that the retail distributed solar photovoltaic market is demonstrably competitive and that utility involvement in the market is not needed to address any deficiencies. The PSC decided that only non-utility market participants will be allowed to submit bids in the competitive solicitations. Furthermore, the New York State Energy Research and Development Authority has seen a strong showing of interest from many non-utility developers in its RPS solicitations.

Thus, the state strongly favors utilities and public power authorities not owning or developing generation. Clearly, the state should not reverse its long-standing policy prohibiting utilities and public power authorities from owning and developing generation, because to do so would harm competitive markets and consumers.

For the reasons stated above, IPPNY respectfully opposes the passage of A.11004 (Englebright) / S.7093-A (Thompson).

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