Independent Power Producers Of New York

Memorandum in Strong Opposition of A.8696-A (Cahill)

June 21, 2010

A.8696-A (Cahill) - 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; to amend the environmental conservation law, in relation to power plant emissions and performance standards; 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 strongly opposes the passage of A.8696-A. New York State must reauthorize its power plant siting law (Article 10 of the Public Service Law) to increase electric system reliability. Since the laws expiration at the end of 2002, New York has seen record-breaking electricity usage. However, the process envisioned in A.8696-A will prevent, rather than facilitate, the siting of power plants and will hinder the competitive power industry in New York, rather than help it. In particular, A.8696-A removes the 12 month timeline for a final decision by the Siting Board on power plant siting projects, thereby reducing the certainty of the Article 10 siting process.

Although IPPNY supports reauthorizing Article 10, A.8696-A includes several proposals that are wholly inconsistent with the expeditious siting of power plants and competitive energy markets. The bills 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. 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 1970s 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. New York is meeting its energy needs by fostering competition, and the state should not be involved in micro-managing the competitive process. Indeed, several reports have highlighted 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.
A.8696-A would prevent the state and power plant developers from taking the steps needed to maintain the reliability of our energy system by impacting negatively the states fuel diversity. New York States energy policy is to obtain and maintain safe, reliable, and diverse energy supplies, yet this bill contains air emission requirements that severely restrict the types of facilities that can continue to operate or that can be built. The bills excessive requirements could force facilities to shut-down, given the alternative of having to install emission controls in an uneconomic manner.

Fundamentally, the bill ignores that, since the expiration of Article 10, Federal and New York State agencies already have taken significant steps to reduce the impact of power plant operations on the environment. For example, A.8696-A would lower further the emission reduction standard for nitrogen oxides (NOx), despite the fact the New York State Department of Environmental Conservation (DEC) completed three major rulemakings this year to control further this emission category, including: 1) promulgation of its version of the federal Clean Air Interstate Rule to reduce emissions of sulfur dioxide and NOx; 2) adoption of its Best Available Retrofit Technology (BART) Determinations Rule; and 3) its Reasonably Available Control Technology for the Control of Nitrogen Oxides (NOx RACT) . The DEC also has promulgated its Clean Air Mercury Rule in a stricter manner than Federal requirements and has policies in place to address fine particulate matter (PM 2.5) and environmental justice. In addition, New York State generators participate in the Regional Greenhouse Gas Initiative designed to reduce emissions of carbon dioxide in the Northeast.

It is important to note, that of even greater potential impact on emissions, is Governor Patersons Executive Order #24 which establishes a goal to reduce greenhouse gas emissions in New York State by 80 percent below the levels emitted in 1990 by the year 2050, with a directive to prepare a draft Climate Action Plan by November 1, 2010. In spite of all of these actions, A.8696-A would require additional environmental controls to be installed by power producers.

The Article 10 process is intended to facilitate the power project activities, such as those resulting from the governors climate change directive and other state requirements; however, A.8696-A will have the opposite outcome. In particular, the bill discourages repowering projects. IPPNY had suggested that the original version of this bill be revised to acknowledge that many existing generating units have invested in emission controls that would make an additional 75 percent emission reduction, beyond those levels achieved by the controls, impossible to achieve. However, instead of updating the definition of a repowering project in a more workable manner, A.8696-A completely removes the language for a streamlined review of repowering projects.

Furthermore, although its provisions are otherwise more fuel-neutral than prior Assembly proposals, the legislation creates a disadvantage for some technologies, by requiring specific fees for facilities involving a fuel waste byproduct, above and beyond the Intervenor Fund fees that are much higher than those from the expired law. As a result, the bill reduces the states ability to obtain fuel-diverse electricity supplies to help maintain electric system reliability. The Article 10 siting process should be fuel and technology neutral in all aspects, in order for the competitive marketplace to determine which types of facilities will provide electricity most efficiently.

Before it expired, New Yorks Article 10 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 facilities. However, A.8696-A would raise Intervenor Fund fees by up to $450,000, which is more than double the amount from the expired law. No Intervenor Fund ever was exhausted under Article 10 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 10 review threshold from 80 MW to 20 MW would force smaller plants into this expensive process. The bill would provide that the fees could be used to fund the legal costs of intervenors into the siting process that would challenge the siting of a facility, markedly increasing the cost burdens on project developers. As a result, New York will not be able to site the new generation it needs.

Also, the bill would expand significantly the scope of the application and ensuing hearing processes and increase burdens on the DEC, the New York State Energy Research and Development Authority (NYSERDA), and applicants, beyond the requirements of the State Environmental Review Act and the expired Article 10 law. Taken together, the additional burdens and intervenor fees required by the bill would increase significantly the cost of the application, discovery and hearing processes. For example, NYSERDA would be required to present expert testimony and information, such as a cost-based analysis of the potential impact of the proposed facility on the wholesale generation markets, as well as the potential impact of the proposed facility on fuel costs, in comparison with the costs for achieving an equal level of capacity through alternative resources. Additionally, NYSERDA would be required to discuss the contribution or impairment of the proposed facility towards meeting the goals of the State Energy Plan and to provide a statement of the reasons why the proposed location and source is best suited, among the alternatives identified. NYSERDA is not in a position to make determinations about the appropriateness of a market-based facility. The competitive markets provide signals about where,

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when, and at what costs facilities best should be sited, with the economics of the facility shouldered by the developer and not energy consumers.

Finally, the bill contains an expiration date, which would create regulatory uncertainty for investment in facilities. Instead, having a siting process in place that does not expire would send positive signals to investors, allowing for the knowledge that a siting process exists for timely review of projects. Otherwise, investments will continue to occur in states other than New York that have the continuity of a siting process that does not expire.

In conclusion, A.8696-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 and strongly opposes the passage of A.8696-A.