

Memorandum in Strong Opposition A.7365

April 16, 2007

A.7365 (Sweeney) - AN ACT to amend the environmental conservation law, in relation to establishing the climate change solutions program act

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 A.7365. This legislation is premature and makes references to a program and a process that currently does not exist in New York and may not exist in the future. It is generally agreed upon that efforts to make a substantive reduction in greenhouse gas emissions must take place at the national level, and Congress and the President may enact a national program to address climate change. Also, the bill would pre-empt the outcome of the ongoing Regional Greenhouse Gas Initiative (RGGI), which is in a pre-proposal stage in New York prior to the start of the formal rulemaking process. It remains to be seen whether this rule or a national program will be adopted and implemented prior to the effective date of this legislation. Indeed, if the RGGI is adopted, it will not be implemented until 2009.

Also, the bill would establish uses for revenues that would be derived from an auction of allowances under the RGGI; however, it has not yet been determined whether this program will distribute emission allowances via auction. In fact, an auction of allowances has never been done in New York, and it remains to be seen whether it can be implemented successfully.

In addition, the bill would establish uses for yet-to-be-authorized revenues in a manner that omits programs that are part of New York's pre-proposal for the state's potential RGGI rule. The bill's definition of renewable energy development projects is inconsistent with the existing New York State Energy Law's definition of renewable energy resources, which has been in place since 1976. Under this law, renewable energy resources are defined as sources that are capable of being continuously restored by natural or other means or are so large as to be useable for centuries without significant depletion and include but are not limited to solar, wind, plant and forest products, wastes, tidal, hydro, geothermal, deuterium, and hydrogen. This bill's definition excludes hydro, all biomass including plant and forest products, waste, and nuclear, even though these resources are capable of being continuously restored by natural or other means or are so large as to be useable for centuries without significant depletion.

Furthermore, the bill would subject the disbursement of yet-to-be-collected revenues to annual appropriation, as part of the New York State budget process, from a fund yet-to-be-created by other legislation. IPPNY is strongly concerned about unintended consequences for renewable energy contracts, as funding for such contracts could become subject to annual appropriation. The legislation will chill investment in renewable facilities, since the requirement for annual appropriation potentially could disrupt revenue streams (to the For the reasons stated above, IPPNY respectfully opposes the passage of A.7365.extent that they may be authorized by the RGGI) upon which investors and developers would rely to finance and construct these capital intensive energy projects.

For the reasons stated above, IPPNY respectfully opposes the passage of **A.7365**.