Independent Power Producers Of New York

Memorandum in Strong Opposition A.8697

May 29, 2007

A.8697 (Tonko) - AN ACT to amend the public service law and the public authorities law, in relation to the siting of major electric generating facilities; to amend the energy law and the public authorities law, in relation to energy planning; to amend the environmental conservation law, in relation to power plant emissions and performance standards; to amend the state finance law, in relation to establishing the 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 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.8697. 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.8697 will prevent rather than facilitate the siting of 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. The New York Independent System Operator, which is the main entity responsible for the energy marketplace and helping to ensure a reliable electric system, notes in its 2007 Reliability Needs Assessment that southeastern New York will need significant quantities of new resources by 2011 in order to maintain the adequacy and reliability of the bulk electricity grid. On a statewide basis, the need date is 2012. In New York, experience has shown that it can take several years to site, permit, and construct power plants. However, A.8697 would prevent the State and power plant developers from taking the steps needed to maintain the reliability of our energy system.

New York State's energy policy is to obtain and maintain safe, reliable, and diverse energy supplies, yet this bill would negatively impact the state's fuel diversity, by excluding technologies that are among those essential for maintaining and enhancing that diversity. The bill specifically makes the following facilities ineligible for consideration under Article X: nuclear facilities, waste-to-energy facilities, and coal facilities that do not reduce emissions of carbon dioxide and other greenhouse gases. The bill also prohibits Article X review of facilities that do not use a closed-cycle cooling water intake structure or comparable technology. By excluding these types of generating facilities from the Article X siting process, the bill limits the state's ability to obtain fuel-diverse electricity supplies to help maintain electric system reliability, and the bill creates competitive disadvantages among companies and between technologies. The Article X siting process should be fuel and technology neutral, in order for the competitive marketplace to determine which types of facilities will provide electricity most efficiently.

Additionally, the bill contains air emission requirements that severely restrict the types of facilities that can be built under the bill, and it discourages the repowering of facilities. Furthermore, imposing a carbon dioxide (CO_2) limit in advance of either New York or the Federal Government promulgating any requirement is premature, given the need to site a variety of fuel-diverse base-load facilities in an expeditious manner. The bill ignores that, since the expiration of Article X, Federal and New York State agencies already have taken steps to reduce the impact of power plant operations on the environment. New York is in the process of developing a regulation to implement the Regional Greenhouse Gas Initiative (RGGI) to reduce emissions of CO_2 in the Northeast. The New York State Department of Environmental Conservation (DEC) is proceeding to adopt its version of the federal Clean Air Interstate Rule to reduce emissions of sulfur dioxide and nitrogen oxides, beyond New York's existing strict requirements. The DEC already has adopted its version of the federal Clean Air Mercury Rule and has policies in place to address fine particulate matter (PM 2.5) and environmental justice. Also, the New York State Public Service Commission and the New York State Energy Research Development Authority are implementing the Renewable Portfolio Standard to increase the use of renewable energy sources. In spite of all of these actions, the bill would require additional environmental controls on power plants.

While IPPNY supports reauthorizing Article X, A.8697 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. New York is meeting its energy needs by fostering competition, and the state should not be involved in micro-managing the competitive process. Indeed, the Staff of the NYS Department of Public Service has 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. However, this 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, the New York State Energy Research and Development Authority, 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.

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.8697 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.8697.