

Memorandum in Strong Opposition A.7584 / S.3715

June 14, 2007

A.7584 (Alessi) / S.3715 (LaValle) - AN ACT to amend the executive law, in relation to the waterfront revitalization of coastal areas and inland waterways

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 over 75 percent of the electric generating capacity in New York.

IPPNY strongly opposes the passage of A.7584 / S.3715. The bill establishes an additional approval that project developers near water bodies affecting coastal areas would be required to secure, outside of the State Environmental Quality Review Act (SEQRA), the state's existing coastal zone processes, and federal reviews. The bill gives a single agency, the New York State Department of State (DOS), unilateral veto power over projects. The bill is silent on how this new DOS authority would be coordinated with existing state and federal processes. This veto power is inappropriate and sets a dangerous precedent for all types of project development.

The bill defines projects as "any construction or placement of a structure or other physical activity or the grant or transfer of interest of the state in land under water or lands adjacent thereto which may have a substantial effect on coastal resources in coastal areas." This definition is drafted in an overly broad manner. It affects projects on lands under water, such as proposed liquefied natural gas (LNG) and wind facilities. Also, the bill affects other energy projects broadly, because the bill applies to projects which are on lands adjacent to lands under water. Under the bill, DOS reviews projects near or affecting a water body, even if federal approval is not required. In effect, the bill allows the Secretary of State to pre-determine, invalidate or trump the outcome of existing state and federal review processes.

Currently, projects which may have environmental impacts are reviewed in a comprehensive manner under SEQRA, which involves multiple state agencies, local governments and the public in the project review process. The National Energy Policy Act of 2005 provides federal authority over applications for the siting, construction, expansion or operation of LNG facilities. This federal law requires consultation with state agencies regarding state and local safety considerations and compliance by applicants with the pre-filing process of the National Environmental Policy Act (NEPA). The bill also does not require DOS to account for energy needs and other economic considerations in its review and approval of coastal harbor management plans.

Furthermore, the bill circumvents the oversight of the United States Department of Commerce on coastal matters, including the Department's congressionally-mandated function to balance economic and natural resource impacts.

The bill could prohibit projects which are in the public interest. New York State's energy policy is to obtain and maintain safe, reliable, and diverse energy supplies, accelerate the development and use of renewable energy resources, and increase its energy independence, in order to promote the state's economic growth, to maintain the security of its energy supplies, and to protect its environmental values. The New York Independent System Operator's 2005 Power Trends report identified the need for an effective fuel diversity strategy for dealing with the increasing use and dwindling domestic reserves of natural gas. Furthermore, the state has committed to increasing renewable energy supplies, in order to increase its fuel diversity. Both LNG and wind facilities are essential components of diversifying our energy supplies.

For the reasons stated above, IPPNY respectfully opposes A.7584 / S.3715.