

Memorandum in Strong Opposition to A.7365 / S.5347

January 11, 2008

A.7365 (Sweeney) / S.5347 (Marcellino) - 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 / S.5347. This legislation is premature and makes references to a program and a process that currently does not exist in New York. 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 has yet to be implemented by New York. The NYS Department of Environmental Conservation and the NYS Energy Research and Development Authority have only just completed on December 24, 2007 the public comment process for their draft NYS rules. These state entities still are in the process of reviewing comments they received and deciding how the draft regulations should be changed. It remains to be seen whether these draft rules or a national program will be adopted and implemented prior to the effective date of this legislation. Indeed, if the NYS RGGI program 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, the auction process has not yet been approved or established. In fact, an auction of allowances has never been done in New York, and it remains to be seen whether and when 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 draft rules, such as non-carbon emitting technologies and innovative carbon emissions abatement technologies with significant carbon reduction potential. Also, the bill does not provide funding for the development of carbon capture and sequestration technology, which does not exist today and would be essential for the successful implementation of the RGGI program.

Furthermore, 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.

Finally, 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 energy contracts, as funding for such contracts could become subject to annual appropriation. The legislation will chill investment in facilities, since the requirement for annual appropriation potentially could disrupt revenue streams (to the 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 / S. 5347.