

Memorandum in Strong Opposition to New Fee for Facility Security

March 06, 2008

Part K of A.9806-A / S.6806-A - Article VII Budget Bill - AN ACT to amend the state finance law and the executive law, in relation to assessments on nuclear power plants to reimburse the state for costs of homeland security provided by the state militia

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 Part K of A.9806-A / S.6806-A. These budget bill provisions would increase fees for nuclear electric generating facilities, which provide 30 percent of the state's energy supply. This new \$11.7 million fee on nuclear companies is intended to cover all costs and expenses of the state organized militia, primarily the New York National Guard, at these facilities. Currently, the militia's costs and expenses are funded via Homeland Security General Fund appropriations.

Even though the nuclear companies did not request and have yet to ask for security assistance, the organized militia has been deployed to protect nuclear power plants subsequent to the terrorist attacks of September 11, 2001. However, the militia is not integrated into the security plans of protecting the nuclear facilities because the United States Nuclear Regulatory Commission already requires (and did so prior to those attacks) nuclear facilities to have well-armed and well-trained security personnel who are prepared to respond to an attack or other security threats around the clock. Furthermore, New York's nuclear facilities already pay a substantial annual fee to support state and local government responsibilities for radiological emergency planning and preparedness for all hazards. These existing funds pay for a number of state and local costs, such as personnel, administrative and contractual services.

In addition, nuclear facilities already contribute to the New York State budget through the taxes that they pay. For example, from 2001 to 2007, one company has paid over \$234 million in taxes to New York State, county and local governments. Unbelievably, since 1986, New York's nuclear facilities have provided over \$81 million to the state for the Low Level Radioactive Waste Siting Commission - a commission that does not exist.

The state is proposing that the new fee for nuclear companies be calculated based upon the costs to the state to provide security to individual facilities. The state's budget documents indicate that the fee will raise \$11.7 million, but the actual budget bill language is open-ended and does not specify that total costs will not exceed this amount. Additionally, it is unclear how this amount and the proportional share for each company were determined, how the number of militia to be present at each facility was decided, and who will serve as an arbitrator of any disputes.

Furthermore, other facilities that receive National Guard protection are not being asked to pay similar fees. At the Joint Legislative Hearing on the proposed governor's budget provisions related to public protection, Members of the Legislature expressed reservations regarding the development of inappropriate public policy that would provide security services to entities based upon their ability to pay for them. Indeed, the director of the NYS Office of Homeland Security admitted under hearing questioning that he is not aware of any other entity that is required to reimburse the state for security services. The director's statement highlighted that nuclear companies are being singled-out by this fee proposal.

Interestingly, other large sums of monies are available in the governor's proposed budget for the security of critical infrastructure (such as nuclear facilities), for domestic incident and emergency preparedness, and for state emergency management activities, as well as General Fund monies specifically provided for the New York Guard. Indeed, the proposed New York State budget also includes the re-appropriation of a large amount of funding for domestic incident preparedness, manmade disasters, and emergency management and disaster assistance, indicating that existing monies have not been used up.

When the new fee on nuclear companies was proposed in the Executive Budget last year, the Legislature rejected this fee and other proposals that would have increased costs for the state's businesses and residents. We urge that this costly fee proposal be rejected again, in order to avoid increasing costs for energy production. Otherwise, if New York State believes that the New York National Guard should be at nuclear facilities, then the state should continue to pay for these costs.

For the reasons stated above, IPPNY respectfully opposes Part K of A.9806-A / S.6806-A.