Independent Power Producers Of New York

# Memorandum in Strong Opposition to A.8696

**June 08, 2009**

**A.8696 (Cahill) - AN ACT to amend the public service law, in relation to the siting of major electric generating facilities; to amend the public authorities law, in relation to making technical corrections thereto; to amend the state finance law, in relation to establishing an intervenor account; to amend the environmental conservation law, in relation to power plant emissions and performance standards; 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.8696.** 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.8696 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. In New York, experience has shown that it can take several years to site, permit, and construct power plants. However, A.8696 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 impact negatively the state's fuel diversity. The bill contains air emission requirements that severely restrict the types of facilities that can continue to operate or that can be built and that discourage the repowering of facilities. The bill's requirements could force facilities to shut-down, given the alternative of having to install emission controls in an uneconomic manner.

Fundamentally, 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 has adopted a regulation to implement the Regional Greenhouse Gas Initiative (RGGI) to reduce emissions of CO2 in the Northeast. The New York State Department of Environmental Conservation (DEC) has promulgated its version of the federal Clean Air Interstate Rule to reduce emissions of sulfur dioxide and nitrogen oxides. The DEC already has adopted its version of the federal Clean Air Mercury Rule in a stricter manner than Federal requirements, and the Department 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 (NYSERDA) 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 to be installed by power producers.

Furthermore, although its provisions, in terms of applicability, are otherwise more fuel-neutral than prior Assembly proposals, the legislation creates a disadvantage for some technologies, by requiring specific fees for facilities involving a fuel waste byproduct, above and beyond the Intervenor Fund fees that are much higher than those from the expired law. As a result, the bill reduces the state's ability to obtain fuel-diverse electricity supplies to help maintain electric system reliability. The Article X siting process should be fuel and technology neutral in all aspects, in order for the competitive marketplace to determine which types of facilities will provide electricity most efficiently.

Additionally, the emission rates required for the bill for repowering projects are not achievable, if the facility already operates on natural gas. Under the bill's requirements, re-powering a natural gas fired, simple-cycle turbine will be impossible. Many existing units have invested in emission controls that would make an additional 75 percent emission reduction, beyond those levels achieved by the controls, impossible to acheive. In general, the proposed emission rate reduction requirements seem to exclude from qualifying for Article X permitting the option of adding a new high efficiency, low emission unit at a site with an existing units.

Before it expired, New York's 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 facilities. However, A.8696 would raise Intervenor Fund fees by up to $450,000, which is more than double the amount from the expired law. 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. The bill would provide that the fees could be used to fund the legal costs of intervenors into the siting process that would challenge the siting of a facility, markedly increasing the cost burdens on project developers. As a result, New York will not be able to site the new generation it needs.

Although IPPNY supports reauthorizing Article X, A.8696 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, several reports have highlighted 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.

Also, the bill would expand significantly the scope of the application and ensuing hearing processes and increase burdens on the DEC, NYSERDA, and applicants, beyond the requirements of the State Environmental Review Act and the expired Article X law. Taken together, the additional burdens and intervenor fees required by the bill would increase significantly the cost of the application, discovery and hearing processes. For example, NYSERDA would be required to present expert testimony and information, such as a cost-based analysis of the potential impact of the proposed facility on the wholesale generation markets, as well as the potential impact of the proposed facility on fuel costs, in comparison with the costs for achieving an equal level of capacity through alternative resources. Additionally, NYSERDA would be required to discuss the contribution or impairment of the proposed facility towards meeting the goals of the State Energy Plan and to provide a statement of the reasons why the proposed location and source is best suited, among the alternatives identified. NYSERDA is not in a position to make determinations about the appropriateness of a market-based facility. The competitive markets provide signals about where, when, and at what costs facilities best should be sited, with the economics of the facility shouldered by the developer and not energy consumers.

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Finally, the bill contains an expiration date, which would create regulatory uncertainty for investment in facilities. Instead, having a siting process in place that does not expire would send positive signals to investors, allowing for the knowledge that a siting process exists for timely review of projects. Otherwise, investments will continue to occur in states other than New York that have the continuity of a siting process that does not expire.

In conclusion, A.8696 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.8696.**

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