



Independent Power Producers of New York, Inc. (IPPNY)

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President & CEO

A.11586

Memorandum in Strong Opposition

June 9, 2006

A.11586 (Gunter) - AN ACT to amend the environmental conservation law, in relation to dam safety in New York state

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.11586. IPPNY supports the safe operation of facilities which have dams; however, this bill creates unfair and disproportionate burdens on private dam owners. The bill's onerous financial assurance provisions establish severe economic and operational disadvantages for hydropower facilities, which are part of the State's renewable and diverse energy supply. Furthermore, the bill duplicates existing federal requirements for dams with hydropower facilities.

The bill should be amended to exclude dams at generating facilities. Hydropower facilities already are regulated by the Federal Energy Regulatory Commission (FERC), and the jurisdiction of the New York State Department of Environmental Conservation (DEC) is subject to federal pre-emption. FERC's dam safety program includes scheduled inspections of significant and high hazard dams at hydropower projects. Furthermore, the FERC's existing program requires licensees operating these dams to prepare emergency action plans. In addition, New York State law already addresses the evaluation of security issues for critical energy infrastructure (including facilities that have dams) and allows local government officials to obtain information about dams.

The bill also requires dam owners to meet difficult financial assurance requirements, to be established by DEC regulations, as a condition of permits for high hazard and intermediate hazard dams and potentially some low hazard dams. These regulations would include criteria for determining the financial condition and viability of permit applicants and permit holders, and the bill requires DEC to establish standards for minimum financial viability. The bill necessitates that permit holders and applicants submit voluminous financial data to the DEC. For companies who do not meet the minimum financial viability standards, the bill provides that DEC determine the type of financial assurance requirement that a dam owner needs to implement. The DEC does not have the experience, the resources, or the jurisdiction to evaluate financial viability. The financial status of dam owners is not necessarily connected to their ability and commitment to operating their facilities safely.



In addition, these burdensome financial requirements do not apply evenly to all permit holders, especially permits granted to the State. For example, the New York Power Authority would be exempt from these requirements, creating huge economic disadvantages for private hydropower facilities.

Prior to a change in ownership of a high or intermediate hazard dam, the bill requires dam owners to inform DEC about plans that new owners have for maintaining the facility properly and correcting any unsafe conditions. It is unclear why existing property owners need to inform State regulators about any activities of subsequent owners. The DEC should deal directly with future owners about any regulatory requirements.

For the reasons stated above, IPPNY respectfully opposes A.11586.

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