Memorandum in Strong Opposition of A. 5346

March 14, 2011

A.5346 (Sweeney) - AN ACT to amend the environmental conservation law, in relation to global warming pollution control

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 opposes A.5346. The emission reductions required by this legislation cannot be achieved, because emission control technologies are not available commercially in a cost-effective manner. Also, enactment of this bill would create competitive disadvantages, in relation to other areas of this country, for New Yorks industries, workers, and consumers and would discourage investment and new job location within the state.

This legislation would require the New York State Department of Environmental Conservation (DEC) to limit greenhouse gas (GHG) emissions from all sources, seemingly without the flexibility of a cap and trade program. These limits would apply to all GHG emitters, including but not limited to any company generating or delivering electricity consumed in the state, natural gas pipelines, manufacturers and distributors of fossil fuels, oil refineries, and oil storage facilities. However, electric generating facilities already are required to comply with the Regional Greenhouse Gas Initiative (RGGI), which requires emissions to be stabilized until 2015 and then reduced by 10 percent through 2018. The bill now would require deeper emission reductions for all GHG emitting sources, even though emission control technologies are not available commercially in a cost-effective manner.

Additionally, this legislation is unnecessary and redundant, given that the process to establish a Climate Action Plan is well underway pursuant to Executive Order #24. The Executive Order already establishes an ambitious goal to reduce GHG emissions in New York State by 80 percent below the levels emitted in 1990 by the year 2050. The order creates a Climate Action Council, with a directive to prepare a draft Climate Action Plan. The Climate Action Plan will assess how all economic sectors can reduce GHG emissions and adapt to climate change. The Climate Action Council already has conducted a stakeholder process, as part of the development of a Climate Action Plan, and has completed a public comment period on an Interim Report on the draft Climate Action Plan.

Furthermore, although addressing climate change is vitally important, this international issue requires more comprehensive solutions than New York may be able to provide. The bill should not be enacted and should not pre-empt actions by the United State Congress and additional steps by the United States Environmental Protection Agency (EPA) to control GHG emissions at the national level on an even playing field. Indeed, it is generally agreed upon that efforts to make a substantive reduction in GHG emissions must take place at the national level, and IPPNY would support the development of a properly structured national GHG program. Absent a comprehensive national program, the proposed legislation here in New York signals that investment should occur outside of our state and, instead, in other areas of the country where GHG reduction requirements are not in place.

Importantly, the EPAs GHG Tailoring Rule took effect on January 2, 2011, and the DEC has adopted its emergency GHG Tailoring Rule. The RGGI program, which took effect in 2009, is in the process of review earlier than the scheduled time period of 2012, even though CO_2 emissions in the RGGI region have declined 33 percent in large part due to the weakness of the economy. Also, the DEC has adopted its policies on Greenhouse Gas Emissions and the State Environmental Quality Review Act and on Climate Change and DEC Action. In addition, the New York State Energy Research and Development Authority (NYSERDA) has adopted a spending plan for the use of RGGI allowances auction proceeds to reduce GHG emissions across all economic sectors and fuel types.

Fundamentally, the legislation would increase costs on the states residents and businesses during extremely trying economic times. The cost impact of this program on the states already overburdened residents and business needs to be evaluated carefully, given that the bills program likely would expand upon the parameters of the RGGI program in which emitters are required to buy through an auction the emission allowances necessary for program compliance instead of receiving them without initial cost in the same manner as under other existing cap and trade programs. New York currently has among the highest electricity prices, which are a hindrance to businesses that are trying to create jobs and to residents struggling to keep them. Any increase in the price of electricity, the fuels needed to generate electricity or additions to the cost to conduct other business processes would exacerbate this economic distress.

The emission reductions proposed by the legislation must be studied from economic, cost, energy, and job impact perspectives. Among other matters, this analysis would need to identify how to mitigate specific county tax impacts for counties with higher industrial bases and impacts on local governments, local property taxes, and other disproportionate impacts. The bill should include provisions to track external emissions, so that New York can ensure that the legislation avoids negative economic, environmental, and competitive outcomes at the states borders. To the extent that the bill merely shifts fuel usage from in-state to out-of-state facilities, the impact of this bill on reducing actual carbon dioxide (CO_2) emissions will be diminished greatly.

Notably, New York State power producers already are reducing further the impact facility operations have on the environment. The DEC has adopted its Clean Air Interstate Rule to reduce significantly emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x). In addition, to reduce NO_x emissions even further, the DEC has adopted its Best Available Retrofit Technology (BART) Determinations Rule and has approved its Reasonably Available Control Technology for the Control of Nitrogen Oxides (NO_x RACT) Rule. The DEC also has promulgated its Clean Air Mercury Rule. Additionally, the DEC has policies on fine particulate matter (PM 2.5) and on environmental justice. Furthermore, the New York State Public Service Commission and NYSERDA are implementing the Renewable Portfolio Standard to increase the use of renewable energy sources and the Energy Efficiency Portfolio Standard to reduce electricity consumption.

An environmental benefit for New Yorkers that cannot be ignored is that, since 1999 and the implementation of competitive electricity markets, CO_2 rates have dropped 31 percent, SO_2 rates have declined 82 percent, and NO_x rates have been reduced by 62 percent in New York State. These reduced emission rates are a direct benefit of increased efficiencies spurred by the competitive energy market structure, in conjunction with increased environmental regulations.

Instead of requiring more untenable emission reductions, the state should focus on developing technologies and processes that will avoid, abate, mitigate, capture and / or sequester CO_2 and other GHG in a viable and economic manner. Most importantly, the requirements of this legislation will impact the diversity of fuels that power plants use to produce the electricity that New Yorkers rely upon every day and may reduce the availability of electric generating facilities in New York at the critical peak load times, thus resulting in electricity reliability problems. Additionally, New York should evaluate the impact of the GHG Tailoring Rule on reducing emissions through 2018 (the RGGI emission reduction period), before deciding to implement further emission reduction requirements. Furthermore, another RGGI program review should take place at the programs midpoint in 2015, especially to consider whether the status of the economy has improved and what other Federal action may have occurred by then.

Independent Power Producers Of New York

For the reasons stated above, IPPNY respectfully opposes the passage of A.5346.