

Memorandum in Strong Opposition of S.4315-C (Thompson) similar to A.11507-A (Sweeney) and A.7572-A (Sweeney)

June 21, 2010

S.4315-C (Thompson) similar to A.11507-A (Sweeney) and A.7572-A (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 nearly 75 percent of the electric generating capacity in New York.

IPPNY strongly opposes S.4315-C and A.11507-A and A.7572-A. The emission reductions required by these bills cannot be achieved, since emission control technologies are not available commercially in a cost-effective manner. In addition, New York currently has among the highest electricity prices, and the enactment of this legislation would increase costs on the states residents and businesses during extremely trying economic times. As a result, the bills 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.

The Senate bill codifies the Climate Action Council, originally established by Governor Patersons Executive Order #24. Nevertheless, this legislation is unnecessary, given that the Executive planning process has been underway for some time to create a Climate Action Plan by November 1, 2010. The Plan is to achieve to meet the goal of reducing greenhouse gas (GHG) emissions from all sectors in New York State by 80 percent below the levels emitted in 1990 by the year 2050.

Although addressing climate change is vitally important, this international issue requires more comprehensive solutions than New York is able to provide. IPPNY strongly supports the development of a properly structured national GHG program. These bills should not be enacted and should not pre-empt actions by the United States Congress and the Environmental Protection Agency (EPA) to control GHG emissions at the national level on an even playing field. Absent a national program, the proposed legislation in New York signals that investment should occur, instead, outside of our state in areas of the country where the GHG reduction requirements of these bills are not in place.

The bills would require the New York State Department of Environmental Conservation (DEC) to limit GHG emissions from all sources, without the flexibility of a regional cap and trade program. These limits would apply to all sectors within the state, as the DEC determines to be appropriate, 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.

The Senate bill makes only passing reference to the Regional Greenhouse Gas Initiative (RGGI), with which electric generating facilities already are required to comply. It took over six years to develop the RGGI program, which just took effect in 2009. The RGGI program requires power plant owners to stabilize carbon dioxide (CO2) emissions until 2015 and then to reduce them by 10 percent through 2018, even without the commercial and cost-effective availability of carbon capture and sequestration technology.

Yet, these bills now would require deeper emission reductions for all GHG emitting sources, as the DEC determines to be appropriate, including from sectors that are not subject to the RGGI program. Just as a start, the bills would require sectors to reduce emissions by 20 percent by 2020, which, as an example, would amount to an additional 10 percent reduction for electric generating facilities, above and beyond the RGGI program requirements, in only two years, regardless of whether an emission control technology ever becomes available.

Furthermore, emissions also would be reduced in by 40 percent on January 1, 2030. In addition, by January 1, 2030, the DEC, based on findings from the Climate Action Council and subject to public hearings, is required to make a recommendation to the Governor and the Legislature to enact a law, setting an enforceable limit on the aggregate level of greenhouse gas emissions from all greenhouse gas emission sources to be established on January 1, 2040 that maximizes the ability of the state to meet the statewide emission limit of an 80 percent reduction by January 1, 2050.

Instead of requiring untenable emission reductions for all sectors, the state should focus on developing technologies and processes that will avoid, abate, mitigate, capture and / or sequester CO2 and other GHG in a viable and economic manner. Otherwise, the requirements of this legislation may reduce the availability of electric generating facilities in New York at the critical peak load times and thus could result in electricity reliability problems.

IPPNY has put forth earnest and good faith effort to improve the legislation; however, our amendments have not been included and contained provisions, such as:

the addition of a safety valve that automatically would interrupt the implementation of emission reduction targets, in order to avoid the following detrimental impacts: (1) higher energy costs to consumers; (2) further impairment of the states economy, economic competitiveness, and increased job loss; (3) a lack of reliable energy supply and associated inadequate fuel infrastructure or the inability for electric generating facilities to be built, and (4) the inability for existing facilities to be reconstructed or expanded

-an improved structure to the legislation, based upon the existing Acid Deposition Control Act (Title 9 of Article 19 of the Environmental Conservation Law), which was enacted by New York State prior to the adoption of a Federal law and program (now embodied in the EPAs Clean Air Interstate Rules) for the control of emissions that result in acid rain; the measured and prudent approach of that law took into account the status of the enactment or adoption of a Federal law or program and required additional specific statutory authorization for the implementation of each long-term state emission reduction requirements, not just the final one. Given that these bills, in 2010, seek to establish emission reduction requirements for the next 40 years, regardless of the commercial and cost-effective availability of emission control technology, a regional approach based upon that existing law precedent would minimize the creation of competitive and cost disadvantages for New York, in relation to other areas of this country that are not subject to these bills requirements.

- establishing emission reduction targets by taking into account energy, economic, environmental and health factors and the commercial availability of emission control techniques in a cost-effective manner

-revising the effective date of the legislation specifically to state that the bills would not impact existing contracts; this component is necessary, given that this issue was the subject of litigation that affected the RGGI program and that a new program would be created by these bills.

-an orderly transition to a Federal program, when it is established

Importantly, New York State power producers already are reducing the impact that facility operations have on the environment. The DEC has adopted its Clean Air Interstate Rules to reduce significantly emissions of sulfur dioxide (SO₂) 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. Furthermore, the DEC has policies on fine particulate matter (PM 2.5), environmental justice, and GHG Emissions and the State Environmental Quality Review Act, and the agency has completed a public comment period on a DEC Commissioners Policy on Climate Change and DEC Action.

Additionally, the New York State Public Service Commission and the New York State Energy Research and Development Authority (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. Also, NYSERDA adopted a spending plan for the use of RGGI allowances auction proceeds to reduce GHG emissions across all economic sectors and fuel types.

For the reasons stated above, IPPNY respectfully and strongly opposes the passage of S.4315-C and A.11507-A and A.7572-A.