

Memorandum in Strong Opposition of A.11500 Rules (Brodsky, Cahill) / S.8254 (Craig Johnson)

June 18, 2010

A.11500 Rules (Brodsky, Cahill) / S.8254 (Craig Johnson) - AN ACT to amend the public service law, in relation to providing oversight and monitoring of the operations of an independent system operator

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 A.11500 / S.8254, which would undermine New York's highly successful competitive electricity market operated by the New York Independent System Operator (NYISO).

Specifically, the bills would authorize a commissioner of the New York State Public Service Commission (PSC) to oversee and monitor the NYISO's operations, even though the NYISO has been created pursuant to Federal law and approved by the Federal Energy Regulatory Commission (FERC). In addition to monitoring and providing oversight, the bill requires the NYISO to provide certain bid data that it currently is required by the FERC under its tariffs to maintain as confidential information.

The legislation also requires the PSC to prevent market manipulation and collusion by requiring the NYISO to disclose price bid data publicly with no more than a three-month delay. The legislation ignores the fact that an independent market monitor polices the wholesale electricity market to avoid market manipulation and that the NYISO already has changed the release of bid data from six months to three months.

The bills require the NYISO's Board of Directors to have appointments by the Governor and the Legislature. This language is poorly drafted and ambiguous in several places. The changes the bills seek to make to the NYISO's governance and operations need to be reviewed by the FERC and cannot be accomplished through unilateral action by and within New York State. The NYISO is not a state agency, and changes to its structure and functions should not be enacted by the Governor and the New York State Legislature.

The NYISO's wholesale power markets are governed by the Federal Power Act and FERC regulations, which pre-empt conflicting state laws. Moreover, unilateral action by the New York State on wholesale power markets would affect interstate commerce, which the Commerce Clause of the U.S. Constitution reserves to the United States Congress alone.

For the reasons stated above, IPPNY strongly opposes the passage of A.11500 / S.8254