

## **Memorandum in Strong Opposition to S.5641 / A.7017 and S.2764 / A.6321**

May 29, 2009

**S.5641 (Thompson) / A.7017 (Gianaris) - AN ACT to amend the environmental conservation law and the state finance law, in relation to the climate change solutions fund**

**S.2764 (Thompson) / A.6321 (Sweeney) - AN ACT to amend the environmental conservation law, in relation to establishing the climate change solutions program act**

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 both S.5641 / A.7017 and S.2764 / A.6321.** Remarkably, these legislative measures ignore the fact that the Board of Directors of the New York State Energy Research and Development Authority (NYSERDA) adopted on April 27, 2009 a plan for the use of allowance auction proceeds under the Regional Greenhouse Gas Initiative (RGGI). These bills now seek to reallocate those funds to a narrower audience for other purposes.

Specifically, S.5641 / A.7017 would establish a Climate Change Solutions Fund to contain proceeds collected from the RGGI auction. The bills would subject the disbursement of these monies to annual appropriation, as part of the New York State budget process. IPPNY is strongly concerned about unintended consequences for energy contracts, as funding for such contracts would become subject to the uncertainty of the annual budget process. The legislation will chill investment in projects, since the requirement for annual appropriation potentially could disrupt revenue streams upon which investors and developers would rely to finance and construct capital intensive energy projects.

Additionally, S.2764 / A.6321 would establish a Climate Change Solutions Program to allow the Commissioner of the New York State Department of Environmental Conservation (DEC) to make state assistance payments or financial assistance on a competitive basis only to municipalities, not-for-profit corporations, or electric utility customers, as applicable, toward the cost of projects under a Greenhouse Gas Emissions Reduction Program, a Renewable Energy Development Program, an Energy Efficiency Program, and a Clean Air Technology Program.

Importantly, the bills do not provide funding for the development of carbon capture and sequestration technology, which does not exist today and would be essential for the successful implementation of the RGGI program. Furthermore, the bills' definition of renewable energy development projects is inconsistent with the existing New York State Energy Law's definition of renewable energy resources, which has been in place since 1976. Under this law, renewable energy resources are defined as sources that are capable of being continuously restored by natural or other means or are so large as to be useable for centuries without significant depletion and include but are not limited to solar, wind, plant and forest products, wastes, tidal, hydro, geothermal, deuterium, and hydrogen. These bills' definition excludes hydro, all biomass including plant and forest products, waste, and nuclear, even though these resources are capable of being continuously restored by natural or other means or are so large as to be useable for centuries without significant depletion.

**For the reasons stated above, IPPNY respectfully opposes the passage of both S.5641 / A.7017 and S.2764 / A.6321.**

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