

Memorandum in Strong Opposition to S.2813/A.6694-A

May 29, 2009

S.2813 (Aubertine) / A.6694-A (Russell) - AN ACT to amend the public authorities law, in relation to establishing the North Country power authority, and providing for its powers and duties

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 S.2813 / A.6694-A. This legislation would establish a North Country Power Authority to generate electricity, among other powers, in a manner that is inconsistent with the competitive electricity marketplace by creating tremendous competitive disadvantages for private generating companies that do not have its tax-exempt financing ability with a state guarantee of non-impairment of its revenues. The Authority even would have a market advantage over other public power authorities, such as the New York Power Authority and the Long Island Power Authority, to the extent that those entities obtain their new power supplies primarily through competitive procurement instead of building new generation or condemning existing facilities.

Specifically, the bills would allow the North Country Power Authority to have a service area comprised of towns and villages throughout Franklin and St. Lawrence counties that are not served by another existing municipal electric utility. Among its powers and duties, the Authority would develop, acquire, construct, reconstruct, rehabilitate, improve and operate facilities for the generation of electric power. It also would acquire by purchase, by arbitration, or by eminent domain any existing facilities or other property to be used in connection with power generation by the Authority. Furthermore, the property of the Authority, its income and operations would be exempt from all taxation, assessments, and fees. These anti-competitive powers of the Authority would send chilling signals for new investment in the state.

New York State already has decided that private generating companies in the competitive marketplace should be the main source of power for energy consumers. The Comprehensive Reliability Plan of the New York Independent System Operator (NYISO) evaluates a range of proposed solutions to address electric system reliability needs identified in the Reliability Needs Assessment. A request for solutions to identified reliability needs is issued, with the expectation that market-based solutions will come forward to meet the identified needs. In the event that market-based solutions are not sufficient, the Comprehensive Reliability Planning Process provides for the identification of regulated backstop solutions. The NYISO then evaluates all proposed solutions to determine whether they will meet the identified reliability needs. However, the Authority would operate in contravention to this process by having the primary ability to build generation itself and to acquire existing generating facilities.

As one of the reasons for creating the Authority, the legislation states that the supplanting of investor owned, private, for-profit corporations by the Authority will result in an improved energy system and a safer, more efficient, reliable and economical supply of electric energy. The veracity of this supposition has not been tested or proven; however, the power supplies from the competitive electricity markets that would be displaced by the Authority's operation are paramount examples of a safe, efficient, reliable and economical supply of electric energy, as discussed in detail below.

In the electric industry, the competitive marketplace results in economic development, efficiency and electric system reliability. Competition has encouraged the development of a diversified generation fleet, increased generator availability and efficiency (resulting in a cleaner environment), and provided savings to consumers.

An environmental benefit for New Yorkers that cannot be ignored is the significant reduction in carbon dioxide (CO₂), sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emission rates. Since 1999, and the implementation of competitive markets, CO₂ rates have dropped 28 percent, SO₂ rates have dropped 77 percent, and NO_x rates have dropped 61 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.

Notably, in 2006, when electricity demand records were set three times in rapid succession in one summer, independent power producers continued to operate their facilities with unprecedented efficiency to meet the needs of consumers. Also, the entry of renewable generation in New York State has been spurred by the competitive market rules, with over 1,274 megawatts of wind-powered resources in existence.

Additionally, competition has shifted the risk of poor investment and operational decisions from the consumer to private company shareholders. Prior to competition, the consumer was at risk for poor investment and operational decisions, and, under the legislation, they would be required to bear the risk of the Authority's power generation-related decisions.

Furthermore, despite upward pressure on prices from record fuel prices, increased usage and additional government regulation, wholesale energy costs have decreased by 18 percent since New York's shift to competitive markets nearly a decade ago (when adjusted for fuel costs). Recently, the NYISO has reported that prices of wholesale electric energy in New York State have dropped to their lowest level since 2002.

To address our concerns about these bills, they should be amended to specify that the Authority would obtain its power and energy supplies through a competitive procurement process wherever feasible. The legislation also should state that the Authority would be able to develop, acquire, construct, reconstruct, rehabilitate and improve facilities for the generation of electric power or any connected service, through a non-rate-based subsidiary wherever feasible, to be called upon as a backstop only if market-based solutions obtained through a competitive procurement process are not available to meet a reliability need in a timely manner. Additionally, the bills should be changed to clarify that the Authority could acquire generation property by the exercise of the power of eminent domain only in instances of public use, benefit or purposes necessary for the Authority's incorporation wherein the public interest otherwise cannot be served and only if the Authority is unable to agree to terms of purchase. Furthermore, the operation of the Authority's subsidiaries should be subject to appropriate vertical market power considerations.

For the reasons stated above, IPPNY respectfully opposes the passage of S.2813 / A.6694-A.

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