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Gavin J. Donohue, *President &
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February 10, 2009

Senator Malcolm A. Smith
Temporary President and Majority Leader
New York State Senate
Legislative Office Building, Room 907
Albany, New York 12247

Dear Majority Leader Smith:

On behalf of the Independent Power Producers of New York, Inc. (IPPNY) and its Members, I appreciate the efforts of the New York State Senate to control costs faced by the state's businesses and residents, especially those related to energy prices here in New York. During your consideration of the points made by this letter, I ask that you continue to remember that increases in the cost of energy production directly translate to escalating costs for energy consumers, at a time when the state is seeking to improve its economic vitality and stabilize energy prices. Therefore, I strongly urge you to reject the Executive Budget proposal (Part K of S.60-A / A.160-A) that makes changes to the Empire Zones Program, which will increase taxes by an estimated \$272 million in State Fiscal Year (SFY) 2009-10 and by \$292 million in SFY 2010-11.

The governor's budget proposal would require existing eligible businesses, such as owners of electric generating facilities, to be reviewed in 2009. If they are de-certified, they will lose their Empire Zone benefits for 2008 and thereafter. New York State must not renege on contracts with already eligible companies. Existing certified electric generating facilities should continue to receive their program benefits, until their current certification term expires. For existing companies to be re-certified, they would need to provide at least 20 times as many benefits to the state as they receive from the state, and it is unclear what businesses will be able to meet this eligibility standard. Changing the program in this way mid-term would affect the real property taxes of existing businesses and the economics under which they operate. Existing eligible companies have made investment decisions based upon the availability of Empire Zone benefits, such as improving the efficiency of facility operations and reducing air emissions. The retroactive nature of this proposal is unfair and sends a chilling investment signal moving forward.

To make matters worse, the governor's proposal would exclude electric generating facilities from applying for future acceptance into the program. When these companies re-apply for program

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benefits, they should be eligible to participate in the program in the same manner as any other program participant. Empire Zone benefits should continue to be offered as incentives for the construction and / or expansion of all types of generating facilities. If not for Empire Zone Program benefits, existing generating facility owners would not have been able to move forward with facility development. Overall, independent power producers have invested more than \$10 billion to purchase, construct, and operate their facilities and well over \$30 million in their communities located throughout New York State. Additionally, they pay annual taxes of nearly \$300 million and employ more than 10,000 individuals across the state. Policies put forth by the state during these trying financial times will determine, in large part, if such investments can continue. Furthermore, denying generating facility owners access to Empire Zone benefits impairs the ability of companies to meet the governor's State of the State goals that would encourage investments to build and improve upon the statewide energy system, including energy generation. Additionally, denial of these benefits would impede the achievement of the governor's renewable energy target of having 30 percent of the state power supplies come from renewable energy resources by 2015.

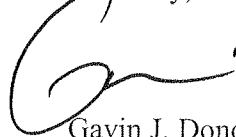
Success for New York's generators under the Empire Zone Program should not be measured solely by job creation but also by the aggregate assessment of employment, community investment, and taxes paid. In the electric generating sector, the sources of jobs often are broader than those at the facility alone. Besides the workforce required for routine daily operations, generating facilities employ significant levels of positions from local unions, as well as contractors and consultants for periodic maintenance outages and capital improvement programs and sectors. They also support jobs in the areas of railroad, fuel and equipment supply, because they are necessary component to electricity production. Additionally, generating facility owners provide reliable supplies of power for businesses and other energy consumers throughout the Empire Zones, supporting jobs in those sectors. In some instances, they provide an economic source of steam, essential to the operation of many businesses and other "thermal hosts," and enable these entities to create and maintain jobs. For example, facilities provide steam to Consolidated Edison, which supplies this resource to New York City.

We urge you to reject the governor's proposed changes to the Empire Zone Program, in order to spare affected businesses the associated large tax increase and to avoid adding to the cost of energy production and the resulting larger burden for energy consumers.

Thank you for your continued support.

Thank you!

Sincerely,



Gavin J. Donohue
President & CEO

CC: Senator Carl Kruger, Chairman of Senate Finance Committee
Senator Kevin Parker, Chairman of the Senate Committee on Energy and
Telecommunications
Patrick Curran
Marcy Palmer