



**Independent
Power Producers**
of New York, Inc. (IPPNY)

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Gavin J. Donohue, *President &
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January 27, 2009

Senator Malcolm A. Smith
Temporary President and Majority Leader
New York State Senate
Legislative Office Building, Room 909
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.

As you work on the Senate's budget resolution, I strongly urge you to reject the Executive Budget proposal (Part B of S.60-A / A.160-A), which stipulates that "the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity are not qualifying activities for a manufacturer." Last year, this language change was proposed by the Division of Budget (DOB), and the Legislature wisely rejected it.

According to the memo by the DOB, this budget change would increase Corporate Franchise Taxes by an estimated \$18 million in State Fiscal Year (SFY) 2009-10 and \$16 million in SFY 2010-11. For example, affected companies could be forced to pay approximately \$750,000 per year in incremental costs above and beyond what they pay today, which they cannot recoup through their bid price in the competitive electricity market.

DOB argues that this change would harmonize calculation of the Corporate Franchise Tax with other sections of the Tax Law that exclude electricity from a definition of a "good" that results from manufacturing. However, these other sections of law are in contradiction to a hearing decision by the Tax Appeals Tribunal. In 1992, the Tribunal held that "electricity has the

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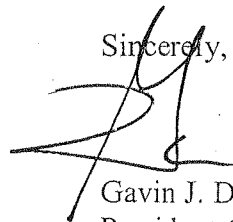
tangibility required to be considered a good." According to the Tribunal's decision, the New York Court of Appeals found that electricity is "the product of capital and labor and in this respect cannot be distinguished from ordinary manufacturing operations." In 1993, a law was enacted to contravene the Tribunal's decision. Unfortunately, the detrimental impact of the 1993 statute was compounded in the 2007 Enacted New York State Budget, which included similar language to that proposed by the governor this year to exclude generation and natural gas activities from the definition of manufacturer, without the prior knowledge of IPPNY.

It would be beneficial, if this year you were able to lead the New York State Senate in reaching agreement with the governor and the New York State Assembly to repeal the 1993 budget provision that excludes electricity from the definition of "good" and the 2007 budget language that removes electricity and natural gas activities from the definition of "manufacturer." If this approach is not feasible, at least, I request your assistance in ensuring that electricity generators and natural gas pipeline companies (and energy consumers as a result) do not incur another tax increase through the adoption of the governor's proposal for this year.

Thank you for your continued support.

Thanks!

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
Marcy Palmer