

Memorandum in Strong Opposition to A.7366 / S.5371

January 11, 2008

A.7366 (Gianaris) / S.5371 (Marcellino) - AN ACT to amend the environmental conservation law and the state finance law, in relation to creating the climate change solutions fund

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 A.7366 / S.5371. This bill would deposit into a fund revenues that would be derived from an auction of emission allowances under the Regional Greenhouse Gas Initiative (RGGI). This legislation is premature and makes references to a program and a process that currently does not exist in New York.

The bill would pre-empt the outcome of the RGGI, which has yet to be implemented by New York. The NYS Department of Environmental Conservation (DEC) and the NYS Energy Research and Development Authority (NYSERDA) have only just completed on December 24, 2007 the public comment process for their draft NYS rules. These state entities still are in the process of reviewing comments they received and deciding how the draft regulations should be changed.

In addition, it is generally agreed upon that efforts to make a substantive reduction in greenhouse gas emissions must take place at the national level, and Congress and the President may enact a national program to address climate change. It remains to be seen whether the draft rules of the DEC and NYSERDA or a federal program will be adopted prior to the effective date of this legislation; indeed, if the NYS RGGI program is adopted, it will not be implemented until 2009. Also, the allowance auction process has not yet been approved or established. In fact, an auction of allowances has never been done in New York, and it remains to be seen whether and when it can be implemented successfully.

Furthermore, the bill would subject the disbursement of yet-to-be-collected revenues 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 could become subject to annual appropriation. The legislation will chill investment in facilities, since the requirement for annual appropriation potentially could disrupt revenue streams (to the extent that they may be authorized by the RGGI) upon which investors and developers would rely to finance and construct these capital intensive energy projects.

For the reasons stated above, IPPNY respectfully opposes the passage of A.7366 / S.5371.