

Memorandum in Strong Opposition of A.7511 (Silver)

May 09, 2011

A.7511 (Silver) - AN ACT to amend the real property tax law and the administrative code of the city of New York, in relation to applications for tax abatements for industrial and commercial construction work on properties in a city of one million or more persons and to tax abatements for certain electricity generating facilities in such city

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.7511. This Governor's Program Bill #8 attempts to provide an "as of right" tax abatement program for a certain electric generating facility technology to be newly constructed within New York City. Although IPPNY consistently supports programs and legislation that create a more hospitable business climate in this state, unfortunately, IPPNY is forced to oppose the proposed legislation because the bill serves more as an ill-advised manipulation of the competitive market from which generating companies derive their revenues than as an incentive for companies to invest.

The bill's intent is driven largely by unsubstantiated and inflated claims of consumer price impacts resulting from a January 2011 order issued by the Federal Energy Regulatory Commission ("FERC") pertaining to the New York Independent System Operator ("NYISO") installed capacity demand curves for New York City. FERC issued its order following the triennial review of the NYISO demand curves, the outcome of which establishes the price of capacity paid to generating resources by reflecting costs likely to be incurred by new entrants into the competitive market.

For the first time since the expiration of the Industrial and Commercial Incentive Program ("ICIP") in 2008, which provided tax abatement "as of right" to new generation resources on a fuel- and technology-neutral basis, the demand curves under the FERC's January 2011 order correctly and accurately reflect the fact that a new resource will face a substantial cost in the form of property taxes (e.g. existing In-City generating facilities pay nearly \$100 million in property taxes annually). Given that the ICIP expired three years ago and an applicable tax abatement program similar to ICIP was not enacted over that period of time, FERC was left with no logical option other than to include the cost of property taxes within the demand curves. Unfortunately, this legislation now is a belated and flawed attempt to get FERC to remove the cost of New York City property taxes from the demand curves.

Of major concern, the bill narrowly defines eligible units as the peaking unit as defined within the NYISO tariff. In doing so, the legislation gives the impression that it is not intended to promote new investment in New York City but, instead, is seeking simply to reduce capacity prices by lowering the demand curves. In fact, language within the legislative findings states as much.

Another large flaw in the proposed legislation is the fact that the program will expire in four years. The short four year shelf life of this program is exactly the type of regulatory uncertainty that IPPNY has consistently opposed because the lack of certainty increases investor risks and adds costs to the development of new generation. FERC also is sensitive to the issue of regulatory uncertainty. By implementing an abatement program that essentially spans just one three year cycle of the demand curves, New York State is sending the signal that it is willing to take only the minimal steps necessary to reduce capacity prices without providing a long-term signal for investment.

Indeed, the legislation is drafted so narrowly, in terms of eligible technology and duration of the program, that it is abundantly clear that the bill's intent is to manipulate the process at FERC in hopes of convincing FERC to reverse its January 2011 decision on property taxes. Similarly, last year, the New York City Industrial Development Authority implemented a discretionary tax abatement program that applied to a very narrowly defined type of generating facility. FERC correctly identified the shortcomings of that program and dismissed it as a reason to eliminate property taxes from the demand curves. FERC likely may come to the same conclusion about this legislation.

This legislation should be crafted in a manner where its intention is not limited to extracting property taxes from the demand curves; instead, the bill should be drafted to provide actual incentives in a manner that ensures regulatory certainty for an array of diverse and efficient resources to invest in New York City. The bill should be changed to mirror the qualifications provided under the now-expired ICIP program, i.e. applicability to facilities in a fuel and technology neutral manner. This suggested change to the legislation is important because, if tax abatement is provided to only peaking units, developers will be discouraged from building efficient combined cycle plants, given that these efficient plants will be subject to significant property taxes while peaking units will be exempt from taxes. In the long run, consumers will be harmed because energy prices would not be as low as they otherwise would have been if combined cycle plants had been built.

IPPNY is willing to work with the Governor's Office and the Legislature to develop a comprehensive tax abatement program that will provide a true signal to investors that New York is attempting to create an environment welcoming to business.

For the reasons stated above, IPPNY respectfully and strongly opposes the passage of A.7511.