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Via e-mail to SEPCComments@nyserda.org

Mr. Thomas C. Congdon
Deputy Secretary for Energy
Chairman of the New York State Energy Planning Board
Office of the Governor
Executive Chamber
State Capitol, Room 245
Albany, New York 12224

Dear Mr. ^{Tom}Congdon:

On behalf of the Independent Power Producers of New York (IPPNY), I appreciate the opportunity to provide feedback to the State Energy Planning Board and the Energy Coordinating Working Group on the Draft State Energy Plan ("Draft Plan"). As you are aware, IPPNY submitted a whitepaper (http://www.ippony.org/files/pdfs/WhitepaperFinal_Nov08.pdf) providing specific recommendations to the State Energy Planning Board on important areas that the State Energy Plan (Plan) must address. Although I recognize that the Draft Plan is a guide to the ultimate direction the Plan will take and not a vehicle to communicate the specifics surrounding potential policies, I remain strongly concerned that a number of our industry's key issues will not be addressed at all -- much less satisfactorily -- in the Final 2009 State Energy Plan, that is scheduled to be published in December 2009.

A primary focus of the State Energy Plan is maintaining the adequacy and reliability of critical systems and infrastructure and sustaining an environment capable of attracting reasonably priced capital to support necessary investments. IPPNY is encouraged that the Draft Plan contains provisions that will support and help achieve that primary focus by: (1) acknowledging the importance of competitive markets and competitive solicitations for the acquisition of new supply, (2) supporting the re-enactment of a fuel-neutral power plant siting law, and (3) continuing the state's support of renewable energy programs.

With regard to the importance of competitive markets, IPPNY recommended that the Draft Plan affirm a commitment to the ongoing development of the competitive wholesale energy market structure, as the most appropriate approach to satisfy the long-term needs for reliability of energy supply for the benefit of consumers in New York State. Importantly, as IPPNY has asserted in

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the past, the Draft Plan notes that, as long as markets are competitive, the uniform clearing price auction provides the most efficient result. Additionally, the document appropriately states that New York's competitive electricity market model provides an economic incentive to power plant operators to run as efficiently as possible. The Draft Plan recognizes that, since the inception of competitive markets in 1999, New York's gross heat rate has decreased 21 percent, indicating a continuing improvement in the overall efficiency of the state's electric generation.

However, IPPNY recommends that the primary focus of the State Energy Plan could better be achieved by further clarifying provisions of the Draft Plan, through actions such as:

- 1) Remove contradictions about the role of nuclear power in the state's energy future by supporting the continued operation of the state's existing nuclear fleet and encouraging the prudent development of facilities in the future.
- 2) Include a more cumulative evaluation of all environmental regulatory programs affecting the energy sector and their impacts on energy policy, including cost, reliability, fuel diversity and economic development.
- 3) Make a top priority the enabling of a private sector company to demonstrate a carbon capture and sequestration (CCS) technology project in this state.
- 4) Articulate more clearly how the state will maintain and enhance fuel diversity, in concert with the state's proposed actions for addressing the impact of climate change.
- 5) Identify incentives for the appropriate repowering of facilities and provide vehicles to achieve repowering.
- 6) Clarify the timetable and methodology for accomplishing the changes to facility operations that are envisioned by the Draft Plan, while at the same time developing needed supplies of natural gas and ensuring energy system reliability.
- 7) Make clear that the wisdom of and need for Canadian power imports and any other related activities need to be evaluated as part of the New York Independent System Operator's (NYISO) Comprehensive System Planning Process.

Nuclear Power

IPPNY is pleased that fuel specific policies are incorporated into the Draft Plan; however, IPPNY continues to feel that the state fails to embrace the potential benefits of its nuclear resources.

IPPNY continues to stress that nuclear energy provides reliable, virtually emission-free baseload power. It is, therefore, imperative that the Energy Plan supports the ongoing operation of the state's existing nuclear facilities, in addition to encouraging the development of additional nuclear resources to allow the state to achieve its economic, energy and environmental goals including its climate change initiatives. It is clearly our concern that the state fails tremendously

to recognize the huge negative impact that the closure of nuclear facilities, such as Indian Point, would have on the state. Closing such a facility would be counter-productive to reaching the state's environmental, economic, and reliability goals.

According to the Draft Plan, the state has begun to identify the potential impacts associated with the possible closure of Indian Point and the infrastructure needs that would be necessary to maintain system reliability standards in that event. The Draft Plan clearly states that not extending the license of the Indian Point Energy Center would result in, "tradeoffs, including higher electricity prices and CO₂ emissions." Inexplicably, the Draft Plan contradicts itself by simultaneously touting the benefits of nuclear generation while also describing the state's opposition to the license renewals of Indian Point Units 2 and 3, a facility that reliability studies conducted by the NYISO have demonstrated is essential for maintaining electric reliability to downstate residents.

In other words, the state is making a recommendation that will result in greater emissions, increased energy prices and less reliable service. For example, according to a major study last year prepared by the Westchester Business Alliance (representing a cross-section of business, real estate and construction organizations), closing Indian Point will result in the price of electricity in the region increasing over 150 percent. In addition, replacing Indian Point with even the most efficient fossil fuel-based power plant (should such an option even prove to be viable from an infrastructure standpoint, a notion which the Draft Plan itself questions) likely will create a significant rise in carbon dioxide (CO₂) emissions, a 19 percent jump in nitrogen oxide (NO_x) emissions, and an 11 percent hike in sulfur dioxide (SO₂) emissions. In the New York City region, Indian Point's 2,000 megawatts (MW) of clean electricity account for as much as 40 percent of the regional energy supply. In addition, the Indian Point facilities are required to meet the electricity needs of consumers in Southeastern New York. According to the NYISO's 2009 Reliability Needs Assessment (RNA) Report, the unexpected retirement of one of the two Indian Point nuclear power plant units would cause an immediate and severe violation of reliability standards, if additional resources were not brought on line in time to replace these megawatts. The RNA also found that, if a major nuclear unit was lost, it would compromise the ability to fulfill Regional Greenhouse Gas Initiative (RGGI) goals, because New York would not have sufficient allowances to operate the program successfully.

Regulatory Uncertainty

IPPNY always has expressed the importance of regulatory certainty, in terms of attracting needed infrastructure investment to New York. Regulatory certainty is an overarching concern for all businesses and industries, and, to the extent that the State Energy Plan can help provide regulatory certainty, it would be a positive step towards meeting future energy needs.

The Draft Plan recognizes that regulatory uncertainty will impact the future of the state's infrastructure, especially in areas such as the authority to site generation as well as environmental requirements and the associated cost of compliance. However, although it states that the need to eliminate or minimize such uncertainties is an appropriate state policy objective, the Draft Plan fails more specifically to address the requirements of the governor's Executive Order #2 for a cumulative evaluation of all environmental programs affecting the energy sector

and their impacts on energy policy, including cost, reliability, fuel diversity and economic development.

IPPNY had recommended that the Draft Plan set a clear, long-range direction that balances environmental policy with energy and economic development initiatives. IPPNY continues to emphasize that the full assessment required by the governor's Executive Order #2 is crucial for the future development of sound environmental, energy, and economic development policies. IPPNY urges the State Energy Planning Board to focus its attention on the cumulative impacts that result from the layering of these regulatory initiatives on the electricity industry and, most importantly, the increased cost of and potentially decreased reliable supply of energy for the state's businesses and residents. The NYISO's 2009 RNA demonstrates the potential adverse impacts of such initiatives on the reliability of the New York system. Prior to the adoption of the Final State Energy Plan, the Issue Brief, "Environmental Impact and Regulation of Energy Systems," must be improved to comply fully with the parameters of the governor's Executive Order #2 and to inform the State Energy Planning Board about the full and cumulative impacts of existing and planned environmental regulatory initiatives on the state's fuel diversity and energy system reliability.

Facility Siting

As we go forward in New York, we will need to repower some of our existing generating facilities and build new facilities of all fuel types. Any effort of this magnitude faces many significant challenges. To that end, a comprehensive and efficient fuel-neutral generating facility siting law is an important component to allow New York to do so.

New York's previous siting statute expired at the end of 2002. The current process for the siting of generating facilities is governed by the State Environmental Quality Review Act ("SEQRA") under Article 8 of the New York Environmental Conservation Law. While the previous siting statute was in place, SEQRA governed the review of generating facilities less than 80 MW; now, SEQRA applies to all sizes of generating facilities. SEQRA necessitates support of the locality in which the facility would be built, in order for the facility to complete the regulatory review process. The previous statute had allowed the Siting Board to waive the application of local requirements to the facility siting project, if the Board found that those requirements would be unreasonably restrictive in light of the need to build facilities to meet the state's energy needs. It is clear that, without the renewal of a workable siting statute, the ability of needed facility projects to complete the siting process is too uncertain.

IPPNY is pleased, however, that the Draft Plan indicates, in an effort to reduce regulatory uncertainty, that the following key provisions be included in comprehensive electric generation siting law: a one-stop siting process that combines state and local authorizations into a single approval; a time-certain framework for rendering a decision on an application; authorization to over-ride the application of unreasonably restrictive local laws; opportunities for extensive public input; and the availability of intervenor funding for expert witnesses and consultants.

Carbon Capture and Sequestration (CCS) / Coal

The Draft Plan indicates that the successful demonstration of CCS technology in New York, as an operationally and economically viable means to mitigate coal generation greenhouse gas impacts, could allow New York to retain coal in its generation mix in a way that is consistent with the state's greenhouse gas emission reduction goals. The Draft Plan also acknowledges that various environmental control technologies have been added to the state's coal facilities to meet increasingly stringent environmental regulations.

IPPNY maintains that, due to the state's access to ample supply of relatively less expensive coal, existing economic and environmentally compliant coal facilities should remain part of the state's generation portfolio. Among the recommendations advanced by IPPNY to preserve and enhance fuel diversity, as CO₂ targeted environmental initiatives move forward, was for the Plan to foster the development of CCS technology to enable facilities, such as those powered by coal, to remain in the state's fuel mix.

The Draft Plan mentions that, in June of 2008, Governor Paterson announced \$6 million in seed funding for an advanced CCS demonstration project in Jamestown, New York. In support of New York's greenhouse gas emission reduction goals, the Final State Energy Plan must make a top priority enabling a private sector company to demonstrate a CCS technology project in this state, and the state should provide sufficient resources to complement private sector funding to ensure the success of this technology. The Draft Plan does note the importance of enacting legislation that addresses CO₂ pipeline siting and CO₂ injection to facilitate the demonstration of CCS, and IPPNY strongly supports this legislation, the adoption of which by the state is essential.

Renewable Energy

As IPPNY had advocated in its comments to the New York State Public Service Commission (PSC), the Draft Plan recommends that the Renewable Portfolio Standard (RPS) program continues to receive full funding going forward. Specifically, the Draft Plan affirms that the first challenge to achieving the governor's goals for renewable energy is to extend funding authorization for new Main Tier solicitations.

IPPNY has suggested that New York State Energy Research and Development Authority should offer multiple solicitations each calendar year to enhance certainty in the renewable energy market and to reflect better the decision-making cycle of the renewable energy industry. IPPNY is pleased that the Draft Plan embraces the need for enhanced certainty in the renewable energy market through the scheduling of regular solicitations for Main Tier procurements. Indeed, since 2000, New York State has seen the addition of over 1,975 MW of wind power to the grid and a new, state-of-the-art wind forecasting monitoring system and the state now seeks to attract additional renewable energy resources (defined correctly by the Draft Plan consistent with New York State Energy Law).

While much progress has been made toward the RPS goal, additional mechanisms for attracting in-state renewable energy development can be utilized further. For instance, purchase power

agreements could be enhanced to continue progress in achieving renewable energy goals. As we move forward, reliability considerations must be addressed, including the potential need for load following facilities.

Natural Gas

IPPNY urged that the State Energy Plan recognize the need for adequate and diverse sources of natural gas supply and improved infrastructure, such as new or expanded natural gas pipelines and new sources of liquefied natural gas. According to the Draft Plan, modeling results show that most of the interstate pipelines serving New York now are operating at or near full capacity on a peak day, and it is expected that in 2018 there will be unmet peak day demand. Accordingly, the Draft Plan recommends natural gas pipeline expansions to improve supply and deliverability of natural gas to markets in New York in an environmentally acceptable manner.

Even though demand for natural gas is expected to grow, the Draft Plan notes that siting and building new incremental infrastructure will continue to be difficult. Natural gas infrastructure investments face several obstacles, making it clear that actions need to be taken soon to overcome barriers to getting facilities sited and to have adequate natural gas to meet future needs. IPPNY agrees that more must be done to attract this vital investment.

Dual-Fuel Capability

On the subject of natural gas, the Draft Plan notes that enhancing pipeline delivery capacity in the downstate area would allow for conversion or repowering of power plants from oil to natural gas, while also meeting core gas demand needs. It seems to encourage the repowering of dual-fueled facilities to operate on natural gas, and IPPNY urges that the Plan provide greater clarity on suggestions in this area.

Also, the Draft Plan states that, for the most part, electric generating facilities rely upon interruptible natural gas service, which entitles generators to utilize available capacity when it is not needed to serve customers with firm contracts. It recognizes that many generators have dual-fuel capability, allowing them to burn an alternate fuel, typically distillate fuel oil, during times when natural gas supplies are limited. Also stated is that many of the older existing baseload generation facilities, particularly in New York's downstate region, use natural gas with residual fuel oil as backup fuel. As long as adequate units that are dual-fueled exist, alternate fuel is available, and generators are permitted to use it, the Draft Plan indicates that reliance on interruptible services represents an efficient utilization of assets.

However, the document observes that, during peak winter months, customers with firm capacity contracts may require the entire available capacity, leaving no pipeline capacity for electric generators and other interruptible customers. It also admits that, at present, the electric generation sector increasingly is reliant on natural gas for a number of reasons. And, as the Draft Plan continues to underscore, the reliance of electric generation on natural gas, coupled with the reliance on interruptible services for the delivery of that gas, raises reliability concerns regarding the adequacy of the natural gas infrastructure to support electric generation requirements.

Furthermore, the Draft Plan notes that, during times of peak gas system demands, electric reliability could be impaired if the ability of generators to burn alternate fuels is hindered, because not enough units have alternate fuel ability or alternate fuel is not available due to either supply or environmental limitations. It states that this reliability concern could deepen, as some of the older dual-fuel units are repowered with newer units fueled only with natural gas.

As a result, IPPNY urges amending of the document to clarify further the timetable and methodology for accomplishing the changes to facility operations that are envisioned by the Draft Plan, while at the same time developing needed supplies of natural gas and ensuring energy system reliability.

Facility Repowering

In order to facilitate the construction of new or repowered generating units, where they are economically warranted, the Draft Plan notes that an effective siting law may help. In addition, it indicates the state's support for the use of repowering and replacement of existing units with new facilities, when such actions can be justified by their reliability, economic and environmental benefits. It encourages the facilitation of the repowering and replacement of existing energy systems to reduce overall actual emissions and environmental impacts, particularly in potential environmental justice communities. The Draft Plan encourages the repowering of the state's oldest facilities, by creating permitting review assurances or other incentives for funding and programs.

IPPNY strongly recommends that the PSC work with the NYISO, the New York State Reliability Council and market participants to determine what market-based price signals are needed to provide incentives for the repowering of facilities to modern, state-of-the-art generation that meet New Source Performance Standards. The market-based solutions to encourage repowering could be in the form of: (1) non-discriminatory Request for Proposals (RFPs) open to both repowered and new resources, regardless of technology, (2) market-based credits (similar to the REC market) or incentives through a Low Emission Efficiency Production Portfolio Standard, or (3) long-term contracts. IPPNY would support the initiation of a PSC proceeding to consider how to achieve these objectives, as they apply to the attraction of clean and efficient new generation. IPPNY urges that the Draft Plan be amended to recommend the commencement of such a proceeding.

Canadian Imports

The Draft Plan discloses that New York has been engaged in discussions with Ontario and Quebec to identify feasible opportunities for importing more renewable electricity into New York. The focus to date has been on identifying technical expansions of existing transmission rights-of-way for moving more power from Canada and upstate New York to the downstate region, where supplies are tighter and prices are higher.

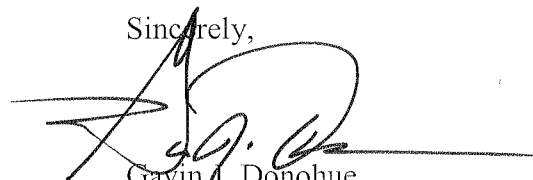
Indeed, the New York Power Authority (NYPA) has stated publically that it is exploring opportunities to develop New York's transmission system and utilize its resources and capabilities to advance renewable energy development in New York State. NYPA has noted that

opportunities exist to bring additional hydroelectric power from Canada into New York State, if the appropriate transmission capacity is made available.

As a result, the document must be amended to make clear that the wisdom of and need for NYPA actions in these areas or any other related activities must be evaluated as part of the NYISO's Comprehensive System Planning Process. If this NYISO process determines that the state requires additional resources, NYPA should issue a RFP to meet those needs. Market participants, including in-state independent power producers, as well as those from Canada, could reply to such an RFP or otherwise make private investments in the context of the competitive market, instead of NYPA or the state taking unilateral action to upgrade the transmission system or to otherwise import power from Canada.

In conclusion, IPPNY thanks the Board for the opportunity to provide input on the Draft State Energy Plan. IPPNY's members recognize the huge undertaking that led to its development. Overall, IPPNY supports the goals of the Energy Plan, although much work still needs to be done. As an Association, we feel that the Draft Plan appropriately addresses some of our priorities. However, it does not recognize properly the cost impacts of certain recommendations that are included and also fails, in some areas to fulfill the intent of the Plan, as outlined in the governor's Executive Order #2. The recommendations put forth by IPPNY in these comments will assist in meeting the state's future energy needs, and we urge the State Energy Planning Board to incorporate them into the Final State Energy Plan. If you have any questions or need additional information, please contact me.

Sincerely,



Gavin J. Donohue
President & CEO

CC: Members of the State Energy Planning Board
Members of the Energy Coordinating Working Group