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Gavin J. Donohue, *President & Chief Executive Officer*

Via email to jrk@nyscrda.org and to SEPComments@nyscrda.org

July 11, 2011

Mr. Francis J. Murray, Jr.
President & CEO
State Energy Plan Draft Regulations Comments
NYSERDA
17 Columbia Circle
Albany, NY 12203-6399

Dear President ^{Frank} Murray:

On behalf of the Independent Power Producers of New York, Inc. (IPPNY), I appreciate the opportunity to provide comments to the State Energy Planning Board ("Board") on the 2013 State Energy Plan Draft Regulations ("Draft Regulations") that outline the conduct of the state energy planning process as guided by the enabling statute, Article 6 of the Energy Law.

As you are aware, IPPNY is a not-for-profit trade association representing the independent power industry in New York State. IPPNY's members are 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. These companies produce over 70 percent of New York's electricity using a wide variety of generating technologies and fuels such as hydro, nuclear, wind, coal, oil, natural gas, energy-from-waste, and biomass. All of the views expressed in IPPNY's comments do not necessarily represent the positions of each of our members, some of whom may submit comments on their own.

While IPPNY is supportive of the energy planning process in New York State, we want to make sure it is done effectively and efficiently. We understand the importance of participating in this process and providing the necessary information to do so, but our members are concerned that a number of the information requests in the Draft Regulations are not only unworkable, but also unnecessary and overly burdensome to our industry. Article 6 of the Energy Law does not authorize or require the level of detail and specificity of the information requested in the Draft Regulations, nor can we identify a policy or strategy that could be affected, for example, by the profits and losses of a specific merchant power plant. Company-specific data should be requested only to the extent that it is needed to develop policy.

Board of Directors

AES-NY, LLC ■ Astoria Energy, LLC ■ Brookfield Renewable Power ■ Brooklyn Navy Yard Cogeneration Partners
Calpine Corporation ■ Constellation Energy ■ Covanta Energy ■ Dominion ■ Dynege, Inc. ■ Entergy Nuclear Northeast
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Additionally, the Draft Regulations note that “the Board shall make every effort to obtain relevant information under this Subchapter C from entities that are members of the Board, including the Bulk System Operator, before requiring filings from major energy suppliers.” This caveat is important, as much of the information requested by the Draft Regulations is publicly available that the Board can retrieve from other sources. The information requests made to energy suppliers would be duplicative of what they already file with other agencies and entities.

Enclosed is an outline of the requirements specific to major electricity suppliers—the section affecting our members—and our objections to these information requests.

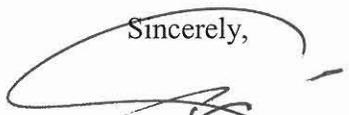
On a related matter, S.3914-A (Maziarz)/A.5318 (Cahill) passed in both houses this year. This legislation includes a provision for a single comprehensive submission from industry groups and trade associations in place of submissions by individual member companies; this requirement could place an untenable burden on trade associations such as IPPNY. If “in place of” is intended to impose the collection and submittal of such company-specific information through entities like IPPNY, then this language creates an impractical and unworkable situation. I am not sure how the language in this legislation coincides with the reporting requirements for state energy planning purposes. Specifically, it is unclear if the information to be collected by the Board pursuant to Section 7856.2 of the Draft Regulations should be done through the associations instead of from the individual members. I urge NYSERDA to clarify the applicability and scope of this specific provision in the legislation as part of these regulations.

Moreover, because the collection of company-specific and even industry-specific information, data, facts, trends, etc. is not the primary function of a trade association, it is unreasonable to encumber a trade association with the collection and submittal of such information. In fact, IPPNY does not require such information from its member companies as a condition of membership, and IPPNY has no authority to compel any company to provide such information. At best, IPPNY could provide some types of information in the aggregate, but could not verify or certify the completeness or accuracy of such information. Importantly, however, we would not provide any confidential or company-specific information that would be submitted more appropriately by individual IPPNY members at their discretion. Any confidential or proprietary information collected would need to be protected; to the extent that the information gathered may be needed for energy planning purposes, it should not be made public.

In conclusion, much of the information requested by the Draft Regulations is not germane to energy planning policy, not required by the energy planning law, and available from other sources. We ask that any additional requested information be in the aggregate, and not unit specific, and that all confidential business information be protected.

Thank you for your consideration of our comments, and we look forward to working with you as the State Energy Planning process continues.

Thank you!

Sincerely,

Gavin J. Donohue
President & CEO

Enclosure

IPPNY objections and recommendations to certain items in the NYSERDA State Energy Planning Board Draft Regulations' information requirements

Section 7856.5 Contact list. *At the request of the Board, all major energy suppliers shall provide a company name, a contact person, and such contact person's address, phone number, and electronic mail address and, at the discretion of the Board, the number of current employees. The contact person shall be a person who is authorized to represent and act on behalf of the major energy supplier for purposes of complying with the requirements of this Chapter.*

Objection: While providing the information of a contact person at the company is appropriate and expected, we are concerned about the request for the number of current employees, as we are not sure how this information is germane to creating energy policy in this state, and it is not required explicitly by the statute.

Section 7856.6 Workforce Development. *The Board may require the submission by major energy suppliers of labor market information, including but not limited to labor market characteristics such as jobs, staffing patterns, skill requirements, earnings, career ladder opportunities, occupational trends and labor supply/demand assessment, in order to inform the coordination of energy policy and workforce development activities, and to ensure that the operation and necessary expansion of the energy sector is not inhibited by a shortage of skilled workers.*

Objection: Again, we do not see how this information is relevant to energy planning. In addition, this request seems to be something that would be more appropriately handled by the Department of Labor, as this workforce development information would be its domain.

Part 7857- Electric Plans (Including Information Requirements)

Most importantly, this section (7857.1) lists the General Filing requirements “applicable to major energy suppliers and any other entity from which the Board deems appropriate to collect such information, including but not limited to the Bulk System Operator.” These requirements most directly affect our members and are the area of greatest concern. Once again, much of this information can be retrieved from other sources such as the NYISO, PSC, DEC, or others. Many of these requirements are overreaching and unnecessary, and the extra effort by generating companies to compile data available elsewhere is burdensome, counterproductive, and contrary to the regulation’s stated intent to obtain information first from available other sources. Our issues with some of these specific requests for information in this section are detailed below:

Section 7857.2-a

(13) average annual heat rate unit (Btu per kWh) while burning each different fuel type, and including an average heat rate for the year burning all fuels;

Objection: It is unfeasible that a generating company would be able to provide such specific information. Additionally, it is hard to see how this data would be relevant to the energy planning process.

(14) the net electricity generated (megawatt-hour) monthly by fuel type and the total annual net energy generation (megawatt-hour);

Objection: The annual net electricity generated is publicly available in reports such as the Load and Capacity Data Book (“Gold Book”) published annually by the NYISO. Because the Gold Book identifies each generating facility by fuel type, this information can be

culled from that report. Given that annual capacity factor information is provided individually for each generating facility in New York, a monthly breakdown is unnecessary and unduly burdensome.

(15) *unit availability (total hours, dates and times of operations) for electric generating;*
Objection: This information is confidential.

(16) *fuel consumption (in both physical units and Btu) by fuel type for each month, separately reported for the unit and any back up boiler;*
Objection: This request is excessive and asks for too high a level of detail.

(17) *for each unit:*

- i. Weighted average fuel cost by type;*
- ii. Operating costs by type;*
- iii. Revenues by type (energy, capacity, ancillary services)*

Objection: Our members find this requirement to be a complete nonstarter. No reason exists for private companies to have to report these costs and revenues. The information is not required by the Energy Planning Law and is irrelevant to developing policy.

(22) *total tons of oxides of sulfur, oxides of nitrogen, carbon dioxide, and particulate matter released, if any;*

(23) *total pounds of mercury released, if any;*

(24) *emission rates for oxides of sulfur, oxides of nitrogen, carbon dioxide, particulate matter, and mercury in pounds per MMBTU of fuel consumed by the generating unit, if applicable;*

(25) *If applicable, once through cooling water usage, as follows: (1) if the water source is a river, such usage shall be measured as intake flow as annual average gallons per day and as a percent of river flow (based on minimum average seven consecutive day, ten-year flow); and (2) if the water source is a lake or ocean, such usage shall be measured in gallons per year.*

(26) *If applicable, a tabular summary identifying each emission control measure for a particular pollutant currently installed on the unit or planned to be installed, including, for each control measure and pollutant, the associated:*

- i. control efficiency, including estimated pre-control and post-control emission rates (in lbs/MMBTU);*
- ii. installation date of emission control measure;*
- iii. remaining useful life of existing emission control measure;*
- iv. initial cost and annual operating expenditures associated with emission control measure; and*
- v. heat rate penalty.*

Objection: These requests (22-24) are environmental requirements that can be obtained from filings at the DEC. In addition, reporting of any emissions reductions in greenhouse gases (GHG) or other emissions achieved by the facility (e.g. avoided landfill emissions) also should include the separation of biogenic and fossil, and well as methane. As such, item (22) should include “biogenic carbon dioxide, fossil carbon dioxide, and methane (including fugitive emissions).” All three primary GHGs (CO₂, CH₄, and N₂O) should be included in the list of emissions as appropriate. Items 26 (iv) and (v) are intrusive and unnecessary.

(27) For natural gas-fired projects:

- i. natural gas supply/transportation contract start and end dates; name of pipeline(s) and its delivery service terms, including the maximum daily deliveries, the number of days that the maximum daily deliveries is available during the year, whether firm or interruptible basis, and seasonal allocation, if any, name of supplier and the amount of natural gas consumed from in-state production, if known;
- ii. local distribution company delivery service terms, including the maximum daily deliveries, the number of days that the maximum daily deliveries is available during the year, whether firm or interruptible basis, and seasonal allocation, if any; and
- iii. natural gas consumption for natural gas received directly from interstate natural gas pipelines.

Objection: This information is commercially sensitive, confidential, and is unnecessary and irrelevant to the planning process.

(28) For each generation unit which has obtained required Federal or State permits, but which has not yet commenced operation, the following information in a tabular summary may be requested:

- iv. station and unit name and/or numbers;
- v. location (town, county and state);
- vi. the contact person and/or organization, address and phone number;
- vii. the principal owner of the station and unit;
- viii. type of unit;
- ix. fuel type;
- x. resource size (MW);
- xi. status of resource (e.g., under construction/development, under licensing/review);
- xii. target in-service date; and
- xiii. storage capacity for any fuels stored onsite.

Objection: For this information, we are not sure to which permits the Draft Regulation are referring. If filings were made for permits, the NYISO or DEC would have this information. Permitted but offline projects are recorded in the NYISO's interconnection queue, which is publicly posted on the NYISO's website under the planning page and updated periodically throughout the course of the year.

We also are proposing the addition of an item (29) in this section to address reporting of any emission reductions and/or carbon offsets, greenhouse gas or otherwise, achieved and/or generated by the project, to read:

(29) If applicable, any emissions reductions and/or carbon offsets, greenhouse gas or otherwise, achieved and/or generated by the project."

Section 7857.2-d

(d) The Bulk System Operator shall provide the following data on the markets it administers:

(i) the net electric energy generated monthly in megawatt-hours by fuel type and the total annual net energy generation in megawatt-hours for each unit participating in the BSO markets;

(ii) revenues paid by service type (e.g., energy, capacity, ancillary services) to each unit participating in the BSO markets; and

(iii) such information as the Board may request to confirm or augment information supplied by major electricity suppliers.

Objection: As stated above, such unit-specific information is excessive and unnecessary for planning purposes. Instead, the NYISO could provide information on an aggregate basis by ISO zone.

Part 7862 Biogas, Biofuel and Biomass Plans.

a(2) the total volume(s) and prices of biogas, biofuels and biomass, by product, annually produced or processed in New York State and intended for in-State and out of State sale for the planning period;

Objection: This item should be amended to add that for energy suppliers, the reporting requirements should include, as appropriate, the use(s) or disposal method(s) for biogas, biofuels, and biomass and associated greenhouse gas emissions if not used for energy.

Part 7863 End-Use Energy Efficiency, Renewable and Emerging Technology Plans.

The Board, or the Chair as authorized by the Board, from time to time, may require the submission by major energy suppliers and energy service companies and any other entity that the Board deems appropriate to collect information, such as the annual capital, installation, and operational cost per kW and conversion process efficiency, on end-use energy efficiency, renewable and emerging technologies, including but not limited to emerging energy technologies; energy efficiency services, technologies and methodologies; and commodity, end use, and/or customer-sited energy services and technologies, such as renewable energy equipment installations, and distributed generation.

Objection: Information requirements related to renewable energy and the collection of information for annual capital installation and operation costs should be obtained from NYSERDA, or on an aggregate basis from the PSC or the NYISO. These information requirements are also excessive and unnecessary.