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Gavin J. Donohue, *President &
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Via e-mail to SEPCComments@nyscrda.org

Mr. John Williams
Director, Energy Analysis
New York State Energy Research Development Authority
15 Columbia Circle
Albany, NY 12203

Dear Mr. Williams:

The Independent Power Producers of New York, Inc. (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. The companies produce over 75 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.

On behalf of IPPNY, I welcome the opportunity to provide feedback to the State Energy Plan Coordinating Working Group on the Draft Scope (Scope) for the 2013 New York State Energy Plan (Plan). IPPNY appreciated meeting with you and the other members of the Working Group to provide our initial feedback, and this letter expounds the points that we raised in that gathering. Overall, IPPNY supports the Scope's provisions, and our comments offer suggestions for further refinements to the framework.

I. Competitive Markets

Consistent with the adopted 2009 State Energy Plan, IPPNY recommends that the Scope reaffirm the need for a commitment to the ongoing development of the competitive wholesale energy market structure as the best approach to satisfy the long-term needs for reliability of energy supply. Importantly, the Scope should reaffirm the strong support of the 2009 Plan for the

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uniform clearing price auction as the most appropriate vehicle to encourage efficient operation of existing facilities and investment into new facilities with lower operating costs. Additionally, the Scope should recognize that new capacity investment should arise from either market signals or, if public policy goals dictate, through competitively issued solicitations.

Utilities and public authorities should stay out of the generation business. The state should continue to view the utilities, the New York Power Authority (NYPA) and the Long Island Power Authority (LIPA) as generation suppliers of last resort and call upon their resources only in instances where independent power producers cannot provide energy supplies needed for electric system reliability. The state should continue to expect utilities, NYPA and LIPA to obtain supply from the competitive markets and through the ongoing issuance of Requests for Proposals (RFPs). Additionally, the state should require the issuance of RFPs for the sale of generation assets owned by utilities and public power authorities to independent power producers.

II. Energy System Reliability

The State Energy Planning Law requires the Plan to improve the reliability of the state's energy systems and to minimize impacts related to climate change. IPPNY supports the Scope's indication that the Plan will:

- Contain an overview of New York's energy systems, including an evaluation of future energy and infrastructure requirements and costs, supply options, and system reliability needs; and
- Evaluate how to meet the state's energy needs, by assessing: (1) generation infrastructure, options to modernize aging infrastructure, and impacts of siting new infrastructure; (2) effects on the grid's reliability as it adapts to changing needs, technologies, markets, and policies; (3) fuel diversity, the development of alternative energy resources, and system upgrades; as well as (4) infrastructure needs, costs, and impacts associated with the development of energy storage.

Furthermore, IPPNY emphasizes that the Plan needs to provide a blueprint for how energy system reliability will be maintained, especially while greenhouse gas (GHG) emissions are reduced. The roadmap should specify the important role of baseload power sources, such as nuclear energy, to complement increased supplies of renewable energy resources. An essential element of this pathway is to encourage the repowering of existing facilities. Repowering is important because of the resulting economic and environmental benefits and the reuse of existing electric system infrastructure. Central to maintaining reliability is the development and implementation of carbon capture and sequestration (CCS) technology, given that approximately 70 percent of the state's generating capacity is powered by fossil fuels. In addition to embracing low-emitting baseload power sources, the state's plan for maintaining reliability must encourage the development of energy storage facilities.

A. Nuclear Power

The Scope intends that the Plan would review areas such as: (1) the contribution of the existing nuclear fleet in meeting New York's energy requirements; (2) relicensing issues; (3) nuclear technology development; as well as (4) issues associated with the siting and construction of nuclear plants. IPPNY supports these provisions.

Additionally, IPPNY continues to stress that nuclear energy provides reliable, virtually emission-free, baseload power. Therefore, the Plan must support the ongoing operation of the state's nuclear facilities. The state fails to recognize that the closure of nuclear facilities, such as Indian Point, would be counter-productive to reaching the state's goals for maintaining energy reliability and addressing climate change. Shutting down nuclear facilities would have a huge negative impact on energy consumers, the environment, and the economy.

B. Repowering

The Scope should support the repowering and replacement of existing units with new facilities when such actions can be justified by their reliability, economic and environmental benefits. IPPNY suggests that this category be added to the Scope.

As included in the Power Supply and Delivery Group's recommendations for the Draft Climate Action Plan, IPPNY urges that the New York State Public Service Commission (PSC) work with the New York Independent System Operator, 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 meets New Source Performance Standards. The market-based solutions to encourage repowering could be in the form of: (1) non-discriminatory RFPs open to both repowered and new resources, regardless of technology; (2) market-based credits (similar to the renewable energy credit market) or incentives through a Low Emission Efficiency Production Portfolio Standard; or (3) long-term contracts. IPPNY recommends that the Scope include provisions for the initiation of a PSC proceeding to consider how to achieve these objectives.

C. Carbon Capture and Sequestration/Coal

The Scope notes that the Plan will examine topics such as: (1) the contribution of the existing coal-fired generation fleet in meeting New York's energy requirements; (2) markets for coal; and (3) issues related to existing coal-fired generation, emerging trends, and alternatives to conventional coal generation, including the use of advanced coal technologies and CCS. IPPNY agrees with this aspect of the Scope.

As environmental initiatives that target carbon dioxide (CO₂) move forward, IPPNY underscores the importance of the maintaining fuel diversity. The Scope should recognize the need to develop CCS technology, enabling facilities to remain in the state's fuel mix.

The Scope should recommend that the Draft Climate Action Plan include a more specific path and timetable for the development and use of CCS technology for all types of fossil-fueled

facilities through methods such as RFPs and power purchase agreements. A top priority of the Plan must be enabling a private sector company to demonstrate a CCS technology project, and the Plan should identify sufficient state resources to complement private sector funding. Additionally, IPPNY supports the adoption of legislation that provides a regulatory framework for CCS technology.

D. Renewable Energy

IPPNY agrees with the Scope's plans for utilizing renewable energy resources and suggests the inclusion of more specific provisions regarding municipal solid waste as part of the review of the Renewable Portfolio Standard (RPS). The adopted 2009 State Energy Plan defined renewable energy resources consistent with the New York State Energy Law. Since 1976, this law has specified that renewable energy resources include (but are not limited to) solar, wind, plant and forest products, wastes, tidal, hydro, geothermal, deuterium, and hydrogen. The 2013 Plan should adhere to this definition.

The Scope should specify that energy-from-waste (EfW) is a renewable energy technology that is to become eligible under the RPS program, consistent with Covanta Energy's petition to the PSC. Given the goal of reducing methane emissions, energy recovery should be identified as a GHG-mitigation tool for those wastes remaining after recycling. Notably, EfW is recognized internationally as a GHG-mitigation technology. Even if New York's recycling rate tripled, EfW still could provide the state with 2.3 million baseload megawatt-hours per year, which is enough electricity for 200,000 homes. In addition to providing baseload power, EfW would reduce GHG emissions by 3 million tons of CO₂. Throughout its petition, Covanta details further how EfW is a GHG-mitigating, renewable-energy-generating, and recycling-compatible technology. As a result, EfW should be given full RPS eligibility and parity with other technologies such as landfill gas.

E. Energy Storage

The enactment of Chapter 6 of the Laws of 2011 was a great step to foster further investment by independent power producers in energy storage technologies. As recommended by the Power Supply and Delivery Group's suggestions for the Draft Climate Action Plan, this law includes batteries within the definition of "alternate energy production facility." However, the state needs to quantify further the amount of energy storage and traditional back-up generation necessary to maintain electric system reliability in relation to the Climate Plan's policies for the increased use of intermittent renewable energy resources.

III. Regulatory Uncertainty

IPPNY agrees with the Scope's intention to explore the effect of government action (legislative, regulatory, policy, and public-private partnerships) and increased energy system reliability on the state's efforts to attract new businesses, foster job growth and innovation, and increase access to capital. The Plan should recognize that regulatory certainty is essential to obtaining needed infrastructure investment.

Executive Order #2 of 2008 required the 2009 Plan to include “assessments of state environmental policies and programs, which impact the state’s development and implementation of energy policy and programs.” However, the adopted 2009 Plan’s Issue Brief, *Environmental Impact and Regulation of Energy Systems*, fails significantly to accomplish this directive. Instead of analyzing the cumulative impact of the layering of the regulations of the New York State Department of Environmental Conservation (DEC) on fuel diversity and energy system reliability, the document simply recites the provisions of existing programs.

In addition, Executive Order #25 of 2009 established a Regulatory Review and Reform Program to reduce unnecessary costs and inefficiencies, improving the state’s economy while maintaining appropriate protections for public health, safety and welfare. However, the DEC’s evaluation of its regulations identified only five regulatory areas (two of which had expired and already were replaced with other programs) for amendments, despite numerous public comments on the onerous nature of many other DEC regulations.

Consistent with the state policy objectives of eliminating or minimizing regulatory uncertainties and balancing environmental policy with energy and economic development initiatives, the Scope should acknowledge the need for a comprehensive and cumulative evaluation of all environmental programs affecting the energy sector and their impacts on energy policy, including cost, reliability, fuel diversity, as well as economic development. IPPNY urges the Working Group to amend the Scope to include an assessment of the cumulative impacts that result from the layering of DEC’s regulatory initiatives on the electricity industry and, most importantly, on the increased cost of, and potentially decreased reliable supply of, energy for the state’s businesses and residents.

IV. Facility Siting

In an effort to reduce further regulatory uncertainty and to foster investment in repowered facilities and new ones of all fuel types, the Scope should specify the importance of reenacting a comprehensive, efficient, and fuel-neutral generating facility siting statute. New York’s previous siting law (Article X of the Public Service Law) expired at the end of 2002. While that statute was in place, the State Environmental Quality Review Act (SEQRA) governed the review of generating facilities less than 80 megawatts; now, SEQRA applies to facilities of all sizes. SEQRA necessitates local support for the facility to complete the review process. The previous siting statute had allowed the Siting Board to waive the application of local requirements to a siting project if the Board found those requirements would be unreasonably restrictive. Without the renewal of a workable siting statute, the ability of facility projects to complete the siting process is too uncertain.

Since the expiration of the previous siting statute, the DEC has promulgated regulations to control emissions of nitrogen oxides, sulfur dioxide, mercury, and CO₂. Yet, power plant siting proposals have included provisions to require additional reductions for each of these emissions. The Plan should recognize that a reenacted power plant siting law would review facilities under these existing emission reduction requirements.

V. Natural Gas and Dual-Fuel Capability

IPPNY concurs with the provisions of the Plan's assessment of subjects such as: (1) system reliability needs; (2) supply sources, including those in the United States, New York (Marcellus Shale and other geologic formations), and Canada, as well as the reliability, price, economic, and environmental impacts from the production of natural gas from these sources; (3) the interdependency of the electricity and natural gas systems and the contribution that liquefied natural gas and biogas can make to meeting total energy needs; (4) the state's natural gas infrastructure; as well as (5) the regulatory, cost, and other implications of developing and siting infrastructure and new supply sources.

IPPNY observes 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. 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. Many older existing baseload generation facilities, particularly in New York's downstate region, use natural gas with residual fuel oil as a backup. As long as an alternate fuel can be used by these dual-fueled units, the Scope should recognize that reliance on interruptible services represents an efficient utilization of assets. The Scope also should affirm that an adequate natural gas infrastructure is needed to support electric generation requirements.

VI. Use of Allowance Auction Proceeds under the Regional Greenhouse Gas Initiative (RGGI)

The Plan will identify strategies for increasing the use of low carbon energy sources, carbon mitigation, and adaptation measures in the energy sector while discussing existing and proposed policies and their potential impacts on New York. Additionally, the Plan will analyze energy and climate policies and programs, which are current or proposed at the local, regional, and Federal levels, and their impacts on achieving the state's energy goals. IPPNY supports these elements of the Scope.

According to the RGGI Model Rule, the proceeds of the CO₂ allowance auctions are to be targeted to promote and implement programs for energy efficiency, direct mitigation of electricity ratepayer impacts, renewable or non-carbon emitting technologies, innovative carbon emissions abatement technologies with significant carbon reduction potential, and for reasonable administrative costs. However, disappointingly, according to the RGGI program's recent report on the investment of CO₂ allowance auction proceeds, revenues across the RGGI region have been used for programs in the areas of energy efficiency (51.6 percent), state deficit reduction (17.4 percent), direct energy bill assistance (14.4 percent), renewable energy (10.7 percent), program administration (4.8 percent), and other greenhouse gas reduction measures (1.1 percent).

On June 21, 2010, the New York State Energy Research and Development Authority (NYSERDA) adopted its *Operating Plan for Investments in New York under the CO₂ Budget Trading Program and the CO₂ Allowance Auction Program*. IPPNY recommends that the Scope call for NYSERDA's plan to be amended to provide more resources for the support and

development of technologies, such as CCS and renewable energy, which reduce CO₂ emissions directly. Currently, NYSERDA's plan provides only \$15 million over three years for renewable energy programs and a scant \$9 million over the same period for the development of CCS technology, even though the Operating Plan assumes that approximately \$446.2 million in auction proceeds are to be received from the sale of New York's CO₂ allowances at the regional RGGI auctions during the December 2008 through March 2012 timeframe. Furthermore, New York State has refused to provide any funding for non-carbon emitting technologies, which were understood during the development of the RGGI program at the regional level to include nuclear energy activities.

VII. Why are bills high, when wholesale electricity costs have declined over the last ten years?

Policymakers, as well as the public, need to better understand the bills paid by energy consumers and the nature of any escalating costs. The Scope should call for the Plan to evaluate the cost drivers of electricity bills, given that wholesale electricity prices have declined dramatically since competition in the electric industry began over a decade ago. The Plan should include an easily understandable explanation of energy cost drivers and a differentiation between competition in the wholesale and retail arenas and the PSC's regulation of utility costs.

The Plan also should examine the role of taxes and fees in consumer energy bills. Indeed, the impact of the savings from market efficiencies has been diminished by rising taxes, fees and assessments on electricity. New York's power industry overall paid an estimated \$6.367 billion in state and local taxes, assessments and fees in 2009. Importantly, for the independent power producer sector, generators already pay annual taxes of over \$600 million and invest more than \$50 million in their communities.

In conclusion, IPPNY thanks the State Energy Plan Coordinating Working Group for the opportunity to provide input on the Scope, and IPPNY's members recognize the huge undertaking that is involved in the Plan's development. Overall, IPPNY supports the Scope's goals, although some work still needs to be done. The recommendations put forth by IPPNY in these comments will assist in meeting the state's future energy needs, and we urge the Working Group to incorporate them into the Scope. If you have any questions or need additional information, please contact me.

All the
Best,

Sincerely,

Gavin J. Donohue
President & CEO

CC: Members of the State Energy Plan Coordinating Working Group