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

April 9, 2008

Hon. Jaclyn A. Brillig  
Secretary  
State of New York  
Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

Dear Secretary Brillig:

Please find enclosed one original and five copies of IPPNY's comment's in Case 07-M-0548, the Energy Efficiency Portfolio Standard, which Judges Eleanor Stein and Rudy Stegemoeller have requested be filed by April 10<sup>th</sup>.

Sincerely,

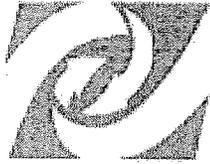


Gavin J. Donohue

Enclosure

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# Independent Power Producers of New York, Inc.

Gavin J. Donohue  
*President & CEO*

April 9, 2008

Honorable Eleanor Stein  
Honorable Rudy Stegemoeller  
Administrative Law Judges  
New York State Public Service Commission  
Empire State Plaza, Agency Building 3  
Albany, New York 12223-1350

**Re: Case 07-M-0548 – Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard**

Dear Judges Stein and Stegemoeller:

On behalf of the Independent Power Producers of New York (IPPNY), I submit this letter of comment, in reply to your request for input dated March 20, 2008. In that ruling, Your Honors asked parties to file initial briefs that address only the following four issues and indicated that parties will be provided further opportunities to brief the remaining policy issues necessary for the overall design of an Energy Efficiency Portfolio Standard (EEPS). In particular, Your Honors requested that parties comment upon:

- (1) the updated Staff Fast Track suite of programs filed March 25, 2008, as well as the Staff presentation at the March 5, 2008 Technical Conference, the NYSERDA Fast Track proposal, and any other Fast Track proposals that have previously been submitted;
- (2) the policy rationale for authorizing utility administration of energy efficiency programs in the broader context of the EEPS proceeding, including the reasons identified in the February 11, 2008 Straw Proposal: "Utilities can bring access to end-use customers, especially mass market customers, an ability to leverage outside funding through on-bill financing, and the potential to integrate energy efficiency with overall energy resource planning." Parties may also brief the advisability of the PSC establishing periodic energy efficiency targets for each utility;

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- (3) whether the program cost and bill impact figures presented in the Technical Appendix to the Straw Proposal represent a reasonable estimate of the overall cost of those elements of the 15 x 15 initiative to be achieved through utility ratepayer-funded programs and on-bill financing; and
- (4) the advisability of allocating in advance energy efficiency targets and funding among NYSERDA and each utility, as per the Straw Proposal.

IPPNY is pleased to provide the comments below on the first two issues that Your Honors identified. We do not have detailed comments at this time on the other two issues. In particular, IPPNY's comments are indicated below on the following two subject areas:

**1. The updated Staff Fast Track suite of programs filed March 25, 2008, as well as the Staff presentation at the March 5, 2008 Technical Conference, the NYSERDA Fast Track proposal, and any other Fast Track proposals that have previously been submitted**

**A. *IPPNY would like to comment on one issue raised by both the PSC Staff Report dated August 28, 2007 and NYSERDA's Proposal dated September 10, 2007.***

According to these two proposals, funding to cover expansion of energy efficiency efforts could come from a number of sources, such as funding obtained through the Regional Greenhouse Gas Initiative's (RGGI) auction of carbon dioxide (CO<sub>2</sub>) allowances. However, the Straw Proposal proposed by Your Honors on February 13, 2008 rightly focuses the EEPS Proceeding on attaining the overall statewide 15 x 15 target by focusing on NYS Public Service Commission (PSC) jurisdictional issues and on the use of System Benefits Charge (SBC) monies. IPPNY urges Your Honors to continue to focus on funding sources that are previously and specifically approved under the jurisdiction of the Commission to provide funding for the EEPS Program.

Indeed, as IPPNY continuously has argued, it is, at best, premature to target revenues from RGGI for use by this proceeding. RGGI monies are not available, because the program has not been finalized and the allowance auction has not been established or conducted. Specifically, the New York State Energy Research and Development Authority's (NYSERDA) RGGI Allowance Auction Draft Rule has not yet been adopted, and the allowance auction parameters (structure, frequency, participant inclusion, and other elements) have not yet been determined by a New York process. Therefore, yet-to-be-obtained RGGI revenues present an unstable funding source for energy efficiency projects. In addition, the use of RGGI monies also will impact energy consumer costs and cannot be thought of as way to supplant realistically costs for energy consumers that arise from the use of the SBC for energy efficiency.

Furthermore, according to NYSERDA's Draft Rule, another stakeholder process (separate from this proceeding) would be conducted to determine the allocation of funds raised through the auctions. It is inherently risky at this stage to rely on the success of the auctions (the auction of

CO<sub>2</sub> allowances under RGGI has never been attempted) prior to their final development and implementation and before the NYSEERDA process determines the revenue disbursement. Not until these processes are completed and the auctions are functioning should RGGI even be considered as a reliable source of funding.

***B. IPPNY would like to comment on an issue raised by the PSC Staff in relation to peaking facilities.***

The PSC Staff's March 25 filing notes that, regarding environmental justice, "New York City's dirtiest power plants, which burn oil and tend to be located in poorer neighborhoods and operate just about 100 hours a year during the summer's hottest periods, account for a significant portion of the City's greenhouse gas emissions because they release three to five times more pollution than gas-fueled base units. Staff met with representatives of environmental justice communities in New York City at a Regional Customer Roundtable in this proceeding. Those representatives emphasized the need to eliminate use of these dirty plants. From this perspective, flattening the City's load shape would be a highly desirable achievement. It may be possible to target energy efficiency and demand reduction efforts that can realize that objective. Also, it may be possible to focus programs to those communities most affected by the adverse environmental effects of electricity and natural gas production, delivery, and use. To do so, however, study is needed to identify the most appropriate strategies and approaches, which would require more time than is available if the fast track programs are to be implemented quickly. The Commission directed that environmental justice be considered in the development of the EEPS program. Staff recommends that this issue be fully investigated in the longer-term EEPS program planning process."

At this point, IPPNY is encouraged by the March 25 PSC Staff filing, to the extent that the PSC Staff points to the importance of energy efficiency as a means to reduce emissions associated with the operation of generating facilities. IPPNY has urged state agencies to give highest priority to aggressively examining strategies, such as energy efficiency and demand side management programs, which can reduce emissions without risking system reliability. As discussed above, New York still is working on its RGGI Rule, and the NYS Department of Environmental Conservation (DEC) also separately is developing a Greenhouse Gas Performance Standard. Furthermore, the DEC is working on its High Electric Demand Day (HEDD) Initiative to address nitrogen oxide (NO<sub>x</sub>) emissions from facilities that operate typically on the hottest days of the year. IPPNY continues to urge the parties, including the DEC, to focus its efforts in the direction of energy efficiency, instead of requiring additional emission reductions at facilities that could result in electric system reliability problems. As another example of this troublesome facility emission reduction approach, at the March 5 Technical Conference, IPPNY was dismayed to learn that the 15 x 15 Initiative is contemplating reaching the program's goals through additional measures focused on generating facilities. IPPNY is concerned that a detailed proposal by PSC Staff has been developed without input from generators. Specifically, the PSC Staff described its proposal for 1,000 MW of generation having a capacity factor of 40 percent to be upgraded to or retired and replaced by generation with a capacity factor of 60 percent.

However, the replacement of units needs to make sense for a company from both financial and regulatory perspectives. Companies cannot economically justify the replacement of a unit that runs only a small amount of time. The capacity factor of many generating units is low, and capacity factors are determined by the amount of time that the New York Independent System Operator (NYISO) calls upon the unit to operate and not necessarily by the inherent efficiency of the unit. Revenues that result from low run times are not likely to cover the large debt that will be incurred to replace the unit. IPPNY especially is concerned that the untimely loss of units could result in the degradation of efforts to maintain system reliability at the very time that these units may be most needed to protect public health (e.g. air conditioning) and public safety (e.g. lighting).

IPPNY also is concerned about the practical regulatory ability of facilities to be repowered or replaced, as contemplated by the PSC Staff. A major issue is the lack of a power plant siting process to enable the repowering of these facilities in a predictable and cost-effective manner, without the imposition of requirements that make these facility changes difficult. In order for the 15 x 15 Program and other initiatives to succeed, generators need access to regulatory processes that enable, instead of discourage, the replacement of facilities.

***C. IPPNY would like to comment on an issue raised by the PSC Staff Proposal in regards to natural gas energy efficiency programs.***

The PSC Staff Proposal indicated that “staff recommends that interruptible sales and transportation customers of LDCs be exempted from mandatory participation in energy efficiency programs. Many of these customers are dual-fueled, with their alternative to natural gas being oil. Any increase to natural gas rates could cause them to burn more oil, which would result in higher greenhouse gas emissions. In addition, part of the margin resulting from sales to interruptible customers flows back to firm ratepayers and has the effect of reducing bills for firm customers. An increase in natural gas costs to interruptible customers could result in reduced margin from these customers and increased bills for firm customers. Interruptible customers could, however, be given the option to participate in energy efficiency programs if it makes economic sense for them and does not cause them to simply switch to oil.” Furthermore, in its March 25, 2008 filing, PSC Staff indicated that, in regards to its fast track programs, the “staff continues to recommend exempting customers of gas utilities that take interruptible sales service and/or interruptible transportation service from mandatory participation in energy efficiency programs, since many of these customers are dual-fueled (natural gas and oil).”

IPPNY agrees with the intent of the PSC Staff and with Your Honors’ Straw Proposal, which rightly indicates that “electric generation service will be excluded from all calculations, and electric generation customers will neither contribute toward, nor participate in, the program.” Indeed, as IPPNY had advocated in prior PSC proceedings, if the Commission decides to impose a SBC on natural gas customers, it should exempt customers that burn natural gas to produce electricity. It would be counterproductive to impose a SBC on the gas burned by electric generating facilities because the charge would merely be passed through to retail electricity customers, resulting in higher electricity rates to consumers. In a large number of hours, gas-

burning electric generating facilities are the marginal suppliers in the wholesale electricity markets administered by the NYISO, and, during times when they are on the margin, set the energy price that all electric generating facilities receive and electricity consumers must pay.

Imposing a SBC on the gas burned by electric generating facilities would result in electricity consumers being charged twice by the SBC, once via the SBC that is applied to retail electric bills and another time in the additional costs consumers pay for electricity when gas-burning units are on the margin.

**2. The policy rationale for authorizing utility administration of energy efficiency programs in the broader context of the EEPS proceeding, including the reasons identified in the February 11, 2008 Straw Proposal: "Utilities can bring access to end-use customers, especially mass market customers, an ability to leverage outside funding through on-bill financing, and the potential to integrate energy efficiency with overall energy resource planning." Parties may also brief the advisability of the PSC establishing periodic energy efficiency targets for each utility**

IPPNY's comments on the EEPS to date have discussed the importance of competitive procurement in relation to obtaining the program's energy efficiency services. For example, the NYS Renewable Portfolio Standard (RPS) and SBC Programs carefully were designed to employ an approach that would support competitive markets through the Requests for Proposals (RFPs) as issued by NYSERDA, an independent entity not otherwise engaged in the markets as a participant itself. Under this approach, utilities, energy service companies, the New York Power Authority, the Long Island Power Authority, and any other providers of energy efficiency services or installers of energy efficiency measures can compete with each other on a level playing field to provide the best, innovative, and most cost-effective opportunities to reduce electricity demand.

IPPNY is pleased that Your Honors' Straw Proposal indicates that the design of the EEPS will integrate competitive procurement into the program's administration and implementation. NYSERDA will administer energy efficiency block RFP programs, available through competitive procurement, to non-utility and non-NYSERDA energy efficiency providers including ESCOs, nonprofits, community organizations, and vendors of emerging technologies. Each utility will be responsible for achieving the energy efficiency target for its service territory, and contractors implementing utility-administered programs will be selected through competitive procurement. Each utility program will include a provision for measures to be administered by ESCOs, nonprofits, community organizations, and vendors of emerging technologies.

Furthermore, IPPNY would like Your Honors to clarify that utilities in the New York City area would be treated the same as utilities and other market participants in the rest of the state on a level playing field. Indeed, as discussed at the March 5 Technical Conference for this proceeding, the City of New York and Con Edison indicated that competitive procurement would be used Downstate to obtain energy efficiency services, and they did not identify any instances where this would not be the case.

IPPNY appreciates that Your Honors are listening to our concerns and urges Your Honors to continue to incorporate our recommendations into your decision-making process under this proceeding. IPPNY looks forward to continuing to work with Your Honors and the parties to this proceeding, and we appreciate your taking the time to review and act on our comments. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gavin J. Donohue", written over a horizontal line.

Gavin J. Donohue  
President & CEO