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Energy Companies File Lawsuit to Overturn Illegal Handout to Nuclear Power

Illinois Law Will Distort Federal Energy Auctions and Interfere in Wholesale Electric Power Markets in Clear Violation of Federal Law

(CHICAGO, IL) —Fighting an illegal and unfair payment scheme to prop up two uneconomic nuclear plants in Illinois, a coalition of energy companies filed a lawsuit today against the Illinois Power Agency and the Illinois Commerce Commission challenging the *Future Energy Jobs Act* (“FEJA”) in federal court in Chicago. The suit challenges the recently enacted state law which establishes a zero emissions credit (“ZEC”) program to alter the revenue paid to certain uneconomic in-state nuclear generators through out-of-market payments estimated to be \$235 million per year over ten years, paid by Illinois citizens and businesses to Exelon, the sole beneficiary of the ZEC program.

The suit highlights that the massive corporate bailout for two nuclear power plants is an illegal transgression by the State into federal regulators’ territory in an attempt to save power plants that, allegedly, can no longer compete successfully in the federally regulated wholesale electric power market.

“Bailing out uneconomic power plants is a bad deal for Illinois ratepayers, who will see their electric bills go up across the State,” said Jonathan Schiller, a managing partner of Boies, Schiller & Flexner, attorneys for the plaintiffs. “This is also illegal because the State’s scheme interferes with the Federal Energy Regulatory Commission’s jurisdiction over wholesale electric rates, and unlawfully interferes with interstate commerce.”

“In a unanimous decision the U.S. Supreme Court struck down similar laws in Maryland. The *Hughes* decision clearly stated subsidies tied to wholesale power market prices – such as ZECs – are plainly illegal. The ZEC program is designed to allow Illinois to take actions that directly affect the wholesale electric market in an attempt to replace the federally regulated market prices with costs determined by the State instead. The credits are directly tied to the Illinois nuclear plants’ participation in interstate energy markets, and are unconstitutional as a result,” said Schiller.

The lawsuit was filed in the Northern District of Illinois, Eastern Division, and plaintiffs are the Electric Power Supply Association (EPSA), Dynegy Inc., Eastern Generation, LLC, NRG Energy, Inc., and Calpine Corporation.

A copy of the complaint can be accessed at www.epsa.org.

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