

Lawsuits: IL 'zero emissions credit' system unconstitutionally rigs electricity market for Exelon (/stories/511082482-lawsuits-il-zero-emissions-credit-system-unconstitutionally-rigs-electricity-market-for-exelon)


Jonathan Bilyk (/author/jonathan-bilyk) Feb. 14, 2017, 6:59pm

Two months since Illinois lawmakers and Gov. Bruce Rauner signed off on a bailout bill they said was needed to ensure the viability of two Exelon nuclear electricity plants, two lawsuits filed in federal court have challenged the constitutionality of the legislation, alleging the law effectively rigs in Exelon's favor wholesale electricity generation and supply markets, resulting in a windfall estimated to be worth at least hundreds of millions of dollars for Exelon over the next 10 years, paid for by Illinois businesses and households.

On Feb. 14, two groups of plaintiffs – one which includes Illinois household and business electricity customers and another which includes an electricity generation trade association and some of Exelon's rival power generation companies – filed separate complaints in the U.S. District Court for the Northern District of Illinois in Chicago, asking the court to invalidate the portions of the Illinois law they say oversteps the state's constitutional bounds and stacks the market in Exelon's favor.

Named plaintiffs in the power suppliers' lawsuit include the Electric Power Supply Association, Dynegy Inc., Eastern Generation LLC, NRG Energy Inc. and Calpine Corporation. Plaintiffs in the consumer complaint include the Village of Old Mill Creek, of Lake County; manufacturer Ferrite International Company, of Wadsworth; business Got It Maid Inc., of Highland Park; and four individual electricity consumers from Chicago and the Illinois communities of Riverside, Highland Park and Havel.

Named defendants in the lawsuit include either the Illinois Power Agency or its director, Anthony Star.

 lawsuits stem from the December 2016 passage of the state legislation, now known as Illinois Public Act 099-0786. Among other provisions, the law restructures certain aspects of the state's energy efficiency programs, as well as calling for greater use of energy from renewable sources, such as wind and solar power.

The lawsuits, however, take aim at the provision mandating the Illinois Power Agency obtain "zero emissions credits" (ZEC) for electrical utilities ComEd, an Exelon-owned power distributor, which covers northern Illinois, and Ameren Illinois, which serves central and southern Illinois, solely from "certain nuclear-fueled generating plants" over the next 10 years.

The lawsuit said the law is crafted in such a way that those credits can only be obtained from Exelon's Quad Cities and Clinton power plants. And the costs of those credits will be passed through ComEd and Ameren directly to Illinois electricity customers, the lawsuit said.

The increased cost may cost typical Illinois households using about 1 Megawatt hour of electricity per month an additional \$2.64 per month. But the new ZEC system would be considerably more costly for energy-intensive businesses. A manufacturer who may use 10,000 MWh of electricity could be hit with an increase of \$26,400 per month, the lawsuit alleged.

The lawsuits argued the ZEC system oversteps the state's constitutional authority to regulate electricity markets, as the state's ZEC mandate would upset wholesale supply and generation markets which are regulated as interstate commerce by the Federal Energy Regulatory Commission. Specifically, the lawsuits alleged the ZEC system would guarantee price premiums for two Exelon plants of more than 70 percent, paid for by Illinois electricity customers, on each MWh of power sold.

The power suppliers' lawsuit estimated each MWh of electricity generated by the Quad Cities and Clinton plants would fetch payments of \$34.50-\$41.50 in 2017, compared to \$18-\$25 other suppliers in the same location could earn.

The credit amounts are expected to change over the next 10 years, based on wholesale power capacity and prices.

The lawsuits said such premiums will disrupt the functioning of markets under which suppliers currently bid for electrical supply production and capacity rights, usurping federal supremacy and harming consumers and market competition.

The "ZEC program was enacted for political reasons in an attempt to save jobs and property tax revenues at the subsidized generators," the power suppliers' lawsuit said. "Illinois' attempts to preserve local industry from the rigors of interstate competition are prohibited by the (U.S. Constitution's) Commerce Clause.

"Although all nuclear facilities connected (to the state's power distribution networks) are purportedly eligible to apply for ZEC subsidies, the procurement criteria have been rigged so that only Clinton and Quad Cities may be selected as the 'winning bidders,'" the power suppliers further alleged.

Both lawsuits have asked the court to block the ZEC provision from taking effect on June 1, and to declare the law unconstitutional.

The electricity customer plaintiffs are represented in their action by attorneys Paul G. Neilan, of Highland Park, and Patrick N. Giordano, of Evanston.

The power suppliers are represented by attorneys with the firms of Massey & Gail LLP, of Washington, D.C. and Chicago, and Boies Schiller & Flexner LLP, of New York and Fort Lauderdale, Fla.



Want to be notified whenever we write about any of these organizations ?

Next time we write about any of these organizations, we'll email you a link to the story.
You may edit your settings or unsubscribe at any time.

Sign-up for Alerts

Organizations in this Story

Exelon Corporation (/organizations/644644915-exelon-corporation/stories)
10 S Dearborn St
Chicago, IL 60603

Law Offices of Paul G. Neilan, PC. (/organizations/645142770-law-offices-of-paul-g-neilan-pc/stories)

Patrick N. Giordano (/organizations/644580386-patrick-n-giordano/stories)
360 North Michigan Avenue, Suite 1005
Chicago, IL 60601

Massey & Gail (/organizations/645235802-massey-gail/stories)
400 50 East Washington Street
Chicago, IL 60602

Boies, Schiller & Flexner (/organizations/645090588-boies-schiller-flexner/stories)
575 Lexington Avenue
New York, NY 10022

State of Illinois (/organizations/643008087-state-of-illinois/stories)
301 S 2nd Street
Springfield, IL 62707

More News



(/stories/511082400-alden-town-manor-failed-to-protect-dementia-patient-from-sexual-assault-complaint-states)

Alden Town Manor failed to protect dementia patient from sexual assault, complaint states (/stories/511082400-alden-town-manor-failed-to-protect-dementia-patient-from-sexual-assault-complaint-states)



(/stories/511082393-chicago-nursing-facility-didn-t-control-patient-s-blood-sugar-levels-lawsuit-alleges)

Chicago nursing facility didn't control patient's blood sugar levels, lawsuit alleges (/stories/511082393-chicago-nursing-facility-didn-t-control-patient-s-blood-sugar-levels-lawsuit-alleges)