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ENERGY COMPANIES FILE SUIT AGAINST PSC TO FIGHT ILLEGAL NUCLEAR POWER SUBSIDIES

Industry Coalition Says Subsidies Constitute Illegal Interference in Wholesale Electric Power Markets

(ALBANY, NY) — Calling a plan to subsidize uneconomic nuclear power plants in New York an illegal transgression by the New York Public Service Commission (PSC) into federal regulators' territory, an industry coalition including competitive electricity producers filed a lawsuit today in federal court in Manhattan. The lawsuit challenges the authority of the PSC to raise electric rates across the state by requiring consumers to pay for so-called "zero emission credits" (ZECs) – solely to save several New York nuclear plants that, allegedly, can no longer compete successfully in the federally-regulated wholesale electric power market.

"This a bad deal for New Yorkers, 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 subsidy will cost New Yorkers as much as \$7.6 billion in payments to a single company. This is illegal. It interferes with the Federal Energy Regulatory Commission's jurisdiction in regulating wholesale electric rates, and also because the measure unlawfully interferes with interstate commerce."

The U.S. Supreme Court ruled earlier this year that state subsidies to electricity generators are unconstitutional if tied to wholesale electricity prices; in a clear violation of the Court's *Hughes* decision, the PSC's "ZECs" are an attempt to replace the federally-regulated market prices with costs determined by the state instead. The credits are directly tied to the New York nuclear plants' participation in interstate energy markets, and are unconstitutional as a result.

Schiller added, "The PSC's attempt to save these uneconomic New York nuclear plants, ostensibly for their 'carbon-free' operations, is misguided. New York would be far better served by supporting investment in modern clean energy and other low-carbon solutions."

The lawsuit was filed in the Southern District of New York, and plaintiffs include the Coalition for Competitive Electricity, Dynegy Inc., Eastern Generation, LLC, Electric Power Supply Association (EPSA), NRG Energy, Inc., Roseton Generating LLC, and Selkirk Cogen Partners, L.P.

A copy of the complaint will be provided upon request.

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