

December 8, 2016

Hon. Valerie E. Caproni
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

**Re: Coalition For Competitive Electricity vs. Zibelman, et al.
No. 16-CV-8164 (VEC)**

Dear Judge Caproni:

Your Order of October 22, 2016 (DE 16), as amended on November 2, 2016 (DE 21), directs the parties to submit a joint letter of no more than five pages by December 8, 2016, addressing the following in separate paragraphs: (1) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s); (2) any contemplated motions; (3) the basis for subject matter jurisdiction; and (4) the prospect for settlement. The Order also requires the submission of a proposed Case Management Plan along with the letter.¹ The parties submit this letter and have attached proposed Case Management Plans in accordance with your Order.²

- (1) **Brief description of the case, including the factual and legal bases for the claims and defenses**

Plaintiffs

Plaintiffs claim that the portion of the August 2016 order of the New York Public Service Commission (“PSC”) establishing ratepayer-paid subsidies for certain in-state nuclear electricity generators³ is unconstitutional under the Supremacy Clause, the dormant Commerce Clause, and 42 USC § 1983. The subsidies, called Zero Emissions Credits (“ZECs”) are field preempted because they unconstitutionally intrude on the exclusive authority of the Federal Energy Regulatory Commission (“FERC”) over “the sale of electric energy at wholesale in interstate commerce” pursuant to the Federal Power Act (“FPA”), 16 U.S.C. § 824(b)(1). Independently, the ZEC subsidies are conflict preempted because they are inconsistent with FERC’s determination that competitive

¹ Constellation Energy Nuclear Group LLC, Exelon Corporation, R.E. Ginna Nuclear Power Plant LLC, and Nine Mile Point Nuclear Station LLC (collectively “CENG/Exelon”) intend to file a joint unopposed motion for leave to intervene in this proceeding (and related responsive pleadings) on December 9, 2016. Counsel for CENG/Exelon has participated in the discussions between the parties that have culminated in the submission of this joint letter.

² The parties conferred about a Case Management Plan and were unable to reach agreement on a joint procedural schedule proposal. Plaintiffs and Defendants are submitting separate Case Management Plans.

³ Tier 3 of the Order Adopting a Clean Energy Standard, Aug. 1, 2016 (the “Order”), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={44C5D5B8-14C3-4F32-8399-F5487D6D8FE8}>.

B O I E S , S C H I L L E R & F L E X N E R L L P

Hon. Valerie E. Caproni

December 8, 2016

Page 2

market forces should set wholesale energy prices, and the ZEC program effectively sets a higher, above-market price for electricity sold by the subsidized generators. The ZECs would upset the competitive markets, reward less efficient generators, and force more efficient existing and potential new generators out of the market. The program also discriminates against out of state generators and thus violates the dormant Commerce Clause, which prohibits protectionist efforts to save local businesses from out of state competition.

Plaintiffs submit that a similar Maryland subsidy program was recently held unconstitutional on field preemption grounds by the U.S. Supreme Court in *Hughes v. Talen Energy Marketing, LLC*, 578 U.S. ___, 136 S. Ct. 1288 (2016). *Hughes* held that the Maryland program, which guaranteed a favored generator an above-market price for its electricity, was preempted because it “adjust[ed] an interstate wholesale price.” 136 S. Ct. at 1297. The New York program similarly is field preempted because it adjusts the interstate wholesale price by giving the ZEC price “adder” only to the favored nuclear generators. These generators would receive market price plus ZEC price for their electricity, while their competitors, including plaintiffs, would receive market price alone. Plaintiffs contend that the ZEC subsidy also is conflict preempted because it has the “potential to seriously distort the [FERC-sanctioned] auction’s price signals, thus interfering with the method by which the federal statute was designed to reach its goals” and “substituting the state’s preferred incentive structure for that approved by FERC.” *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014) (quotations and citations omitted), *aff’d* 136 S. Ct. 1288 (2016). Both the Supreme Court and the Fourth Circuit deemed it unnecessary to reach plaintiffs’ Commerce Clause argument, but New York cannot, “without violating the commerce clause of Article I of the Constitution, discriminate against out-of-state renewable energy.” *Illinois Commerce Comm’n v. FERC*, 721 F.3d 764 (7th Cir. 2013).

Defendants

Defendants assert that the Complaint fails to state a claim under Fed. R. Civ. P. 12(b)(6), and will file a motion to dismiss on that basis on December 9, 2016. Defendants will explain that the field and conflict preemption counts (I and II) cannot be pursued in federal court because neither the Constitution’s Supremacy Clause nor the FPA affords a private right of action, and Plaintiffs cannot invoke this Court’s equitable power to consider Plaintiffs’ claims because the FPA forecloses such relief. *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015).

Substantively, Defendants will explain that even if taken as true, Plaintiffs’ allegations do not violate the Supremacy Clause. New York’s ZEC order is not preempted because it falls well within state authority to regulate generation facilities and retail sales. Both FERC and courts acknowledge that states may compensate clean-energy facilities for the environmental attributes of how they generate electricity. Certificates reflecting these environmental attributes can be sold either together with or separately from the associated energy. When sold separately (*i.e.*, on an “unbundled” basis), as the ZECs are, FERC regulates the energy sale and the state regulates the attribute sale. *Hughes* is not similar. In *Hughes*, Maryland set rates for a generator’s sales of electric energy and capacity in specific wholesale auctions, and conditioned payment on the generator making sales in those auctions. The ZEC program, in contrast, provides compensation for the environmental attributes of energy produced by eligible generators *regardless* of how that energy is disposed of.

B O I E S , S C H I L L E R & F L E X N E R L L P

Hon. Valerie E. Caproni
December 8, 2016
Page 3

Likewise, Defendants will explain that the ZEC program is consistent with the dormant Commerce Clause. State action to create commerce and define its reach—such as commerce in generation’s environmental attributes—or to subsidize environmentally beneficial actions is “not the kind of activity with which the Commerce Clause is concerned.” *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 805 (1976). In any case, the ZEC program does not discriminate against interstate commerce, either facially or by imposing disparate impacts out of proportion to local benefits. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). ZECs are targeted to nuclear generation that has provided electric energy to New York and is at risk of retirement. New York did not exclude any out-of-state nuclear generation that meets those criteria.

(2) **Any contemplated motions**

Plaintiffs

As the ZEC program is scheduled to go into effect on April 1, 2017, Plaintiffs seek an expedited schedule that would allow for trial in the Spring of 2017 with commensurate deadlines for fact and expert discovery that would allow for a non-jury trial on that schedule. If the case is not expedited, Plaintiffs may move under FRCP 65(a)(2) for a preliminary injunction, which the Court has discretion to consolidate with a trial on the merits.

Plaintiffs contend that, in considering a request for expedited treatment, courts apply a flexible “good cause” test and allow expedited discovery “on the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances.” *Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 326–27 (S.D.N.Y. 2005), and cases cited therein. There is good cause for expedited treatment here, because plaintiffs’ harm is irreparable. Defendants have Eleventh Amendment immunity from damages, and it would be difficult to unwind the ZEC payments and “unscramble the eggs” if the program goes into effect, ZEC payments are made, and auctions are conducted with the resulting market distortion. *Greenlight Capital, L.P. v. Apple, Inc.*, No. 13 CIV. 900 RJS, 2013 WL 646547, at *9 (S.D.N.Y. Feb. 22, 2013). There should not be need for extensive fact discovery in this case. Moreover, plaintiffs’ proposal calls for a 60-day period for fact discovery, two-thirds of the presumptive maximum period for fact discovery, as set forth in the Court’s form Case Management Plan and Scheduling Order. Defendants should not be allowed to delay the trial until they can present this Court with a *fait accompli* – a fully operational program with millions of dollars already disbursed. See *Allco Finance Ltd. v. Klee*, No. 16-2946 (2d Cir. Nov. 2, 2016) (expediting appeal and enjoining an allegedly preempted Connecticut wholesale electricity subsidy pending appeal). And there is no basis for staying discovery while defendants’ forthcoming motion to dismiss is pending; a stay requires, *inter alia*, proof of prejudice and a “strong showing that the plaintiff’s claim is unmeritorious.” *Abbott Laboratories v. Adelpia Supply USA*, 2016 WL 4148323, at *1 (E.D.N.Y. Aug. 4, 2016).

Defendants

B O I E S , S C H I L L E R & F L E X N E R L L P

Hon. Valerie E. Caproni
December 8, 2016
Page 4

On December 9, Defendants and Intervenor CENG/Exelon will file separate motions to dismiss that, if granted, would terminate this proceeding in whole or in part. Defendants also will move to stay discovery pending a ruling on the motions to dismiss. In the Defendants' version of the case management plan being filed today, Defendants suggest a procedural schedule with time intervals that run from the date of a ruling on the motions to dismiss. Defendants further contemplate potential Rule 56, *Daubert*, and *in limine* motions.

Defendants oppose Plaintiffs' requested expedited schedule, because they are concerned that it will not allow for the reasonable development of an evidentiary record. Defendants' case management plan proposes a schedule consistent with this objective while not unduly delaying a determination in this case. Defendants note that, while a trial would not be completed until after the ZEC program becomes effective, that is in large part due to Plaintiffs' decision to wait more than two-and-a-half months to bring suit after the ZEC order issued on August 1, 2016. (The ZEC order itself was preceded by a lengthy state administrative proceeding.) Plaintiffs should not be permitted to leverage their delay in filing the complaint into a basis for adopting an unduly expedited schedule.

Defendants believe the case can and should be dismissed on legal grounds alone. If the Court disagrees, significant fact and expert discovery will be needed to determine the truth or falsity of Plaintiffs' allegations and Defendants' defenses. Potential areas of discovery include (*inter alia*) the operation of the New York wholesale electric markets overseen by FERC, how the ZEC program operates, how (if at all) it may affect prices, and whether the state had adequate alternative means to achieve needed reductions in electric power-sector greenhouse gas emissions. In addition, motion practice is likely concerning depositions sought by Plaintiffs of PSC Commissioners.

Defendants note that, in the proceedings leading to *Hughes*, on which Plaintiffs rely (ECF 1, ¶¶ 7, 47, 63), discovery began only once the court ruled on motions to dismiss. Fact discovery occurred over the ensuing four months, and expert discovery over the next two and one-half months. *PPL EnergyPlus, LLC, v. Nazarian*, Second Scheduling Order, No. 12-cv-1286 (D. Md. Aug. 8, 2012). The trial commenced about eleven months after the filing of the plaintiffs' April 27, 2012 complaint. For the Court's convenience, a PDF of the *Nazarian* docket sheet is available at <https://perma.cc/27NQ-95QW>. The corresponding periods in a companion case before the New Jersey district court, *PPL EnergyPlus v. Solomon*, No. 11-745 (D.N.J.), <https://perma.cc/BJN6-SC6Y>, were even longer. Defendants assert that a schedule comparable to that followed in *Hughes/Nazarian* should govern this matter, and have proposed dates along these lines in their case management filing. Defendants expect to oppose any request for a preliminary injunction.

(3) **Basis for subject matter jurisdiction**

Plaintiffs

Plaintiffs allege this Court has jurisdiction over the subject matter of this case under 28 U.S.C. § 1331, because the claims arise under federal law, specifically the Supremacy Clause and the Commerce Clause of the U.S. Constitution, and under 28 U.S.C. § 1983. This Court has jurisdiction to order prospective relief in the form of a declaratory judgment or an injunction against Defendants in their official capacities as officers of an agency of the State of New York. *Ex parte Young*, 209

Hon. Valerie E. Caproni
December 8, 2016
Page 5

U.S. 123, 129 (1908). Plaintiffs have Article III standing to bring this case; contrary to Defendants' contention, *Armstrong* is inapposite because nothing about this case is "judicially unadministrable" and there is nothing in the FPA suggesting a "necessary and inescapable inference" of congressional intent to foreclose equitable relief. *Minnesota Auto. Dealers Ass'n v. Stine*, 2016 WL 5660420, at *8 (D. Minn. Sept. 29, 2016); accord, *Bellsouth Telecommunications, LLC v. Louisville/Jefferson Cty. Metro Gov't*, 2016 WL 4030975, at *5–6 (W.D. Ky. July 26, 2016).

Defendants

Defendants deny that Plaintiffs have the Article III standing necessary to bring this case within the Court's subject matter jurisdiction. Plaintiffs claim as injury the receipt of suppressed wholesale electricity auction prices, but those auction prices do not result from unmediated forces of supply and demand. They result from the operation of a FERC-regulated tariff that controls which resources may bid, how they bid, and how those bids might affect prices in the New York wholesale electric markets. New York's ZEC program may forestall retirement of needed nuclear generation facilities, but the current tariff would allow the retained nuclear units to bid and affect the clearing price. Plaintiffs may ask FERC to change the tariff, but may not claim as "injury" the receipt of wholesale market prices set as FERC allows.⁴

Defendants further deny Plaintiffs' allegation that they have a cause of action to pursue their preemption claims in federal court or a basis to invoke this Court's equity jurisdiction in lieu of such an action. *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015). Defendants recognize, however, that this Court has subject matter jurisdiction to address whether Plaintiffs possess a cause of action. *Davis v. Passman*, 442 U.S. 228 (1979); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). While Defendants have several other independently sufficient defenses, they, too, go to the merits. Apart from questions of Article III standing, Defendants acknowledge that the Court has subject matter jurisdiction over the Complaint.

(4) **Prospect for settlement**

The parties agree that the nature of the issues presented by this case make settlement unlikely.

⁴ Defendants are aware of a split of authority as to whether the FERC-filed rate is the basis for a jurisdictional or merits defense. For this reason and because discovery (e.g., into the Plaintiffs' alleged injuries and their relationship to the FERC-filed tariff) may aid in resolution of the issues, Defendants do not expect to move to dismiss Plaintiffs' complaint on this basis at this stage.

B O I E S , S C H I L L E R & F L E X N E R L L P

Hon. Valerie E. Caproni
December 8, 2016
Page 6

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Plaintiffs' Proposed Case Management Plan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Coalition For Competitive Electricity et al.	X	
	:	
-v-	:	1:16-CV-08164 (VEC)
Plaintiff(s),	:	<u>CIVIL CASE</u>
	:	<u>MANAGEMENT PLAN</u>
	:	<u>AND SCHEDULING</u>
	:	<u>ORDER</u>
	:	
Audrey Zibelman, et al.	:	
	:	
Defendant(s).	:	
	X	

This Civil Case Management Plan is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties [consent _____ / do not consent ^X_____] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. *[If all parties consent, the remaining paragraphs need not be completed. In addition, they shall submit to the Court a fully executed Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, available at <http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge>, within three days of submitting this Proposed Case Management Plan and Scheduling Order.]*

2. Except for amendments permitted by Fed. R. Civ. P. 15(a)(1) and this Court’s Individual Practices in Civil Cases (“Individual Practices”), amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed within ³⁰_____ days from the date of this Order. *[Absent exceptional circumstances, a date not more than 30 days following the initial pretrial conference.]*

3. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed no later than ¹⁴_____ days from the date of this Order. *[Absent exceptional circumstances, a date not more than 14 days following the initial pretrial conference.]*

4. *[If applicable]* The plaintiff(s) shall provide HIPAA-compliant medical records release authorizations to the defendant(s) no later than N/A.

5. Discovery

- a. All fact discovery shall be completed no later than February 16, 2017. [A date not more than 90 days following the initial pretrial conference, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]
- b. All expert discovery, including reports, production of underlying documents, and depositions, shall be completed no later than March 17, 2017. [Absent exceptional circumstances, a date not more than 45 days from the date in paragraph 5(a) (i.e., the completion of all fact discovery).]
- c. Within two weeks of the date of entry of this Scheduling Order, the parties shall meet and confer in person to agree upon a joint plan for meeting the discovery deadlines.
- d. In the case of discovery disputes, the parties should follow Local Civil Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court **must first meet and confer in good faith** with the opposing party, in person, or by telephone, in an effort to resolve the dispute. If this process fails and the Court's intervention is required, the parties must jointly call Chambers to schedule a joint teleconference with the Court for prompt resolution of the dispute. The Court will determine during the teleconference whether additional submissions will be required.

6. Counsel for the parties believe the following alternative dispute resolution mechanisms may be helpful in resolving this case (check all that apply):

- Immediate referral to the District's Mediation Program
- Immediate referral to a Magistrate Judge
- Referral to the District's Mediation Program after the close of fact discovery
- Referral to a Magistrate Judge after the close of fact discovery
- Other

7. This case [is / is not] to be tried to a jury.

8. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.

Whether discovery and trial should be expedited, in light of the fact that the challenged ZEC program is scheduled to commence in April 2017.

- 9. This Order may not be modified or the dates herein extended except by further Order of the Court for good cause shown. Unless the Court orders otherwise, parties engaged in settlement negotiations must pursue settlement and conduct discovery simultaneously. Parties should not assume that they will receive an extension of an existing deadline if settlement negotiations fail. Any application to modify or extend the dates herein shall be made by written application no later than two business days before the date sought to be extended in accordance with the Court’s Individual Practices.

- 10. The next pretrial conference is scheduled for February 24, 2017 at 10:00 a.m. in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York 10007. [*Unless otherwise ordered, 10:00 a.m. on the first Friday after the deadline for completion of all fact discovery as set forth in paragraph 5(a).*]

By Thursday of the week prior to that conference, the parties shall submit a joint letter regarding the status of the case. The letter should include the following information in separate paragraphs:

- a. a statement of all existing deadlines, due dates, and/or cut-off dates;

- b. a brief description of any outstanding motions;

- c. a brief description of the status of discovery and of any additional discovery that needs to be completed;

- d. a statement describing the status of any settlement discussions and whether the parties would like a settlement conference;

- e. a statement of the anticipated length of trial and whether the case is to be tried to a jury;

- f. a statement of whether any party anticipates filing a motion for summary judgment or a motion to exclude expert testimony;

- g. any other issue that the parties would like to address at the pretrial conference; and

- h. any other information that the parties believe may assist the Court in advancing the case to settlement or trial.

Counsel for the Parties:

Jonathan D. Schiller and Stuart H. Singer for Plaintiffs

Counsel for Plaintiffs

SO ORDERED.

Date: _____
New York, New York

VALERIE CAPRONI
United States District Judge

Defendants' Proposed Case Management Plan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Coalition For Competitive Electricity et al.

Plaintiff(s),

-v-

Audrey Zibelman, et al.

Defendant(s).

-----X

1:16-CV-8164 (VEC)

CIVIL CASE
MANAGEMENT PLAN
AND SCHEDULING
ORDER

This Civil Case Management Plan is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties [consent _____ / do not consent ^X_____] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. *[If all parties consent, the remaining paragraphs need not be completed. In addition, they shall submit to the Court a fully executed Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, available at <http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge>, within three days of submitting this Proposed Case Management Plan and Scheduling Order.]*
2. Except for amendments permitted by Fed. R. Civ. P. 15(a)(1) and this Court’s Individual Practices in Civil Cases (“Individual Practices”), amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motion to amend or to join additional parties shall be filed within ³⁰_____ days from the date of this Order. *[Absent exceptional circumstances, a date not more than 30 days following the initial pretrial conference.]*
3. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be completed no later than ²⁰_____ days from the date of this Order. *[Absent exceptional circumstances, a date not more than 14 days following the initial pretrial conference.]*
4. *[If applicable]* The plaintiff(s) shall provide HIPAA-compliant medical records release authorizations to the defendant(s) no later than not applicable.

5. Discovery

- a. All fact discovery shall be completed no later than 120 days from a ruling on the motions to dismiss. [A date not more than 90 days following the initial pretrial conference, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]
- b. All expert discovery, including reports, production of underlying documents, and depositions, shall be completed no later than 90 days from the close of fact discovery. [Absent exceptional circumstances, a date not more than 45 days from the date in paragraph 5(a) (i.e., the completion of all fact discovery).]
- c. Within two weeks of the date of entry of this Scheduling Order, the parties shall meet and confer in person to agree upon a joint plan for meeting the discovery deadlines.
- d. In the case of discovery disputes, the parties should follow Local Civil Rule 37.2 with the following modifications: Any party wishing to raise a discovery dispute with the Court **must first meet and confer in good faith** with the opposing party, in person, or by telephone, in an effort to resolve the dispute. If this process fails and the Court's intervention is required, the parties must jointly call Chambers to schedule a joint teleconference with the Court for prompt resolution of the dispute. The Court will determine during the teleconference whether additional submissions will be required.

6. Counsel for the parties believe the following alternative dispute resolution mechanisms may be helpful in resolving this case (check all that apply):

- Immediate referral to the District's Mediation Program
- Immediate referral to a Magistrate Judge
- Referral to the District's Mediation Program after the close of fact discovery
- Referral to a Magistrate Judge after the close of fact discovery
- Other

7. This case [is / is not] to be tried to a jury.

8. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.

Defendant NYPSC moves to stay discovery pending a resolution of the motions to dismiss.

Defendant NYPSC believes that a schedule akin to that in PPL Energy Plus, LLC v. Nazarian No. 12-cv-1286 (D. Md. Aug. 8, 2012) is appropriate.

Defendant NYPSC believes the above time intervals should apply regardless of the disposition of its stay motion.

- 9. This Order may not be modified or the dates herein extended except by further Order of the Court for good cause shown. Unless the Court orders otherwise, parties engaged in settlement negotiations must pursue settlement and conduct discovery simultaneously. Parties should not assume that they will receive an extension of an existing deadline if settlement negotiations fail. Any application to modify or extend the dates herein shall be made by written application no later than two business days before the date sought to be extended in accordance with the Court’s Individual Practices.

- 10. The next pretrial conference is scheduled for to be determined at _____ in Courtroom 443 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York 10007. [*Unless otherwise ordered, 10:00 a.m. on the first Friday after the deadline for completion of all fact discovery as set forth in paragraph 5(a).*]

By Thursday of the week prior to that conference, the parties shall submit a joint letter regarding the status of the case. The letter should include the following information in separate paragraphs:

- a. a statement of all existing deadlines, due dates, and/or cut-off dates;

- b. a brief description of any outstanding motions;

- c. a brief description of the status of discovery and of any additional discovery that needs to be completed;

- d. a statement describing the status of any settlement discussions and whether the parties would like a settlement conference;

- e. a statement of the anticipated length of trial and whether the case is to be tried to a jury;

- f. a statement of whether any party anticipates filing a motion for summary judgment or a motion to exclude expert testimony;

- g. any other issue that the parties would like to address at the pretrial conference; and

- h. any other information that the parties believe may assist the Court in advancing the case to settlement or trial.

Counsel for the Parties:

Scott H. Strauss

Counsel for NYPSC Defendants

SO ORDERED.

Date: _____
New York, New York

VALERIE CAPRONI
United States District Judge