

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Electric Power Supply Association, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:17-cv-01164
)	Judge Manish S. Shah
Anthony M. Star, et al.,)	
)	
Defendants.)	

**BRIEF OF PJM INTERCONNECTION, L.L.C.
AS AMICUS CURIAE IN OPPOSITION TO MOTIONS TO DISMISS**

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PJM Interconnection, L.L.C. (“PJM”) respectfully submits this brief *amicus curiae* in opposition to the Motions to Dismiss filed by Defendants Anthony M. Star, in his official capacity as Director of the Illinois Power Agency, and Brien J. Sheahan, John R. Rosales, Sadzi Martha Oliva, Miguel Del Valle, and Sherina Maye Edwards, in their official capacities as Commissioners of the Illinois Commerce Commission (“ICC”) (collectively, the “State Defendants”) and Intervenor Exelon Generation Company, LLC (“Exelon”).

SUMMARY OF AMICUS CURIAE POSITION

PJM submits this brief because the Zero Emission Credit (“ZEC”) program established pursuant to the Illinois Future Energy Jobs Act, SB 2814, Public Act 099-0906, 99th Gen. Assemb. (Ill. 2016) (“FEJA”) will substantially harm the wholesale electricity markets that PJM operates, as well as the investors, competitive energy providers, and (ultimately) consumers that rely on PJM’s markets to provide adequate and reliable electricity at the lowest efficient price. Moreover, the ZEC program will frustrate Congress’ intent to promote competition in wholesale electricity markets and, in particular, thwart Congress’ assignment to the Federal Energy Regulatory Commission (“FERC”) of responsibility to set just and reasonable wholesale electricity rates under the Federal Power Act. For these reasons, as explained in detail below, PJM respectfully requests that the Court deny the Motions to Dismiss.

BACKGROUND OF PJM’S MARKETS

PJM is a Regional Transmission Organization (“RTO”), as approved by FERC in 2002. *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002). RTOs are created by FERC regulation to independently operate the electric transmission network and administer wholesale electricity markets. *Regional Transmission Organizations*, Order No. 2000, 1996–2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089 (1999). The PJM region has grown since 2002 to encompass

all or part of thirteen states in the Mid-Atlantic and Midwest, as well as the District of Columbia. PJM's territory covers northern Illinois, including the Chicago area. A separate RTO, the Midcontinent Independent System Operator, Inc. ("MISO") is responsible for the transmission system and wholesale markets in the rest of Illinois.

States within PJM's territory—like Illinois—are not members of PJM. But utility companies—such as Exelon affiliate Commonwealth Edison Co. ("ComEd")—can join PJM and, in so doing, agree to subject their assets, which may include transmission facilities and generating stations, to PJM's operational rules and markets. Relevant here, twenty years ago, the Illinois General Assembly directed Illinois utilities to form or join Independent System Operators (the predecessors to RTOs), in light of the independence and expected efficiency these interstate markets and operations could bring to the state and its citizens. Electric Service Customer Choice and Rate Relief Law of 1997, 220 Ill. Comp. Stat. 5/16-126 (2017). *See also* Transcript of Technical Conference at 43:3–7, *PJM Technical Conference with States and Market Participants*, (Aug. 28, 2003) (ICC Commissioner Wright stating, "[s]ince 1997, it's been the [ICC]'s policy goal to see that our public utilities join an RTO in order to bring efficient access to trading partners and less costly links for power to all market participants in Illinois.") (attached as Exh. A).

PJM operates in many states, including Illinois, that have legislatively chosen to deregulate or "unbundle" utility operations within their state. While these decisions vary by state,¹ they either require the formerly-integrated utilities to sell their generation to third parties,

¹ Differences in state unbundling have led to different market design choices by PJM and MISO. MISO has not established a resource adequacy approach reliant on competitive, unsubsidized offers from merchant generation because most states in MISO have not deregulated, and thus retain responsibility to ensure sufficient generation is in place to serve their citizens. Accordingly, FERC is focusing only on PJM and the RTOs in New York and New England (and not MISO) in a technical

or place ownership and operation of their generation into financially separate “merchant” affiliates, which compete with other generation owners in wholesale energy markets. An important rationale driving states to deregulate, including Illinois, *infra* at 5 (quoting Illinois legislative history), is the advantage in having merchant investors (as opposed to utility ratepayers) underwrite the investment and assume the attendant risks of developing and operating power plants in an industry facing technological change, uncertain demand growth, and volatile fuel prices.

Not every state in PJM has deregulated in the same manner as Illinois. Several retain traditional, so-called “integrated” utility companies responsible for generation, transmission, distribution, and sale of electricity. This model is distinct from the regime adopted by Illinois in a manner crucially important to this litigation: unlike Illinois, traditionally regulated states do not rely on PJM’s markets to ensure that sufficient generation and other resources are installed and available to satisfy federal standards governing “resource adequacy.” (a concept described more fully immediately below). Rather, these states retain responsibility, with their integrated utilities, to meet resource adequacy requirements through traditional state rate regulatory mechanisms.

ARGUMENT

A. Illinois’ Restructuring of its Electric Industry Ceded to the Wholesale Market Economic Determination of the Generation Resources on Which Illinois Would Rely to Meet Demand.

At its most basic level, the question before the Court is: Who is responsible for managing “resource adequacy” in Illinois—*i.e.*, ensuring that sufficient generation is available in

conference next month on “an open question of how the competitive wholesale markets, particularly in states or regions that restructured their retail electricity service, can select resources of interest to state policy makers while preserving the benefits of regional markets and economic resource selection.” *State Policies & Wholesale Markets Operated by ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.*, Notice of Technical Conference, Docket No. AD17-11, at 1 (Mar. 3, 2017) (attached as Exh. B).

Illinois when needed to meet future demand. A state that retains a traditional regulatory construct for its public utilities manages the resource adequacy challenge through utility commission proceedings that approve resource plans submitted by the utilities. These plans identify the construction of new power plants, the retirement of old plants, and the mix of fuel types on which the utility, its customers and its regulator agree. Thus, under the traditional, integrated model, it is state regulators that retain authority to address resource adequacy.

However, once a state elects to restructure or unbundle the generation function of the utility and place that function in a competitive wholesale environment, the state effectively cedes authority over the economic determination of which generators will be committed to meet resource adequacy. In deregulated states like Illinois, generation entry and exit decisions are determined by supply and demand in competitive markets.

In particular, notwithstanding any generation permitting, siting, or procurement² authority retained by a restructured state (like Illinois), “if [the state] wish[es] to use a new generation resource to satisfy [its] capacity obligations required under the [PJM wholesale capacity market], [then] the resource must clear the [PJM] [a]uction . . . [and] if the state[’s] preferred generation resources fail to clear the auction . . . the states cannot use (those) resources to offset their capacity obligations in [the wholesale market].” *N. J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 97 (3rd Cir. 2014) (“*NJBPU*”). If the preferred resource does not clear the wholesale capacity auction and the state nevertheless compels its construction, then the state “will appropriately

² Ten years after the 1997 restructuring, Illinois established Defendant Illinois Power Agency as an independent body to oversee the competitive procurement of electricity to meet the needs of the Illinois utilities’ residential and small commercial customers that chose (by default) to continue buying power supply from the utilities. Illinois Power Agency Act, Public Act 95-0481. Generators or power supply contracts secured through IPA’s processes, however, will not count towards PJM’s determination of the wholesale capacity needed to meet the needs of those customers unless those resources clear in PJM’s capacity market (as explained in the text, *infra*).

bear the cost of [those] decision[s],’ including possibly having to pay twice for capacity.” *Id.* (quoting *Conn. Dep’t of Pub. Util. Control v. FERC*, 569 F.3d 477, 481 (D.C. Cir. 2009)).

Thus, rather than relying on an administratively dictated “integrated resource plan,” as a restructured state, Illinois relies on the PJM-operated interstate wholesale markets to meet the resource adequacy objective in the most cost efficient manner. *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 8 (2006); *see also* Request for Rehearing of the Illinois Commerce Commission, Docket No. ER13-535-000, at 11 (May 28, 2013) (ICC explains Illinois is “a retail access state with no ICC jurisdiction over generation facilities in Illinois;” as distinct from “traditionally regulated states,” *id.* at 10, in which “the legislature or state commission could direct a state-jurisdictional utility to place [a preferred generation plant] into the state-approved integrated resource plan.” *Id.*).

The Illinois General Assembly expressly considered the anticipated “[i]mproved efficiencies in the use of industry assets and personnel” gained by relying on the market—instead of regulators—in its 1997 restructuring legislation. Nancy Brockway et al., *Principles Applicable to the Electric Industry Reform Legislation*, The Governor’s Advisory Committee for Electric Utility Regulatory Reform, 11-12 (Apr. 28, 1997) (attached as Exh. C). By “substituting competitive market pricing for regulated pricing of electricity in the wholesale and retail markets” the restructured markets could “send[] . . . more efficien[t] price signals to operators and builders of electricity generators and to users of electricity;” and could “shift[] the locus of risk bearing for the use of existing generating assets and personnel [and constructing new generating assets] from captive users (where much of it has rested in the current system of economic regulation) onto shareholders of unregulated generating companies.” *Id.* Similarly, the ICC advised the legislature at that time that it “supports a swift transition to a competitive electric

industry in which prices are decided by market forces, not by government.” *Report to the Senate President Analysis of Electric Restructuring with Particular Emphasis on Senate Bill 55*, Illinois Commerce Commission, Executive Summary at ii (Aug. 15, 1997) (attached as Exh. D).

Notably, the legislators who voted to approve deregulation appreciated fully that: “[o]nce industry restructuring has progressed to the stage where distribution companies, generating companies and transmission companies are deemed separate business[es] and the FERC has deemed the wholesale market prices to be just and reasonable, the State will have no more voice in the price that generating companies charge for unbundled electricity than they do over the price that oil refineries charge for gasoline.” *Id.* at 18.

To enable and promote competition, PJM’s markets are single-clearing price auctions. *PJM Interconnection*, 117 FERC ¶ 61,331, at P 141. This means sellers can receive a higher price for electricity than their actual offers. This is because, based on economic rationale evaluated and accepted by FERC, RTOs (including PJM) centrally clear the total amount of generation needed to meet demand, starting with the lowest offer and proceeding upward until the demand is met, and pay all generators that clear the price represented by the offer of the last (or marginal) generator needed to serve demand. This marginal offer sets the single-clearing price paid to all generators. *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1293 (2016); *PJM Interconnection*, 117 FERC ¶ 61,331, at P 141. As Intervenor Exelon has explained, this single-clearing price structure “provides the appropriate price signals for market participants to determine when to invest in generation [and] whether to retire plants or re-invest in them” because “lower-cost resources are able to achieve a higher producer margin than higher cost resources, and are more likely to clear in the market,” which “inherently produces competitive pressure on producers to achieve lower costs and higher efficiency, which ultimately reduces

costs for consumers.” See Comments and Partial Protest of Exelon Corporation, Docket No. ER15-623-000, at 53 (Jan. 20, 2015) (attached as Exh. E).

The prices set by these markets therefore signal: (a) when obsolete or non-economic plants can and should be retired; (b) when new more efficient technologies should enter the markets; and (c) when existing plants remain necessary and economic. *Hughes*, 136 S. Ct. at 1293.

PJM’s wholesale markets are agnostic as to resource and fuel types, so they do not favor one technology over another. This structure is completely consistent with—as Exelon itself put it—FERC’s “strong preference for competitive markets, in which resources that provide the same product receive the same compensation, without regard to generation fuel type, vintage, cost structure, or any other attribute of a particular generator.” See Exh. E at 52. These markets will clear the lowest cost resources needed to meet resource adequacy. Consequently, they will not provide revenues sufficient to retain what the market regards as an uneconomic plant (nuclear or otherwise), in spite of the environmental value, employment, or other social or political value a state may see in the plant.³

B. Subsidies Distort PJM’s Wholesale Markets

Generators that receive subsidies to prevent them from retiring in response to the price signals coming from the PJM market represent uneconomic generation whose continued participation distorts PJM’s market outcomes by suppressing prices. Subsidies allow high-cost generators to offer at artificial, i.e., below-cost, prices in order to guarantee that they will clear the auctions, confident that whatever they receive by way of PJM’s single-clearing price auction

³ This is not to say these additional features are unimportant public policy matters. Rather, as noted, *infra*, at 14-15, Illinois had alternate avenues to recognize this value in a manner which would not have the effect of changing wholesale prices set through FERC tariffs.

will be supplemented by the subsidy. This drives down the clearing prices, which crowds out potential new merchant competition that relies only on market revenues to support investment. *See, e.g., NJBPU*, 744 F.3d at 100 (relying on FERC’s expressed concern that the “prospect of thousands of megawatts of new generation, developed under arrangements that would explicitly subsidize the resources regardless of Auction price, potentially being offered into the [PJM] [m]arket at a zero bid brought into focus the distortive effect . . . that the state exemption could have on market prices for all capacity.”) Lower clearing prices also starve otherwise economic existing generation, beginning a vicious cycle that requires these plants also to look for out-of-market subsidies, further depressing clearing prices and undermining the market price.

FERC, PJM, and various PJM members (including Exelon) have previously recognized the potential harms described above. Exelon, for example, has explained that “the payment of out-of-market subsidies to a select group of producers destabilizes market dynamics in a manner that ends up being self fulfilling and discourages new entry.” Exh. E at 54 (footnotes omitted). Such “discriminatory subsidies depress market price signals for other resources that rely on competitive prices to remain in or enter the market, thereby encouraging early retirement of resources dependent upon those price signals, and discouraging new entry.” *Id.* The result is to “saddle[] consumers with a set of higher-cost resources than could have been procured through the competitive market.” *Id.* Indeed, concerns over these types of harms have led to successful action in federal courts to stop similar state programs. *See PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014); *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241 (3rd Cir. 2014).

Such state programs to, in effect, pick the winners in the wholesale market, are contrary to Congress’s intent, as reflected in such statutes as the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992), and the Energy Policy Act of 2005, Pub. L. No. 109-58, 119

Stat. 594 (2005), “to promote greater competition in bulk power markets by encouraging new generation entrants.” *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 1991–1996 FERC Stats. & Regs., Regs. Preambles ¶ 31,036, at 31,644 (1996). *See also Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071, at P 1 (Oct. 17, 2008) (“National policy has been, and continues to be, to foster competition in wholesale electric power markets. This policy was embraced in the Energy Policy Act of 2005”).

C. The ZEC Program Is a Targeted Intervention That Causes Particular Harm

Of course, the Illinois program is hardly the only industry subsidy that impacts and frustrates theoretically perfect PJM market outcomes. For example, federal tax subsidies offer great advantage to wind generation and have distorted economic outcomes in PJM’s markets. This effect has been particularly felt in PJM’s western region, impacting Illinois and Exelon’s nuclear operations. These and other federal programs (including several benefiting nuclear owners) are authorized by the U.S. Congress and, as a result, are not subject to the constitutional pre-emption and commerce clause arguments raised in this case. State programs also exist to promote emerging technologies, including carbon-free renewable generation, that work to incent otherwise uneconomic investments and also distort PJM market outcomes. Also, programs that provide tax rebates for efficiency artificially lower demand, while renewable energy credits and regulations directing utilities to procure a certain percentage of preferred resources artificially increase supply. These programs, which are not before the Court, cause a similar type of harm to PJM’s markets as the Illinois ZEC program. However, the Court should be cognizant of factual differences that potentially distinguish the Illinois program from generic programs supporting

renewable energy technologies.⁴ These potential distinctions, recognized in *Hughes*, at 136 S. Ct. at 1299, are fact-specific and thus not appropriately addressed in the context of a Motion to Dismiss. Rather, all parties should have the opportunity to demonstrate facts concerning the distinction drawn in *Hughes*, as applied to the Illinois ZEC legislation through further proceedings rather than being summarily addressed in a Motion to Dismiss.

D. Potential ZEC Recipients Are Required to Participate in PJM's Markets

In fact, how the ZEC program operates depends on prices realized by the nuclear plants as they participate in the interstate electricity markets. The plants in Illinois are *required* to participate in the wholesale auction markets run by PJM. PJM's members, including Exelon, are subject to the rules found in the PJM Open Access Transmission Tariff (excerpts attached as Exh. F) as approved by FERC. The Tariff, Exh. F at Attachment DD, section 6.6(a), requires every generation plant located in the PJM Region to offer its capacity into the PJM capacity auction.⁵

Further, according to the Tariff, once a generator's capacity offer clears, then it also is required to make offers in the energy market every day. *See* Exh. F at Attachment K, Appendix section 1.10.1A(d). In other words, participation in PJM markets is effectively mandatory; subsidized plants therefore cannot simply sit outside the market to avoid having their participation depress prices. As a result, nuclear plants located in the PJM footprint are *required*,

⁴ The key legal distinction that separates existing state subsidies that promote emerging technologies is that the determination, award, and subsequent level of the ZEC payments under the Illinois program are targeted to supplementing wholesale market revenues just enough to maintain in service the particular plants that will receive the subsidies. More generic subsidies, which are both determined and awarded in a manner entirely separate from the wholesale market, do not share those characteristics of the ZEC payments.

⁵ This "must offer" requirement was designed to prevent withholding of resources—a possible exercise of market power driving prices higher for the unit owner's generation fleet.

by FERC-approved tariff rule, to offer into the market and thus are integral to the setting of wholesale market prices.⁶

Not only are the nuclear plants required to offer into the wholesale market, they *must clear* that market in order to receive a capacity designation and attendant wholesale revenues. The ZEC payments are expressly intended to make up the difference between these revenues and the total amount certain uneconomic nuclear plants need to continue operating and generating zero emission power. 20 Ill. Comp. Stat. 3855/1-75(d-5)(1)(C). By design then, the ZEC payments, standing alone, provide insufficient revenue to support the plant. To continue operating, and thus receive ZEC payments, the nuclear plant must offer below its real costs to ensure it clears the wholesale auction. The ZEC program therefore both enables and incents below-cost offers that distort the competitive wholesale market.

E. The ZEC Program Is Preempted Under *Hughes*

Illinois' choice to rely on the PJM wholesale market to decide what plants are needed for resource adequacy has clear implications on Illinois' effort now to ensure that certain generators remain in service and continue to sell power in the wholesale market for the benefit of Illinois consumers. PJM does not contend that Illinois is without options to further its objective. However, those options cannot include a state effort to supplement wholesale electricity market revenues that the state finds to be inadequate for specified generators. Nor do those options include effectively changing which resources clear in the wholesale market and the clearing price determined by that wholesale market. Such state actions are preempted, as the Supreme Court

⁶ PJM is exploring ways to create exceptions that would remove subsidized resources from the price formation process and thus accommodate state subsidies in a manner that might be acceptable to FERC and PJM's stakeholders. At present, however, the ZEC program before this Court should be viewed in the context of the existing federal rules; and a design component of these rules presently compels participation by all plants seeking a capacity designation from PJM, including subsidized plants.

made clear in *Hughes*. The state action here is sufficiently similar to the state action that *Hughes* found pre-empted that, at a minimum, the Complaint should survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Indeed, here, as in *Hughes*:

- The state award of ZECs requires a finding that the desired generation resource will not be financially viable (i.e., will not continue to provide zero emission power) if it relies only on PJM wholesale market revenues;
- The relevant states (Illinois and Maryland) both adopted retail choice, restructured their utilities, and chose to rely on the competitive wholesale market to determine the resources that would be relied upon to meet reliability needs;
- The state will review the desired generation resource's costs, and the award of the payments to a specific generator will depend on whether they are sufficient to ensure the generator will enter (or remain) in service;
- The subsidy payments adjust in certain circumstances depending on the level of wholesale prices; and
- The distribution utilities will make the payments to the desired generation resource, and collect the cost of those payments from retail customers.

See Hughes, 136 S. Ct. at 1294-95; 20 Ill. Comp. Stat. 3855/1-75(d-5)(1)(A)(iii) (demonstration of costs necessary to continue operating), (d-5)(1)(A)(iv)(commitment to continue operating), (d-5)(1)(B)(ZEC payment reduction based on wholesale price index increase), (d-5)(1)(C) (selection of winning bids shall take into account preservation of zero emissions facilities that would cease to exist if the ZEC procurements were not held). Thus, at a minimum, *Hughes* requires close factual examination of the ZEC program because it is so closely interconnected with wholesale rates and affects wholesale market results. Such close examination cannot meaningfully occur within the context of a motion to dismiss.

Movants attempt to distinguish *Hughes* primarily on the grounds that the state in *Hughes* only awarded the “contract for difference” payments if the selected generator offered its capacity into the PJM capacity market, whereas the ZEC law supposedly does not. *See, e.g.*, Exelon Memo. Supp. Mot. to Dismiss at 14-15. But the condition that the plant offer into PJM’s market as imposed in Maryland is not needed in the ZEC program because, as noted above, the Illinois nuclear generators located in the PJM Region are *already* required by the FERC-approved Tariff to offer their capacity into the PJM capacity market. The ICC has long known of, and supported, this PJM Tariff requirement. *See, e.g.*, Request for Rehearing of the Illinois Commerce Commission, FERC Docket No. ER15-623-000, at 7 (July 8, 2015) (attached as Exh. G) (ICC arguing that a particular price cap “*combined with a must-offer requirement from existing resources, has been an essential element protecting PJM’s capacity construct from the exercise of market power.*”) (emphasis added). Maryland, in the program addressed in *Hughes*, had to condition state financial support on a requirement that the proposed new generator offer and clear in PJM’s market because PJM’s “must-offer” rule does not apply to new resources. But that rule *does apply* to existing resources, like the nuclear plants that the ZEC program aims to keep in service, obviating any need for an explicit condition requiring the nuclear plants to offer into the PJM market. Still, the ZEC program is clear that the nuclear plants must remain in service to continue receiving the ZEC payments—which creates the same incentive seen in *Hughes* for the state-supported plant to offer at a below-cost price, and thereby distort the price paid to *all* sellers and charged to buyers.

Here, as in *Hughes*, 136 S. Ct. at 1296, the proponents of the challenged subsidy argue that the program does not seek to change the wholesale rate, and that the objectives it seeks to advance are permissible and distinct from the objectives of the federal wholesale market. And,

candidly, PJM accepts that the dividing line between the federal sphere and permissible state action is not clear-cut. But the Court in *Hughes* nonetheless found that, considering the state program's target and structure, it was still "tethered" to the wholesale market and constituted an over-reach into the exclusive federal domain of that wholesale market. The proposed ZEC payments here, in their structure, effect, and apparent purpose, appear to be economically equivalent to the contract for differences at issue in *Hughes* and should be treated the same. As noted, for example, while the ZEC payment begins at a fixed level based on the social cost of carbon, *whether to award the ZEC* expressly involves consideration of the nuclear generators' costs, and must take into account whether, without the ZEC payments, the plant would no longer provide zero emission power—*i.e.*, cease operations. Moreover, the ZEC payments are designed to adjust—*i.e.*, go down—to the extent wholesale market compensation goes up, thus directly tying the amount of the ZECs to the wholesale energy price. Adding to the concern, the ZEC payments at issue here also are expected to be quite substantial, targeted to only one or two plants, and to continue for ten years, resulting in a large and prolonged market distortion. These factors heighten the degree to which the program will intrude into and change both the pricing and resource-clearing results of PJM's wholesale markets.

Notably, Illinois has other permissible avenues, if it wishes to value carbon-free generation at Illinois nuclear plants. Illinois could, for example, price the negative externality in question here—carbon. Emitting units would internalize this cost in their PJM market offers, thus changing the competitiveness of nuclear plants relative to fossil generation. Plainly, a program of this sort is more efficient on a national or regional basis. But models for this sort of approach already exist. Indeed, the Regional Greenhouse Gas Initiative (which includes two other PJM states) is designed to cap and reduce (through emissions allowances) carbon dioxide

emissions in the power sector. *Program Design*, Regional Greenhouse Gas Initiative, <http://www.rggi.org/design> (last visited Apr. 24, 2017). Putting a price on carbon is wholly compatible with the operation of competitive wholesale electricity markets and the economic commitment and dispatch approach used by these markets to clear competing generation.

Additionally, PJM has market rules that offer Illinois the opportunity to work with Exelon and its affiliate, ComEd, to relieve PJM of resource adequacy responsibility, and the ability to pick and choose plants to meet resource adequacy needs for ComEd's customers. *See* Exh. F, Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, Schedule 8.1.A. More dramatically, Illinois could return to traditional regulation for the whole state. These options carry consequences and complications that might unduly burden and cost Illinois consumers. But so long as PJM remains tasked with meeting resource adequacy in Illinois, the state cannot intervene to prop up a small portion of the need and expect PJM's markets to effectively cover all the rest.

CONCLUSION

WHEREFORE, for the foregoing reasons, PJM, solely as *amicus curiae*, respectfully requests that the Court deny the State Defendants' and Exelon's Motions to Dismiss and award PJM such other and further relief as is appropriate, if any.

Respectfully submitted,

PJM INTERCONNECTION, L.L.C.

By: /s/ Paul M. Flynn
One Of Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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