

FOR IMMEDIATE RELEASE: January 9, 2017

Media Inquiries: Danielle Moodie-Mills, dmoodie-mills@skdknick.com, 646-930-1937

Energy Coalition Seeks Early Trial to Prove \$7.6 Billion Nuclear Subsidy is Illegal

“Zero Emission Credits” Program Distorts Energy Auctions in Clear Violation of Federal Law

(ALBANY, NY) —The coalition of energy companies suing the Public Service Commission (PSC) for its illegal and unfair “Zero Emission Credits” (ZEC) program responded on Friday to the motions to dismiss the lawsuit filed by the PSC and Exelon, the sole beneficiary of the PSC’s ZEC program. The memorandum highlights the ZEC program’s clear overreach into federal jurisdiction, and reaffirms the coalition’s argument that this massive corporate bailout is a bad deal for New Yorkers. The coalition has asked the court to schedule an early trial in the matter.

The coalition’s response emphasizes that the ZEC program is a subsidy which will distort the wholesale electricity market in New York, rewarding inefficient and uneconomic nuclear plants at the expense of more efficient generators. The coalition initially filed suit in October, based on the unanimous decision of the U.S. Supreme Court in striking down similar laws in Maryland. The *Hughes* decision clearly stated subsidies tied to wholesale power market prices – such as ZECs – are plainly illegal.

“The Supreme Court has repeatedly held that States may not take action that directly affects the wholesale electric market, and that is precisely what the ZEC program will do and was expressly intended to do” said Jonathan Schiller, a managing partner of Boies, Schiller & Flexner, attorneys for the plaintiffs. “This illegal subsidy only fulfills the PSC’s intended purpose if it keeps afloat inefficient nuclear plants that were going out of business.”

Schiller continued, “The ZEC subsidy, like the similar subsidies invalidated in Maryland and New Jersey, represents New York’s attempt to interfere with competitive auctions which are regulated solely by the federal government. The PSC has not been able to cite a single example where similar subsidies were upheld in court.”

ZECs are predicted to cost ratepayers up to \$7.6 billion over the next 12 years, just to bail out foundering upstate nuclear power plants. Furthermore, the subsidies will not benefit a New York power producer, but will instead go exclusively to Exelon, an Illinois-based corporation.

The ZEC program is broadly opposed by environmental conservation groups, business advocates, consumer protection organizations and good government watchdogs.

The memorandum 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 will be provided upon request.

###