
Two Federal Lawsuits Challenge the Constitutionality of the Exelon Nuclear Bailout Legislation

By Christopher N. Skey, Christopher J. Townsend / Feb 16, 2017

On February 14, 2017, two lawsuits were filed in federal court in Chicago challenging a key provision of [sweeping energy legislation](#) known as the Future Energy Jobs Bill ("FEJB"). The FEJB was passed by the Illinois General Assembly in December 2016.

The lawsuits challenge the portion of the FEJB that was designed to provide a multi-billion dollar subsidy to two Exelon nuclear plants in Illinois. Exelon previously announced that those plants, located in Clinton and the Quad Cities, were operating at a loss and would be closed in the near future unless the State took action.

In response, the General Assembly established a "Zero Emissions Credit" or "ZEC" program as part of the FEJB. The ZEC program would require Illinois ratepayers to pay a surcharge to fund what could amount to a decade-long \$235 million annual subsidy to the uneconomic Exelon nuclear plants. At the time of the FEJB's enactment, both Illinois Governor Bruce Rauner and Exelon announced that the ZEC program would save the nuclear plants.

The new lawsuits challenge the constitutionality of the ZEC program. The plaintiffs assert that ZEC program payments to the uneconomic Exelon nuclear plants will undermine wholesale electricity markets that are regulated by the Federal Energy Regulatory Commission and improperly impact federally regulated interstate commerce involving wholesale electricity sales. The lawsuits are similar to a challenge brought last year in New York against a similar program designed to save three uneconomic nuclear plants owned by Exelon.

The Illinois lawsuits request that the court enjoin Illinois administrative agencies, including the Illinois Power Agency and the Illinois Commerce Commission, from implementing the ZEC program. Unless the injunction is granted, the ZEC charges could be on customers' bills as early as July, 2017. The lawsuits do not challenge any provisions of the FEJB other than the ZEC program.

One of the Illinois lawsuits (*Electric Power Supply Association, et al. v. Star, et al.*), was brought by large energy producers that compete in the wholesale energy markets with Exelon. The other lawsuit (*Village of Old Mill Creek, et al. v. Star*) was brought by several Illinois electricity customers.

Please contact [Chris Townsend](#) or [Chris Skey](#) if you would like copies of the complaints or have questions about the FEJB, the ZEC program, the new lawsuits, or other matters involving energy issues.