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Exelon rivals sue to stop nuke bailout

By STEVE DANIELS |

When Gov. Bruce Rauner signed legislation bailing out two money-losing nuclear power plants, operators of Illinois coal- and natural gas-fired facilities promised to take the state to court.

Done.

A group of competitors of Chicago-based nuclear giant Exelon filed a lawsuit in federal court in Chicago today to stop the **ratepayer-funded bailout** from going forward.

They include Houston-based Dynegy, the second-largest generator in Illinois after Exelon and dominant player downstate, and Princeton, N.J.-based NRG Energy, which operates coal and gas plants in northern Illinois.

The suit is similar to a challenge some of the same generators brought to a similar program launched in New York State to save three Exelon-owned nukes there.

The law, the Future Energy Jobs Act, will ask business and residential power users statewide to pay a surcharge to funnel as much as \$235 million annually to Exelon over the next decade. For the average household, the subsidy will cost about \$2 per month.

In the lawsuit, the competitors allege the subsidies undermine wholesale power markets that are the exclusive jurisdiction of the federal government via the Federal Energy Regulatory Commission (FERC). They challenge the law on jurisdictional and constitutional grounds.

The competitors say the law unfairly tilts the playing field in Exelon's favor, keeping open two plants that otherwise had announced they would close.

"It will profoundly disrupt the FERC-approved energy market auction structure and result in the transfer of hundreds of millions of dollars a year of ratepayer funds to Exelon at the expense of other generators that would have been economically viable without discriminatory subsidies," the lawsuit stated.

The state set up the program to recognize the "environmental attributes" of nukes, which don't emit carbon unlike coal- and to a lesser extent gas-fired plants. But the suit contended the real motivation was to save the high-paying union jobs at the two plants, in Clinton in central Illinois and Cordova on the Mississippi River.

The act "is not environmental legislation; it is just a mechanism to provide out-of-market funding to Clinton and Quad Cities," the suit said.

In a statement, Exelon didn't address the legal issues detailed in the lawsuit. But it said the law used similar mechanisms that have aided renewable energy development for years. "Exelon opposes misguided and parochial



A coalition of environmental groups and renewable energy providers, which supported the law because it provides ratepayer assistance to their industries in addition to the nuke subsidies, also fired back.

"Today's lawsuit suggests that big polluting industries would rather shackle Illinoisans to higher costs and dangerous fuels of the past rather than invest in Illinois' bright clean energy future," the Illinois Clean Jobs Coalition said in a statement.

The lawsuit isn't a surprise, and the law could well be vulnerable. The [U.S. Supreme Court last year struck down a Maryland program](#) aimed at subsidizing the construction of a new gas-fired plant by ensuring the facility would obtain a minimum level of revenue no matter what it got through the federal power auctions.

The new nuke subsidies go into effect in June.

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