THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COALITION FOR COMPETITIVE ELECTRICITY, DYNEGY INC., EASTERN GENERATION, LLC, ELECTRIC POWER SUPPLY ASSOCIATION, NRG ENERGY, INC., ROSETON GENERATING, LLC, and SELKIRK COGEN PARTNERS, L.P., *Plaintiffs*, v. AUDREY ZIBELMAN, in her official capacity as Chair of the New York Public Service Commission; and PATRICIA L. ACAMPORA, GREGG C. SAYRE, and DIANE X. BURMAN, in their official capacities as Commissioners of the New York Public Service Commission, *Defendants*.	)	Case No. 1:16-cv-8164(VEC)

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor") respectfully moves, pursuant to the Court's inherent authority, to file a brief as *amicus curiae* regarding whether defendant's implementation of the Zero Emissions Credit ("ZEC") program would, in violation of the U.S. Constitution, "artificially depress wholesale market prices" and "disrupt[] the FERC-approved auctions and market processes."

Counsel for the Defendants and for intervenors in support of the Defendants have authorized the Market Monitor to state that this motion is unopposed.

A copy of the proposed brief as Exhibit 1 to this Motion is attached.

I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS

Federal district courts possess the inherent authority to accept *amicus* briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) ("[D]istrict courts possess the inherent authority to appoint 'friends of the court' to assist in their proceedings."); *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *United States v. Davis*, 180 F. Supp. 2d 797, 800 (E.D. La. 2001) (noting that district courts have authority to permit the filing of *amicus* briefs). The role of *amici* is to assist the court "in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision." *Newark Branch, N.A.A. C.P. v. Town of Harrison*, N.J., 940 F.2d 792, 808 (3d Cir. 1991).

The case authority supports the Court's exercise of its discretion to accept the Market Monitor's *amicus* brief.

II. THE PROPOSED MARKET MONITOR BRIEF EXPLAINS HOW THE ZEC PROGRAM CONFLICTS WITH THE FEDERAL SCHEME FOR REGULATION OF THE WHOLESALE ENERGY MARKET OPERATED BY THE NYISO.

The Market Monitor has reviewed the briefs filed to date in this case in order to avoid unnecessary duplication of the parties' arguments. Consistent with the Market Monitor's special interest, explained in the first section of the Brief, in protecting and promoting competitive organized wholesale markets, the Market Monitor's brief will

explain in more depth the factual basis of plaintiff's arguments that the ZEC program interferes with and improperly supplants the federal regulatory scheme for the organized wholesale market, and that alternative programs already exist, pursuant to which the Commission could better meet its purported objectives.

Respectfully submitted,

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Dated: January 6, 2017

EXHIBIT 1

Case No. 1:16-cv-08164-VEC

IN THE
United States District Court
for the Southern District of New York

COALITION FOR COMPETITIVE ELECTRICITY; DYNEGY, INC., EASTERN GENERATION, LLC; ELECTRIC POWER SUPPLY ASSOCIATION; NRG ENERGY INC.; ROSETON GENERATING LLC; and SELKIRK COGEN PARTNERS, L.P.,

Plaintiffs,

v.

AUDREY ZIBEMAN, in her official capacity as Chair of the New York Public Service Commission; and PATRICIA L. ACAMPORA, GREGG C. SAYRE, and DIANE X. BURMAN, in their official capacities as Commissioners of the New York Public Service Commission,

Defendants.

BRIEF OF AMICUS CURIAE MONITORING ANALYTICS, LLC, ACTING IN ITS CAPACITY AS THE INDEPENDENT MARKET MONITOR FOR PJM, IN SUPPORT OF PLAINTIFFS

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**Pro hac vice application pending.*

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TABLE OF AUTHORITIES

INTEREST OF AMICUS CURIAE

Monitoring Analytics, LLC, serves as the Independent Market Monitor for PJM ("Market Monitor"), and appears here solely in its capacity as the Market Monitor.[1] Consistent with its unique role, the Market Monitor here seeks to protect and promote the public interest in and federal policy for competition based regulation, including, specifically, the creation of structural problems in PJM markets that may inhibit a robust and competitive market.[2]

The organized wholesale electricity market at issue in this case is operated by the New York Independent System Operator, Inc. ("NYISO"). NYISO has been approved as an Independent System Operator ("ISO") by the Federal Energy Regulatory Commission ("FERC").

The organized wholesale market operated by NYISO is adjacent to the market operated by PJM Interconnection, L.L.C.

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[1] Monitoring Analytics, LLC, is solely owned by Dr. Joseph E. Bowring. Dr. Bowring is the President of Monitoring Analytics and the Independent Market Monitor for PJM.

[2] *See* PJM Open Access Transmission Tariff Attachment M; 18 CFR § 35.28(g)(30.

PJM has been approved as a Regional Transmission Organization ("RTO") by the FERC.[3] Insofar as it concerns this proceeding, an ISO and an RTO may be considered the same type of entity, operators of organized wholesale markets for electric power.

NYISO exports electric power to and imports electric power from PJM. New York rules that affect prices in the NYISO energy and capacity markets have an impact on prices in PJM energy and capacity markets. Rules with similar impacts to the rules adopted in New York have been and are currently under consideration in some states in PJM markets.[4] The Market Monitor has directly intervened as a party in or otherwise directly participated in state proceedings and matters involving PJM states that affect the PJM markets.[5] Due to the direct impact the New York rule would have on PJM markets and the general importance of this issue to the future of the organized wholesale markets, including the PJM markets, the Market Monitor includes its brief of amicus curiae as

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3 *See PJM Interconnection, L.L.C., et al.*, 96 FERC § 61,061 (2001).

4 *See* Ohio Public Service Commission Cases Nos. 14-1693, 14-1297 and 16-0395; Ill. S.B. 2814 (Future Energy Jobs Bill).

5 *See id.*

Exhibit 1 to a motion for permission to submit such brief in this proceeding.

Consistent with its competition based regulatory initiative, FERC requires each ISO/RTO to operate a centralized wholesale electricity market independently from market participants. FERC requires ISOs/RTOs to have a market monitoring unit that is independent from market participants and from the ISO/RTO.[6]

The core functions of the Marker Monitor are to evaluate and review proposed market rules, tariff provisions and market design elements; review and report on the performance of the wholesale markets; and identify and notify the FERC of participant or RTO behavior that requires investigation.[7]

The Market Monitor is charged to protect the public interest in competitive wholesale electricity markets.[8] The Market Monitor's purpose is to promote efficient wholesale markets in the PJM

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6 *See* 18 C.F.R. § 35.34(k)(6).

7 *See* 18 C.F.R. § 35.28(g)(3)(ii).

8 *See* PJM Open-Access Transmission Tariff ("OATT") Attachment M § IV.B.3; *see also*, 18 C.F.R § 35.28(g).

region and to help realize the FERC's goal to regulate wholesale electricity markets through competition.[9]

The Market Monitor is subject to a strict code of ethics prohibiting conflicts of interests or engagements with market participants and others that could interfere with the Market Monitor's independence and objectivity.[10]

The Market Monitor has no financial interest in the outcome of this proceeding. The Market Monitor is completely independent of plaintiffs, the FERC, PJM and NYISO, and it determines its own position without outside interference. The Market Monitor's sole interest is to provide objective information on the operation of the organized wholesale electricity markets in order to assist the Court in its determinations in a case that implicates the public interest in competitive and efficient organized wholesale electricity markets, including in the PJM region.

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9 *Id*.

10 *See* OATT Attachment M § XI; *see also*, 18 C.F.R § 35.28(g)(3)(vi).

ISSUE PRESENTED

Whether New York's Zero-Emissions Credit ("ZEC") program is unlawful because it operates in the area of FERC's exclusive jurisdiction and federal law preempts it and because it is invalid under the dormant Commerce Clause.[11] [12]

SUMMARY OF ARGUMENT

By design, the ZEC program will subsidize nuclear power plants that demonstrate "public necessity" and are awarded contracts by April 1, 2017, by providing revenues outside of the wholesale power markets operated by NYISO.[13] The explicit purpose of the subsidies is to provide revenues to a specific set of three nuclear power plants to ensure that the plants will not retire, which they otherwise would.[14] The level of subsidies will be administratively determined as the difference between the social

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[11] The "ZEC program" refers only to the portion of the order of the New York Public Service Commission that is the subject of the complaint. *See* Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, et al., New York Pub. Serv. Comm'n Case No. 15-E-0302 et al. (August 1, 2016) slip. op. at 19–20, 45–61, 119–150 ("ZEC Order").

[12] *See*, *e.g.*, Hughes v. Talen Energy Mktg., LLC, 136 S. Ct. 1288, 1297 (2016); U.S. Const. Art. I, § 8, Cl, 3.

[13] ZEC Order at 19–20.

[14] ZEC Order at 125.

cost of carbon, RGGI impact, the difference between forecast market revenues and current market revenues.[15] New York Load-Serving Entities (customers) will be required to pay for Zero-Emissions Credits (ZECs) to fund the subsidies.

The ZEC subsidies will result in keeping noneconomic plants in NYISO markets despite market signals to retire. The result will be to suppress prices in the energy and capacity markets compared to a competitive outcome. The result of price suppression will be increased pressures for the artificial and uneconomic retirements of other nonsubsidized plants, reduced incentives for new entry by new plants and reduced incentives to maintain existing plants. [16]

Price suppression will result from retaining uneconomic sources of supply in the energy and capacity markets. These subsidized plants will have an incentive to operate, regardless of the wholesale market price. Receipt of the ZEC subsidies is

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[15] *See* ZEC Order at P 131.

[16] The prevailing federal wholesale regulatory regime relies on competition to set just and reasonable prices in lieu of the historical reliance on the cost-of-service ratemaking approach. *See* Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1, 554 U.S. 527, 535–536 (U.S. 2008).

explicitly tied to the continued sales of power by the subsidized units at historic levels.[17] In addition, by requiring that the subsidized plants be offered into the NYISO market and provide power at historic levels without regard to market prices, the ZEC programs incent offers at zero or below competitive levels.

The ZEC program will thus interfere with and undermine federal policies intended to establish competitive wholesale electricity markets and the FERC's reliance on such markets to regulate prices under the Federal Power Act.[18] Accordingly, the ZEC program is field and conflicts preempted.[19]

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17 ZEC Order at 144–146.

18 *Id*.

19 *See*, *e.g.*, PPL EnergyPlus, LLC v. Nazarian, 753 F.3d 467, 475–476 (4th Cir. 2014) ("A wealth of case law confirms FERC's exclusive power to regulate wholesale sales of energy in interstate commerce, including the justness and reasonableness of the rates charged. 'The [FPA] long has been recognized as a comprehensive scheme of federal regulation of all wholesales of [energy] in interstate commerce,' Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 300…, and 'FERC's jurisdiction over interstate wholesale rates is exclusive,' Appalachian Power Co. v. Pub. Serv. Comm'n, 812 F.2d 898, 902 (4th Cir. 1987)… In this area, 'if FERC has jurisdiction over a subject, the States cannot have jurisdiction over the same subject.' Miss. Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354, 377… (1988)..."); *id*. at 479–480 ("The Generation Order … presents a direct and transparent impediment to the functioning of the PJM markets, and is therefore preempted.").

The ZEC program targets specific resources located within New York, even though resources located anywhere could meet the stated objective (at 19), "to avoid the emission of 15 million tons of carbon dioxide per year." Because the ZEC program includes no valid reason to restrict the source of avoided emissions to certain upstate New York power plants, it is invalid under the dormant Commerce Clause.

New York could have achieved its carbon dioxide emissions objectives, which are not preempted, under available alternative market-based and nondiscriminatory approaches, including, most obviously, through its existing or enhanced programs for Renewable Energy Credits ("REC") and Renewable Portfolio Standards ("RPS") and through its participation in the Regional Greenhouse Gas Initiative ("RGGI"), a mandatory market-based program to reduce greenhouse gas emissions, through market purchases of RECs from neighboring markets including PJM, or through the market purchase of offsets from any area.[20]

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[20] RGGI explains on its website that it is "a cooperative effort among nine states—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont—to reduce

ARGUMENT

Congress, with the Energy Policy Act of 1992, and the FERC, with the issuance of Order No. 888, initiated restructuring of the electric industry and reforming the regulation of that industry based on competition principles in place of the traditional cost of service ratemaking model.[21] A market permits competition from new entrants that are not regulated public utilities and creates an

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greenhouse gas emissions." RGGI explains that its "exclusive purpose is to provide administrative and technical services to support the development and implementation of each RGGI State's CO_2 Budget Trading Program." RGGI lists its activities to include: (i) "Development and maintenance of a system to report data from emissions sources subject to RGGI, and to track CO_2 allowances; (ii) "Implementation of a platform to auction CO_2 allowances;" (iii) "Monitoring the market related to the auction and trading of CO_2 allowances:" (iv) Providing technical assistance to the participating states in reviewing applications for emissions offset projects;" (v) "Providing technical assistance to the participating states to evaluate proposed changes to the States' RGGI programs," The RGGI website can be accessed at: <*https://www.rggi.org/*>.

[21] *See* Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1, 554 U.S. 527, 535–536 (U.S. 2008) ("In recent decades, the Commission has undertaken an ambitious program of market-based reforms… [T]he Commission has attempted to break down regulatory and economic barriers that hinder a free market in wholesale electricity. It has sought to promote competition in those areas of the industry amenable to competition, such as the segment that generates electric power... To further pry open the wholesale-electricity market and to reduce technical inefficiencies caused when different utilities operate different portions of the grid independently, the Commission has encouraged transmission providers to establish "Regional Transmission Organizations"--entities to which transmission providers would transfer operational control of their facilities for the purpose of efficient coordination.").

incentive for lower costs and technical innovation. Actual costs of generation have been reduced as a result and technical innovation has occurred as a result.[22]

The courts have recognized the essential features of FERC's wholesale regulatory model and its vulnerability:

> [T]he federal markets are the product of a finely-wrought scheme that attempts to achieve a variety of different aims. FERC rules encourage the construction of new plants and sustain existing ones. They seek to preclude state distortion of wholesale prices while preserving general state authority over generation sources. They satisfy short-term demand and ensure sufficient long-term supply. In short, the federal scheme is carefully calibrated to protect a host of competing interests. It represents a comprehensive program of regulation that is quite sensitive to external tampering.[23]

Market participants, including both suppliers and buyers, are deprived of the benefits of competition if suppliers are permitted to exercise market power and raise prices above competitive levels or

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22 *Id*.

23 PPL EnergyPlus, LLC v. Nazarian, 753 F.3d 467, 473 (4th Cir. 2014), *aff'd*, Hughes v. Talen Energy Mktg., LLC, 136 S. Ct. 1288, 1294 (2016) ("FERC extensively regulates the structure of the PJM capacity auction to ensure that it efficiently balances supply and demand, producing a just and reasonable clearing price," citing FERC v Elec. Power Supply Ass'n, 138 S. Ct. 760, 769 ("the clearing price is "the price an efficient market would produce").

if buyers are permitted to exercise market power and reduce prices below competitive levels or if state policies "guarantee[] … a rate distinct from the clearing price for its interstate sales of capacity… [b]y adjusting an interstate wholesale rate."[24]

States are allowed to "encourag[e] production of … clean generation through measures 'untethered to a generator's wholesale market participation.'"[25] But the ZEC program is clearly tethered to a generator's wholesale market participation. Payment of the subsidies requires continued participation in the wholesale power markets.[26]

The NYISO markets, like the PJM markets, include an energy market, ancillary services markets and a capacity market. The combination of markets provides a level of total revenues to plants that incents efficient market entry and exit.

The NYISO and the PJM markets operate on the principle of economic dispatch. The plants with the lowest offers clear first and

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[24] *Hughes v. Talen*, 136 S. Ct. 1288, 1297.

[25] *Id.* at 1299.

[26] ZEC Order at 124–126.

plants are cleared in ascending order of offers. When supply equals demand, no additional plants are cleared in the markets. An increase in zero or low price energy will displace other plants and reduce the energy price paid to other plants. An increase in zero or low price capacity will displace other plants in the capacity market and reduce the capacity price paid to other plants.

The ZEC program is not consistent with the operation of a competitive wholesale electricity market. The ZEC program subsidizes specific plants to the extent that the State of New York Public Service Commission ("NYPSC") determines it is appropriate to ignore market exit signals produce by the competitive operation of NYISO wholesale markets. The ZEC program artificially suppresses prices in NYISO markets. Suppressed prices negatively affect the incentives to build new generation and, if extended, would result in a situation where only subsidized units would ever be built. Suppressed prices can create retirement signals for plants that are financially viable. Such a result contradicts a fundamental policy goal that investors build and operate resources at their own risk and not at the risk of ratepayers.

If allowed, the ZEC program would lead to the displacement of the federal market approach by a state determined alternative in NYISO. The effects are not limited to New York but extend to the PJM market and other adjacent markets. Because there are substantial imports and exports between NYISO and PJM, suppressed prices in NYISO will also suppress prices in PJM. The market approach created under federal policy cannot coexist with the subsidies created by the ZEC program.

The ZEC program also interferes with the establishment of just and reasonable rates under the Federal Power Act because it is unduly discriminatory. The ZEC program identifies three nuclear generation stations that will close based on market signals if they do not receive subsidies: FitzPatrick, R.E. Ginna and Nine Mile Point ("ZEC Stations"). The ZEC Order also identifies Indian Point as a New York nuclear facility that would not close based on financial need and did not include it as a ZEC Station. The ZEC Order makes an explicit finding that the ZEC Stations will close taking account expected NYISO market revenues and revenues

from programs designed to reduce carbon emissions.[27] The ZEC program renders each ZEC Station immune to the identified competitive market result in a manner that confiscates a portion of the market value of existing investment not similarly immune, including all units whose market prices are affected, including those in PJM and other neighboring markets, and creates a disincentive to new entry from competitive suppliers. The ZEC program reverses the results of the competitive wholesale electricity markets operated by NYISO. The ZEC Order also suppresses prices in PJM markets because of the substantial volume of exports and imports between NYISO and PJM. This direct impact on the federal regulatory scheme is exactly the kind of scheme prohibited in *Hughes v Talen*.[28]

Even though the particular ZEC program adopted by New York is an overreach, this does not mean that there are no valid approaches through which New York could have met its

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[27] ZEC Order at 125–127.

[28] 136 S. Ct. 1288 (2016) (finding "guarantee[d] … rate distinct from the clearing price for … interstate sales of capacity … invades FERC's regulatory turf").

objectives. In fact, New York already has existing programs in effect that could be readily enhanced "to avoid the emission of 15 million tons of carbon dioxide per year" on top of the reductions already incented. These include New York's existing or enhanced programs for REC and RPS, through New York's participation in RGGI, through market purchases of RECs from neighboring markets including PJM, or through the purchase of offsets from any area. New York has the right and the obligation to address its environmental policy concerns if it does not think they are being adequately addressed through the NYISO wholesale markets.[29] It can do so without interfering with FERC's jurisdiction over the wholesale power market.[30]

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[29] *Id.* at 1299 ("We reject Maryland's program only because it disregards an interstate wholesale rate required by FERC. We therefore need not and do not address the permissibility of various other measures States might employ to encourage development of new or clean generation, including tax incentives, land grants, direct subsidies, construction of state-owned generation facilities, or re-regulation of the energy sector. Nothing in this opinion should be read to foreclose Maryland and other States from encouraging production of new or clean generation through measures 'untethered to a generator's wholesale market participation.'")

[30] *Id.*

The intrusion on federal policy includes the impact on the market prices paid to other market participants in the wholesale power market. The impact of the ZEC program is the suppression of the market clearing prices paid to other participants in the NYISO capacity market and other markets below competitive levels.

The FERC approved a market design intended to establish just and reasonable market clearing prices. The ZEC program by its terms would work to establish different and unlawful prices. Both field and conflicts preemption preclude that result.[31] The Interstate Commerce Clause also precludes this result.[32]

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[31] *See id*. at 1297 ("The Supremacy Clause makes the laws of the United States "the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U. S. Const., Art. VI, cl. 2. Put simply, federal law preempts contrary state law. 'Our inquiry into the scope of a [federal] statute's pre-emptive effect is guided by the rule that the purpose of Congress is the ultimate touchstone in every pre-emption case.' Altria Group, Inc. v. Good, 555 U. S. 70, 76, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008) … A state law is preempted where 'Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law,' Northwest Central Pipeline Corp. v. State Corporation Comm'n of Kan., 489 U. S. 493, 509…, as well as 'where, under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' Crosby v. National Foreign Trade Council, 530 U. S. 363, 373, 120 S. Ct. 2288…. We agree with

CONCLUSION

Accordingly, the Market Monitor respectfully urges that the relief requested by plaintiffs be granted, that the ZEC program be found unlawful.

Respectfully submitted,

*Jeffrey W. Mayes**

> the Fourth Circuit's judgment that Maryland's program sets an interstate wholesale rate, contravening the FPA's division of authority between state and federal regulators. As earlier recounted, see … 194 L. Ed. 2d, at 419, the FPA allocates to FERC exclusive jurisdiction over "rates and charges . . . received . . . for or in connection with" interstate wholesale sales. §824d(a). Exercising this authority, FERC has approved the PJM capacity auction as the sole ratesetting mechanism for sales of capacity to PJM, and has deemed the clearing price per se just and reasonable. Doubting FERC's judgment, Maryland—through the contract for differences—requires CPV to participate in the PJM capacity auction, but guarantees CPV a rate distinct from the clearing price for its interstate sales of capacity to PJM. By adjusting an interstate wholesale rate, Maryland's program invades FERC's regulatory turf. See EPSA, …136 S. Ct. 760… ('The FPA leaves no room either for direct state regulation of the prices of interstate wholesales or for regulation that would indirectly achieve the same result.'… [n9: According to Maryland and CPV, the payments guaranteed under Maryland's program are consideration for CPV's compliance with various state-imposed conditions, i.e., the requirements that CPV build a certain type of generator, at a particular location, that would produce a certain amount of electricity over a particular period of time. The payments, Maryland and CPV continue, are therefore separate from the rate CPV receives for its wholesale sales of capacity to PJM. But because the payments are conditioned on CPV's capacity clearing the auction—and, accordingly, on CPV selling that capacity to PJM—the payments are certainly 'received . . . in connection with" interstate wholesale sales to PJM. 16 U. S. C. §824d(a).]'").

[32] U.S. Const. Art. I, § 8, Cl, 3.

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**Counsel of Record, Admission to the Bar of the Supreme Court of the United States pending.*

January 6, 2017

Exhibit 2

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COALITION FOR COMPETITIVE ELECTRICITY, DYNEGY INC., EASTERN GENERATION, LLC, ELECTRIC POWER SUPPLY ASSOCIATION, NRG ENERGY, INC., ROSETON GENERATING, LLC, and SELKIRK COGEN PARTNERS, L.P., *Plaintiffs*, v. AUDREY ZIBELMAN, in her official capacity as Chair of the New York Public Service Commission; and PATRICIA L. ACAMPORA, GREGG C. SAYRE, and DIANE X. BURMAN, in their official capacities as Commissioners of the New York Public Service Commission, *Defendants*.	)	Case No. 1:16-cv-8164(VEC)

ORDER

Upon consideration of the unopposed Motion for Leave to File Amicus Brief in this case, **IT IS HEREBY ORDERED**, the Court grants the Motion for Leave to File Amicus Brief of Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM.

Dated:

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The Honorable Valerie Caproni
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,

this 6th day of January, 2017.

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