

future are among NRDC's top institutional priorities, and we frequently advocate before federal regulatory bodies, wholesale energy market operators, state siting and regulatory authorities, and the federal courts to promote and defend clean energy policies like the Future Energy Jobs Act legislation (Legislation) that is the subject of this litigation. NRDC was a leading member of the Illinois Clean Jobs Coalition, which lobbied for the passage of the Legislation.

2. NRDC was granted leave to participate as amicus curiae in litigation pending in the U.S. District Court for the Southern District of New York concerning substantially identical issues. Order Granting Motion to File Amicus Brief, Dkt. 49, *Coal. for Competitive Energy v. Zibelman*, No. 16-8164 (S.D.N.Y. Dec. 12, 2016).¹

3. The Legislation contains a suite of policies aimed at making Illinois a leader in fighting climate change and decarbonizing the electricity sector. These include improvements to the state's Renewable Portfolio Standard, a program requiring, among other things, that a specified percentage of energy come from renewable sources; significant solar energy incentives, including a community solar program; and a strong energy efficiency program. It also includes a program of Zero Emissions Credits (ZECs), designed to keep nuclear power plants from closing by providing financial support to them for ten years. NRDC is skeptical of nuclear power because of the significant safety, global security, environmental, and economic risks that the use of this technology imposes on society. However, NRDC strongly supported the Legislation as a whole because of the important energy-efficiency and renewable-energy measures that it includes, and because it will move Illinois away from its current reliance on fossil fuels toward a clean energy future.

¹ NRDC also recently submitted an amicus brief to the U.S. Court of Appeals for the Second Circuit, defending Connecticut's Renewable Portfolio Standard against an attack on preemption grounds. Brief of NRDC *et al.* as Amici Curiae Supporting Appellees, Dkt. 129, *Allco Fin. Ltd. v. Klee*, Nos. 16-2946, 16-2949 (2d Cir. Nov. 23, 2016). NRDC also submitted a joint amicus brief to the U.S. Supreme Court in *FERC v. Electric Power Supply Ass'n*, 136 S. Ct. 760 (2016). *See* Brief for Conservation Law Foundation *et al.*, *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760 (2015) (Nos. 14-840, 14-841), 2015 WL 4550213.

4. The Federal Rules of Civil Procedure do not specifically provide for the filing of amicus curiae briefs in the district courts. It is well established, however, that “whether to allow the participation of an amicus curiae is firmly within the discretion of the district court.” *Adams v. City of Chicago*, No. 94-5727, 1995 WL 491496, at *1 (N.D. Ill. Aug. 11, 1995) (citing cases); accord *Aliano v. Quaker Oats Co.*, Nos. 16-3087, 16-4293, 16-6215, 16-7395, 2017 WL 56638, at *4 (N.D. Ill. Jan. 4, 2017). The criterion for a district court’s decision whether to accept an amicus brief “should be the same for any would-be amici: ‘whether the brief will assist the judge by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.’” *Johnson v. U.S. Office of Personnel Mgmt.*, No. 14-0009, 2014 WL 1681691, at *1 (E.D. Wisc. Apr. 28, 2014) (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in chambers) (internal brackets omitted)). “The criterion is more likely to be met [when] . . . the amicus presents ‘a unique perspective or specific information that can assist the court beyond what the parties can provide.’” *Id.* (quoting *Voices for Choices*, 339 F.3d at 545).

5. NRDC respectfully submits that its proposed brief will assist the Court in analyzing the complex subject-matter at issue in this case, and it presents both a unique perspective and specific useful information regarding the Legislation. The issues in this case are not only unusually complex—requiring an understanding of the complexities of wholesale energy markets and their associated legal and economic issues—but have precedential implications reaching far beyond the immediate subject matter. As explained in NRDC’s brief, a decision concerning the constitutionality of the Zero Emission Credits (ZECs) program at issue here has the potential to create significant ambiguities regarding the scope of states’ authority, which could chill sound energy regulation and impede the development and implementation of clean energy policies. NRDC, as a leading advocate for such state-level efforts, offers in its amicus brief facts concerning states’ various clean energy initiatives that will be helpful to the Court, as well as a unique perspective on the implications of

quashing those initiatives through an overbroad interpretation of federal preemption. In circumstances where an amicus brief will offer a unique and useful perspective, district courts have granted leave to file. *See Johnson*, 2014 WL 1681691, at *2; *Monarch Beverage Co., Inc. v. Johnson*, No. 13-1674, 2014 WL 7063019, at *3 (S.D. Ind. Dec. 11, 2014). Here, the case for granting leave to file NRDC's amicus brief is particularly compelling given that no party opposes the filing.

6. NRDC has no financial stake in the outcome of this case. NRDC submits that the filing of its proposed brief at this stage in the proceedings will not affect the existing briefing schedule, prejudice the parties, or delay the Court's resolution of the pending motion to dismiss. NRDC is noticing this motion seeking leave to file the attached proposed amicus brief on the same day Defendant has noticed its motion to dismiss. As noted above, counsel for Plaintiffs and Defendants do not oppose this motion.

For the foregoing reasons, NRDC respectfully requests the Court's leave to file the attached proposed amicus brief in support of Defendant's motion to dismiss and in opposition to Plaintiffs' motions for a preliminary injunction.

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Respectfully submitted,

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**Pro hac vice* application pending

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