

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN A. NICHOLS and FUELCELL)
ENERGY, INC., a Delaware Corporation,)
)
Plaintiffs,)

v.)

Civil Action No. 12-777-CJB

JACK MARKELL, in his official capacity as the)
Governor of Delaware; WILLIAM O'BRIEN, in his)
official capacity as Executive Director of the Delaware)
Public Service Commission; JAYMES B. LESTER, in)
his official capacity as Commissioner of the Delaware)
Public Service Commission; JOANN CONAWAY, in)
her official capacity as Commissioner of the Delaware)
Public Service Commission; DALLAS WINSLOW, in)
his official capacity as Commissioner of the Delaware)
Public Service Commission; and JEFFREY CLARK, in)
his official capacity as Commissioner of the Delaware)
Public Service Commission,)
)
Defendants.)

ORDER

At Wilmington, this 17th day of April, 2014, for the reasons set forth in the Memorandum Opinion issued this date, **IT IS HEREBY ORDERED** that:

- (1) Defendants' Motion to Dismiss For Lack of Subject Matter Jurisdiction and Failure to State a Claim (D.I. 19) is **GRANTED IN PART** and **DENIED IN PART**.
- (2) Plaintiff John A. Nichols' ("Nichols") dormant Commerce Clause challenge (Count I) is dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing; Nichols' challenge under the Equal Protection Clause of the Fourteenth Amendment (Count II) is dismissed pursuant to Federal Rule of Civil

Procedure 12(b)(6) for failure to state a claim. Only Plaintiff FuelCell Energy, Inc.'s dormant Commerce Clause challenge (Count I) remains.



Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE