



State legislatures moving to regulated power plant decommissioning, decontamination and demolition

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In an earlier [blog](#) we raised the question: *What Happens to a Coal-Fired Power Plant When it Stops Being a Power Plant?* We also [predicted](#) that soon there would be mounting public pressure to prevent closed and vacant former power plants from standing unused for long period of time—so-called “zombie” power plants. As the pace of coal- and oil-fired power plant closings accelerates, due (in part) to new, stringent environmental regulatory requirements, it’s not surprising that the 2015 state legislative season included multiple bills aimed mainly at ensuring that these plants do not sit vacant and unattended for too long. As of August 1, 2015, one of these bills had passed and others had been introduced. The provisions of some of these bills are being closely watched and may serve as a road map for other states to follow as they consider a way to expedite power plant repurposing or demolition and/or to ensure that the state or local municipalities do not get stuck footing the bill to properly decommission, decontaminate, demolish and remediate these sites.

Analysis

The first of the bills to cross the finish line was [Nevada’s Senate Bill 416](#), which was signed by the Governor as Chapter 395 of the laws of 2015. This new law only applies to publicly-owned “electric utilities” and requires them to identify as “surplus” certain “non-productive assets” which are not being “reasonably held for future use”. “Electric Utility” is defined in the new law as any “public utility” doing business on lands within Nevada and which, among other things, “generates, transmits or distributes” electric power with gross revenues of \$250,000,000 or more. Because Nevada only has three coal-fired power plants and only two of them are owned by electric utilities (at least one of which may not meet the gross revenue criteria), the prospective scope of the new law is limited. The law requires the Electric Utility to create and execute a plan for the “timely cleanup and disposal of surplus assets.” Assets which are not disposed of in a timely manner shall “be removed from the responsibility of the utility’s customers.” To the extent that the cleanup and removal is done in a timely manner, “the reasonable costs of decommissioning and disposal of surplus assets may be charged to the utility’s customers.” The sale of the asset is the assumed end point. If an asset is deemed to have “no value” but is not sold, no future carrying costs can be included in the rate base. Hence, the State has created a significant financial incentive for electric utilities who close a power plant to move expeditiously through the cleanup, decommissioning and either sale or demolition of the site.

Another state bill that moved forward legislatively this year (although it was not enacted) is [Connecticut Senate Bill \(SB\) 1050](#). Entitled An Act Concerning Abandoned Electric Generating Facilities and Corporate Responsibility, the bill focuses on two key points:

- It creates requirements for power plants and other electric generating facilities that no longer produce power; and
- It requires developers of new power plants to include decommissioning plans in their application for a Siting Council certificate.

The first of these provisions affects existing power plants potentially slated for retirement or closure. The bill requires plants that have not generated power in at least six months to submit to the Connecticut Public Utilities Regulatory Authority (PURA) within 6 months a plan to sell, transfer, reenergize or decommission the power plant within two years. For “abandoned electric generating facilities” that have not generated power in at least two years, the bill requires the facility’s owner to submit to PURA, within six months of the effective date of the law, a plan to sell, transfer, reenergize or decommission the facility. Under the bill, when PURA receives the plan, it must issue an order giving the facility owner up to one year to sell, transfer, reenergize or decommission the facility. The bill establishes penalties for failure to comply with PURA’s order. Finally, the bill specifies that towns can exercise eminent domain over the abandoned facility’s tract of land for certain uses already permissible by law. It also exempts towns from environmental remediation costs and reverts liability for such costs to the abandoned facility’s former owner.

As with most of these pending bills, the Connecticut bill had a very broad definition of “decommission”:

the process undertaken at the time an electric generating facility is permanently retired from service to ensure that the decontamination, dismantlement, removal and disposal of the facility, including the facility site and any components and materials associated with the facility, are accomplished in compliance with all applicable state and federal laws, and to ensure that such final disposition does not pose any threat to the public health and safety.

(Emphasis added.) This bill was approved by the State Legislature’s Energy and Technology Committee, and it was evaluated and released by the Legislative Commissioner’s Office and placed on the calendar for the full Senate. However, it failed to pass.

In neighboring Massachusetts, a different tack was taken to address those electric generating facilities which are “designed for or capable of operating at a gross capacity of 100 megawatts” or more. Entitled An Act Relative to Decommissioning Plans for Electric Generating Facilities, the bill gave the State’s Energy Siting Board a role in deciding whether the proposed closure and decommissioning of a generating facility will be done in a timely manner, “with a minimum impact on the environment at the lowest possible cost,” and without recovery through rates. The proposed bill stated:

The owner of a generating facility, fueled in whole or part by petroleum products, gas, or coal during some period of its operations, hereinafter “decommissioned facility,” shall decommission any such decommissioned facility in a timely manner and in accordance with the conceptual decommissioning plan required pursuant to [the bill] and the final decommissioning plan

approved by the board pursuant to [the bill]. Notwithstanding any general or special law to the contrary, no owner of a generating facility may seek recovery of any costs under this section in any rate proceeding before the department.

Once again, the proposed definition of “Decommission(ing),” was very broad:

the permanent closure and discontinuation of the generation of electric power, at a generating facility, as defined in Section 69G of chapter 164, including the dismantlement, demolition, and removal of associated structures and equipment and remediation of site contamination as required by applicable regulatory requirements prior to reuse of the site for power generation and/or redevelopment for other commercial, industrial, residential, or public uses.

Unlike the Connecticut bill, Massachusetts’ bill did not define what constitutes a “timely manner” or how “permanent closure” will be differentiated from long-term inactivity.

On the west coast, Washington State’s efforts to encourage early closure of coal-fired power plants triggered a huge backlash from its Montana neighbors. The original version of Washington Senate Bill 5874 entitled An Act Related to Regulatory and Financial Mechanisms and means to promote the retirement of coal-fired electric generation facilities would have established mechanisms for power plant owners to recover from Washington rate payers not only the broadly defined “net book value” of plants which close early, but also eligible “plant acquisition costs” if a plant is purchased and then closed.

According to media reports, Washington SB5874 was largely aimed at the 4-unit Colestrip Steam Electric Power Plant, which is located in Montana but which supplies much of Washington’s electricity. The plant has multiple owners, and the ownership structure is making any decision to close the plant complicated. Among other things, in its original form, [Washington Senate Bill 5874](#) would have allowed plant owners to recover from Washington utility customers a broad range of not only “plant closure” costs, including such things as displaced employee-related costs and legal costs, but also eligible plant acquisition costs.

At least one Montana Senator strongly objected to the potential massive loss of both local power plant and coal mining jobs, and he introduced a “poison pill” bill ([Montana SB 402](#)) that not only would have wiped out any of the incentives for early closure created under the Washington bill, but would have made the early closure of the Colestrip power plant so costly that it likely would never occur. Under Montana’s SB 402, any coal-fired power plant that is sold with the intention that it would be shut down early would pay for 20 years an annual fee of 5 times the taxable value of the property to be retired. Further, even a Montana coal-fired power plant which has not incurred “acquisition costs” (that is, it hadn’t been sold) that is shut down “early,” would still have to pay an annual fee based on two times the taxable value, but for only 10 years. These fees reportedly would have cost the owners of Colestrip approximately two billion dollars.

The Montana bill was later amended to apply to all coal-fired power plants that close before 2025. Under the amended bill, during each of the first 5 tax years after closure the plant’s owners would have to pay an annual “impact fee” equal to the sum of:

- \$3 Million
- 100% of the 2014 Property Taxes

- 100% of the “electrical energy producers license tax”

These fees would then be stepped down between years 6 and 10. In recognition that changing environmental requirements might force coal-fired plants into early retirement, plant owners could apply for an exemption from these fees if they could demonstrate that the closure was caused by state or federal requirements which could not be met without an “unreasonable investment or capital improvement.” Seventy-five percent of the annual fees were to be returned to the locality in which the plant was located to cover such things as lost property and school taxes, pay for outstanding capital bonds, promote development of the economic bases and workforce redevelopment and training.

When SB 402 passed the Montana Senate, it sent a strong message to both the owners of Colestrip and the Washington legislature. Washington SB5874 was subsequently not approved. Two weeks after the vote which tabled it, an alternate bill started to move through the Senate. [Washington SB 2225](#) orders the State Utilities and Transportation Commission to undertake a “comprehensive study of the costs and benefits of accelerated retirement of certain coal-fired generation units.” Until the Commission has completed this study, it may not issue a financing order or otherwise authorize an electrical company or its financing subsidiary to issue bonds or to recover from ratepayers any costs related the “accelerated retirement” of a coal-fired plant. Once Washington signaled that SB5874 was not going anywhere, the Montana House took no further action on SB 402.

Closing thoughts

The North American Electric Reliability Corporation (NERC, a federal agency tasked by the Federal Energy Regulatory Commission to assess the impact of these closures on the reliability of the U.S. bulk energy system) concluded an April 2015 report that widespread outages could result from these closures and that this closure of so many power plants that still had some planned useful life is fundamentally changing the energy generation mix.

Approximately 72 GW of electrical generating capacity, mostly coal-fired facilities, have announced their eventual retirement. While states and municipalities generally support closure of coal- and oil-fired plants for many reasons, they fear the potential for idled facilities to result in significant costs being borne by their communities and rate payers. Thus, plant closure laws are gaining national attention as states begin to focus on how to force “timely” decommissioning and repurposing, sale or demolition of closed plants. The initial regulatory efforts discussed above that have been taken by some proactive states are being closely watched by other states, and could signal the direction in which more and more public service commissions and state legislatures will move in coming months and years.

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