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State Laws cushioning the impact of power plant closures continue to be enacted (or at least considered)

By Bruce Baker and Libby Ford

According to multiple media reports,[1] U.S. utilities took 1.4 GW of coal-fired power plant capacity offline in 2018, due almost entirely to economics. While to date the power lost has been replaced with power generated with natural gas, solar or wind without placing significant reliability strains on the country's electrical supply, these closures have taken significant tolls on local economies as good jobs disappeared and some local tax bases shrunk almost overnight.

Once again, we have taken a look at what happened at the state legislature level to address issues related to closing power plants. As plant closures have moved from a future possibility that could potentially be prevented[2] to a wave of actual closures—possibly leaving "zombie" power plants to slowly decay over years detracting from the perceived value of the nearby area[3]—state legislatures have moved from trying to block, or at least slow down plant closures, to trying to make sure that closed plants move through the closure and reuse or demolition process fairly quickly. Most recently, we see state legislatures trying to minimize the cost to ratepayers and/or the local economic impact of these closures. As we have found in prior years, not all of these efforts "crossed the finish line" as new laws, but the ideas and proposals submitted are likely to act as seeds as these same states and others try to grapple with the realities of power plants closing.

There are also an increasing number of lobbying organizations focused on the impact on communities of the closing of a large fossil fuel or nuclear power plant. In Illinois, for example, the Delta Institute (http://delta-institute.org), which focuses on local impacts of coal-fired power plant closings, has formed the *Just Transition Fund* (http://www.justtransitionfund.org) to act as both a grantmaker and a catalyst for local investment to assist communities impacted by power plant

[1] See, *Vistra, Duke, and FirstEnergy Lead In U.S. Coal-Plant Retirement Trend Likely To Gain Pace In 2018*, IEEFA March 2018 citing other sources and *U.S. Coal Plant Retirements Near All-Time High*, Bloomberg NEF.

[2] See our 2015 Alert on *State legislatures moving to regulate power plant decommissioning, decontamination and demolition*.

[3] Also see our October 2017 Alert on *Wanting to avoid zombies, states act to regulate closing power plants*.

closings. It is not likely a coincidence that the emergence and growth of these lobbying organizations has led to more legislative activity at the state level.

This article describes legislation in a number of states across the United States that has been enacted or under active consideration in 2018 to address the local economic impact of a power plant closing.

Montana

During 2018, Montana enacted legislation[4] stipulating that, beginning in Fiscal Year 2020, the Montana Office of Public Instruction is to provide a coal-fired generating unit closure block grant (CFC block grant) to affected school districts. To qualify, a school district must have had a 2017 taxable valuation that includes a coal-fired generating unit with a capacity of 200 MW or greater that had been placed in service prior to 1980 and has closed or will retire prior to July 1, 2022 (coal-fired power plant (CFPP)).

While the CFC block grants are to be funded out of the state's General Fund, if a qualified CFPP makes a payment in accordance with an approved closure plan and a portion of this payment is allocated to a school district, then this allocation must be used to reimburse the state's General Fund according to a sliding scale included in the new law. Payments from CFPPs which closed prior to June 30, 2018, must refund 100% of the total block grant. The mandated repayment percentage ratchets down to only 60% of the CFC block grant for CFPPs which close on July 1, 2022, or during Fiscal Year 2022. The total amount of the repayments, however, must not exceed the amount of the CFPP's payment allocated to the school district in the approved closure plan.

California

Previously California had passed a law anticipating the closing of the Diablo Canyon nuclear power plant and its two nuclear reactors operated by Pacific Gas & Electric (PG&E). Pursuant to that law, the California Public Utilities Commission (CPUC) had a third-party assessment undertaken of the adverse and beneficial economic impacts and the net economic effects that would occur if these units were to temporarily or permanently shut down. This assessment was also supposed to identify potential ways for the state and local jurisdictions to mitigate the adverse economic impact of the closure. This assessment was funded by $400T withdrawn from both unit's decommission funds.

In January 2018, the CPUC approved PG&E's request to retire both units in 2024–2025. On September 9, 2018, the California governor signed legislation (SB1090) stating the legislature's intent to provide direction and authorization to the commission to approve the full funding for the community impact mitigation settlement as well as the employee retention program proposed by PG&E in its closure application. Further, the new law mandates that the commission "ensure that the integrated resource plans avoid any increase in emissions of greenhouse gases" due to the retirement of Diablo Canyon.

Kentucky

Kentucky continues to fight to preserve coal-fired power plants. Its General Assembly issued a formal call to the U.S. Congress to "create a level playing field for all energy sectors" by

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[4] See, Section 20-9-638 MCA.

(i) establishing a temporary moratorium on closures of CFPPs and (ii) eliminating all subsidies for renewable energy used for electricity production that does not have proven battery storage. These two actions are to stay in effect until "prior harmful federal regulations on the coal industry have been repealed" or "similar subsidies for fossil fuel" have been established.[5]

Colorado

Rather than focusing on power plant closings, Colorado opted to pass a bill[6] addressing industrial plant closures and layoffs in rural areas. This new law instructs the state's Department of Local Affairs (DOLA) to provide "assistance" in job retention and creation to these rural areas. However, no additional state moneys are authorized, only "nonmonetary resources and assistance" is mandated and no increased DOLA staff are authorized to provide this assistance.

Missouri

While neither the Missouri House or Senate signed on to it, the state Senate introduced the "Missouri Electricity Bill Reduction Assistance Act"[7] which would have authorized the state's Public Service Commission (PSC) to allow utilities to issue revenue bonds to pay for the retirement of non-operational electrical generation facilities and for the construction of other generating units. The bonds were to be backed by the ratepayers for the electrical corporations that issued the bonds "as well as the existing customers" who later purchase electricity from another supplier or who receive electricity from another utility in the same service areas. The bonds would not have been considered debt and bond-related charges would not have been considered part of the corporation revenue or an asset of the corporation. Further, the state PSC could not later deem any action taken pursuant to an approved financing order to be unjust or unreasonable, as long as the actions were deemed "prudent." The bill further prohibited the state and all of its political subdivision from taking any action that impaired the value or revenue streams resulting from the bond nor to reduce (or alter) bond-related charges until the principle, interest and redemption premiums as well as all bond costs had been paid in full. It also specified that "some bond proceeds can be used to reduce localized financial impacts of closing."

In addition, the bill cited alternative financing mechanisms "used by twenty-one other states" that could lower ratepayers cost, apparently in an effort to create some incentives for power plant owners to explore other ways to reducing the short-term rate impacts as compared to if demolition, abatement and demolition were charged solely to current ratepayers. It also laid the groundwork for the PSC to approve one or more alternate financing mechanisms to reduce the overall cost to Missouri consumers, including the cost of decommissioning. Finally, the bill stipulated that the state PSC "shall not deny the recovery of any costs associated with the retirement" solely because the electrical corporation chose to finance the retirement through a mechanism other than a bond.

New Mexico[8]

The New Mexico House passed a bill mandating that if the closure of a CFPP facility within the state would cause a reduction of the taxable property value within a school district of $2.5M or

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[5] 2018 Kentucky House Concurrent Resolution No. 115, Regular Session.

[6] Colorado SB 5 enacted March 22, 2018.

[7] See, Missouri SB 968.

[8] See, New Mexico 2018 Senate Bill SB 47.

more, then the utility abandoning the CFPP "shall procure replacement reserves within the school district" as long as the cost of the replacement resource is less than 110% of the cost to procure the replacement electricity elsewhere in the state **and** as long as siting the replacement power within the school district does not affect overall system reliability. This bill did not pass the New Mexico Senate.

The New Mexico Senate also introduced, but did not pass, a bill allowing bonds to be issued to fund plant closures using alternative financing mechanisms if the mechanism led to cost savings for customers when compared to "traditional utility financing mechanisms." Similar to Missouri's revenue bond bill discussed above, the bill would allow recovery of financing costs and the imposition of "non-bypassable" energy redevelopment charges as separate line items on customer's bills.

Illinois

In many ways, the findings stated in a state Senate bill entitled the "Illinois Energy Transition Zone Act" track the issues state legislatures across the country struggled to tackle during 2018 as they accepted the reality and energy consequences of closing coal and nuclear power plants and the desire by many to transition to "green" energy sources:

> The General Assembly finds and declares that the health, safety, and welfare of the people of this State are dependent upon a healthy economy and vibrant communities; that the closure of coal energy plants, coal mines, and nuclear energy plants across the state are detrimental to maintaining a healthy economy and vibrant communities; that the expansion of green energy creates significant job growth and contributes significantly to the health, safety, and welfare of the people of this State; that the continual encouragement, development, growth and expansion of green energy within the State requires a cooperative and continuous partnership between government and the green energy sector; and that there are certain depressed areas in this State that have lost jobs due to the closure of coal energy plants, coal mines, and nuclear energy plants and need the particular attention of government, labor[,] and the citizens of Illinois to help attract green energy investment into these areas and directly aid the local community and its residents. Therefore, it is declared to be the purpose of this Act to explore ways of stimulating the growth of green energy in the State and to foster job growth in areas depressed by the closure of coal energy plants, coal mines and nuclear energy plants.

While this bill did not pass during 2018, it focused on the regional employment and other effects of power plant (and coal mine) closures by allowing "Energy Transition Zones" (ETZs) to be established. Each ETZ was to be located within a single municipality and, to qualify as an ETZ, the area had to contain a coal or nuclear energy plant or a coal mine that was retired from service (closed) within ten years of application for designation. Once an ETZ is officially designated, green energy projects sited within the zone could obtain tax credits. This bill advanced during the 2018 legislature session and has been re-introduced in the 2019 session as Senate Bill 29.

Closing Thoughts

Clearly, most of these states have moved beyond trying to prevent "early" power plant closings, although Kentucky is still trying to have the federal government undo laws and regulations it sees as unfairly making the continued operation of coal-fired power plants uneconomical. Another trend we are seeing is that nuclear power plants have joined coal plants as being deemed uncompetitive in the merchant power marketplace and the communities hosting them are looking to their state governments to try to ease the severe local economic and employment impacts plant closings can cause.

Approaches for doing this vary from state to state. For example, Colorado is treating closing power plants like other closing industrial facilities and providing some job retention and economic assistance to rural communities, but without any increased state budget support. Other states are promoting and even incentivizing the use of bonds and other alternative financing structures so plant owners can spread the cost to both current and future ratepayers and even those in the closed plant's service area that opt to obtain their electricity from a different provider. Some states are also trying to mandate retention of power plant workers during decommissioning and demolition or redevelopment. Other states, such as Illinois, are exploring using tax credits to draw "green energy" facilities to those areas where power plants (and coal mines) have closed or will be closing.

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