



## **REPORT UPDATE**

# **State Options to Keep Nuclear in the Energy Mix**

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## **Update on State Actions Supporting Nuclear Power**

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The policy environment surrounding nuclear power is shifting rapidly in the United States. Illinois and New York adopted policies in 2016 that offer financial support to existing nuclear power plants and similar measures are now being considered in other states.

As of May 2017, at least three other eastern states have introduced bills to support the continued use of nuclear power in the 2017 legislative session, while a number of others are actively discussing the issue. There is some concern from market operators that these state policies are in conflict with interstate wholesale markets, which are regulated by the Federal Energy Regulatory Commission (FERC). In May, FERC opened proceedings over how to address the growing discord between state policy and wholesale power markets.

Many states have considered actions to support nuclear generation since late January 2017, when NCSL published a comprehensive report, “State Options to Keep Nuclear in the Energy Mix.” Due to the pace at which the issue is moving, NCSL is publishing this update to the report.

# State Mechanisms Supporting Existing Nuclear Generation

## CONNECTICUT

The Connecticut General Assembly is continuing discussions after introducing a bill in 2016 which passed the Senate but was tabled in the House. Senate Bill 106 (pending) was introduced in January, which would allow the state's lone nuclear plant to bypass competitive wholesale markets for up to half of its generation capacity, and instead enter directly into power purchase agreements (PPAs) with distribution utilities. The legislation would not guarantee the plant receives PPAs, but it would give the state the option to open a process that's already used for largescale renewable procurements.

## ILLINOIS

After the passage of Senate Bill 2814 in December 2016, the Illinois Power Agency is now preparing to implement a zero emissions credits (ZECs) program. The procurement of ZECs from eligible nuclear plants will begin in June 2017. The ZECs will offer qualifying nuclear plants payment for each megawatt-hour (MWh) of carbon-free electricity generated, with the price set initially at \$16.50 per MWh. However, Senate Bill 1610 (pending), introduced in February 2017, would direct the Illinois Commerce Commission to review the price of ZECs quarterly and grant state agencies the authority to rebid and alter the program under certain market conditions.

## NEW JERSEY

Senate Bill 3061 and Assembly Bill 4698 (both pending) would require the New Jersey Board of Public Utilities to study ZECs as a mechanism to support the continued use of nuclear power in the state. The study would include a written report that evaluates the methods used to value ZECs, discusses and quantifies the potential benefits and costs associated with implementing zero emission credits and examines potential costs to the state's ratepayers.

## OHIO

FirstEnergy Corp., the owner of both nuclear plants in Ohio, filed several plans in 2016 with the Public Utilities Commission of Ohio to request assistance to keep the plants in operation. While there was initial support from the PUC, the proposals ran afoul of FERC regulations and never went into effect. Two pending bills were introduced in April to support the at-risk plants. However, the chairman of the House Public Utilities Committee suspended hearings and a vote on House Bill 178 in May, after more than 10 hours of testimony, due to a lack of consensus among committee members. Senate Bill 128 has been referred to the Senate Public Utilities Committee, but there has been no action to date. The measures, if enacted, would establish a ZECs program in the state—modeled in part on the programs established in Illinois and New York—which could provide around \$300 million annually from ratepayers to support the plants. FirstEnergy has also publicly said that it plans to sell off its nuclear plants, along with the rest of its merchant plants, in order to become a fully regulated utility, focusing solely on transmission and distribution assets. Given the current operating environment, FirstEnergy has said the nuclear plants are unlikely to sell without the passage of a nuclear support mechanism and would likely shut down.

## PENNSYLVANIA

The Pennsylvania legislature has not introduced any specific nuclear-related legislation in 2017, but the discussions are underway. Legislators formed the first bipartisan, bicameral Nuclear Energy Caucus, which has held several caucus meetings to discuss the current challenges and needs for nuclear power in the state. Pennsylvania has the second-highest nuclear generating capacity, after Illinois.

## WASHINGTON

Many bills have been introduced in recent years that aim to support the growth of nuclear power in the state. This session, Senate Bill 5467 (indefinitely postponed) introduced by Senator Sharon Brown, with 16 co-sponsors, would include nuclear power as a qualified alternative energy resource that customers can elect to purchase on their electric bills.

### RECENT ANNOUNCEMENTS

The operators of the following nuclear power plants in New Jersey, Ohio and Pennsylvania have said that the following plants are at risk of shutting down without policies to support nuclear power:

- Hope Creek (NJ)
- Salem (NJ)
- Davis-Besse (OH)
- Perry (OH)
- Three Mile Island (PA)
- Beaver Valley (PA)

# State Support for Nuclear Power

## POLICY INITIATIVES

New Mexico and Washington have each considered measures that would offer an improved policy environment for nuclear power. The New Mexico Legislature considered a measure in February that would have added nuclear power to the state's renewable portfolio standard (RPS). However, House Bill 406 failed to clear the House Energy, Environment and Natural Resources Committee after a tied vote. While the state does not currently have any commercial nuclear power plants, any new construction would have counted toward meeting those goals.

Washington's Senate Bill 5467 (indefinitely postponed) could support the state's Columbia nuclear power plant by allowing customers to elect to purchase nuclear power on their electricity bills. In addition, Senate Bill 5468 (indefinitely postponed), also introduced by Senator Brown, would include nuclear energy in the principles that guide development and implementation of the state's energy strategy.

## REPEALING MORATORIUMS ON NUCLEAR POWER

Kentucky became the second state in as many years to repeal a statewide moratorium on the construction of new nuclear power plants. Governor Matt Bevin signed Senate Bill 11 in March, which ends Kentucky's requirement that the federal government establish a permanent repository before a nuclear plant can be built. The new law allows nuclear plants to be built so long as the plans for waste storage are approved by the Nuclear Regulatory Commission. The state currently does not have any nuclear plants or plans to build a new facility.

Similar bills have been introduced in Hawaii, Illinois and Minnesota this session. Wisconsin ended its moratorium on new nuclear power in 2016.

## EXPRESSIONS OF SUPPORT

The Arizona Legislature adopted Senate Concurrent Resolution 1010 in April that says that "the Members of the Legislature support the use of nuclear energy as a safe and efficient means of energy production and express their commitment to the continuing and safe use of nuclear energy to supply the energy consumption needs of the people of Arizona." The resolution provides no binding action, but clarifies the state's support.

# Market Operators React

Market operators have not necessarily embraced these state initiatives. The ZECs programs in Illinois and New York are facing lawsuits from a coalition of competitors and consumer advocates, who argue that the policies infringe on FERC's regulation of wholesale markets. Market operators have also expressed reservation and concern—though to varying degrees. The CEO of PJM Interconnection has spoken out against the subsidies, contending that they risk skewing the markets by depressing prices and arguing that any fixes should be addressed regionally or nationally. However, PJM has also noted that they are not seeking to preempt state solutions to address current risks to nuclear plants. On the other hand, ISO-New England has expressed a willingness to incorporate individual state policies into its market design.

In response, FERC held a technical conference in early May to hear from the various stakeholders. While the meeting offered a great deal of insight into the problems and current market flaws, there was no clear-cut solution. Given that FERC is currently one commissioner short of a quorum, it is unlikely that the federal regulator will take action to address the problem in the near-term, meaning that state policies will continue to drive the issue for the time being.

# Eyes on the Courts

New York's ZECs program went into effect on April 1, and Illinois' program is set to follow suit on June 1. However, the legality of both programs is being challenged in the courts, as opponents have argued the policies interfere in wholesale markets. Both states have argued that the ZECs policies mirror existing mechanisms that support renewable energy and were designed to support the carbon-free attributes of nuclear power plants which would otherwise be lost without financial assistance. The lawsuits, which have broad implications for such policy action, are pending.

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