



Natural Gas Interests Look to FERC as Nuclear Subsidies Gain More Ground

Jamison Cocklin October 2, 2018

Now that four courts in Illinois and New York have upheld subsidies for nuclear power plants, representatives of the natural gas interests battling them are looking to FERC for a prescription to counter the state programs and their effects on wholesale electricity markets.

Last month, federal appeals courts affirmed rulings that upheld zero emission credit (ZEC) programs adopted in 2016 to prop-up five nuclear facilities owned by Exelon Corp. in Illinois and New York. The courts found that challenges brought by the Electric Power Suppliers Association (EPSA) and several others failed to show how the subsidies are preempted by federal law or how they depress energy prices and put gas-fired facilities at a competitive disadvantage.

“Without these ZEC programs, as has happened to date, gas and renewables would increasingly gain market share,” EPSA CEO John Shelk told *NGI*. “That’s critical because it would be one thing if we had a growing market, we could do the old rising tide lifts all boats, everybody could gain. That’s not the case, we’ve got flat, arguably declining demand” for electricity.

“To the extent that these programs allow nuclear to gain share that they wouldn’t otherwise gain, it’s coming at somebody’s expense,” Shelk added.

Wholesale electricity prices are determined by an auction. Generation resources offer in a price at which they can supply a specific number of MW hours of power. A resource clears the market and contributes generation when it submits a successful bid in an auction. The cheapest resource will clear the market first, followed by the next cheapest and so on until demand is met.

Utilities or power producers that generate with coal or natural gas are required to purchase a certain number of credits from nuclear facilities that produce zero-emissions electricity. Under the ZEC programs, subsidized nuclear generators receive the value of their credits in addition to what they earn in the wholesale markets. Opponents argue that this allows them to bid below cost during auctions.

“What the courts have failed to do in two cases now puts the spotlight even more on” the Federal Energy Regulatory Commission, Shelk said. EPSA mainly represents independent gas-fired power generators, which are typically the single largest purchasers of natural gas in the country on any given day.

FERC in June [narrowly rejected](#) two proposals by PJM Interconnection to help the grid operator [address state subsidies](#) for uneconomic coal and nuclear power plants. In EPSA’s appeal to the U.S. Court of Appeals for the Seventh Circuit, FERC filed a brief concluding that the Illinois ZEC program does not interfere with interstate auctions and does not preempt federal laws. The Seventh Circuit leaned heavily on FERC’s position in upholding the subsidies.

The Commission has, however, acknowledged in the PJM proceeding that the wholesale market is threatened by subsidies.

“The courts are basically punting to FERC and saying, ‘okay, if you think there’s a problem then go fix it,’” Shelk said.

A coterie of groups, including PJM and EPSA, were expected to make filings at FERC on Tuesday with further suggestions on how to counterbalance the disruptive effects of subsidies on the market. PJM is the nation’s largest grid operator, serving 65 million people in all or parts of 13 states and the District of Columbia. Its footprint includes Illinois and shale-rich Ohio, Pennsylvania and West Virginia, where gas-fired power plants are proliferating.

“Power market participants need FERC to uphold and defend competitive market policies against state or federal subsidies designed to favor certain fuels,” said the Natural Gas Supply Association’s Pat Jagtiani, executive vice president. “These kinds of subsidies distort wholesale power markets and set a chain of events in motion that will erode cost savings and risk the ability of generators to finance new pipeline capacity and contract for existing firm capacity.

“While state subsidies are intended to preserve existing generation, in the long-run interfering with the operation of the competitive market will actually result in less, not more, generation.”

Merchant generators have faced stiff competition in the open market, but it has intensified with an increasingly diversified resource mix. In recent years, renewable sources have become more competitive and an abundance of low-cost natural gas has caused electricity prices to plummet, undermining coal and nuclear plants in the process.

The EIA said in July that gas-fired power plants [would supply](#) 37% of the nation’s electricity generation over the summer, near the record-high set in summer 2016. As the fuel has climbed the power stack, coal-fired plants have been retired and several nuclear facilities have stopped generating power.

The ZEC programs, and similar legislation that was recently signed into law in Connecticut and New Jersey, were designed to preserve the baseload electricity produced by nuclear facilities. Proponents argue that the credits better value the resiliency, consistency and smog-free attributes of nuclear facilities.

Nuclear Energy Institute spokesman Matthew Wald said without them, the facilities would have been forced off the grid.

“The courts, four of them, are essentially saying that it is within the purview of states, either legislatively or administratively, to make certain decisions,” he said. “States already make lots of decisions about their electricity systems.”

Wald pointed to renewable portfolio standards, which require a certain amount of electricity to be produced with “clean” energy, air pollution standards and even carbon pricing that states have advanced.

“Those have knocked some generators off the grid and raised prices for the survivors, but those are steps that affect the wholesale price, almost everything the government does affects price,” Wald said. “There’s more to life than price. If you look at price, you miss some of the benefits provided by some generators, not just nuclear, it’s clearly for wind and solar too.”

Wald said FERC can't undo state programs, adding that while the Commission "has at times entertained proposals that would have the effect of counterweighting" them, it has not adopted any such proposals, and we're glad they have not."

It remains unclear how FERC might handle the subsidies. It's working with stakeholders on a solution and is expected to have a decision on the PJM proceeding by January. PJM's annual capacity auction, held each May, has been postponed until August in the meantime, Shelk said.

Complicating matters is a [four-member Commission](#) divided evenly between Republicans and Democrats that could stalemate on the issue. Richard Glick and Cheryl LaFleur, the two Democrats, have advocated for strong state authority over the power markets. Glick has went further to say that the Commission should not use its power to limit state efforts to address climate change.

Shelk also said EPSA would soon push FERC for a remedy to address the effect of subsidies on the New York Independent System Operator's generation members. "FERC is going to be hard pressed to say it's a problem in PJM but not New York," he said. "So, I think down the road, there will be a similar proceeding in New York."

In the meantime, EPSA has filed for a rehearing with the Seventh Circuit, arguing, among other things, that the court "misapprehended facts, arguments, and law regarding" certain aspects of its case. He said the organization could eventually file a petition for review at the U.S. Supreme Court.

The nuclear subsidies are also converging with other proposals and sea changes confronting the power markets. New York is currently considering a carbon pricing program that could conceivably invalidate the ZECs altogether if it were to price carbon in a way that applies to all fuels and not just one. The Trump administration continues to consider a more wide-ranging federal bailout for coal and nuclear facilities, as well.

"It's sort of been this multi-year reckoning of which direction are we going to go," Shelk said. "There are certainly very high stakes involved for sure, and it certainly is very complicated. It can get very technical, but the reason why people are fighting so hard is because it's very consequential."

Other states in the region are taking notice. Ohio lawmakers have floated similar proposals for nuclear subsidies. And Exelon, which has helped wage a grassroots and public relations campaign on the ground in Pennsylvania, is expected to push lawmakers there to introduce nuclear subsidy legislation next year.

Steve Kratz, spokesman for Citizens Against a Nuclear Bailout, a group whose members include more than 20 organizations and companies, including the Marcellus Shale Coalition and the American Chemistry Council, said the state shouldn't "follow in the footsteps of New York, Illinois and New Jersey" because the cost of any program could come at the expense of consumers. The state, he added, also produces more power than it needs, demonstrating that the grid is diverse and resilient enough.

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