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Colorado's Energy Impact Assistance Act Is Short-sighted

Securitization Risks Saddling Ratepayers with Long-Term Debt, Overlooks Coal Communities

Summary

The proposed Colorado Energy Impact Assistance Act currently being considered in the Colorado legislature raises important questions concerning how to shut down coal plants at a faster pace than is currently taking place. It uses the right tools – legislation and regulation – but in the wrong way.

As a business incentive, this measure will have no significant impact on accelerating coal plant closures. **If enacted, the "securitization" plan would tie up ratepayer dollars for decades to come on an economically dead asset** – those funds would be more productively deployed for renewable energy development and other much needed investments to improve Colorado's electricity system as well as fight climate change. As structured, the law would set a dangerous and unnecessary precedent by effectively paying an excessive amount to utilities that are seeking to close economically worthless assets. Finally, the envisioned assistance to workers and communities will likely be insufficient to meet the true needs of those harmed by the closures. It additionally neglects to include coal mine workers and their communities.

The Colorado legislature has, to its credit, recognized the need for the state to support employees who are displaced due to power plant closures and to assist the communities that host power plants. Such an acknowledgement is of particular importance as it reflects the major contribution that the coal industry has made to Colorado as an employer, taxpayer and source of economic growth. The State's legislative response reflects the local and regional roots of the coal industry but also serves as a reminder that coal has been a mainstay of national economic growth.

However, despite coal's many contributions to the national economy, there is no comparable effort at the federal level to support displaced workers and their communities. Coloradans generally, and its coal communities and employees specifically, contributed mightily to the nation's economic expansion, but now they are expected to shoulder alone the burden of coal's decline. In the absence of a federal response, it is to the state's credit that it is stepping up.

Colorado would be better served, however, by **a plan that sets deadlines for closing uneconomical and unneeded coal plants** and allows the state's Public Utilities Commission (PUC) and the utilities management to work through the changes. This needs to be combined with a road map for using tax dollars to alleviate communities of any resulting economic hardship. The combination of the

state's current regulatory structure and the options available to utilities to manage the decline of coal provide a strong foundation for accelerating the closure of uneconomic coal plants**. If it is the will of the legislature to use this proposed framework, then a timeline needs to be built into the process.** There are numerous alternatives, including:

- a mandated plan to close plants,
- limits on the number of applications and/or the aggregate value of assets that can be securitized (converted into cash or loans), or
- a sunset provision (statutory expiration) for the use of the securitization mechanism.

Finally, the State's acknowledgement of the needs of its people and municipal governments requires state budget allocations and not simply an increase in ratepayer dollars. The assistance act also needs to be expanded to include coal miners and communities that host coal mines slated for closure.

State plans require budget allocations and not simply an increase in ratepayer dollars.

The statute sets the resource availability to meet the human and fiscal needs it has identified based on the vagaries of expected savings to one randomly selected coal plant. These amounts bear no relation to the precise and measurable hardships experienced by families who must contend with disruptions to household employment and income.

Furthermore, the needs of municipalities are well known and losses of revenue can be measured in consequent cuts to the number of teachers, health care workers, and police as well as declines in access to public facilities that sustain Colorado's quality of life. A more rational standard of estimating real needs is required, and a more certain source of funding must be established to meet that need.

Background

The proposed "Colorado Energy Impact Assistance Act"[1] enables a utility to apply to the Colorado PUC for a financing order that will authorize the utility (or its assignee) to issue low-cost bonds paid via a special rate increase. This bond issuance is the primary purpose of the law.[2] The legislative intent is: "to lower the cost to electric utility customers (ratepayers) when the retirement of a power plant occurs."[3] The idea behind securitization is that the cash raised by the bond is used to pay off the

[1] Colorado Energy Impact Assistance Act.
[2] Colorado Energy Impact Assistance Act, 40-41-102. Legislative declaration, Section 2-c.
[3] Colorado Energy Impact Assistance Act, Bill Summary.

unamortized portion of a retiring coal plant. **The new rate covering the cost of the bond is lower than what is currently paid for the existing coal plant. The cost savings are then, in theory, passed along to consumers.**

Bondable costs include but are not limited to: the unrecovered capitalized costs of a retirement facility, costs of decommissioning and restoring the site of the electricity utility and other applicable capital and operating costs, accrued carrying charges and deferred expenses. They also include financing costs related to diligence expenses for accountants, lawyers, credit agencies, financial advisors as well as payments for taxes owed to local governments.

In addition, bondable costs also cover transition assistance payments that would go through a new special authority, the Colorado Energy Impact Assistance Authority ("the authority"), designed to direct cash assistance to individual power plant workers, retraining programs and eligible local governments that have lost revenue due to facility closures. The amount paid by the utility will be set as a percentage of the Net Present Value (NPV) of the planned savings from the bond issuance.[4]

This legislation enables the PUC to authorize a "special energy impact assistance charge" that is separate and apart from the utility's base rates. The separate charge will be noted on consumer bills and the revenue and debt from the transaction will not be counted in future rate proceedings brought by the company. The financing order to be issued is not revocable, and the rates may be periodically adjusted by future orders.

Securitization: What is its Intended Purpose?

According to many proponents, the purpose of the bill is to hasten the closure of coal plants.[5] This action is driven by the urgent need to cut greenhouse gas emissions and align public policies generally with the goals of the Paris Agreement.[6] It is assumed that the financing option will serve as an incentive that encourages the plant closures sooner rather than later. It is assumed that the financing package allows the utility to avoid the loss of its investment capital should it close the plant based solely on its economics.

There are several factors that suggest the law will have no impact on hastening the retirement of coal plants.

First, the law leaves the choice of whether or not to submit an application up to the individual utility. A regulated utility can profitably continue to operate a power plant and earn a commission-approved rate of return even if the asset might be uneconomic, in a hypothetical competitive power market. Utilities make a series of calculations regarding a particular plant's revenue-producing capacity,

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[4] Also a utility has an option to devote up to 15% of the planned operational savings from closing a plant to the Authority, whether or not they use the bonding mechanism.
[5] Greentech Media. Colorado May Have a Winning Formula for Managing Early Coal Plant Retirements. March 25, 2019.
[6] Ibid.

environmental compliance, shareholder impact, timing and cost/benefits of keeping it running longer even if it is technically uneconomic. In other words, if the policy goal is to accelerate the closing of plants, the decision of whether or not to close a plant should not be left up solely to the decision of the plant owners.

Also, it is unclear why a utility planning to retire a plant would choose securitization. Xcel, the utility which owns 44% of Colorado's operating coal plant capacity is not in a financial position of needing to raise cash (through a securitization bond issuance) to fund new investments. Xcel has expressed little enthusiasm for securitization; and its CEO was recently quoted on the Colorado bill: "we've achieved the goals of securitization through our own efforts."[7] Additionally, about 50% of Colorado's operating coal plant capacity is owned by public power entities (municipal or cooperative utilities), which do not have shareholders and already borrow at low interest rates, meaning that little savings would be gained through securitization.

Even if a utility chooses securitization, the bill does not specify that the associated asset must be retired within a set timeframe from the issuance of the securitization bonds.[8]

Second, most of the research literature tells us that these kinds of proposals to stimulate business behavior are ineffective.[9] Most firms will make decisions to go or stay, contract or expand, independent of the existence of incentives.[10] The most intense critics of these subsidies point out that they do not alter corporate behavior, rarely meet their job and tax projections, and even when some evidence suggests that they do, the public benefits are elusive or nonexistent.[11]

Subsidies rarely alter corporate behavior nor meet job and tax projections.

The Brookings Institute has recently released a review of four cities' economic development policies. The report contains a literature review of key studies in the field. They found that the programs are largely ineffective and poorly designed.[12] The Institute report favors business incentives and calls for greater granularity in the targeting and design of programs so that they are tailored to better fit the businesses and make more efficient use of taxpayer or ratepayer dollars.

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7 Utility Dive. Low prices, not legislation, driving Xcel renewables push for now. January 31. 2019.
8 https://leg.colorado.gov/sites/default/files/documents/2019A/bills/2019a_1037_ren.pdf, Issuance of Financing Orders, Section 40-41-105 2(j)I.
9 The Hill. Think corporate welfare isn't a waste? Read these studies. December 27, 2018.
10 W.E. Upjohn Institute for Employment Research. "But For" Percentages for Economic Development Incentives: What percentage estimates are plausible based on the research literature? Timothy J. Bartik, 2018.
11 CityLab. The Uselessness of Economic Development Incentives. December 7, 2012.
12 Metropolitan Policy Program at Brookings. Examining the Local Value of Economic Development Incentives: Evidence From Four U.S. Cities. Joseph Parilla and Sifan Liu, March 2018.

The utility sector is already heavily regulated and sustained by a host of corporate, tax and regulatory incentives. As will be highlighted throughout this paper, the bill offers no rationale that suggests utilities are even marginally impaired as they retire coal plants, nor in need of the bond revenue that securitization provides. Further, the bill offers no assessment of the other options utilities have available to phase out their use of coal.

The Special Impact Rate and the Risks to Ratepayers

The bond is securitized by utility ratepayers pledging to pay off the debt; essentially the bond is given first priority lien status on the revenues raised through electric rates. The ratepayer obligation to pay off the bond is independent of the utility; the utility could go bankrupt, and ratepayers would still be obliged to pay bondholders what is owed (at a special impact rate).

What are the risks to ratepayers from this arrangement?

1. **There is no limit to the amount of debt that can be securitized through this mechanism** and hence no limit to the amount of rate dollars that could ultimately be tied up in the special impact rate. If the bill were limited to securitizing retired coal plants, the rate impact would be relatively small,[13] but the bill is not limited in this way. Nothing in the bill limits securitization to coal plants; in future, the same mechanism could be used for natural gas investments.

2. **There is no limit to the potential refinancing of the bonds.** This means ratepayers are likely to pay for the debt longer and on more expensive terms than established by the Commission in its rate order. The special impact rate charge is anticipated for no more than thirty-two years with provision made for re-financings.[14] In 1998, the State of New York retired the Shoreham Nuclear plant. The plant had been built but never achieved permanent commercial operation. When the financial bailout came due in 1998, the Long Island Power Authority (LIPA) in New York State promised to retire a cumulative tranche of debt amounting to $7 billion within 25-30 years.[15] The bonds are currently secured with special rate protections like that proposed in the Colorado bill. Under LIPA's current refinanced bond agreement, the bonds will not be paid until 2041 – forty-three years since the first bond was issued.[16] The current balance on this specially secured debt is $4.7 billion.[17] The amount suggests that

[13] As of December 31, 2015 (the latest data for which data is available), Xcel had $2.1 billion in undepreciated investment in steam plants (the vast majority of which are coal). Floating a $2 billion, 30-year bond at 3% interest would result in a rate impact of approximately 0.35 cents/kWh (based on Xcel's 2018 retail sales).
[14] Colorado Energy Impact Assistance Act. Section, Definitions, 40-41-103 (7).
[15] Long Island Power Authority. Electric System General Revenue Bonds, Series 1998A. pp. i-vii.
[16] Utility Debt Securitization Authority, Restructuring Bonds, Series 2017. p. 11.
[17] Utility Debt Securitization Authority (A Component Unit of the Long Island Power Authority). Basic Financial Statements. December 31, 2018 and 2017. p. 5.

further re-financings are likely and each usually pushes the final maturity date out further and adds to the interest paid by ratepayers.

This risk could be mitigated if the Colorado bill were to require that operational savings resulting from renewable energy investments to replace the retiring coal plant were used to accelerate the repayment of principal on the securitization bond. This strategy would result in lower interest rate payments to ratepayers over time and reduce the risk of costly future refinancings.

3. **The special impact rate created by the securitization is "nonbypassable" meaning that it applies to any retail customer of the utility, even those that generate their own electricity through rooftop solar** or other distributed generation, as well as any customer of a municipal utility that uses transmission or distribution assets of the utility that retired the plant. This would not be the case if retiring plants were paid off through traditional utility financing. The "nonbypassable" provision of **the special impact rate creates an economic disincentive against residential solar rooftop investments and municipalization efforts.**

The securitization bill does not explicitly guarantee a rate reduction. **While it is generally assumed that securitization will result in savings from paying off an asset at a lower interest rate than would otherwise be the case**, the bill establishes two separate regulatory proceedings: one for the approval of the securitization and the special impact rate, and the other for the rate decrease associated with taking the retiring plant out of the utility's rate base. Ratepayers would be better protected if the legislation explicitly required the rate decrease to be larger than the increase associated with the special impact rate.

The bill establishes legislative goals and provides critical policy direction as to how the PUC and the authority are to carry out the intention of the law. **This law is creating new policy in three areas:** 1) in the **regulatory realm** setting the rules of the road for the application for, assessment of and orders governing the retirement of generation facilities that plan to benefit from special bond financing and rate setting; 2) in the **social assistance realm** setting a program structure for the provision of cash assistance and other employee benefits for displaced power plant workers; and 3) in the **fiscal realm** setting standards and protocols for the provision of payments to municipal governments that suffer lost revenues from the closure of the affected facilities.

Bondable Costs and Implications for the Future

The bill permits an applicant to request a bondable amount that includes the unrecovered capitalized costs of retirement. The PUC after review and hearings approves the final bondable amount. There is a definition of bondable costs related to the unrecovered capitalized costs of the plant that gives the Commission authority to reduce the amount of the final bondable costs by certain indebtedness, insurance payments and salvage costs.[18] In addition, the final bondable costs include related financing costs that are not capped.[19]

Beyond these technical adjustments, there is no legislative guidance provided to clarify how the PUC should adjust the final bondable costs to meet the public interest in these special circumstances. For example, the securitization mechanism provides more security to the holders of debt than they would otherwise have under traditional utility financing. **The more assets that are taken off utility books and moved into this bankruptcy-remote mechanism, the more ratepayers are on the hook for paying off retired plant debt for decades,** even if the utility that originally constructed the plants goes bankrupt. Is it the legislature's policy position that paying off 100% of the unamortized value of retired plants should be the top priority for Colorado's rate dollars?

Securitization provides more security to the holders of debt than they would receive under traditional utility financing.

It should be additionally noted that Colorado's main investor-owned utility, Xcel, spent $1.3 billion to construct unit 3 of the Comanche coal plant, which entered service in 2010. Xcel had chosen to invest heavily in coal-fired technologies despite being warned[20] of significant risks.[21] This plant was constructed at a time when proposed coal plants around the country were being cancelled in the face of unfavorable economic conditions. It is almost certain that if Xcel were to attempt to sell the plant, it would receive far less than its book value. The legislature should consider developing policy principles to allow the Commission to reduce the recovery from ratepayers of the amortized balance of retiring coal plants based on the deterioration in market value of the assets relative to their book value.[22]

Propping Up an Ailing Industry

There is also a related policy consideration of whether and to what extent tying up rate dollars to pay off retired plants crowds out new investment in

[18] Colorado Energy Impact Assistance Act. Section 40-41-103 Definitions 9(iii)(b).
[19] The term used is "demonstrable costs necessary". Colorado Energy Impact Assistance Act. Definitions, 15-c.
[20] Colorado's Billion Dollar Mistake: The Unit 3 Coal Plant in Pueblo. Leslie Glustrom, April 2009.
[21] Daily Camera. Steve Pomerance: Is this really Colorado's plan for clean energy? February 21, 2019.
[22] Such a provision in the legislation would also necessitate a specific timetable for the retirement of coal plants. Otherwise, plant owners would be more likely to delay retirements to reduce the unamortized balance of the plants.

renewable energy.[23] Over a decade ago, Standard and Poor's warned that climate-related costs that were poorly planned could have a counterproductive impact on the broader goal of moving electricity toward renewable energy and other environmentally sound alternatives. The credit agency offers a sophisticated, complex and on-point warning as to how transition costs need to be managed.

> Among the risks are that CO_2 compliance costs could spiral out of control, those costs could be up for rate recovery at the same time that other expenses are rising, and the costs could then get "crowded out" if regulators try to ease customer rate shock. Any disallowance would not necessarily be explicit, since it is difficult and legally suspect to keep prudent, legislatively mandated cost out of rates. The real risk to credit quality is the prospect that CO_2 compliance costs will be the proverbial straw that leads to harsh regulatory responses such as a disallowance or deferral because of cost pressures tied to commodity prices, more capital spending for reliability needs on the transmission and distribution system, and added construction costs for new generation to meet the rising demand.[24]

More broadly, the question is: what does the state as representative of the ratepayer owe the utility in a time of economic change and transition?

The United States Supreme Court ruled in *Market Street Railway v. Railroad Commission* that there is no obligation for a Public Service Commission to raise rates to pay for a business model that has become uneconomic.

> [I]f there were no public regulation at all, this appellant would be a particularly ailing unit of a generally sick industry. The problem of reconciling the patrons' needs and the investors' rights in an enterprise that has passed its zenith of opportunity and usefulness, whose investment already is impaired by economic forces, and whose earning possibilities are already invaded by competition from other forms of transportation, is quite a different problem.[25]

The State of Colorado and the PUC are also confronted with the economic reality that coal plants are "a particularly ailing unit of a generally sick industry" (the coal industry). Coal plant operation has been "invaded" by the combined economic forces of low natural gas prices and the growth of wind and solar energy, both cost-competitive alternatives that the State has at its disposal. Coal and energy markets have changed dramatically in a short time and the Legislature is now trying to address one part of that change.

The legislature, setting new rules of the road for future PUC Orders, is not bound to require payment of 100% of the applicant's unrecovered costs. If it decides to offer

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[23] On a related note, the bill does not establish any policy on whether any of the cash raised by the utility from bond proceeds must be used for renewable energy investments, nor how the Commission should treat such investments and the associated cost of capital for rate recovery.

[24] Standard & Poor's. The Credit Cost of Going Green for U.S. Electric Utilities. Credit Week. p. 16. March 19, 2008.

[25] Market Street Railway v. Railroad Commission, 324 U.S. 548 (1945).

the benefits provided by the bond and special rate, it does so as a matter of political consensus on this policy and can offer more detailed guidance on how much ratepayers should pay.

Such a view, if accepted by the State Legislature, could result in a law that empowers the Commission to more broadly consider adjustments to the utility application based on a balancing of the equities.

Other general regulatory treatments of the issue highlight the variable means by which utilities can and do absorb losses over time.[26] Utilities have a full array of tools to manage declining asset values and the impact this has on revenue and enterprise-wide performance. Many utilities have above-average bond ratings. Xcel, for example, had an A- rating as of Q4 2018, well above investment grade, above the industry average and in the top third of utilities in the United States.[27] The retirement of a coal plant unaided by any subsidy is, in today's market, deemed credit positive by credit agencies.[28]

In addition to their ability to borrow without special rate underwriting, these companies have many other options:[29] 1) Writing off the value of the plant and declaring a loss to shareholders – a step that allows for an accounting loss and a long-term improvement of company profitability;[30] 2) Selling assets to offset the loss of revenue; 3) Accelerating the use of cash reserves; 4) Maintaining a robust regulatory agenda and 5) Making short-term adjustments to dividends.

By failing to set clear legislative direction, however, the statute is flawed. The bill neither reflects the specific regulatory and political history of Colorado nor the variety of tools available to utilities and regulatory entities to address this issue without placing substantial stress on current and future consumer costs.

Worker Assistance Policy

The Colorado legislature has, to its credit, taken on the task of ensuring that support for displaced employees from plant closures is a matter of state concern. Such an acknowledgement by the State of Colorado is of particular note as it reflects the major contribution that the coal industry has made to the state as an employer,

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[26] The Regulatory Treatment of Embedded Costs Exceeding Market Prices: Transition to a Competitive Electric Generation Market a Briefing Document for State Commissions. November 7, 1994.

[27] Electric Utility Industry Financial Data and Trend Analysis. Financial Updated/Credit Rates/Backup Data/2018 Q4.

[28] Moody's Investor Service, Vistra's Coal Plant Closures Are Credit Positive for Generators, Sector Comment, October 18, 2017 and JEA's Plan to Decommission Coal Fired Power Plants Is Credit Positive, Issuer Comment. March 27, 2017.

[29] For a more detailed discussion of the tools available to regulated utilities and the appropriateness of applying them in given regulatory settings see: https://www.scotthemplinglaw.com/files/pdf/ppr_embedded_costs_1194_0.pdf

[30] Companies take impairments in order to effectively reset company finances in the face of certain adverse financial events or trends. See: Columbus Business First. AEP takes $2.3B write-down of coal plants to avoid Ohio's 'deregulation debacle'. November 1, 2016.

taxpayer and source of economic growth. The State's leadership reflects the regional and local roots of the coal industry but also is a reminder that coal has been a mainstay of federal economic growth strategies for decades. **Despite this national contribution, there is no comparable effort to support displaced coal plant workers at the federal level.**

There is a conceptual flaw in the target population for assistance. The statute directs support for the purpose of mitigating direct impacts from plant closures. It defines this in terms of power plants and host communities. The problem is that Colorado is a coal state and its mines are directly impacted by the fall in demand for coal. The law needs to be clarified to include employees of coal companies and communities that host coal mines. The broader role for the State government suggested in this paper should allow for the logical inclusion of this group of individuals and communities to become eligible for assistance.

The proposed assistance to individual employees, like that of the needs for communities that have lost tax revenue (see below), sets funding levels based on the net present value savings of the power plant.[31] This is clearly meant to be a modest contribution to meet the needs of displaced workers, but it is misguided.

The needs of households and that of municipal governments bear no relation to the vagaries of the net present value savings estimates. Household budgets are driven by monthly income, basic living expenses and the need to put something away for vacations, college, pensions and health. When steady income is disrupted, additional costs are incurred related to reemployment, late bill payments, and potential family relocations. Change of employers usually entails changes in salaries, health plans and retirement compensation.

The bill provides that the authority will assist employees of power plants affected by the plant closure with direct cash assistance and a series of program supports related, in large measure, to worker retraining. The law makes a distinction between direct assistance to employees in the form of cash payments, and indirect assistance in the form of program supports, generally payments to third-party sources to provide services.[32] **The law states a preference for distributing up to 50% of the money directly to workers and establishes a committee to do so in a fair and equitable manner and to ensure that benefits are not "excessive."**[33] The bill includes some worker representation on the committee.

The term "excessive" is not defined (nor is it defined for the eligibility of bondable financing costs). Is it excessive to pay 100% of salary lost for a certain period of time? Is it excessive to pay extraordinary co-payments or deductibles for significant health expenses incurred during the employee's transition period? Is it excessive to eliminate a mortgage on a home in order to allow mobility to a new place of business? Are moving expenses excessive? If an employer goes bankrupt and is able

[31] Colorado Energy Impact Assistance Act. Section 40.41.105 2-c.
[32] Colorado Energy Impact Assistance Act. Section 40-41-202, 1,(c), I.
[33] Colorado Energy Impact Assistance Act. Section 40-41-202, 1 (e).

to eschew significant salary payments and pension benefits, is it excessive to offset these losses?

The bill also requires that utilities provide a roster of the employees who are being affected by the closure. This information is very important for an accurate understanding of need and potential funding levels. The bill, however, does not include a requirement that utilities have any obligation to rehire or retrain displaced workers. Most of the employees affected by the closure are skilled workers with experience. There has been some indication that utilities understand this fact and have offered employees new employment at other company-owned facilities. Some coal operators however, like Peabody Energy for example, have not made similar offers even when notice of plant closures has been given years in advance.[34]

The bill does not require utilities to rehire or retrain displaced workers.

The bill also does not address the fact that the value of additional income to a family may be eroded or completely lost by interaction with existing government and other benefit systems. There is no provision in the bill that the temporary and transitional cash assistance provided to families: 1) is exempt from state income taxes; 2) is exempt from family income for purposes of veteran benefits, governmental benefits and housing programs; 3) does not count toward family income for educational scholarships, tuition or other income-based educational programs, and 4) is exempt from family income for the purposes of eligibility or payments for health care or health-related services. Were there a reliable federal partner, such payments could be exempted further from federal income tax and other federal program rules.

Finally, **the legislature might provide an important service, and save taxpayers and ratepayers money, if the authority were specifically empowered to assist employees in obtaining legally mandated payments[35] and other rights from companies and government.** [36] In coal bankruptcies, employee benefits are often slashed, back wages forfeited or paid with high discounts, and pension obligations erased. In spite of this, most bankruptcy proceedings include approval of executive compensation packages for senior managers. The authority should be given ample

[34] Tom Sanzillo. IEEFA Arizona: Peabody must do the right thing for employees at the Kayenta Mine. April 6, 2019.

[35] While this paper deals generally with legal interventions by the Authority on behalf of employees as an institutional matter many displaced employees may also have economically related legal issues that could help individual employees and their families navigate the transition.

[36] The Authority might also be empowered to help document corporate compliance with Colorado's Worker Readjustment and Retraining Notification Act (WARN). See: Colorado Department of Labor and Employment. WARN Listings.

ability to intervene in such cases on behalf of employees who have a claim to company assets but do not have the means to fight through the thicket of issues raised in bankruptcy proceedings.

Fiscal Assistance Policy

Like the social assistance provisions of the bill, support to supplant lost governmental revenue is tied to the NPV savings of the covered transaction, and this cost is borne by the ratepayers. Typically, the matter of local fiscal distress is an area for state governmental interventions[37] and not tied to ratepayer increases.

The bill provides for the authority to compensate local municipalities that have lost revenue due to plant closure. These payments are designed to replace revenue that was once paid by a plant or mine while it was a viable business concern. Municipal budgets are generally funded through property taxes and other taxes and levies paid by owners and users of certain services in a community. Tax payments from power plants and mines usually comprise a significant part of local government revenue and the loss can lead to layoffs of teachers, police, fire and sanitation workers and cutbacks in necessary community services (child care centers, health facilities, parks, libraries).

The amount of revenue lost from a power plant or coal mine closure can be measured with some precision. However, the legislation does not provide any direction for how municipalities should decide on the level of losses they are experiencing. For example, plants and mines usually decline over time and consequently, so do the associated annual tax payments. Should municipalities be compensated for lost revenue based on the long-term annual average revenue from the facility or on the most recent year's budget?

The legislation provides no direction for municipalities to ascertain the level of losses they are experiencing.

The State of New York offers an important example of a law designed to help mitigate the lost revenue experienced by local governments in the aftermath of a power plant closing.[38]

First, the state acknowledges that the loss of a power plant should involve state budget appropriations backed by taxpayers and not ratepayers. The use of taxpayer instead of ratepayer dollars is a tacit recognition of the critical role played by electric utilities as an essential provider of a necessary public service, and as an employer, taxpayer and contributor to state economic growth.

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[37] Colorado Department of Local Affairs. Local Government.
[38] Lisa Anne Hamilton, Radina Valova and Karl R. Rábago. Transition Support Mechanisms for Communities Facing Full or Partial Coal Power Plant Retirement in New York. March 2017.

Second, the implementation process sets out a reasonable set of standards by which a local government can quantify its losses. [39] The state then pays a gradually declining portion of the losses over a five-year period – 80% in the first year.

Third, the law has been amended as experience created both interest in and attempts to deepen New York's response to the energy transition. The fund established by the legislature is now based on annual allocation reflecting the rising number of plant retirements in the State. It also now includes nuclear power plants reflecting the state's particular energy mix and concerns over the timing of closures and replacements.

Recommendations

The Colorado bill raises very important issues related to the need to shut down coal plants at a faster rate than is currently taking place. It uses the right tools – legislation and regulatory structure – but in the wrong way, by tying up rate capacity for decades in order to pay for economically unusable assets rendered obsolete by competition from market forces. Nevertheless, should the state move ahead with this plan, it needs to 1) establish a mandated timetable for closing plants in the state; and 2) provide the Commission with flexible authority but firm guidance to reduce unrecovered capitalized costs based on a balancing of the equities.

In addition, several steps need to be taken to improve the basic structure of the assistance to be provided to workers and affected communities based on real needs and not the vagaries of the net present value savings of retiring coal plants.

1. **General:** Colorado could adopt a simpler coal plant closure law by setting **specific dates for retirements** and making provision through tax revenues for electricity supply as well as the needs of affected power plant and mine workers and coal communities. Working from the premise that the State of Colorado is making a choice to provide some compensation to utilities, the law should grant flexibility to the Commission to set bondable amounts for the unrecovered capitalized costs based on a balance of the equities.

   If the state does not want to adopt a plant closure mandate, it could place a sunset date on the availability of applications for the special rate bonds. It could also cap the number of applications[40] or total value of assets that can be securitized under the legislation. The legislation should also be limited specifically to the retirement of coal plants.

2. **Bonds and Rates:** If the current bill is maintained in its present form, it could be improved by:

[39] Empire State Development. Electric Generation Facility Cessation Mitigation Program, Program Guidelines. Adopted June 2016.

[40] *"The commission may only consider applications made pursuant to this subsection for the recovery of underlying expanded net energy costs that would be reflected in schedules of rates filed in calendar year 2012."* WV Code §24-2-4f (c)(2).

- Including a mandate that any approved securitization rate increase be more than offset by a rate decrease from removing the retiring asset from the rate base.

- Directing by statute the proposed use of and conditions applied to bond proceeds that are to be invested in future projects. For example, the legislature may want to direct investment into renewable energy and/or ensure that new investment preserves the affordability intent of the legislation. Another option is for the legislature to direct proceeds from new investment in renewable energy toward an accelerated retirement schedule for the securitized debt.

- Providing standards to the Commission for reducing the amount of the bondable costs associated with the unrecovered capitalized cost.

- Requiring that the plant close within a maximum of one year from the issuance of the bonds.

- Including a timetable for the retirement of coal plants, rather than leaving the timing of retirements up to the discretion of the utilities.

3. **Assistance to communities and employees:** The statute should more clearly identify and include coal mine workers and communities affected by plant closures. Plant closures have direct and proximate impact on specific mines[41] and actions to assist those affected should be provided.

    - The statute should base income and other assistance to displaced employees on a flexible standard of need that reflects the current salary, health and pension benefits that have been available to coal miners and coal plant workers. The ethic of the effort should be 'No One Goes Without a Day's Pay.' The standard of need should be sufficiently flexible to take into account reasonable additional payments reflecting the particular situation of individual families.

    - The statute should be amended to require utilities and mines to implement rehiring as a preferential route to layoffs. Company plans need to be submitted to include this option.[42]

    - The statute should be amended to encourage the authority to pursue activities in the following areas: 1) organization of a nationwide network of coal states to push for municipal compensation and employee supports federally or in additional states; and 2) intervention in bankruptcy proceedings to protect employee access to wage, salary, health and pension benefits.

[41] Seth Feaster. Record Drop in U.S. Coal-Fired Capacity Likely in 2018. October 2018.
[42] Section 40.41.104.3 (g) calls for the creation of a workforce transition plan.

- The statute should drop the word "excessive" in terms of benefits to affected employees and replace it with a standard of need comparable to the current quality of life of the employee.

- The statute should be reviewed and amended to address the likelihood that some federal assistance will eventually be enacted and forthcoming to state and local governments.

About IEEFA

The Institute for Energy Economics and Financial Analysis conducts research and analyses on financial and economic issues related to energy and the environment. The Institute's mission is to accelerate the transition to a diverse, sustainable and profitable energy economy. www.ieefa.org

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Tom Sanzillo, director of finance for IEEFA, is the author of several studies on coal plants, rate impacts, credit analyses and public and private financial structures for the coal industry. He has testified as an expert witness, taught energy-industry finance training sessions, and is quoted frequently by the media. Sanzillo has 17 years of experience with the City and the State of New York in various senior financial and policy management positions. He is a former first deputy comptroller for the State of New York, where he oversaw the finances of 1,300 units of local government, the annual management of 44,000 government contracts, and where he had oversight of over $200 billion in state and local municipal bond programs and a $156 billion pension fund.