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New Ohio Energy Law Impairs Competition, Reverses History

By **Richard Drom** (August 19, 2019, 1:39 PM EDT)

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On July 23, 2019, Ohio's governor signed legislation that will dramatically alter the state's energy environment, with changes that will directly conflict with the wholesale competitive electricity market that has existed in Ohio for the last 20 years.

Among other things, the new legislation will subsidize four uncompetitive electricity-producing nuclear and coal plants, remove financial incentives to build more renewable energy projects in Ohio and essentially cancel efforts to help customers use less electricity though energy efficiency programs.

Since 1999, Ohio has participated in a restructured electricity market, to take advantage of the wholesale competitive electricity market that was developed by PJM Interconnection LLC. Under this structure, electricity distribution companies, including Ohio's largest utility, FirstEnergy Corporation, have been able to acquire economical electricity from competitive energy generation facilities located in the large PJM region through day-ahead and/or real time energy markets, in order to meet their customers' needs.

PJM's robust markets have also allowed FirstEnergy's generation affiliate, FirstEnergy Solutions (which is currently involved in a Chapter 11 bankruptcy proceeding), to participate in these large regional energy markets.

Competitive wholesale energy markets have resulted in hundreds of millions of dollars of savings for Ohio electricity customers by enhanced transmission planning, healthy competition between traditional generation and alternative supply resources, and least-cost economic dispatch of all available resources.[1] On the other hand, wholesale competition has also produced some losers.

Although competitive energy markets facilitate the market entry of new technologies (e.g., solar facilities), competitive wholesale energy markets also mean that uneconomical generators — ones that don't receive sufficient revenues through competitive markets — are encouraged to retire their facilities. Newer energy resources, which often operate more efficiently, with lower heat rates and in most cases lower fuel costs, have caused less efficient older resources to have economic incentives to retire.

An example of the retirement of uneconomical generation facilities is First Energy Solution's recent announcement that it would close the largest coal-fired power plant in Pennsylvania, the Bruce Mansfield plant, in November of 2019, due to "a lack of economic viability"; this plant closing is nearly two years earlier than had been expected. In fact, PJM has estimated through simulations of retired resources that wholesale competition saves its customers between $1.1 and $1.3 billion each year in the PJM region, compared with noncompetitive energy markets.

The first part of Ohio's significant legislation is an attempt to reverse history by, in part, subsidizing Ohio's uneconomical nuclear, coal and some solar facilities. The legislation authorizes FirstEnergy to collect $150 million per year until 2027 to subsidize two of its subsidiary's nuclear power plants, Davis-Besse and Perry.

In addition, FirstEnergy is authorized to collect tens of millions of dollars of additional surcharges from its customers to subsidize two vintage coal-powered generation facilities in Ohio and Indiana that are owned by Ohio Valley Electric Corporation. These significant subsidies are designed to prevent the retirement of electricity generation facilities that allegedly are no longer economical to operate.

Ohio customers do not need to pay premium prices for electricity because of the PJM wholesale markets. PJM has an electricity capacity resource reserve margin that is the largest in the nation,and it has adequate transmission capability to reliably deliver generated electricity to Ohio customers.

It is also well-established that restructured competitive wholesale energy markets have saved consumers billions of dollars, in part, by shifting the costs and risks of uneconomic generation facilities from ratepayers to the shareholders of such facilities. As PJM's independent market monitor, Joe Bowring, succinctly stated in a recently issued quarterly report, "Markets continue to provide the most efficient way to organize the production of power at the lowest possible cost."[2]

The second part of the legislation will weaken Ohio's environmental protection rules by essentially removing existing financial incentives to build more renewable energy projects in Ohio. The legislation will significantly reverse Ohio's existing renewable portfolio standards, or RPS, laws, which influence how much electricity electric distribution utilities, such as FirstEnergy, must procure from renewable resources (e.g., solar and wind).

The legislation will lower existing RPS standards from supplying 12.5% of total demand from renewable energy resources by 2027, to only providing 8.5% of clean energy until 2025; after that date, RPS standards will be discontinued. Despite all of the available evidence of the importance of promoting renewable resources, such as solar facilities, to attempt to address the existential threat of climate change, the new legislation will eliminate Ohio's existing RPS standards in 6 years.

Finally, the legislation will cancel efforts to help Ohio customers use less electricity. Under the former laws, Ohio utilities were required to engage in energy efficiency programs to reduce customers' energy use 22% from 2008 levels by 2027. These programs reduce ratepayers' electricity usage through methods including energy-efficient lighting, enhanced insulation for homes, and more energy-efficient water heaters and pumps.

The Ohio Environmental Council has estimated that since 2009, Ohio's energy efficiency programs have resulted in over $5.1 billion in savings for Ohio customers on their utility bills.[3] The new legislation, however, allows electric utilities to abandon energy efficiency programs entirely once the utilities achieve an energy savings rate of only 17.5%, a level that most Ohio utilities are already close to reaching. As a result, Ohio electric utilities will no longer have an economic incentive to encourage energy efficiency programs in the state.

It is uncertain whether Ohio's new energy laws will affect neighboring states. In July of 2018,for example, PJM made a filing at the Federal Energy Regulatory Commission in Docket No. EL18-178 to request approval to address state subsidies of generation resources bidding into its capacity resource markets. FERC did not approve PJM's filing, and instead established a "paper hearing" to focus on this complex topic.

To date, FERC has not issued an order in this proceeding, although it has ordered PJM not to conduct a capacity auction under the old rules. It does appear, however, that Ohio's legislation will result in Ohio electricity customers paying more to keep some uneconomic generation plants operating, dismantle existing RPS rules that have promoted the development of new renewable resources and basically terminate utility promotion of energy efficiency programs in Ohio.

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[1] See, e.g., https://pjm.com/about-pjm/~/media/about-pjm/pjm-value-proposition.ashx.

[2] See http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2019/2019q2-som-pjm-sec1.pdf. at p. 1.

[3] See https://theoec.org/energy-efficiency/.