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California Adopts Two New Greenhouse Gas Reduction Rules: Renewable Electricity Standard and Regional Emissions Targets

By Jessica A. Johnson

Last week, the California Air Resources Board (CARB), a department of the California Environmental Protection Agency, adopted two significant rules to aid in the reduction of greenhouse gas (GHG) emissions. CARB established a standard that 33% of the electricity sold in the state by 2020 come from renewable energy sources, and approved final emission reduction targets for each metropolitan planning region pursuant to SB 375. However, there is some risk that these rules could be suspended if Proposition 23 passes.

Renewable Electricity Standard

History of the Standard

In 2002, SB 1078 established a Renewable Portfolio Standard (RPS) that required the retail sales of electricity in the state consist of 20% energy from renewable sources (e.g. wind, solar, and geothermal sources) by 2017. In September 2006, Governor Schwarzenegger signed AB 32 and SB 107 into law. The landmark goal of AB 32 is to reduce GHG emissions to 1990 levels by the year 2020. To help achieve that goal, SB 107 accelerated the deadline for meeting the 20% RPS to 2010.

In 2008, the Governor signed Executive Order S-14-08 to set a further RPS standard of 33% by 2020. The Executive Order directed state agencies to take appropriate actions to implement that target. AB 32 also directed CARB to create rules and regulations to reduce GHGs. Pursuant to this directive, on November 23, 2010, CARB adopted the new Renewable Electricity Standard (RES).

Summary of the Regulation

- The purpose of the regulation is to reduce GHG emissions associated with the generation of energy. (Order § 97000.)
- The regulation does not affect the existing authorities of the energy agencies and grid operator (CARB, California Public Utilities Commission, California Energy

Commission, and California Independent System Operator). (Order § 97001.)

- The regulation applies to entities that deliver electricity in state, including: local publically-owned utilities, electrical corporations, electric service providers, aggregators, cooperatives, the California Department of Water Resources, and the Western Area Power Administration. (Order §§ 97001(b), 97002(a)(15).)

- A partial exemption applies to entities formed prior to September 15, 2009, with average electricity sales of less than 200,000 MWh per year during 2007-2009. These small entities are only subject only to the recordkeeping and reporting requirements of the regulation. (Order § 97003.)

- RES compliance is phased-in over the following intervals:

    - 20% for 2012-2014;

    - 24% for 2015-2017;

    - 28% for 2018-2019;

    - 33% for 2020 and beyond. (Order § 97004, Table 1.)

- Compliance is calculated for each entity by multiplying the sum of the entity's retail sales to end users in each compliance interval by the RES percentage compliance required for that interval. (Order § 97004(a).)

- Renewable Energy Credits ("RECs") may be banked and traded. (Order §§ 97005, 97002(a)(16).)

- The regulation contains recordkeeping and reporting requirements to monitor compliance, including the submission of a plan to achieve the 33% RES target by 2020, annual progress reports, and compliance interval reports. (Order § 97006.)

- Violation of the regulation is deemed to result in the emission of an air contaminant. Penalties may be assessed for a violation pursuant to Health and Safety Code section 38580. (Order § 97009.)

Goals and Benefits

The RES is a major step toward fulfilling AB 32's goals. By increasing the use of renewable energy sources, electrical companies will be forced to decrease the use of fossil fuel sources, thereby reducing air pollution. It is estimated that by 2020 the RES will reduce GHGs by the equivalent of 12 to 13 million metric tons of carbon dioxide per year, as well as reducing other smog-forming and toxic air pollutants.

The increased demand for renewable energy that will result from the RES is also expected to require the construction and management of new renewable energy facilities in California, consequently generating new jobs. Further benefits to the state's economy will be gained as consumers are protected from the volatility of natural gas prices.

Regional Emissions Targets

History of SB 375

In 2008, California adopted SB 375 to require the state's Metropolitan Planning Organizations (MPOs) to plan transportation and development in a manner that creates internally sustainable communities so that the amount of automobile use necessary for people to transact their daily affairs would be reduced. Correspondingly, by reducing vehicle miles traveled, GHG emissions would be reduced. As such, SB 375 is an important component in achieving AB 32's GHG reduction goals.

For more detailed information on SB 375, please see our previous blog article.

Reduction Targets

SB 375 required CARB to provide each MPO with GHG emission reduction targets for passenger vehicles for 2020 and 2035. On September 23, 2010, CARB adopted a final rule calling for the following reductions in per capita emissions in each metropolitan planning region:

- San Diego region: 7% by 2020 and 13% by 2035;
- Sacramento region: 7% by 2020 and 16% by 2035;
- Bay Area region: 7% by 2020 and 15% by 2035;
- Southern California region: 8% by 2020 and proposed 13% by 2035;
- San Joaquin Valley region: placeholder of 5% by 2020 and 10% by 2035;
- Monterey Bay, Butte, San Luis Obispo, Santa Barbara, Shasta, and Tahoe regions: generally match or improve upon their current plans for 2020 and 2035.

The final decision on Southern California's 2035 target was continued to CARB's February meeting due to the Southern California Association of Governments' (SCAG) concerns that the proposed 13% target was too aggressive. SCAG does not believe it can achieve the targets due to state budget reductions to its transportation funding. SCAG consists of 6 counties, representing 19 million people.

CARB treated the San Joaquin Valley differently by adopting placeholder and provisional, rather than final, targets because of significant pending developments respecting the Valley's planning that would impact the determination of achievable targets. The Valley's first Regional Transportation Plan is under development and is four years away. Improvements in available data and modeling capability are also expected, the use of which would set more accurate targets. Further, unlike the other regions, which consist of a single MPO, the San Joaquin Valley consists of 8 MPOs, and it had not yet been resolved if each MPO would develop its plan separately, or if two or more MPOs would coordinate. The placeholder targets will be revisited in 2010.

Proposition 23

Proposition 23, titled the "California Jobs Initiative," proposes to suspend AB 32 until unemployment in California falls below 5.5%. Supporters of the proposition claim that AB 32 increases energy and construction costs, which are passed on to consumers who are already struggling in this economic climate. Opponents of the proposition claim that AB 32 creates "green jobs," and continued dependence on foreign oil increases energy costs and air pollution.

For more detailed information on Proposition 23, please see our previous blog article.

If Proposition 23 passes the vote on November 2, 2010, the 33% RES will be suspended. The Legislative Analyst's Office (LAO) does not believe that SB 375 and the regional emissions targets will be suspended because SB 375 is independent of AB 32. However, legal experts believe that, because the goals of AB 32 and SB 375 are derived from the same goals set by CARB, if Proposition 23 passes, litigation will ensue to include SB 375 in the suspension. LAO predicts that, based on California's historical unemployment trends, the GHG reduction measures would be suspended for many years, thereby thwarting AB 32's goal to reduce GHG emissions to 1990 levels by 2020.

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