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2013 Alternative Energy Legislative Roundup: California Continues to Move Forward on Clean Energy

By Theresa Cho

California continued to add to its steady stream of laws and regulatory actions to promote renewable energy and clean technologies with significant new legislation on net metering and community solar projects. While AB 177 (Perez) – a two-year bill which would increase the state's renewable portfolio standard (RPS) from 33 percent to 51 percent – has been in committee since June, AB 327 sets the stage for an expansion of the RPS by changing the 33 percent standard from a ceiling to a floor.

On the regulatory front, an October decision from the California Public Utilities Commission (CPUC) adopted a first-of-its-kind 1.325 gigawatt energy storage procurement requirement for the state's investor-owned utilities. See http://www.mofo.com/files/Uploads/Images/131018-California-Public-Utilities-Commission.pdf. The California Air Resources Board opened its 2013 update to the AB 32 Scoping Plan with a focus on planning for the state's policy goal of reducing greenhouse emissions to 80 percent below 1990 levels by 2020 which could require a virtually carbon-free electricity sector and an electrified transportation system. The continuing discussion and debate on the clean energy future for the state ensures that the markets will continue to evolve and expand over the coming years with additional legal and regulatory developments.

AB 327 (PEREA)

AB 327 expands the net metering program for self-generation customers in California by eliminating caps on net metering in 2017. Under current law, net metered self-generation customers can receive payment from the state's investor-owned utilities for energy generated in excess of the customer's demand over a 12-month period. The net metering program is currently capped at 5 percent of each utility's peak demand. AB 327 provides that, upon the earlier of July 1, 2017 or the date that the utility reaches its cap, the net metering program will enter into a new phase in which all new self-generation customers are eligible for net metering without a cap on the program.

However, it is possible that the uncapped phase of the net metering program will have different, and potentially less favorable, terms for self-generation customers. AB 327 requires that the CPUC adopt new tariffs or standard contracts for the post-July 2017 phase of the net metering program which ensure that the net metering rates are based on the costs and benefits of the self-generation program. A draft CPUC study released in September 2013 concludes that the current net-metering program will shift $1.1 billion in costs to non-net metering customers by 2020 and also concludes that the average household income of residential net metering customers is 78 percent higher than the median household income in California. The CPUC will attempt to balance the rate-payer equity issues with the state's efforts to expand the self-generation market as it implements the mandates of AB 327 over the next two years.

AB 327 also contains a small but significant change to the RPS law. Currently, the CPUC is prohibited by law from requiring that investor-owned utilities to purchase renewable energy in excess of 33 percent of retail sales. AB 327 instead allows the CPUC to require additional renewable energy procurement, thus setting the stage for an expansion in the state's RPS requirements.

SB 43 (WOLK)

SB 43 creates a Green Tariff Shared Renewables Program that requires the investor-owned utilities to procure up to 600 megawatts of renewable energy from facilities that are 20 MW or smaller. Customers of the utilities may "subscribe" to the electricity from these renewable energy facilities by electing to take energy from the utility under a green tariff that reflects the full cost of electricity delivered pursuant to the Green Tariff Program. Customer demand for the green tariff will presumably drive the pace and volume of utility procurement under SB 43. The program rules and requirements will be determined by the CPUC pursuant to applications for approval of the green tariffs to be filed by the utilities on or before March 1, 2014.

AB 217 (BRADFORD)

AB 217 expands and extends the California Solar Initiative (CSI) for single and multi-family low income residential buildings. Under existing law, the CSI is a $3.6 billion program to provide incentives for conversion to roof-top solar energy which will expire at the end of 2016. A minimum of 10 percent of the program funds are designed for low-income residential facilities. AB 217 authorizes an additional $108 million for low-income homes and extends the program to the end of 2021.

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