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New Laws Aim to Make State Greener

Deborah Behles
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On April 12, Gov. Jerry Brown signed into law the highest renewable portfolio standard in the country. Senate Bill X1 2 requires that 33 percent of energy sold in California come from renewable resources in 2020. Resources that qualify as renewable include energy generated from solar, wind, small hydro and biomass facilities. Renewable requirements such as these are common throughout the country. In fact, the majority of states have enacted similar, although not as stringent, renewable portfolio standards (RPS). Congress has also attempted to follow suit by proposing several different versions of RPS legislation, but thus far has been unable to pass a national requirement.

This new law will not result in a major shift in California's energy requirements. Renewable requirements similar to the new RPS law are already being implemented in California. Rather, the passage of SB X1 2 is likely to result in a re-examination of current requirements and an evaluation of how to effectively procure renewable resources and integrate them into the grid.

CALIFORNIA RPS REQUIREMENTS

Initial discussions related to a RPS began in California in 1995. While California's RPS was not adopted until 2002, these initial discussions spurred national interest and several states adopted RPS requirements in the late 1990s. In 2002, the state Legislature established California's first RPS, which required that 20 percent of energy from its investor-owned utilities come from renewable resources by 2017. Legislation in 2006 accelerated this initial goal and required that 20 percent of energy come from renewable resources by 2010. In November 2008, Executive Order S-14-08 further accelerated California's 20 percent RPS goal by requiring that by 2020 "all retail sellers of electricity" serve their load with 33 percent of energy coming from renewable energy.

Now, the new 33 percent RPS law replaces the prior law and executive order. The new RPS law requires that the following percentages of retail sales are from eligible renewable resources: 20 percent by Dec. 31, 2013, 25 percent by Dec. 31, 2016, and 33 percent by Dec. 31, 2020. (The new RPS requirements will be codified at Public Utility Code §399.11 et seq.) Enforcement of these requirements
can be waived if the retail seller can demonstrate conditions beyond its control that will prevent compliance such as interconnection delays. In addition to changing the RPS targets, the new RPS law applies to local publicly owned utilities instead of only investor-owned utilities, like the previous 20 percent RPS law. The new RPS law also adds new limitations on renewable energy credits and requires consideration of the costs of the RPS program.

RPS requirements have a number of purposes, including motivating renewable energy development, reducing reliance on fossil fuels, protection of public health and improvement of environmental quality through reduction of air pollution, and meeting the state's climate change goals by reducing greenhouse gases. Several California agencies have responsibilities related to the implementation of the RPS including the California Public Utilities Commission, the California Energy Commission and the California Air Resources Board. For instance, the CPUC has been granted authority to take all appropriate action to ensure that utilities meet the RPS targets, and the California Energy Commission is required to certify eligible renewable energy resources and to implement an accounting system to verify compliance with the RPS requirements. These responsibilities are often overlapping, leading to inefficiencies in the implementation of the RPS.

California has expended considerable effort into meeting its RPS targets, but it did not meet its 20 percent goal at the end of 2010. At the end of 2010, approximately 18 percent of retail sales from the investor-owned utilities were from renewable resources.

**REGULATORY DEVELOPMENTS TO WATCH**

California's new RPS law is likely to impact several regulatory areas, including: renewable energy credits, energy storage and distributed generation.

A renewable energy credit (REC) is a claim over the renewable attributes associated with a unit of energy generated by a renewable energy facility without having to own or deliver the energy itself. This claim or REC could then be applied toward the RPS targets. The new RPS law limits the use of RECs for power generated outside of the state by gradually reducing the allowable amount of unbundled RECs that can be used to satisfy the RPS. Last year, the CPUC issued a decision allowing utilities to rely on RECs for compliance with the RPS. That decision will now need to be re-evaluated in light of the new law's limitations on RECs, and is likely to lead to reduced reliance on RECs than anticipated last year.

Another area to watch is energy storage. As more renewable energy resources come online, California will need to determine how to integrate intermittent renewable energy resources into the grid. In general, the system must produce the same amount of electricity demanded by its customers, which makes the intermittent nature of wind and solar resources a potential issue. To integrate intermittent resources, a system operator needs to have the capability to back-up renewable resources that go off-line quickly. Energy storage is a type of device or physical media that stores energy for later use, and is one way to handle these potential integration issues. Some examples of energy storage are batteries, fly wheels and pumped hydro storage. Last year, California passed legislation (AB 2541) recognizing the value of energy storage systems, and the Public Utilities Commission has started investigating its potential use on the grid. The use of energy storage systems will bring up several interesting legal issues including how to count and verify stored energy for RPS purposes, and how to
structure payments for stored energy.

An additional potential impact of the new RPS law is an increased emphasis on distributed generation. Initially, when California started developing renewable energy resources, the focus was on large centralized renewable energy facilities. Now, due to increasing transmission and other viability concerns, California has started to increase development of smaller-scale projects, recognizing the value of generating electricity close to the demand. In the past few years, California has initiated several programs, such as the California Solar Initiative, designed to increase small-scale renewable development. Historically, however, distributed generation has been viewed primarily as a way to reduce demand rather than a way to meet RPS requirements. But, this could change with the new RPS law. The focus on distributed generation will likely increase and lead to future discussions about how to count distributed generation projects when determining RPS compliance.

Further potential regulatory development in the area of distributed generation is related to feed-in tariffs. Feed-in tariffs are instruments that allow small generators to be paid for the energy they deliver to the grid. California has a law setting a feed-in tariff for combined heat and power facilities as the utility's avoided cost. A recent Federal Energy Regulatory Agency decision allows California wide latitude to determine the avoided cost and consider factors such as reduced transmission needs. FERC, Docket No. EL 10-64. This issue, along with its potential application of feed-in-tariffs to other types of facilities, is likely to continue to be evaluated as California determines how to meet its 33 percent RPS requirement.

**CONCLUSION**

While the new RPS law will not significantly change California's current trajectory, it is likely to lead to several important regulatory and policy evaluations worth watching over the next few years.

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