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Developments In Calif.'s Energy And Climate Law: Part 1

Law360, New York (January 13, 2016, 10:17 AM EST) -- In this two-part series, part 1 focuses on California's bold new clean energy agenda, including preferential treatment for renewable energy and an increased focus on energy efficiency. Part 2 will address California legislation aimed at electric vehicles, pipeline safety and climate change. This legislation went into effect Jan. 1, 2016.

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Energy Legislation

The California Legislature took major steps in energy legislation in 2015. The state's energy agenda, set forth in SB 350, codified Gov. Jerry Brown's ambitious plans for 50 percent renewables and a doubling in energy efficiency by 2030. Additional legislation aims to ease the regulatory burden for renewable energy technologies and push smart meter implementation. Notably, some anticipated legislation did not emerge, including a potential 50 percent reduction in California's petroleum use, greenhouse gas reduction targets, and extensive reform of the California Public Utilities Commission.

SB 350: Gov. Brown's Ambitious Clean Energy Agenda

Easily the most significant energy legislation in California in the past few years, SB 350 codifies goals Gov. Brown announced in January 2015 to generate half of retail electricity from renewable sources while doubling the rate of energy efficiency savings by 2030.

By increasing the state's renewables portfolio standard (RPS) to 50 percent by 2030 (up from 33 percent by 2020), the SB 350 bill will allow for the continued growth of large-scale renewable energy in California. Because the current RPS structure (which excludes most rooftop solar installations from counting toward the target) was left largely intact, utilities and other retail suppliers of electricity will need to procure substantial new quantities of utility-scale renewables. And by maintaining the "bucket" system, which prioritizes renewable projects interconnecting directly to the California grid, this bill continues to promote development of in-state projects.

Meanwhile, by setting the stage for the state's primary electric grid operator to transform into a region-wide organization, SB 350 paves the way for increased collaboration among the Western states, which could become especially important as these states determine the most efficient means to comply with President Obama's landmark Clean Power Plan.

Equally relevant, however, is what the final version of the bill did not contain. At the last minute, provisions in the bill that would call for a 50 percent reduction in petroleum use in California cars and trucks by 2030 were dropped. Likewise, a complementary bill — SB 32 — which would have set greenhouse gas reduction targets for the state for 2030 and 2050 was pulled at the last minute. Current legislation only governs GHG targets through 2020; longer range goals have been set forth in executive orders, but not yet in binding law.

SB 350 (De León) Clean Energy and Pollution Reduction Act of 2015

Health & Safety Code: adds § 44258.5

Labor Code: amends § 1720

Public Resources Code: amends §§ 25310 & 25943, adds §§ 25302.2 & 25327

Public Utilities Code: amends §§ 359, 399.4, 399.11, 399.12, 399.13, 399.15, 399.16, 399.18, 399.21, 399.30, 454.55, 454.56, 701.1, 740.8, 9505, & 9620; replaces §§ 337, 352 & 359.5 et seq.; adds §§ 237.5, 365.2, 366.3, 400 et seq., 454.51, 454.52, 740.12, 9621, 9622; repeals §§ 359 et seq.

Renewable Procurement: In addition to its 2030 target of 50 percent renewable RPS, SB 350 set new interim targets for 2024 and 2027. The bill retains the existing procurement "buckets" established in prior RPS legislation, in which projects with a first point of interconnection to a California balancing area (bucket 1) are favored, and firmed and shaped resources (bucket 2) and transactions involving only renewable energy credits or RECs (bucket 3) are limited. However, the utilities can now bank bucket 1 resources starting in 2021 and use them for future compliance periods. Also starting in 2021, 65 percent of RPS resources must have contracts that are at least 10 years in duration. The CPUC and California Energy Commission must also establish a publicly available tracking system for RPS progress.

The bill directs the CPUC to identify a diverse portfolio of resources to meet the RPS requirements, relying on zero-carbon resources to the maximum extent reasonable. Both the CPUC and the CEC must also take various considerations into account, including costs and benefits, impacts to disadvantaged communities, and reliance on complementary resources including large- and small-scale storages, efficiency and demand response.

Cost Shifting and Sharing: SB 350 authorizes the investor-owned utilities to pass along the costs of procuring renewables to all customers, including those of direct access providers and community choice aggregators. The bill prohibits cost shifting between customers of different providers, so that load departing from utilities pays its fair share.

Integrated Resource Plans: Starting in 2017, each retail seller must file an integrated resource plan, including plans to meet the GHG reduction targets established by the California Air Resources Board (CARB). The CPUC can approve procurement of resource types that will reduce overall GHG emissions and meet other procurement goals, but that may not compete favorably in price against other resources.

Regional Grid: The bill declares that the transformation of the California Independent System Operator (CAISO) into a regional grid operator will only occur when it is in the best interests of California and its ratepayers, and instructs CAISO to study the impacts of a regional market to ratepayers, jobs, the environment, disadvantaged communities and GHG emissions. Prior to any transformation, the CAISO must present its findings at a public workshop hosted by the CPUC, CEC and CARB, and submit its findings to the governor, who would submit it to the Legislature by Dec. 31, 2017. The Legislature would then need to adopt a bill that includes the proposed governance changes for the CAISO.

Energy Efficiency: The bill requires the CEC and CPUC to establish annual targets for statewide energy efficiency savings and demand reduction that will result in two times the savings from electricity and natural gas customers by Jan. 1, 2030.

Transportation Electrification: SB 350 directs the CPUC to oversee applications submitted by the investor-owned utilities to accelerate transportation electrification, and to move forward programs that deploy charging infrastructure.

Barriers in Disadvantaged Communities: Under this bill, the CPUC must complete, by Jan. 1, 2017, studies on barriers to and opportunities for solar photovoltaic installations and efficiency improvements by low-income customers. By the same date, the CARB must study barriers to low-income customers accessing zero-emission transportation.

Transmission and Labor: SB 350 requires that any construction, alteration, demolition, installation or repair work done on the electric transmission system in California be considered a public works project that is subject to prevailing wage requirements.

Preferential Treatment for Renewable Energy

Consistent with the strong focus on renewable energy manifest in SB 350 (above), the state legislature also passed two bills that ease the regulatory burden for renewable energy technologies, one by streamlining the approval of renewable projects on former mining land (AB 1034) and the other simplifying the disposal of defunct solar panels (SB 489).

AB 1034 (Obernolte) Surface Mining: Reclamation Plans: Renewable Energy Generation Facility

Public Resources Code: adds § 2777.3

AB 1034 allows certain renewable energy projects on previously disturbed mining lands to avoid submitting a reclamation plan or an amendment to an approved reclamation plan. Instead, a qualifying renewable energy facility is termed an “interim use” and need not submit a separate amendment. However, only solar photovoltaic, solar thermal (under 50 megawatts) and wind energy facilities qualify for this preferential treatment.

SB 489 (Monning) Hazardous Waste: Photovoltaic Modules

Health & Safety Code: adds §§ 25259 et seq.

SB 489 changes the classification of end-of-life solar panels for waste processing. Formerly considered hazardous waste and subject to hazardous waste control law, photovoltaic modules are now termed “universal waste” and are regulated by universal waste management provisions.

Energy Efficiency Implementation

In tandem with its dramatic increases in building energy efficiency included in SB 350 (above), the state's increasing focus on energy efficiency includes incenting smart meter implementation (AB 793) and creating a standard benchmark system for measuring energy efficiency (AB 802).

AB 793 (Quirk) Energy Efficiency

Public Utilities Code: adds § 717, amends § 2790

AB 793 requires utilities to develop outreach programs aimed at increasing the adoption of smart meters. Utilities must provide incentive programs for resident customers and small/medium businesses, and install meters for low-income customers, where feasible.

AB 802 (Williams) Energy efficiency

Public Resources Code: amends §§ 25301 & 25303, replaces § 25402.10

Public Utilities Code: amends § 381.2; amends and renumbers § 384.2; adds § 913.8

AB 802 provides a public, standardized program for measuring buildings' energy efficiency. Commercial buildings have already been required to share a benchmarking rating (through private programs such as Energy Star) upon the sale of the building. AB 802 requires the CPUC to issue a public measurement system for both commercial and large residential buildings, and provide regular efficiency reports to owners. This legislation is similar to other benchmarking programs established in Boston, New York City, Philadelphia, Chicago and Portland, Oregon, among other places.

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