



CALIFORNIA ENERGY LEGISLATIVE ROUNDUP 2017:

A Focus on Protecting the Environment and Environmental Justice

For energy industry observers, the 2017 California state legislative session produced a few significant bills (concerning extension of the cap and trade program and regulation of criteria air pollutants and toxic air contaminants) along with a host of more minor bills. Two of the most closely watched legislative initiatives of the year—SB 100, which would have significantly increased California’s Renewable Portfolio Standard (RPS) from 50% to 100%, and AB 813, which would have further facilitated expansion and regionalization of the California electric grid with neighboring states—ultimately failed to pass at the end of session, although it is expected the 100% RPS bill will resurface in some form in the 2018 session.

While protecting the environment, the legislature also sought environmental justice. A number of bills that passed include provisions related to “disadvantaged communities” and provide for regulatory action and targeted funding to reduce localized pollution: AB 398, (prioritizing offset projects benefiting disadvantaged communities), AB 617 (prioritizing monitoring and assessment of pollutants in disadvantaged communities), AB 523 (funding for energy technology demonstration projects in disadvantaged communities), and SB 338 (prioritizing reduction of pollutants in disadvantaged communities in utility Integrated Resource Plans). In addition, the 2017 legislation, as in past years, facilitated development and deployment of distributed energy resources, including rooftop solar, electric vehicles, and battery storage. There were also a number of bills related to consumer protection for rooftop solar, PACE financing, and retail utility service disconnection.

Most of the newly enacted laws will require implementation by state agencies, including the California Public Utilities Commission (CPUC), the California Air Resources Board (CARB) and regional air districts, the California Energy Commission, and municipal authorities, over the coming year. Affected companies and other interested stakeholders should monitor relevant regulatory proceedings.

For your reference, the energy-related bills enacted in 2017 are summarized below.

CAP AND TRADE

Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (AB 32), which introduced “cap and trade,” market-based regulations designed to reduce greenhouse gas (GHG) from multiple sources by placing a firm limit on GHGs. A decade later, the California legislature revisited the program, extending it and reforming it, in line with Governor Brown’s proactive climate policies. With bipartisan support, the new cap and trade legislation solidifies the state’s battle against global warming.

AB 398 (GARCIA) – CAP AND TRADE EXTENSION AND REFORM

Amends, repeals, and adds select provisions at §§ 38501 et seq. of the Health and Safety Code. Adds § 4213.05 to, adds Article 3 (commencing with § 4229) to Chapter 1.5 of Part 2 of Division 4 of, and repeals Chapter 1.5 (commencing with § 4210) of Part 2 of Division 4 of the Public Resources Code, and amends § 6377.1 of the Revenue and Taxation Code.

Extension. With AB 398, California extended its greenhouse gas cap and trade program through 2030; under AB 32 the program was scheduled to sunset in 2020. The bill also requires CARB to undertake specified carbon market reforms, including:

Allowance Price Cap. CARB must establish and implement a price cap on auctioned allowances. CARB retains broad discretion in setting the specific level of the price ceiling but must consider several factors, including “the need to avoid adverse impacts on residential households, businesses, and the state’s economy.” The mechanics of the price ceiling work as follows: (1) CARB must sell any allowances remaining in CARB’s allowance price containment reserve as of Dec. 31, 2020 at the newly established price ceiling; and (2) issue new allowances at the price ceiling, and direct the proceeds from the sale of such allowances to projects designed to reduce GHGs, if allowances allocated for sale at the price ceiling are exhausted. Depending on how CARB implements the price cap, it could represent a significant change to the program and provide greater certainty regarding the maximum cost of compliance. Allowance costs, however, have not been a significant issue in the program to date and have generally remained closer to the price floor.

Additional Cost Containment. CARB must implement two interim “price containment points” below the price ceiling, at which CARB must offer non-tradable allowances at a specified price. This is similar to the existing price containment reserve.

Continues Free Allocations of Allowances. Under the current program, certain categories of covered entities are allocated

free allowances that they can either use to satisfy their own compliance obligation, or, sell on the secondary market. Under the current program, free allocations were to phase out over time. AB 398 requires that CARB extend allocation of free allowances at the same levels applicable to the 2015-2017 compliance period. This provision was highly controversial with environmental groups insofar as it reduces the need to purchase allowances at auction and undermines the incentive to invest in actual GHG reductions.

Addresses Over-Allocations of Allowances. The bill directs CARB to evaluate and address concerns related to the over-allocation of allowances, which depresses prices of allowances and reduces the incentive to invest in GHG reduction. CARB must transfer allowances that remain unsold after 24 months to the allowance price containment reserve, which may reduce the amount of allowances available.

Addresses Speculation and Volatility. CARB is required to establish allowance banking rules to discourage speculation, avoid financial windfalls, and consider the impact on complying entities and volatility in the market.

Limits Use of GHG Offsets. Currently, the program allows covered entities to use GHG offsets to cover up to 8% of their compliance obligations. Historically, environmental justice advocates have opposed the use of offsets, which they claim enable higher levels of emissions from industrial facilities, such as refineries and power plants, which are more commonly located in or close to disadvantaged communities.

Under AB 398, from 2021 through 2025, covered entities may only use offsets for up to 4% of their compliance obligation; from 2026 through 2030, covered entities may use offsets to cover 8% of their compliance obligation. Additionally, beginning in 2021, AB 398 requires that half of the offsets used by covered entities are generated by projects that provide “direct environmental benefits” to the state. Finally, AB 398 calls for the creation of a new Compliance Offsets Protocol Task Force, which is responsible for increasing the development of in-state offset projects.

AIR QUALITY

The legislature passed additional air quality legislation as a companion to the new cap and trade legislation. In addition to addressing climate change, both bills placed an emphasis on disadvantaged communities—prioritizing offset projects benefiting disadvantaged communities (AB 398) and prioritizing monitoring and assessment of pollutants in these communities (AB 617). With the passage of these laws, California continues to be a leader in both the protection of the environment and environmental justice.

AB 617 (GARCIA) - AIR

Amends §§ 40920.6, 42400, and 42402 of, and adds §§ 39607.1, 40920.8, 42411, 42705.5, and 44391.2 to, the Health and Safety Code.

AB 617, which was passed concurrently with AB 398, establishes new requirements related to monitoring, reporting, and reducing criteria air pollutants and toxic air contaminants from both mobile and stationary sources. Most significantly, AB 617 provides for: (a) CARB to develop, by October 2018, a statewide strategy to monitor and reduce emissions in communities affected by a high cumulative exposure burden; (b) select air districts to develop community-specific emissions-reduction plans; (c) community-level fence-line monitoring or other specified real-time on-site monitoring, as may be required by CARB; (d) accelerated retrofit of pollution control equipment to best available retrofit control technology (BARCT) at existing facilities near communities; (e) direct reporting of facility-level emissions data to CARB; (f) increases cap on penalties from \$1,000 per violation to \$5,000 per violation, with subsequent adjustment for inflation.



DISTRIBUTED ENERGY RESOURCES

A myriad of legislation encouraging investment in and development of a variety of distributed energy resources is another building block in California's commitment to the elimination of global warming. The following bills promote energy storage, renewable energy, and the reduction of diesel generators. Each law that eliminates carbon dioxide emissions is an opportunity to reduce global warming.

AB 546 (CHIU) – ENERGY STORAGE SITING

Adds § 65850.8 to the Government Code.

This bill is designed to help communities navigate the often challenging process of obtaining permits for energy storage projects. The bill will require cities with 200,000 or more

residents to make documentation and forms associated with battery energy storage and retail customer-sited energy storage available on the internet. Further, the bill would require those cities to provide for electronic submission of those documents. The bill also encourages the Governor's Office of Planning and Research to provide guidance on energy storage permitting.

AB 634 (EGGMAN) – HOAs AND ROOFTOP SOLAR

Amends §§ 714.1 and 4600 of, and adds § 4746 to, the Civil Code.

This bill will prevent HOAs from banning or placing certain restrictions upon the installation of rooftop solar improvements on the roof of the building in which the owner resides. Specifically, the bill prohibits banning or requiring a vote of the members in order to install or use rooftop solar on the roof of the building in which the owner resides, or a garage or carport adjacent to that building that has been assigned to that owner for exclusive use. Finally, the bill sets forth modest procedural requirements, including insurance and responsibility for maintenance of the panels once installed. Some interest groups expressed concern that this bill may result in disputes among HOA members seeking to use the same portion of the common area roof. The bill does not address this issue, but supporters claim that existing HOA dispute-resolution procedures will adequately resolve this potential issue.

AB 1414 (FRIEDMAN) – SOLAR PERMITTING FEE CAP EXTENSION

Amends § 801.5 of the Civil Code, and amends § 66015 of, and amends the heading of Chapter 7.5 (commencing with § 66015) of Division 1 of Title 7 of, the Government Code.

This bill extends statewide caps on permit fees for residential and commercial installations of solar projects to 2025. Further, it expands the fee cap to cover ground-mounted systems, solar thermal installations, and new technology such as integrated photovoltaic panels in windows, siding, or roofing panels.

AB 1400 (FRIEDMAN) – NO DIESEL GENERATORS IN MICROGRIDS

Adds §§ 25620.9 and 25711.8 to the Public Resources Code.

According to some estimates, diesel generators are the least-expensive option for a reliability-focused microgrid. Diesel generators are commonly used on college campuses, on military bases, and in remote communities. This bill prohibits the use of diesel generators in microgrids. This may spur innovation and investment in storage and renewable generation.

SOLAR CONSUMER PROTECTION

California's new solar consumer protection laws continue the state's efforts to encourage investment in solar power. Consumers make independent, voluntary choices with regard to solar investments. The new laws help eliminate confusion in the marketplace and provide clearer information to the public. The anticipated result of this legislation is continued use of solar power across the state.

AB 1070 (FLETCHER) – ROOFTOP SOLAR CONSUMER PROTECTION

Adds §§ 7169 and 7170 to the Business and Professions Code, and adds § 2854.6 to the Public Utilities Code.

This bill requires the board to collaborate with the CPUC to publish a disclosure document that provides clear, concise information about solar energy systems available on a residential scale. The bill also sets forth certain consumer protection requirements for solar energy systems. For example, the bill provides a structure for the review of complaints and questions regarding solar contractors. Further, the bill requires the commission to develop standard assumptions to be used in the calculation of potential savings that can be expected by using solar energy systems.

SB 242 (SKINNER)/AB 1284 (DABABNEH) – PACE CONSUMER PROTECTION

*SB 242 – adds Chapter 29.1 (commencing with § 5900) to Part 3 of Division 7 of the Streets and Highways Code.
AB 1284 – amends, repeals, and adds § 10133.1 of the Business and Professions Code, and amends select provisions at §§ 22000 et seq. of the Financial Code.*

These bills enact a comprehensive set of consumer safeguards and requirements that protect homeowners and maintain the integrity of PACE assessments. Senate Bill 242 requires public agency PACE administrators to verify via live telephone calls whether the borrower understands the terms of the financing and has the ability to pay. It also requires the creation of a forbearance protocol for borrowers that demonstrate they cannot make a payment. Assembly Bill 1284 requires mandatory licensing of residential PACE lenders and oversight through the California Department of Business Oversight.



EMERGING TECHNOLOGIES AND ZERO-EMISSION VEHICLES

In 2017, the legislature continued to promote the adoption and use of technology to lessen California's carbon footprint by extending CARB funding for zero-emission vehicles, providing for the installation of electric vehicle charging stations, and allocating a portion of Electric Program Investment Charge (EPIC) funding toward low-income and disadvantaged communities.

AB 1073 (GARCIA) – ZERO-EMISSION VEHICLE CARB FUNDING

Amends § 39719.2 of the Health and Safety Code.

AB 1073 extends CARB funding for the early commercial deployment of zero- and near-zero-emission heavy-duty vehicle technology to December 31, 2020. CARB must continue allotting at least 20% of California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program money to provide incentives for technologies such as new and retrofitted ultra-low-NOx vocational trucks, short- and long-haul trucks, buses, and off-road vehicles.

AB 1082 AND AB 1083 (BURKE) – CHARGING STATIONS FOR ELECTRIC VEHICLES

Adds §§ 740.13 and 740.14 to the Public Utilities Code.

AB 1082 and AB 1083 promote access to Electric Vehicles (EVs) by directing utility companies to install publicly accessible charging stations at public schools, state parks, and beaches. "By making charging stations more publicly accessible and increasing incentives, we can make zero-emission vehicles an everyday reality while fighting climate change and making California a healthier state in which to live," said Assemblywoman Autumn Burke.

AB 523 (REYES) – EPIC FUNDING AND DISADVANTAGED COMMUNITIES

Amends § 25711.5 of, and adds § 25711.6 of, the Public Resources Code.

Electric Program Investment Charge (EPIC) funding is generally used to fund projects that may lead to technological advancements to help achieve the state's energy policy goals. This bill requires 25% of funds to be used at sites located in, and benefitting, disadvantaged communities, and 10% of funds to be used in low-income communities.

RETAIL UTILITIES

Last year, the legislature ushered in a broad range of laws directing the CPUC to promulgate new rules and policies impacting public utilities and their ratepayers. The new bills addressed a spectrum of issues, including the management of energy demand, utility bill volatility, and utility service disconnections. Other legislation creates new utility notification requirements regarding the reallocation of revenue, and a new tax exemption for wholesale generators.

SB 338 (SKINNER) AND SB 618 (BRADFORD) – NET PEAK LOAD, IRP, MINIMIZE OVERBUILD OF TRANSMISSION AND RENEWABLES (PUC)

Amends §§ 454.52 and 9621 of the Public Utilities Code.

SB 338 directs the CPUC and publicly owned utilities to consider, as part of the Integrated Resource Planning process, how to utilize storage, demand-side management, and other non-emitting resources to meet electric utilities' peak demand needs.

This bill requires the CPUC and the governing boards of local publicly owned electric utilities to establish policies and procedures to ensure that electric utilities meet net-load peak energy and reliability needs while reducing the need for new electricity generation and transmission lines in achieving the state's energy goals at the least cost to ratepayers.

SB 549 (BRADFORD) - PUBLIC UTILITIES: REDIRECTION OF MONEYS AUTHORIZED FOR MAINTENANCE, SAFETY, OR RELIABILITY

Adds § 591 to the Public Utilities Code.

SB 549 added Section 591 to the Public Utilities Code, which requires electrical and gas corporations to annually notify the CPUC each time capital or expense revenue authorized by the CPUC for maintenance, safety, or reliability is redirected by the utility to other purposes. SB 549 spawned from CPUC concerns that utilities were diverting safety-benchmarked funds authorized in the utilities' general rate cases for non-safety-

related purposes. Notably, in the aftermath of PG&E's 2010 gas pipeline explosion, it was revealed that PG&E had diverted funds earmarked for gas pipeline maintenance to other purposes, including executive bonuses. The bill seeks to curtail safety-related incidents by requiring the utilities to notify the CPUC when they reprioritize safety-related funds.

SB 711 (HILL) – ELECTRICAL CORPORATIONS AND GAS CORPORATIONS: RATES AND CHARGES

Amends § 739 of, and adds § 739.11 to, the Public Utilities Code.

SB 711 requires the CPUC to make efforts to minimize utility bill volatility for residential customers of electric and gas corporations by reviewing and revising the "baseline quantity" used to determine rates, as average consumption patterns change. The bill also provides that Lifeline quantities of electricity or gas would be allocated by the CPUC based on 50% to 60% of average residential consumption, with exceptions for residential gas customers and for all-electric residential customers, which would be 60% to 70% of average residential consumption during the winter season.

SB 801 (STERN) – ALISO CANYON NATURAL GAS STORAGE FACILITY: ELECTRICAL GRID DATA: ELECTRICITY DEMAND REDUCTION AND RESPONSE: ENERGY STORAGE SOLUTIONS

Amends § 972 of, and adds §§ 2104.7, 2836.7, 9616, and 9618 to, the Public Utilities Code.

SB 801 seeks to increase storage procurement and other clean energy resources in the LA Basin, and mandates three strategies to mitigate against the threats to electrical reliability resulting from the 2015 Aliso Canyon well failure: (1) data sharing (publicly owned utilities in the LA Basin with more than 250,000 customers, i.e., LADWP, must make electrical grid data available to the public); (2) demand response and demand reduction; and (3) electricity storage (requires LADWP and Southern California Edison to deploy a combined minimum of 120 megawatts of cost-effective energy storage solutions to the extent feasible). The bill also limits use of any fines or penalties levied on SoCalGas related to the Aliso Canyon gas leak to mitigation of effects on local air quality, public health, and ratepayers.

SB 639 (HERTZBERG) – TAX EXEMPTION FOR NONCONVENTIONAL EWGs

Amends § 721.5 of the Revenue and Taxation Code.

This bill provides a new exemption for Exempt Wholesale Generators producing power from other than a conventional power source. Conventional power sources are nuclear, hydropower greater than 30 MW, and the combustion of fossil fuels (unless cogeneration).

SB 598 (HUESO) – PUBLIC UTILITIES: GAS AND ELECTRIC SERVICE DISCONNECTIONS

Adds §§ 718, 779.3, and 910.5 to the Public Utilities Code.

SB 598 requires the CPUC to adopt rules, policies and regulations with the goal of reducing, by January 1, 2024, the statewide level of gas and electric utility service disconnections for nonpayment by residential customers, and extends special considerations to residential customers who have specified medical conditions or who have a member of the household with those conditions.

CONCLUSION

California continues to be a leader in the battle against global warming. With bipartisan support, in 2017 the legislature passed a number of laws that eliminate GHGs, encourage renewable and alternative energy sources, and protect “disadvantaged communities.” Poised at the intersection of environmental protection and environmental justice, these laws were designed to position California for the future. Against this backdrop, California seems ready for the 100% RPS bill in 2018.

MORGAN LEWIS'S ENERGY PRACTICES

For more than a century, major participants in every sector of the energy market – oil and gas, conventional electric, nuclear, renewable energy, and water – have turned to Morgan Lewis for a broad range of legal services. Our team, which includes a number of lawyers who formerly held senior positions within the government and energy companies, assists clients engaged in energy development, production, and distribution, as well as energy-related technology innovation. We advise on federal, state, and local environmental laws and agencies that come into play when companies seek permits, site or expand facilities, engage in transactions, confront government enforcement, participate in cleanups, or are involved in litigation. Our lawyers and consultants understand the complex legal, financial, regulatory, and policy dimensions of the energy sector, and bring focused skills to clients not just in California but across the United States and around the world.

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