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Air Resources Board Decisions to Shape California for Generations

Some meetings are bigger than others. The California Air Resources Board (CARB or Board) recently held one of the more significant environmental regulatory meetings of the last couple of years. The Board approved two items on its agenda which could potentially affect the lives of every Californian for decades to come.

At the September 2010 meeting, the Board focused on both the future of growth in California by setting the SB 375 regional land use greenhouse gas (GHG) targets and by establishing the future of California's electricity grid through the adoption of a 33% Renewable Electricity Standard (RES) regulation.

These two actions were both key components of the Board's 2008 road map to achieve the AB 32 mandate of reducing the state's GHG emissions to 1990 levels by 2020. This road map is known as the AB 32 Scoping Plan and contains a list of policy recommendations and additional measures to achieve the state's climate change goals. With these two items being moved to the Board's adopted pile, the sole remaining major climate item for Board consideration this year is the Cap and Trade program, recently pushed back to December 16th.

Though both measures are considered important policy instruments, the RES regulation is expected to achieve four times the 2020 GHG emission reductions as the land use measure (12 vs. 3 million metric tons). It is also worth noting that because the land use targets were required by SB 375 and not AB 32, its requirements are not subject to delay under Proposition 23, nor are they subject to any potential one-year Governor-initiated suspension--only the RES regulation would be subject to suspension or delay as an AB 32 measure.

SB 375 Regional Targets

Of the two items, SB 375 generated the most witnesses, controversy and conversation among the Board Members. Two previous Manatt Newsletters have focused on SB 375; one provided background, and the other dove into the details of the CARB staff proposal. At the end of the day, the Board voted to approve the staff-recommended targets, with a few minor changes. (Note: the final resolution is not yet available, but when released it should be located here. Also, the hearing can be seen here in its entirety.)

The biggest issue for the Board to deal with was the 2035 long-term target for Southern California. The staff-recommended target was substantially higher than what the Southern California Association of Governments (SCAG) advocated. This item proved to be too difficult to answer in the hearing and a decision on this specific target was delayed until February 2011 after more work between CARB staff and SCAG.

Notwithstanding the SCAG target, CARB has completed the biggest requirement for the state in implementing this bill. Now the work shifts to the local Metropolitan Planning Organizations (MPOs) to draft federally approvable regional transportation plans that meet these new GHG targets, with Sacramento first up on the rotating schedule.

33% Renewable Electricity
Increasing California's renewable electricity standard to 33% and expanding its reach to all providers of electricity has been discussed for years and has been close to reality before. But for a variety of reasons, it hadn't yet come to pass. But CARB's action puts a marker in the ground and should not be underestimated in its significance.

Though adopted unanimously, with less stakeholder opposition, the RES regulation has a greater level of uncertainty surrounding its ultimate implementation. Previously delayed, this regulation was developed in the shadow of pending complex legislative action. But when SB 722 failed by four minutes to receive its final vote in the last moments of the legislative session, all eyes turned back to CARB's much simpler 18-page proposed regulation. The RES regulation could potentially be held up in a number of ways: by the passage of Proposition 23, or by suspension of AB 32 by a future Governor. Additionally, the revamped Legislature and new Governor could finally come to agreement and enact a statutory 33% renewable electricity standard that would supersede the RES regulation. Legislative leaders also made it clear in a letter to the Board prior to their approval that they were not happy with the direction the Board was taking.

Assuming none of these regulatory-killing actions actually take place, then regulation would require both publicly owned and investor-owned utilities to secure a third of their power from renewable resources starting in 2012. The focus of the regulation is on reducing GHG emissions and not energy diversification as is the case with the existing renewables program. The RES regulation itself does not place many of the geographic and/or credit restrictions that were integral to SB 722 and last year's SB 14.

Complicating matters is the fact that the California Public Utilities Commission's (CPUC) existing 20% Renewable Portfolio Standard (RPS) does not go away with the adoption of the RES. CARB staff addressed this issue by stating an intent to harmonize these two programs. This new policy view would essentially defer to the CPUC on many of their adopted policies related to renewables, including tradable credits (TRECS). This change was a surprise to most stakeholders at the hearing and became the focus of much of the discussion. The exact changes to the regulatory language were not available at the hearing and will be made public at a later date when an additional comment period is opened.

With these actions adopted by CARB, the direction of two pieces of California's future infrastructure was altered from its current path. Implementation of these programs over the coming months and years will dictate how these changes really affect everyday life in California.