CALIFORNIA Energy Circuit
P.O. Box 2174 • Berkeley, CA 94702 • Phone: (510) 883-9827, (510) 534-9109
• www.californiaenergycircuit.net, **A women-owned small business**

Governor: Cancel the Veto, Deliver on Your Promises

By Nancy Rader
September 25, 2009

Arnold Schwarzenegger was the first to publicly call for a 33 percent Renewables Portfolio Standard in California. That was in 2003 when he initially ran for governor. Later, as governor he championed and signed the state's groundbreaking greenhouse gas reduction law, AB 32.

In order to achieve AB 32's carbon reduction goals and one-third green energy target in the buying habits of California utilities, the governor must work with the Legislature to enact a 33 percent renewables mandate into law this year.

Despite the governor's good intentions last week in directing the California Air Resources Board to raise the renewable standard to 33 percent under its AB 32 authority, only a statute will do the job.

Only a law on the books will provide sufficient long-term market certainty to support the substantial capital investments required to build the generation and transmission needed for private and public utility supplies to be one-third renewable by 2020.

Without it, the generation and transmission development supporting solar, wind and other renewable projects now underway will be put at risk. That will cause substantial market disruption that will jeopardize achievement of the state's greenhouse-gas reduction goals that depend on the clean energy mandate.

Without new law, the California Public Utilities Commission remains specifically prohibited from enforcing the renewable energy requirement if alternative power supplies cannot be procured at or below market prices.

This is the situation we may well face. As it is, the above-market fund created for the 20 percent renewable mandate law is almost depleted. Additional funds may well be needed for the current bidding cycle to close the gap between the "market price referent" and bid prices--the result of a downturn in gas prices and high financing costs in the current economy. The market referent refers to a benchmark price against which the above-market cost of a project is measured.

The renewable standard bills passed by the Legislature earlier this month--SB 14, AB 64, and AB 21--provide specific new authority regarding cost containment to keep project

development momentum going. Without it, project investors will be hesitant to make the large deposits required by the state grid operator to support the transmission upgrades that their projects require, and to pay for the million-dollar environmental studies necessary to acquire land-use permits. Without the power purchase agreements to justify these expenses, projects could stall or be abandoned.

A high degree of consensus from diverse parties was obtained in support of the 33 percent alternative power legislation after two years of work and compromise.

It is not perfect legislation in anyone's eyes.

An Executive Order is simply no substitute. Without the force and effect of law, an Executive Order can be eliminated or modified by the next Governor. Consider recent statements by Republican gubernatorial candidate Meg Whitman, who pledges to issue a moratorium on AB 32 implementation on her first day as governor. Or another candidate for governor, Tom Campbell, who declared that he would include nuclear energy in the renewable power mandate.

Further, the Air Resources Board has no clear statutory authority under AB 32 to implement a 33 percent renewable standard that would counter the specific prohibitions contained in statute. Those specifics bar the CPUC from enforcing the renewable standard obligation when the above-market fund is exhausted. It also prohibits the CPUC from raising the renewables standard above 20 percent; and CARB is prohibited from changing the regulations of other agencies.

At a minimum, the lack of legal clarity could tie up a 33 percent standard in court.

Southern California Edison is already arguing before regulators that CARB's scoping plan directing AB 32 implementation--and its inclusion of a 33 percent renewable mandate in particular--is not cast in stone. The utility argues that other strategies may be available to achieve greenhouse gas reduction goals, such as those that may be available under federal cap-and-trade policies.

Labor interests could challenge the Air Board's authority to implement an administrative 33 renewable standard if it attempts to extend the current policy of unlimited renewable energy credits from out of state without real energy deliveries. These competing interests can only be settled with new law, which parties spent the past two years developing and negotiating.

With these kinds of uncertainties and potential delays in store under an Executive Order--paired with the seven-year minimum lead time to plan and build transmission--a veto would eliminate the already-slim possibility that now exists to meet the 33 percent goal by 2020. It also could jeopardize progress made thus far.

Consider the $2 billion Sunrise Powerlink transmission project. Regulators predicated its completion on a 33 percent renewable mandate. Without that goal in law, and given the uncertainties associated with an Executive Order, the committed litigants now fighting Sunrise will have a new basis for challenge. Indeed, this may be the first place where the strength of the order is tested.

Likewise, other pro-active transmission planning efforts, such as the state's Renewable Energy Transmission Initiative and the California Independent System Operator's just-announced initiative on planning transmission for renewables, are predicated on a 33 percent alternative power mandate. If these efforts are to go beyond planning and produce infrastructure, they'll need the certainty of law.

The arguments against the bills center around protectionism. Although labor's objection to unlimited renewable energy credits, which represent the green attribute, not the actual power of an alternative power project, is rooted in a desire to promote in-state jobs, the reasonable delivery requirements and limitation on credits in the renewable bills are not based on protectionism but on good public policy and technical objectives.

These requirements, which still allow substantial out-of-state development to count toward the state's renewable energy portfolio goal, recognize that most out-of-state grid systems are less capable than the state's grid operator to integrate renewables. Further, the Legislature reasonably sought to assure that, in supporting the bill, Californians will reap the tangible benefits that are associated with renewable energy deliveries--namely, stable power prices and reduced in-state fossil fuel production, which are not provided by renewable energy credits alone.

Now more than ever, California needs the governor's leadership to get the 33 percent renewable standard over the finish line this year, even if that takes a special session.

The alternative is to risk collapse of the California renewable energy market and to eliminate any possibility of achieving the 33 percent renewable energy and AB 32 goals on time.

—Nancy Rader, California Wind Energy Association executive director
Edited By: Circuit staff