

**VALLEY CLEAN ENERGY ALLIANCE
COMMUNITY ADVISORY COMMITTEE**

Staff Report - Item 9

TO: VCEA Community Advisory Committee

FROM: Mitch Sears, Interim General Manager

SUBJECT: Legislative/Regulatory Task Group Summary and Recommendation on AB813 and SB100

DATE: July 2, 2018

Recommendation

1. Support CalCCA position on AB 813 of support as amended.
2. Support CalCCA position on SB 100 of support.

Background and Analysis

The Community Advisory Committee (CAC) Legislative/Regulatory (Leg./Reg.) Task Group has prepared the attached summary report of Assembly Bill 813 [AB 813 (Holden - Multi-State Regional Transmission System Organization)] and Senate Bill 100 [SB 100 (de Leon - Renewable Portfolio Standard. GHG Emissions)].

AB 813 will form a multi-state regional transmission system organization (RTO), said formation will “regionalize” the California Independent System Operator (CAISO).

SB 100 establishes the 100 Percent Clean Energy Act of 2017 which increases the Renewables Portfolio Standard (RPS) requirement and creates the planning policy to meet the state's retail electricity supply mix by the year 2045.

Leg./Reg. Task Group Recommendations

The Leg./Reg. Task Group prepared a background report outlining its consideration of the two Bills. The report is included as an attachment to this staff report. The Task Group is asking the CAC to review and recommend a “position” for consideration by the VCEA Board at their July 12th meeting. . The Task Group is recommending the Advisory Committee recommend the following to the Board:

- 1) take no position on AB 813 (Task Group Vote of 3-0 with one member absent) and
- 2) support SB 100 [Task Group vote of 2-0-1 (2 in support, none to oppose and one abstention)], consistent with CalCCA’s position. The recommendation includes the topics raised in CalCCA’s letter that would result in withdrawal of support.

Staff concurs with the Task Group's support recommendation for SB 100.

Staff also concurs with the analysis of the Task Group on AB 813 but reaches a different conclusion on the final recommendation. While the "No Position" recommendation has merit, the following points edge staff's recommendation to support:

- The current version of AB 813 has the potential to reduce reliance on fossil generation (e.g., natural gas and coal) and reduce ratepayer costs.
- As the CalCCA position materials point out, a significant challenge in building local renewable resources is ensuring sufficient value to support the cost of construction, and a significant risk to value is the expected curtailment and negative wholesale prices. A broader and more effective western market through regionalization could lower these risks for local renewable projects.
- Any proposal for regionalization will need to ensure California retains its autonomy to determine its electric power sources.
- The Bill does not decide the matter of regionalization itself, but rather sets out a process for developing and reviewing a proposal.
- The Bill would require that a future proposal for regionalizing the grid would need to be developed in an open, transparent way, and reviewed broadly by the public, the CEC, the CPUC and CARB prior to considering any actual regionalization.

For these reasons, staff is recommending the CAC support the CalCCA support as amended position on AB 813.

Attachment

1. CAC Leg./Reg. Task Group Report

CAC Leg/Reg Task Group Report to CAC June 23, 2018

1. AB 813 (Holden). Multi-State Regional Transmission System Organization.

Summary of Bill. AB 813 would establish a process for the California Independent System Operator (CAISO) to initiate and/or join a multi-state regional transmission system organization (RTO), starting with replacement of the current California-appointed board of governors by a new fully independent board. The bill would specify certain criteria that must be met before CAISO could initiate or join such an organization. The formation of such an RTO is generally referred to as “regionalization” of the CAISO. In its current form, AB 813 would provide that the California Energy Commission would have the authority to certify (or not) the proposed governance structure.

Summary of Arguments in Support and Opposition.

Supporters. Supporters of AB 813, including CalCCA and some environmental groups, suggest such an RTO would help advance the demand for and growth of renewable energy, as well as the ability of the power system to integrate renewable energy, and thus promote development of renewable energy in California. Supporters also observe that a change in Cal-ISO’s governance structure, such as that proposed in AB 813, is necessary in order for such an RTO to be implemented.

Opponents. Opponents of AB 813, including some environmental groups, suggest that an RTO such as that motivating AB 813 would open up California to more fossil-fuel energy sources such as that generated by coal. They also express concerns that by participating in an RTO, California would be subject to the jurisdiction of the FERC (the Federal Energy Regulatory Commission) that could under-cut California’s renewable portfolio standard and efforts to reduce greenhouse gas emissions. Some attorneys note that the Supreme Court has ruled that the federal government prevails over state law.

CalCCA’s Position. Cal-CCA supports AB 813, as amended, in a May 11, 2018 letter. Cal-CCA notes, in part, that the bill...

“in its current form sets out a transparent process for creating and evaluating proposals to regionalize the independent system operator and ensure California can continue its ambitious renewable energy goals. Cal-CCA believes that a well-crafted plan will support the ability of CalCCA members to procure and build local renewable resources by creating a stronger renewable energy market...Regionalization is also likely to further reduce greenhouse gas emissions by exposing coal-fired power plants to competition from cheaper clean sources.”

CalCCA also notes its appreciation for the removal of objectionable provisions “that would have prevented public community choice providers from administering demand response programs.”

Comments from CAC-Leg/Reg Task Group. The Leg/Reg Task Group discussed the concept of an RTO and AB 813 twice, including during a conference call June 13, 2018 (with Christine, Lorenzo and Yvonne on the call). Individual members express the following comments during the call.

- SB 813 does not create a multi-state regional transmission system organization (RTO). All it does is permit and provide a process for the ISO to develop a new governance structure to take the place of the current ISO governing board consisting of 5 members appointed by the governor of CA and confirmed by the CA legislature. The new governing board would be “independent” meaning not affiliated with or subject to any state policy authorities or commercial interests in the power sector. The bill requires that the new governance structure shall not be implemented before January 1, 2021.
- The new governing board is viewed by other states as a necessary step for them to allow their jurisdictional electric utilities to participate in a CAISO-led RTO. With the new board in place, individual states could authorize or direct their jurisdictional utilities to join in forming an RTO, but these would be individual state and utility decisions that play out over years, rather than a single event in which the entire western interconnection becomes a single RTO.
- As a consequence of the above points, any effort to create a new multi-state regional transmission system organization pursuant to AB 813 or similar governance change will take at least three to five years before the new RTO begins formal operation with those utilities that decide to become initial members. This fact impacts any potential short-term benefits supporters suggest for increasing renewable energy sources and markets.
- Christine observed that the debate surrounding AB 813 seems to involve two main issues.
 - ✓ Does regionalization help or hurt the advancement of California’s renewable energy and greenhouse gas reduction policies?
 - ✓ Does regionalization put California at risk for increased intrusion by FERC?
- It should be noted that the environmental community is split on AB 813 and the concept of regionalization. NRDC and Union of Concerned Scientists support; the Sierra Club and some small grassroots groups (like 350 San Diego) oppose.
- Lorenzo pointed out that California is already regulated by FERC for its electricity transmission and wholesale market activities, and that the western grid is already an interconnected system covering 13 states and parts of Canada and Mexico, while every state has its own policies about greenhouse gas emissions and renewable energy sources. Problems arising from diverse states with diverse policies trying to control the outcomes of a single physically-interconnected electrical system exist today and will continue to exist

with an RTO. (An example is the great difficulty in calculating the carbon content of electricity entering CA over its interconnections with other states.)

- Christine questioned the need for doing this now. Especially given an uncertain Federal environment.
- Lorenzo, Christine and Yvonne all express dismay at the extreme and overblown rhetoric on both sides of AB 813 that obscures rational discussion of the pros and cons of the proposal.
- In a series of email exchanges after the conference call, Lorenzo, Christine and Yvonne exchanged comments about the issue legal challenges related to potential FERC intrusion into state energy issues. Although this topic is not the focus of the Leg/Reg Task Group's recommendation, it may be of interest to the rest of the CAC. An appendix to this write up includes a link to a discussion of a 2016 court case (provided by Christine) and a discussion of the broader topic offered by Lorenzo.

CAC Leg/Reg Task Group Recommendation. No Position. (Vote of 3-0 with one member absent.) If AB 813 is amended that raises new concerns, the Leg/Reg Task Group would review it again. (Note that "No Position" is a formally-recognized position to adopt under legislative conventions, and is not the same thing as simply not taking a position.)

The basis for the Leg/Reg Task Group's different recommendation than that of CalCCA is that any new regional transmission system organization would not be activated until at least three to five years, thus delaying the potential benefits for advancing renewables (again, the bill requires that the new governance structure shall not be implemented before January 1, 2021). Also, because of the rhetoric on both sides of the issue, we are uncomfortable having VCE get involved at this time. We appreciate that CalCCA secured an important amendment to remove an objectionable provision that would have limited the ability of CCAs to administer demand response programs.

2. SB 100 (de Leon). Renewable Portfolio Standard. GHG Emissions.

Summary: Establishes the 100 Percent Clean Energy Act of 2017 which increases the Renewables Portfolio Standard (RPS) requirement from 50% by 2030 to 60%, and creates the policy of planning to meet all of the state's retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045, for a total of 100% clean electricity. (Note: SB 100 only deals with electricity.) SB 100 is now in the Assembly Energy and Utilities Committee with a hearing of July 3.

Supporters include environmental groups, faith based organizations, public health groups and some businesses including renewable energy companies, smaller businesses and a few larger companies whose business plans include sustainability. Opponents include PG&E, SCE, the California Chamber of Commerce, the agricultural community, Western States Petroleum Association and others.

CalCCA Position: CalCCA supports SB 100. In its January 16, 2018 support letter (which is attached), CalCCA listed topics that would cause it to withdraw its support if included in the bill.

CAC Leg/Reg Task Group Recommendation:

- Three members of the Task Group (Christine, Lorenzo and Yvonne) discussed SB 100 during a conference call June 21. (Tom Flynn did not make the call.)
- The Leg/Reg Task Group voted 2-0-1 (2 in support, none to oppose and one abstain) to recommend support of SB 100, consistent with CalCCA's position. The recommendation includes the topics raised in CalCCA's letter that would result in withdrawal of support.

Note: CalCCA's letter is attached.



Dawn Weisz, MCE
President

Geof Syphers, Sonoma Clean Power
Vice President

Jan Pepper, Peninsula Clean Energy
Secretary

Joseph Moon, Apple Valley Choice Energy
Treasurer

Barbara Hale, CleanPowerSF

Nick Chaset, East Bay Community Energy Authority

Cathy DeFalco, Lancaster Choice Energy

Bill Carnahan, Los Angeles Community Choice Energy

Tom Habashi, Monterey Bay Community Power Authority

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January 16, 2018

Honorable Kevin De León
President pro Tempore
California State Senate

RE: SB 100 and Community Choice Aggregation

Dear President pro Tempore De León:

Thank you for your leadership in introducing SB 100, which would usher California into an era of 100% carbon free electricity. CalCCA and its individual CCA members believe CCAs play a critical role in the achievement of California's carbon free electricity future. As we begin this new legislative year and continue to partner with the state in combating climate change, **we are pleased to continue supporting the concept of moving to 100% carbon free outlined in SB 100.** Cumulatively, the operating CCAs in this state have an average Renewable Portfolio Standard (RPS) of 50%, well exceeding any other load serving entities within the state.

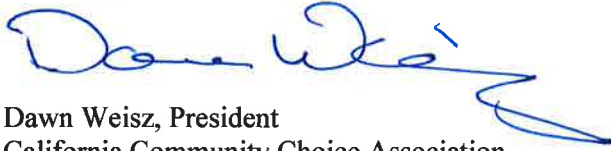
As SB 100 and any other bills surrounding this agreement are being considered in 2018, **CalCCA offers the following guidance** on topics which would cause CalCCA to withdraw support for SB 100:

- CCA local governance and the procurement authority of CCA governing boards must not be undermined by any provisions within the bill. Procurement authority could be undermined by, among other things, the imposition of non-bypassable charges, the assignment of new costs through P.U. Code 365.1, or through attempts to alter the coordination framework envisioned in SB 350's Integrated Resource Plan framework. Any attempt to undermine CCAs' local governance by their publicly elected board members will be vigorously opposed by CalCCA.
- Any attempt to create an uneven playing field or unfair cost allocation between CCAs and other load serving entities must not occur. This particularly affects low-income customers in CCA communities, who are offered universal, affordable access to renewable energy products through their CCAs.
- CalCCA opposes amendments that would give the IOUs control of the Distributed Energy Resources (DER) market-- including storage and other innovative technologies. Such proposed amendments shut out competition, are unrelated to the clean energy goals of SB 100, and undermine innovation that will lead to a carbon-free California.
- CalCCA opposes any concept requiring the IOUs to procure more renewable energy resources and pass these costs onto CCA customers. This effectively undermines CCA procurement, which is obligated by statute and is the reason of existence for many CCAs. CalCCA is open to amendments allowing CCAs to meet standards of procurement that apply to all load serving entities.

CCAs offer customers a choice in where their power comes from as an alternative to the IOUs. CCAs stand at the vanguard of offering innovative and affordable energy solutions to our communities. CCAs are also deeply committed to advancing the state's decarbonization goals in partnership with policymakers. CalCCA would be pleased to meet with you to further discuss these important issues.

Thank you again for your leadership.

Sincerely,



Dawn Weisz, President
California Community Choice Association

cc: Honorable Members of the California Senate and Assembly

APPENDIX

Discussion of the Relationship between FERC and State Authority (relative to AB 813)

Court Case of Interest

- ✓ *Huges v. Talen Energy Marketing* (text of the Supreme Court Decision)
https://www.supremecourt.gov/opinions/15pdf/14-614_k5fm.pdf
- ✓ *Hughes v. Talen Energy Marketing*. Analysis in SCOTUSBLOG. (offered by Christine)
<http://www.scotusblog.com/2016/04/opinion-analysis-u-s-energy-regulators-authority-grows/>
- ✓ Another resource related about the impact of *Huges v. Talen Energy Marketing* (offered by Lorenzo) more details on the Hughes v Talen case.
<https://www.utilitydive.com/news/what-the-hughes-v-talen-supreme-court-decision-means-for-state-power-incen/418046/>

Lorenzo's Comments

Some opponents of SB-813 raise the concern that forming a Regional ISO would increase potential for negative interference by the federal energy regulatory commission (FERC) and the federal government in general. Here are some important relevant facts.

First, the US Constitution gives the federal government authority over states in matters of interstate commerce (the "commerce clause" of the constitution). This is sometimes referred to as "federal pre-emption" and has had vast impacts in all sorts of arenas ever since the Constitution was adopted in 1789.

Second, the Federal Power Act (FPA) of 1935 designates wholesale electricity transactions and high-voltage electricity transmission as interstate commerce under the Constitution, and establishes FERC as the regulatory authority to implement the FPA. There have been important updates to the FPA through federal legislation over the years, most recently the Energy Policy Act of 1992 which paved the way for wholesale power markets operated by ISOs, and the Energy Policy Act of 2005 which created a new framework for ensuring power system reliability and security in the wake of a major blackout in 2003. But the underlying FPA framework has not changed substantively. FERC has been the implementing and regulatory authority over the relevant provisions of the 1992 and 2005 acts, and the regulator of all the ISOs in the US.

As a result, the CAISO is already a FERC-jurisdictional entity, and 100% of what it does is specified in its Tariff (book of everything CAISO does spelled out in formal legal language) which, per FERC approval, is incorporated into the FPA and is federal law governing the CAISO. So today if CAISO wants to implement something the state of CA wants, or that other stakeholders want, or to address a problem, CAISO conducts a public stakeholder process over several months, takes a final proposal to its Board of Governors in a public session, and if the Board approves submits a filing to FERC with proposed changes to the CAISO Tariff and arguments for why FERC should adopt the changes. Stakeholders get an opportunity to file written comments on the CAISO filing, and then FERC issues an order. FERC is supposed to assess the proposal as to whether it's consistent with existing federal law and FERC policy, and has to explain all this in its order. FERC's more formal definition of its role and jurisdiction is about

“rates, terms and conditions of wholesale energy markets, wholesale energy transactions and transmission service” to ensure that they are “just and reasonable.”

Forming a Regional ISO will not change any of FERC’s roles in this or the extent of its authority. The one thing SB 813 does change (not involving FERC) is the composition of the CAISO Board of Governors, which as noted is the intermediate decision maker or “filter” between the CAISO management/staff, who develop a proposal through the stakeholder process, and FERC.

Re the Board of Governors, as noted above any changes to the CAISO Tariff that are originated by the CAISO (in contrast to ones that are ordered by FERC) must have approval of the CAISO Board before being filed with FERC. Today’s CAISO board has 5 members appointed by the governor of CA and confirmed by the CA Senate. So there is a concern that a different Board that is not CA-appointed might make different decisions about what the Regional ISO can submit to FERC, and some of those decisions might be less favorable to California. That is a plausible scenario. But the new Board is required to be “independent” which means not to have any financial or political interests with market-participating entities or specific state or local governments in the Regional ISO’s territory. And in the end, FERC still has to rule on whatever is submitted to it, so has essentially the last word (unless the FERC decision is appealed in the courts, which happens sometimes).

The above should NOT be read to say that FERC regulation and authority are not problematic for states - they certainly can be. (And there are many other areas where federal “pre-emption” of state authority is problematic, but it’s not black and white.) But the question with regard to SB 813 is whether forming a Regional ISO, compared to the CAISO governance as it today, expands FERC’s authority or expands the ability of the federal government to over-rule or under-mine CA policy objectives. Personally I don’t see much merit to this argument against SB 813, but in the current federal political climate who knows? One relevant FERC story: The Dept. of Energy twice directed FERC to implement subsidy schemes for coal and nuclear power plants (last December and again in a different frame last month). Both times the FERC voted 5-0 to say NO to DOE, mainly related to their mission to protect competitive wholesale markets (4 of the 5 current commissioners were appointed by the post-Obama administration). In fact two states - New York and New Jersey - have passed subsidy schemes for their nuclear power plants, and FERC does not seem to be challenging them in any way so far.

By the way, Texas, Hawaii and Alaska are not subject to FERC regulation because they do not engage in interstate commerce for electricity. That’s probably obvious for HI and AK. In the case of Texas, it’s because they don’t do import and export transactions with other states; they’re essentially an electrical “island” for most of the state. Now that kind of thing is simply impossible for CA because we rely on imports for over 20% of our electricity supply annually.

Relative to Hughes v Talen (the court case Christine shared above) I don’t see how going from CAISO to Regional ISO changes anything about how FERC would deal with this kind of issue.