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The Missing Piece to California's Regulatory Puzzle for Accelerating Renewable Energy Development?

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California has long been a leader in the development of renewable energy and the transition to a carbon-free economy. The State recently demonstrated its continuing leadership with the enactment of a new law that may streamline environmental review and permitting for solar PV, terrestrial wind, energy storage and alternative (i.e., non-fossil and non-nuclear) fuel power projects, and their transmission lines.

Key takeaway: The economics of a project for investors, lenders, and developers often turn on: (i) how long it will take to secure project approvals; and (ii) the conditions of approvals (e.g., development impact fees, mitigation payments, or taxes). This new law may reduce regulatory uncertainty and improve project economics.

Assembly Bill 205 ("AB 205"), approved by Governor Newsom on June 30, 2022 as a budget trailer bill, is the Legislature's latest attempt to better position the State to meet its GHG reduction and renewable energy targets while staying true to other key policies and priorities. The new law makes available to qualifying renewable energy, energy storage and alternative fuel power projects (and their transmission lines) a "one-stop" permitting and environmental review process similar to one that has existed for thermal power plants before the California Energy Commission ("CEC") since the 1970s. Under the new law, renewables, energy storage and alternative fuel power plant developers have the option to go directly to the CEC to obtain local, regional and state permits and approvals, rather than going to each agency individually and separately. The CEC will also prepare the project's Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act ("CEQA"). And the CEC must do all this quickly—absent extenuating circumstances, the CEC must complete the environmental review process and "certify" (i.e., approve) projects within 270 days of receiving a complete application.

This new certification process, codified in Public Resources Code, Division 15, Chapter 6.2 (§ 25545 et seq.), is effective as of June 30, 2022, when the Governor signed it. The main highlights are as follows:

- **Broad applicability**—Applies to any solar PV or terrestrial wind energy project of 50 MW or more (including appurtenant facilities), any "energy storage system" capable of storing 200 MWh or more, alternative fuel power plants of 50 MW or more, and their transmission lines.

- **Local, regional and state requirements encompassed in CEC process**—Certification from the CEC is “in lieu” of any permit or approval required by local, regional or state agencies **except** for leases from the State Lands Commission and permits from the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the State Water Resources Control Board, or applicable Regional Water Quality Control Boards.
- **Prevailing wage and skilled labor requirements**—Projects have to comply with various provisions relating to labor, including paying construction workers prevailing wages and using a “skilled and trained workforce” to perform the construction. However, certain requirements do not apply if contractors and subcontractors are subject to a project labor agreement (“PLA”).
- **Establishes 270-day approval process (subject to exceptions)**—The certification process may provide significant timing benefits relative to the traditional approval process where a developer separately seeks permits and approvals from each agency. The timeline for the CEC to issue a final certificate is as follows:
 - Once submitted, the CEC has **30 days** to review the application for completeness.
 - After deeming an application complete, the CEC must issue a Notice of Preparation under CEQA, initiate consultation with Native American tribes, and hold various public meetings all within the next **60 days**.
 - After deeming an application complete, the CEC must certify an EIR for the project and issue a certificate for the site and facility within **270 days**, or “as soon as practicable” thereafter.

In sum, a project can receive final certification **within 270 days** after submission of a complete application. However, the law also allows the CEC to extend the standard 270-day timeline for various reasons.

- **Must benefit the local economy and community-based organizations**—The CEC may not certify a project unless it finds that the project will have an “overall net positive economic benefit” for local governments, and that the applicant has entered into one or more agreements that benefit “community-based organizations” such as labor unions, local governmental agencies, or Native American tribes.
- **Expedited CEQA litigation (if certain criteria met)**—A certified project automatically qualifies as an “environmental leadership” project if the CEC finds that certain criteria are met. This designation provides significant benefits by expediting CEQA litigation—including the general standard that all legal proceedings, including appeals, be resolved within 270 days.

AB 205’s streamlined certification procedures open a new path for renewables, energy storage, and alternative fuel power plant developers to get their projects built on time and within budget. It may also prove to be a critical piece of the regulatory puzzle needed for California to meet its ambitious renewable energy generation and GHG emission reduction goals.

In 2018 California committed itself to source 60% of its electricity from renewables by 2030 and 100% of its electricity from zero-carbon sources by 2045. California has also committed to reducing GHG emissions economy-wide by 40% (over 1990 levels) by 2030 and achieve carbon neutrality by 2045.

Hitting these goals will be difficult. For example, to reach the 2030 target California will need to triple the annual rate of emission reductions achieved over the past 14 years (2007–2021). And to get to a carbon-free electricity sector by 2045, the annual build rates for renewables must increase dramatically to an average of 2,800 MW for solar, 900 MW for wind, and 2,000 MWh for storage.

At the same time, California has long been known for its uniquely rigorous and protective environmental regulatory ecosystem. The impacts of CEQA review and local, state, and federal permitting—and litigation related to all of them—on project timelines and costs have long concerned project developers and investors. Renewables, energy storage, and alternative fuel power plant projects are no exception. Although environmental groups and local governments have expressed concerns about AB 205, the new law presents an opportunity to reduce those all-too-common delays and costs without sacrificing the State’s commitment to robust public planning and rigorous environmental protection.



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