

CALIFORNIA AIR RESOURCES BOARD RELEASES DRAFT ANNUAL EVALUATION OF FUEL CELL ELECTRIC VEHICLE & HYDROGEN FUEL STATION NETWORK DEPLOYMENT

To Our Clients and Friends:

In 2013, California set hydrogen infrastructure targets to promote development and growth of the fuel cell electric vehicle (FCEV) and hydrogen fueling market.[1] Yesterday, the California Air Resources Board (CARB) released a draft annual report that analyzes the industry's current status and near-term outlook, and recommends "actions necessary to maintain progress and enable continued future expansion." [2]

Despite the COVID-19 pandemic, California's hydrogen fueling network and the number of FCEVs on the road have continued to grow over the past year.[3] CARB concluded that the hydrogen fueling industry is "responding favorably" to California's "maturing support systems." [4] As of July 3, 2020, there were 42 open-retail stations, with five stations opened and nine newly funded this year.[5] The total network has reached 71 opened and planned projects across the State.[6] And the California Energy Commission is expected to announce the recipients of co-funding for new stations in the near future.[7]

Although growth projections have shifted back one year compared to prior estimate due to the pandemic, auto manufacturers nevertheless seem poised to accelerate production of FCEVs in tandem with projected fueling station development.[8] And deployment data suggests that FCEV technology has a shot at wide-spread consumer adoption based on similar trends for consumer acceptance of the current generation of battery electric vehicles.[9]

While California's hydrogen fueling network has continued to advance and has become a priority among public and private stakeholders, CARB notes that progress must "not only continue[] but accelerate[]" in order to meet "State and industry targets for both zero-emission infrastructure development and [zero-emission vehicle] deployment." [10] Although the State is on track to meet its AB 8 goals, "there is little room for station development delays." [11] Specifically, the market needs "continued and coordinated industry and State support" to achieve economies of scale so that manufacturers will continue to produce FCEVs, and customer-facing costs will drop enough to make FCEV ownership possible for a broader swath of the California population.[12] CARB cites several "complementary factors" that are crucial to successful FCEV market growth: development of new supply chains and manufacturing capacity; increased consumer awareness and acceptance of FCEVs and hydrogen technology; expansion of the hydrogen fuel production network; and use of consumer incentives to make the technology more affordable.[13]

CARB recommends six specific priorities for industry development:

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1. Use AB 8 and HRI program funding, and any other means available, to develop as many light-duty hydrogen fueling stations as possible through the end of the AB 8 program.
2. Appropriately balance the goals of developing stations in communities statewide and driving larger-capacity growth in highly developed local networks.
3. Continue to assess ongoing and projected development pace and quickly address bottlenecks as the technology transitions to a broader market.
4. Understand capacities and opportunities to reduce State funding and transition to a financially self-sufficient industry.
5. Expand upstream hydrogen supply to ensure fuel availability for customers as the market expands.
6. Encourage use of renewable hydrogen.[14]

CARB has solicited public and expert review of the draft report and will release a final revised report in 2021.

[1] Assembly Bill No. 8 (Statutes of 2013).

[2] California Air Resources Board, 2020 Annual Evaluation of Fuel Cell Electric Vehicle Deployment & Hydrogen Fuel Station Network Development xiv.

[3] *Id.* at xiii, 3.

[4] *Id.* at xiii.

[5] *Id.* at xv-xvi.

[6] *Id.*

[7] *Id.* at xiii, 4-8.

[8] *Id.* at xvii-xxii.

[9] *Id.* at xx-xxi.

[10] *Id.* at xiii, 62.

[11] *Id.* at xxi.

[12] *Id.* at 62.

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[13] *Id.* at xiii-xiv.

[14] *Id.* at 62-63.



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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Environmental Litigation and Mass Tort practice group, or any of the following:

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