NATURAL GAS SURVIVES ELECTION, AIMS TO THRIVE POST-ELECTION

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The November election results signal changes to energy policy at the state and federal levels. While it is not yet clear how these changes will develop in the months to come, one winner that appears to have emerged at the ballot box is natural gas. As the debate over the use of natural gas in residential and commercial settings continues to play out, this year's election results demonstrate that voters around the country favor keeping natural gas around, at least for now. The battle over its future is not over though, and policy proposals and ballot initiatives will undoubtably continue to play a role in how the resource is used in the energy transition.

ELECTION DAY WINS: GAS BANS AND BALLOT MEASURES

On election day, voters in several states were asked to consider initiatives that had the potential to reshape the role of natural gas in those states.[1] These initiatives are the latest development in an ongoing battle over natural gas and emissions reduction efforts. Leading up to election day, there were questions about how the election results would impact the composition of state legislatures and whether they would result in more proposals to ban gas, prohibitions on gas bans, or electrification mandates.[2] Now that we know the results, it appears there is wind behind the natural gas sails, as voters in several states made it clear they want natural gas here to stay.

In the state of Washington, for example, voters rejected an initiative aimed at killing the state's nascent carbon market, but at the same time saved natural gas from the chopping block.[3] Initiative 2066 protects natural gas access in the state and bars local governments from banning its use.[4] The initiative repeals and amends portions of the Washington Decarbonization Act passed in early 2024, which would have required the state's largest utilities to plan for and encourage building energy electrification, including by prohibiting incentives for natural gas appliances and creating incentives for electric heat pumps.[5] The initiative also prohibits Washington building code provisions that “in any way prohibit, penalize, or discourage the use of gas” in residential and nonresidential buildings.[6] Opponents of the initiative argue it is unconstitutional because it violates the state's “single subject rule,” which limits initiatives to one subject, and they are gearing up to challenge it in court.[7]

Natural gas' election wins are also apparent in Berkeley, California, where over two-thirds of voters rejected a proposed new tax on natural gas use in buildings.[8] The voter-led initiative “Measure GG” sought to implement a fossil fuel tax on large buildings. It would have taxed buildings larger than 15,000 square feet at an escalating rate each year, with the tax doubling in 10 years, tripling in 15 years, and eventually maxing out at 10 times the initial rate.[9] Revenue from this tax would have funded a Fossil Fuel Free Buildings Just Transition Fund to pay for “building decarbonization retrofit work, prioritizing low-rise residential buildings and restaurants.”[10]

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Following this election, there will also be several states to watch for future legislation designed to prohibit natural gas bans. For instance, the New Mexico Legislature had bipartisan support for a gas-ban preemption bill (i.e., a state law banning local natural gas bans) in the last legislative session and is expected to reintroduce the bill next year.[11]

STATE POLICY AND BALLOT MEASURES: GAS BANS AND ELECTRIFICATION MANDATES

In February 2024, we provided an update on the US Court of Appeals for the Ninth Circuit's decision in *California Restaurant Association v. City of Berkeley*, striking down a Berkeley ordinance that prohibited natural gas piping in new buildings as preempted by the federal Energy Policy and Conservation Act (EPCA). Since then, states have remained active in legislating and litigating on the gas ban issue. On 18 April 2024, Nebraska joined 25 other states in passing a gas-ban preemption law that would prohibit local governments from enacting ordinances prohibiting or restricting access to a fuel source or a type of energy that is authorized to be supplied to customers, including propane.[12]

Over the same period, Maryland and Chicago, Illinois, considered, but did not pass, bills implementing a building electrification mandate. In Maryland, the Better Buildings Act would have required all new buildings greater than 25,000 square feet and major renovations of old buildings of the same size to meet water and space heating requirements without the use of fossil fuels.[13] Likewise, Chicago's Clean and Affordable Buildings Ordinance would have set an indoor emissions standard in newly built commercial and residential buildings and major building additions.[14] The ordinance would have also required zero or low-emission energy systems in covered buildings.[15]

New York and the state of Washington, for their part, passed statewide building codes to restrict or discourage the use of fossil fuels in new buildings. These codes remain the subject of ongoing litigation in both states. On 29 August 2024, the US District Court for the Northern District of New York dismissed the claims against the New York Department of State, the building code council, and the councilmembers on the basis of sovereign immunity.[16] The case will move forward against defendant Robert Rodriguez in his official capacity as the New York Secretary of State.[17] Subsequently, a motion for summary judgment was filed by New York Propane Gas Association et al., and a motion for judgment on the pleadings and dismissal for lack of subject matter jurisdiction was filed by Walter T. Mosley.[18] We will continue monitoring this case, as a decision that EPCA does not preempt such a state action could create a circuit split and draw the attention of the US Supreme Court.

In the state of Washington, the EPCA preemption claims are no longer included in the lawsuit. Instead, the challengers argue the building code council violated the Open Public Meetings Act, a state law requiring public agency meetings to be open to the public, when it adopted the new building code.[19] The defendants filed a motion to dismiss on 23 August 2024, which is set to go to hearing on 22 November 2024.[20] The passage of the Washington voter initiative discussed above, however, could moot this case.

These state-level updates are also taking place in the context of a shifting federal dynamic regarding natural gas at, among other departments and agencies, the Federal Energy Regulatory Commission. This is an actively developing area of policy that we will continue to monitor. Check back on our page for updates.

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FOOTNOTES

[1] Mika Travis, Carlos Anchondo & Shelby Webb, *Ballot Initiatives: Gas bans, offshore wind and CO2 pipelines*, ENERGYWIRE (Nov. 5, 2024), https://subscriber.politicopro.com/article/eenews/2024/11/05/ballot-initiatives-gas-bans-offshore-wind-and-co2-pipelines-00187113.

[2] Tom DiChristopher, *US statehouse elections offer no easy paths to prohibiting gas bans*, S&P GLOB. (Sept. 18, 2024), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-statehouse-elections-offer-no-easy-paths-to-prohibiting-gas-bans-83264029.

[3] Wash. Sec'y of State, Elections & Voting: November 5, 2024 General Election Results (last visited Nov. 12, 2024), https://results.vote.wa.gov/results/20241105/measures-all.html; *see* also Adam Aton, *Washington State narrowly passes protections for gas use*, CLIMATEWIRE (Nov. 13, 2024), https://subscriber.politicopro.com/article/eenews/2024/11/13/washington-state-narrowly-passes-protections-for-gas-use-00189133.

[4] I-2066, I-4903.1/24, §§ 2–3 (Wash. Apr. 5, 2024); VoteWA, *State Measures – Initiative Measure No. 2066* (last visited Nov. 11, 2024), https://voter.votewa.gov/genericvoterguide.aspx?e=889&c=99#/measure/6494.

[5] I-2066, §§ 4–5.

[6] I-2066, §§ 6–8; *see* Travis et al., *supra* note 1.

[7] Amanda Zhou, *WA passes natural gas initiative; climate advocates plan lawsuit*, SEATTLE TIMES, (Sept. 9, 2024), https://www.seattletimes.com/seattle-news/climate-lab/wa-voters-approve-natural-gas-initiative/.

[8] ACVOTE, Off. Election Site of Alameda Cnty., General Election – November 05, 2024, Unofficial – Post Election Update # 3; Measure GG – City of Berkeley (last visited Nov. 11, 2024), https://alamedacountyca.gov/rovresults/252/.

[9] City of Berkeley, Off. of City Manager, Section 9212 Report: Large Buildings Fossil Fuel Emissions Tax, 3, 6 (July 30, 2024), https://berkeleyca.gov/sites/default/files/documents/2024-07-30%20Special%20Item%2010%20Section%209212%20Report%20Large%20Buildings%20Fossil%20Fuel.pdf.

[10] *Id*. at 3.

[11] DiChristopher, *supra note* 2.

[12] LB 867, 109th Leg., 1st Sess., § 12 (Neb. 2024).

[13] Gracie Tilman, Recap: *The 2024 Maryland legislative session*, U.S. GREEN BLDG. COUNCIL (Sept. 06, 2024), https://www.usgbc.org/articles/recap-2024-maryland-legislative-session.

[14] Jim Chilsen, *CUB Q&A: What is the Clean and Affordable Buildings Ordinance (CABO)?*, CITIZENS UTIL. BD. (Jan. 23, 2024), https://www.citizensutilityboard.org/blog/2024/01/23/cub-qa-what-is-the-clean-and-affordable-buildings-ordinance-cabo/#:~:text=The%20Clean%20and%20Affordable%20Buildings%20Ordinance%20(CABO)%20is%20a%20proposed,health%2C%20create%20jobs%20and%20reduce.

[15] *Id*.

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[16] *Mulhern Gas Co., Inc. v. Rodriguez*, 1:23-CV-1267, slip op. at 20 (N.D.N.Y. Aug. 29, 2024).

[17] *Id*.

[18] Motion for Summary Judgment, Mulhern Gas Co., Inc. v. Rodriguez, 1:23-CV-1267 (N.D.N.Y. Nov. 05, 2024); Motion for Judgment on the Pleadings, Mulhern Gas Co., Inc. v. Rodriguez, 1:23-CV-1267 (N.D.N.Y. Nov. 05, 2024).

[19] Nw. Reg'l Council of the Nat'l Constr. All. v. Wash. State Bldg. Code Council, No. 23-2-00615-34 (Thurston Cnty. Super. Ct. May 28, 2024).

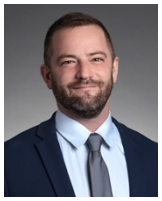
[20] Motion for Partial Summary Judgment, Nw. Reg'l Council of the Nat'l Constr. *All. v. Wash*. State Bldg. Code Council, No. 23-2-00615-34 (Thurston Cnty. Super. Ct. Aug. 23, 2024).

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