Calif. Energy Conservation Plan Hits Speed Bump

Marc Campopiano
Latham & Watkins LLP

Joshua Bledsoe
Latham & Watkins LLP

Jennifer Roy
Latham & Watkins LLP

James Erselius
Latham & Watkins LLP

Law360, New York (April 06, 2015, 11:23 AM ET) -- In his January 2015 State of the State Address, California Gov. Jerry Brown championed the broad expansion of his state's seminal climate change mandates to require half of the state's electricity to come from renewable resources by 2030 and to slash greenhouse gas emissions 80 percent below 1990 levels by 2050. Legislation was subsequently introduced to meet these goals which, if passed, would spur significant new development of renewable resources in the state already at the forefront of the clean energy wave.

Nevertheless, a long-anticipated plan to develop renewable energy resources in Southern California recently hit a speed bump. Concerns from local agencies, industry and environmental groups over the long-awaited draft environmental impact report/environmental impact statement for the Desert Renewable Energy Conservation Plan — a renewable energy and conservation plan covering 22.5 million acres of desert located in seven Southern California counties — have caused the responsible state and federal agencies to shift to a more limited, phased approach. In a March 10 statement, the four lead agencies — the Fish and Wildlife Service, Bureau of Land Management, California Energy Commission and California Department of Fish and Wildlife — said they will initially focus on the public lands component of the DRECP, the BLM Land Use Plan Amendment.

The agencies released a draft EIR/EIS for the DRECP on Sept. 23, 2014, after nearly six years of work. In the five-month period for public comments, which ended on Feb. 23 after being extended from its original Jan. 9 date, the agencies received approximately 12,000 comments.

A key concern that emerged from the comments, which ultimately prompted the new phased approach, came from five county governments that identified fundamental questions about the structure of the
DRECP as proposed. The counties asked for more time to work with the agencies to align the DRECP’s objectives with county priorities. Specifically, since the DRECP planning area covers private, state and federal lands, the counties urged the agencies to reconsider the obligations that the plan would place on private land.

For example, San Bernardino holds over half of the acreage included in the plan and expressed concerns that approximately 85 percent of the land that the county had identified as “prime developable land” would be set aside under the plan for renewable energy development and conservation. The county proposed instead to prioritize conservation on federal land and focus renewable energy development on private lands in areas that have marginal economic development potential or are disturbed or contaminated. Similarly, Imperial County stated that it did not want to convert agricultural lands for renewable energy development and asked the agencies to look to non-productive private lands.

Industry comments questioned whether the plan’s streamlined permitting process for renewable energy projects in development focus areas would actually lead to added efficiency. The Large-scale Solar Association, for instance, expressed concerns that the complicated new process may not result in much of an improvement over the current system, since, in order to qualify for permitting benefits, projects must be sited in a very limited number of areas where streamlining may not be needed.

The LSA and other renewable energy associations questioned whether the proposed DRECP reserved adequate land for development to support California’s renewable-energy goals. The LSA called insufficient the 177,000 acres slated for development and 183,000 acres slated for assessment for potential development within DFAs, which are areas the DRECP designates as having a high potential for renewable energy. The LSA also argued that small, scattered parcels are not easily amassed into a site suited for utility-scale development. The California Wind Energy Association likewise targeted the DRECP’s assumptions, questioning whether the DRECP’s target of 20,000 megawatts by 2040 and its wind-specific planning targets would be adequate to support California’s goal of reducing greenhouse gas emissions to 80 percent below 1990 levels by 2050. CalWEA contended that 12,500 megawatts of wind energy would be needed by 2040 compared to the 3,070 megawatts provided for in the plan.

Federal agencies also weighed in on the proposed DRECP. The U.S. Environmental Protection Agency commended the agencies for laying the foundation for a more considered, integrated framework for the construction of renewable energy projects, but asked for a more thorough discussion on a range of issues, including impacts to ephemeral streams and other sensitive waters, the impact of construction and fugitive dust emissions on air quality, the threat to avian mortality posed by solar installations and the inclusion of protected land in the Silurian Valley.

Conservation groups expressed concerns that the protections in the proposed DRECP are inadequate. The National Parks Conservation Association stated that the DRECP failed to assure long-term protection for sensitive desert wildlife or protect valuable habitat in the Eagle Mountain area, which supports habitat and corridors for imperiled wildlife such as the desert tortoise, bighorn sheep and golden eagle.

The agencies’ next step under the phased approach will be to focus on development and conservation on public lands managed by the BLM, including designating areas with high potential for renewable energy development or conservation. The agencies expect that the phased approach will provide additional time to work with stakeholders on the remaining two DRECP components: (1) a general conservation plan, which would streamline the permitting process under the federal Endangered Species Act and (2) the Natural Community Conservation Plan, which would set out a strategy for the protection of plants, animals and desert habitat to simplify compliance with the California Endangered
Species Act. The agencies said the added time will allow them to evaluate alternative approaches, including a tailored, county-by-county approach.

The agencies have emphasized that they will continue interagency coordination to maintain the linkages between the BLM Land Use Plan, GCP and NCCP. However, until the GCP and NCCP are completed, the DRECP would not provide incidental take coverage for renewable energy development on state or private lands in the plan area and, therefore, may offer reduced “streamlining” benefits. The delay in completing planning efforts on state and private lands also may slow development efforts, as it remains unclear when the proposed “DRECP Coordination Group” would begin processing applications for renewable energy and transmission projects and whether the newly formed procedures would actually be expedited compared to traditional permitting pathways. The uncertainty related to project permitting processes may also increase the possibility for litigation.

Until further progress is made on the BLM Land Use Plan and the overall DRECP, existing permitting processes and timelines will apply to projects proposed in the California desert. Time will ultimately tell whether the comprehensive streamlined permitting process contemplated by the DRECP ever fully materializes. Despite these potential challenges, even the adoption of the initial phase of the DRECP — the BLM Land Use Plan — could accelerate renewable development on broad swaths of lands managed by the BLM as projects are focused in areas with limited environmental constraints and established mitigation strategies.

—By Marc T. Campopiano, Joshua T. Bledsoe, Jennifer K. Roy and James Erselius, Latham & Watkins LLP

Marc Campopiano is a partner and Joshua Bledsoe is counsel in Latham & Watkins' Orange County, California, office. Campopiano previously worked as an environmental consultant evaluating power plants, transmission lines and other infrastructure projects under the California Environmental Quality Act and National Environmental Policy Act.

Jennifer Roy is an associate in Latham & Watkins' San Diego office.

James Erselius is a law clerk at Latham & Watkins.

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