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Permitting Poses Challenges To Renewable-Energy Projects

Despite California's leadership in sustainability, clean power developers face multiple regulatory hurdles

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Renewable-energy project proposals continue to stream into the Bureau of Land Management in California.

In early December, informational meetings and hearings were held for **Chevron Energy Solutions** and **Solar Millennium LLC**'s proposal for two solar thermal power plants in eastern Riverside County. Solar Millennium also has proposed a 250-megawatt solar power project near Ridgecrest in Kern County. There also is **NextEra Energy Resources LLC**'s proposed 250-megawatt solar thermal power plant at Ford Dry Lake.

That was just in the first half of December.

"California is leading the nation from a legal and regulatory perspective in requiring so many renewables in the utilities grid," said Stephen E. Velyvis, senior counsel in the Walnut Creek office of **Miller Starr Regalia**. "We're far and ahead from other states and certainly the federal government in mandating that renewables be used, but the problem is the long length of time for permitting."

With the governor's September executive order to ramp up the Renewables Portfolio Standard to 33 percent by 2020, the flood of project proposals has not yet yielded a match in project deliveries. Developers interested in building renewable-energy projects should be prepared to guide their projects through the necessary permits, environmental considerations and financing issues that tend to pop up over what becomes multi-year processes.

Velyvis pointed out there are three key phases to any renewable-energy project. The first phase is site selection and acquisition. In the second phase, a developer must obtain permits, entitlements and the purchase power agreements with the utility. After that is complete, the final phase is construction and operation.

"There's a lot more involved than just permitting and getting approvals for your project. They're not small projects," Velyvis said. "They're huge and they incorporate many different challenges."

It is in that second phase that the most challenges occur.

An analysis of the Renewables Portfolio Standard released jointly by the California Public Utilities Commission and the California Energy Commission in June concluded that permitting along with the lack of transmission infrastructure continue to be significant hurdles to moving the state toward its goals.

According to the report, the 33-percent-by-2020 goal would require seven transmission lines to be built at a cost of $12 billion.

Other reports, too, have pegged permitting as a significant barrier to getting renewable-energy projects in the ground.

A March report from the California Wind Energy Collaborative surveyed renewable-energy project developers and found that survey respondents were either discouraged or very discouraged by the permitting process.

"The areas that I'm working in, in renewable energy, I think that the decision makers are really trying to bring as much new, renewable energy online as quickly as possible," said Anne E. Mudge, a partner in **Cox, Castle & Nicholson LLP**'s San Francisco office. "That said, you'd be surprised how difficult it is to bring renewable projects online in California."

She sited the existing regulatory environment as a major barrier that needs change.

"It's very time-consuming to take a project through California's land use and environmental permitting process," Mudge said. "It's very expensive. It requires hundreds of thousands of dollars in consultant and lawyer time and several years."

Mudge would know considering that she shepherded the Shiloh II wind project near Travis Air Force Base through its lengthy permitting process. And as site advisor to the California Wind Energy Association, she helped draft legislation to streamline the permitting process for wind energy projects. To the dismay of CalWEA, however, the bill never was signed into law.

Mudge is now working again with Travis Air Force Base on a 100-megawatt wind project called Shiloh III.

Time and Money

In early November, **First Solar Inc.** acquired the Carrizo Solar Energy Farm from **Ausra Inc.** Terms of the deal were not disclosed.

The significance of the deal for First Solar may mean reduced barriers to getting its proposed 4,200-acre photovoltaic solar project, the Topaz Solar Farm, off the ground. Essentially, the acquisition affords First Solar a larger area to plan and site its project with the hope that there will be less impact on Williamson Act agricultural land or the environment.

"Looking at it more from the county perspective, it takes out of the picture an area where there previously were three [renewable projects]. Now there are only two," said David Lazerwitz, an environmental law partner in the San Francisco office of **Farella Braun + Martel LLP**. "You've reduced the total amount of development in that area that will occur."

The sale to First Solar allows Ausra to continue shifting its focus to being a project equipment supplier. Ausra Chief Executive Officer Bob Fishman announced in January that the Palo Alto-based company would be "focusing on being a technology and equipment supplier rather than an independent power developer and owner."

With fewer projects proposed for the Carrizo Plain, First Solar now can concentrate on the Topaz Solar Farm.

According to Lazerwitz, there is a conditional use permit application on file and the company is moving forward with the environmental review and permitting process. There is no official estimate as to when construction could begin and when the project would become operational.

To understand the complexities of the permitting and approval process for large-scale renewable-energy projects, the two types of land that a project can be proposed to be built on have to be taken into account.

Unlike many of the projects being proposed in public, the Topaz Solar Farm is proposed for private land.

"On the private land side, what you see is project entities - whether it's First Solar or SolarGen or whatever company - that a lot of them are working on private land sites where they've optioned or acquired property or created a lease structure," Lazerwitz said. "Then they need to go to whatever authority and get into whatever regulatory issues."

Velyvis, from Miller Starr Regalia, said the significant increase in proposals on BLM land have created a huge backlog as bureau staff grapple with processing applications they historically did not deal with that often.

"In the past, the BLM dealt with mining and vehicle off-roading projects. Now they've had to figure out so much with these hundreds of applications for [renewable energy] projects so much so that I've seen a lot of recent projects being proposed within private land owned by counties," Velyvis said.

Desert Rush

As of September, the BLM in California had 92 applications for wind projects and 64 applications for solar projects that would comprise a total of 1.36 million acres of public land.

A memorandum of understanding signed in October between Gov. Schwarzenegger and U.S. Secretary of the Interior Ken Salazar seeks to expedite the development of renewable-energy projects in the state. The agreement calls for greater coordination between the state and federal government on the review and permitting of renewable-energy projects.

The agreement could be viewed as one step forward in the process of streamlining the permitting process.

"You definitely have the drive at the top, but when it comes down to the nuts and bolts of project development and project approval, you're still stuck within the existing regulatory system," Lazerwitz said. "The agencies are attempting to coordinate some levels of review, but for project developers they're still largely dealing with these agencies on an individual basis on individual issues. It's moving forward, but it's moving slowly."

BLM project applicants have to obtain a type of entitlement known as a right-of-way. It sounds simple enough, but the process triggers the usual regulatory approvals that come into play for projects on private land - the California Environmental Quality Act or even the National Environmental Policy Act.

"You're looking at timeframes for these projects from initial proposal to approval that could take three to four years, and then you've got construction [time] on top of that," Lazerwitz said.

Most point to Oakland-based **BrightSource Energy Inc.**'s proposed Ivanpah solar power project in San Bernardino County as a good example of just how time-intensive these projects can be.

At 4,000 acres and a request for four right-of-ways from the BLM, the project would be the first commercial thermal solar power project on public land.

The draft environmental-impact statement and the California Energy Commission's final staff assessment is out for public comment until Feb. 11.

San Bernardino County Supervisor Brad Mitzelfelt publicly raised concerns about the environmental impacts of the project.

"This project is planned on land that the BLM along with a local coalition of industry and environmental groups long ago identified as habitat for protected species," Mitzelfelt said. "This solar project in its current configuration could compromise nearly 20 years of efforts to protect habitat and appropriately grow desert communities."

While nothing is guaranteed for Ivanpah, BrightSource pegs the start of Phase I construction to be as early as next year with a 2012 completion.

The scale of such projects as Ivanpah and the concerns they raise shed light on an important question Velyvis said the industry will need to answer about commercial-scale renewable projects and California's Renewables Portfolio Standard goal. That question is whether the state wants to press on with these larger projects that require nonexisting transmission infrastructure or push for more distributor generation at the business or single-family homeowner level.

"Are we going to have to build projects out in the desert or can we do it on a smaller scale but with many locations combined to create the same amount of energy?" Velyvis said. "I don't know which way the industry is going to go."

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