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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Pacific Climate Pact's Green Energy Goals No Easy Feat

By **Keith Goldberg**

Law360, New York (October 31, 2013, 7:58 PM ET) -- From streamlined permitting of clean energy projects to electricity grid integration, the regional climate change action pact inked by California, Oregon, Washington and British Columbia this week is an impressive wish list of renewable-friendly goals, but experts say bridging jurisdictional divides and turning those goals into concrete, cohesive energy policies won't be easy for lawmakers and regulators.

Under the so-called Pacific Coast Action Plan on Climate and Energy, the U.S. states and Canadian province agreed to coordinate efforts to enact climate change policies such as carbon emission reduction targets, pricing mechanisms for carbon emissions and low-carbon fuel standards. The pact also aims to get more renewable energy projects off the ground and on the grid through streamlined permitting for renewable energy infrastructure and regional grid integration, among other steps.

However the pact is nonbinding, meaning it's up to the lawmakers and regulators in each jurisdiction to collaborate to make these goals a reality.

"On some level it is aspirational; the devil's in the details of the implementation," said Jerry Bloom, who chairs Winston & Strawn LLP's energy practice and is based in Los Angeles. "It sets the template within the debate over climate change, but it's not like it instantly makes the programs happen or economics work."

Experts say California is clearly the driver of this regional initiative, given its size and the fact that it already has programs touted by the plan in place, including a cap-and-trade system and a low-carbon fuel standard. Getting the other pact members to adopt similar programs will be a long, tough slog.

"Most of these programs are going to be new in other states," Stoel Rives LLP environmental and energy attorney Allison Smith said. "That's a complex regulatory structure that has to be initiated, as well as legislation that has to be enacted."

There's also the question of how eager lawmakers and regulators in Oregon, Washington and B.C. will be to follow the Golden State's lead, said Michael Hindus, an energy lawyer in Pillsbury Winthrop Shaw Pittman LLP's finance practice.

"This whole aspirational document may be an indication that things are changing, but in the past, people didn't want to be bound to California aspirations and requirements," Hindus said. "The Northwest is very concerned that their own interests not be prejudiced by California."

But there are factors that favor a regional approach to clean energy, experts say. One is an energy infrastructure that's in need of a serious overhaul, whether it's aging pipelines and transmission lines or the loss of longstanding power generators such as Southern California Edison Co.'s San Onofre nuclear plant, which was **retired earlier this year**.

"There can be a dovetailing of these policies with a need for infrastructure," K&L Gates LLP energy partner Paul Lacourciere said.

Harmonizing policies on a regional level could also be a way to sidestep challenges of whether state regulations violate the U.S. Constitution's dormant commerce clause by discriminating against other states, according to Lacourciere. Such a challenge was raised in a suit seeking to scuttle California's low-carbon fuel standard, though a divided Ninth Circuit panel **upheld the program** last month.

"If the sovereign entities are able to come together and share this vision, it's a way to accomplish it without necessarily tripping over all the legal hurdles," Lacourciere said.

If the regional pact manages to get implemented, especially the portions that streamline renewable energy project permitting and promote regional integration of the grid, it would be a boon for renewable industry, experts say.

"With permitting, the issue of projects that go across state lines has always been, frankly a little bit of protectionism," Hindus said. "If there's a resource in another jurisdiction that's needed in a different state, you've got to take a regional approach to analyzing its benefits compared to some of the issues involved with another renewable resource."

Meanwhile, Smith said harmonizing greenhouse gas reduction targets could push the pact members to adopt higher renewable portfolio standards, which require utilities to draw a certain percentage of their power from renewable sources, thus increasing the need for new projects.

But that's if the regional plan has any traction with the lawmakers and regulators who are responsible for implementing it. And therein lies the rub that won't have renewable developers flocking to the West Coast, nor have companies already on the coast push to revamp their operations.

Still, with governments representing 53 million people and a combined gross domestic product of \$2.8 trillion outlining a shared commitment to a low-carbon, clean energy future, affected industries would be foolish to not at least sit up and take notice, experts say.

"Even if there's nothing binding, there's a clear statement that our policy makers think that this might be important, as well as our electorate, given the results of the elections in these states and provinces," Lacourciere said. "The message I'm going to take from this is that I need to start putting together a strategic plan on how I'm going to operate in a carbon-controlled environment. I might not know exactly what it is, but there are steps I can take."

--Editing by John Quinn and Chris Yates.

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