

Calif. Offshore Wind Push Won't Be Smooth Sailing

By **Keith Goldberg**

Law360 (May 27, 2021, 7:35 PM EDT) -- The Biden administration and California took a major step this week toward opening up the Pacific coast to offshore wind development, but experts caution that governments and developers have a number of practical and regulatory hurdles to clear before wind turbines can start spinning.

The plans to lease federal waters capable of generating 4.6 gigawatts of wind power rest upon successful deployment of floating offshore wind technology that's still in its relative infancy. They also rest upon completion of extensive, multiagency environmental reviews at both the federal and state level, and the successful buildout of transmission lines needed to bring offshore wind power ashore and connect it with the grid.

Experts aren't downplaying the significance of the collaborative push by the U.S. Departments of Interior and Defense and the state of California to make the Pacific coast available for offshore wind farms as soon as mid-2022. But they say the agreement announced on Tuesday must be viewed as a step on a very long road, even longer than the road to develop offshore wind on the Atlantic coast.

"It's still a very early step, and there's a lot of work to do before there's actually steel in the water," said Nossaman LLP environmental associate Ed Roggenkamp, who works on offshore wind issues.

Technological and Regulatory Hurdles Await

The federal government and California have tabbed two potential offshore leasing areas: a 399-square-mile region northwest of central California's Morro Bay and a 206-square-mile region near Northern California's Humboldt Bay. The leasing areas will undergo environmental reviews and tribal consultations with the hopes of being finalized and put up for auction by mid-2022.

The DOI's Bureau of Ocean Energy Management put out a call to gauge industry interest in the two offshore regions in 2018 and got nominations from 14 offshore wind developers.

But the depths of those federal waters, 20 to 30 miles offshore, pose the biggest practical challenge to building a wind farm. The Pacific portion of the Outer Continental Shelf drops off steeply not far from shore, so wind turbine foundations can't be affixed to the ocean floor like they can be in the Atlantic portion of the OCS.

Government officials and industry are banking on the use of floating offshore wind turbines, connected to the seabed by underwater cables. The technology has been demonstrated to be commercially viable, but only in a handful of small pilot projects outside the U.S.

"It's never been done in the U.S., and never been done at full, utility-scale development," Roggenkamp said. "That technological challenge is going to be a big one."

BOEM noted that the U.S. Department of Energy has invested more than \$100 million in researching, developing and demonstrating floating offshore wind technology.

"The industry has seen remarkable technological progress in the last decade for both fixed and floating wind energy platforms," a BOEM spokesperson told Law360 on Thursday. "The pace of technological innovation will continue in the coming decade, with floating wind energy facilities being a prime focus."

The technological challenge will bleed into the regulatory process, particularly when evaluating projects' environmental impacts and impacts on commercial fishing and other coastal activities, experts say. There just isn't the same amount of available information on floating wind turbines at this point to guide regulators as there is for established, fixed-foundation turbines, said Morgan Lewis & Bockius LLP energy and environmental partner Ella Foley Gannon, who's based in California.

"There's going to have to be more inferences drawn," Gannon said. "Whenever you're having to do something in more of a nascent industry, it's just more challenging."

The regulatory process will be daunting as is, starting with comprehensive environmental reviews of the potential leasing areas. The size of those leasing areas could ultimately change before they're finalized and put up for auction, experts say.

Then there's the review of any proposed wind projects themselves, which will involve a host of federal, state, tribal and local agencies. California, which oversees waters up to three miles off its coast and will ultimately make the call on underwater transmission lines bringing offshore wind power ashore, has an alphabet soup of agencies that will mull project impacts on water quality, fish and wildlife, land use, coastal and environmental justice communities, and the electricity grid.

Litigation challenging the projects and their reviews is also a given, experts say.

And overlaying all this is the state's notoriously exhaustive California Environmental Quality Act review process. California Gov. Gavin Newsom said state officials will try to accelerate CEQA review of offshore wind efforts. There's also pending state legislation that attempts to speed up offshore wind planning and review.

Gannon said it'll be crucial for the Golden State to designate a lead agency that can not only guide the environmental review, but coordinate with federal agencies and all the state and local agencies that will ultimately need to approve parts of a project.

"That's really going to be a key to getting this done," Gannon said.

A Titanic Transmission Task

Building offshore wind on the West Coast is as much a transmission challenge as it is a wind farm

challenge, experts say. It starts with a practical issue: While the Morro Bay offshore area is near extensive onshore grid infrastructure thanks to the soon-to-retire Diablo Canyon nuclear power plant, that level of infrastructure doesn't exist in the sparsely populated region near the Humboldt Bay offshore area.

"That is a bigger problem that needs to be solved and will require a significant amount of money in transmission buildout," said Davis Wright Tremaine LLP partner Patrick Ferguson, who works on California power issues and previously worked for a wind developer.

Any transmission buildout will trigger extensive environmental reviews. Then there's the matter of integrating it and the offshore wind power it carries with the larger grid, a lengthy process that will involve, among others, state utility regulators, the state's regional grid operator and the Federal Energy Regulatory Commission.

Ferguson said the offshore wind grid planning needs to get going quickly. California's grid interconnection queue is dominated by solar and a growing number of solar-plus-storage projects, which at this point offer more viable power at lower prices, he said.

"It is going to be the challenge for these [offshore wind] resources, particularly if you layer in the cost of the transmission and distribution upgrades," Ferguson said. "It's very hard for that to compete against other renewable resources we have, particularly solar and storage."

The cost issue is especially acute in California with the proliferation of small, independent electricity distributors such as community-choice aggregators, Ferguson said. Within states along the Atlantic coast, the prospective buyers of offshore wind power are mostly large utilities, he said.

Building Coalitions Will Be Crucial

While Pacific offshore wind development presents unique and thornier challenges compared to the Atlantic coast, there are plenty of lessons that can be drawn from the federal government's Atlantic offshore wind efforts, experts say.

Latham & Watkins LLP counsel Nikki Buffa, a former DOI official in the Obama administration, said the biggest lesson may be the importance of building coalitions that include project developers, state and local governments, affected coastal industries and communities, as well as environmental and labor groups. The federal government's ability to forge those coalitions has helped move Atlantic offshore wind development forward, including the recent approval of the 800-megawatt Vineyard Wind project, the first commercial-scale offshore wind project in the U.S.

"The whole thing that this administration needs to do is de-conflict our ocean uses," said Buffa, who's based in California. "That is the role the government needs to play, the federal government in particular, because they can see all those chips on the board."

Which is why the most significant part of Tuesday's deal to advance California offshore wind development was the DOD giving its thumbs-up, experts say. The Biden administration had to resolve longstanding DOD concerns that wind development would interfere with the extensive testing, training and other operations it performs off the California coast.

"Up until that happened, that has really been the staller," Gannon of Morgan Lewis said.

Given the time it has taken for Atlantic development to progress, it'll be a huge lift to make the Pacific part of the Biden administration's goal of installing 30 gigawatts of offshore wind by 2030. But experts say all the ingredients are there.

"It's just a matter of lighting a fire under all of these different entities, and I think that's what this administration did [Tuesday]," Buffa said. "Everybody's realizing now, throughout the industry and different government agencies, that there's real potential and real momentum."

--Editing by Kelly Duncan and Nicole Bleier.

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