Managing Environmental Challenges for RE Projects

ALTHOUGH RENEWABLE energy is usually seen as benefiting the environment, project developers must plan ahead to manage risks and environmental challenges.

Renewable energy development faces unique obstacles in the form of environmental challenges. These can range from site-specific species issues, to environmental review under the *National Environmental Protection Act (NEPA)* and its state equivalents, to litigation brought by project opponents. Such environmental challenges affect the industry generally, and impact the ability of renewable energy developers to deliver projects to the market on time, and as contemplated. This article tracks a hypothetical wind energy facility located on Federal land in California, and the various environmental obstacles that it encounters and addresses on the path to completion.

Year One: Site Selection.

Fundamental to the success of any renewable energy project is the selection of a suitable site. Considerations such as access to the renewable energy sources – sun, wind, etc. – and proximity to existing transmission facilities are obvious. Less obvious may be environmental issues that raise permitting obstacles or draw community interest and potential opposition. For example, the presence of an endangered species or endangered species habitat can present major permitting obstacles, and attract negative interest from the public. The need to divert or consume scarce water resources can also present unforeseen costs and obstacles. Issues concerning wetlands and cultural resources such as Indian artifacts also arise frequently.

In our hypothetical case, a project developer identifies a site for a wind energy facility on 3000 undeveloped acres of desert land owned by the Federal Government in California. The land is adjacent to existing transmission lines, and a public utility is eager to purchase the power generated by the facility. The Federal Government is also motivated to see the land used for a renewable energy facility. However, the land is habitat for the desert tortoise, an endangered species.

The project developer addresses the situation by consulting with a biologist and other experts concerning potential impacts on project design and permitting, resulting from the endangered species issues. The developer negotiates a long term ground lease with the Government that includes certain 'escape' clauses for the developer in the event that the project is held up by environmental issues. The developer is also able to negotiate a reduction in rent based on the desert tortoise habitat concerns.

Year Two: Project Permitting and NEPA.

Many environmental challenges, particularly if they were unknown or undervalued at the time the site was selected, first become a significant issue during the environmental review process. For renewable energy projects located on Federal land, or requiring Federal Government approval, compliance with NEPA is usually required. NEPA requires Federal Government agencies to conduct environmental reviews, usually in the form of an *Environmental Assessments (EA)* or *Environmental Impact Statements (EIS)*. The purpose of these documents is to study the environmental effects of proposed Federal agency actions and approvals, and evaluate potential alternatives.

In addition to requiring environmental review, NEPA also has a public review component. In most cases, the NEPA document is circulated for public review and comment, and the agency must consider comments from other agencies and members of the public. As a practical matter, the NEPA process for a renewable energy project can result in significant delays in obtaining project approval, and can also result in changes to the project resulting from public comment or the study of alternatives.

In our hypothetical case, the project developer is already aware of the desert tortoise habitat concerns. In response, the developer engages a biologist to work with the project engineers and architects to 'design around' the habitat. An EIS is prepared for the project that studies the potential impacts on the desert tortoise habitat,

The presence of an endangered species or endangered species habitat can present major permitting obstacles.

About: Emily Lane Murray is Senior Counsel in the Los Angeles office of Californian law firm **Allen Matkins Leck Gamble Mallory & Natsis LLP** whose practice focuses on environmental litigation, land use, and energy law.

Wind turbines in the Palm Springs area, CA.

Planning for and managing environmental obstacles is the best way to avoid significant delays and cost overruns.

and clearly identifies the ways in which the project design will mitigate those impacts.

During the public review period for the EIS, community concern regarding whether the wind turbines will be dangerous to birds and bats becomes an issue of significant debate. A local environmental group opposes the project, and submits lengthy comments from a competing biologist. The project developer works with the Government to respond to the environmental group's comments. The developer also meets with key players in the environmental group, and is able to negotiate minor project changes that help to diffuse the situation. As a result, the environmental group backs down. The project is approved, the EIS is certified, and permits are issued.

Year Three: Litigation

Litigation is a major risk for any project. The costs of litigation can quickly escalate. In some situations, a project can proceed while litigation is ongoing, but in other situations, a court will order that the project cannot proceed until the legal issues are resolved. Depending on the complexity of the case, it can take several years to reach a verdict, and even then the case may be appealed or changes ordered, resulting in further delays. On the other hand, many cases can be settled out of court with the project opponent. There is almost always a cost associated with settlement, but it can alleviate delay.

In our hypothetical case, despite the best efforts of the project developer, an adjacent property owner sues to prevent the project from moving forward. The adjacent property owner claims that the EIS did not adequately address the impacts on both the desert tortoise habitat and bird and bat deaths from the wind turbines. The challenger is able to get a court order – an injunction – preventing development from proceeding. The developer and his lawyers meet with the adjacent property owner and his lawyers in a mediation. They are able to come to a resolution whereby the developer purchases a portion of the adjacent property owner's land. The adjacent property owner agrees to withdraw his lawsuit, and the project, at last, can move forward.

As seen from the hypothetical case, planning for and managing environmental obstacles is the best way to avoid significant delays and cost overruns. While not all problems can be anticipated, having the right team of experts from the start can go a long way toward achieving the ultimate objective of a fully permitted and built renewable energy project.

e: EmilyLane.Murray@REF.contributor.com

Online: renewableenergyfocususa.com

US Reviews of Hydrokinetic Energy Projects off California
http://tinyurl.com/62yhv67

Green Construction and LEED Certification
http://tinyurl.com/5web2dp

US Speeds Up Offshore Wind Development
http://tinyurl.com/5tzox9h

California to Fund Research Reducing Environmental Impact of Solar Energy
http://tinyurl.com/6hufcz4

Bird Organization Calls for Regulation of Wind Power
http://tinyurl.com/64xts2y

AXYS Assesses Offshore Wind in Lake Michigan
http://tinyurl.com/6aamnq5