Rethinking permitting: Regulatory reform needed in the quest for renewable energy alternatives, expert says

January 15 2013

(Phys.org)—Amid the economic and environmental realities of fossil fuel dependence in the United States, regulatory processes need immediate reform to allow renewable energy initiatives such as offshore wind to provide alternatives, according to the University of Maine's first School of Economics Visiting Professor of Energy Law and Policy.

Indeed, argues Jeffrey Thaler, a nationally known environmental attorney, writing in the current edition of the journal *Environmental Law*, existing environmental laws and regulations actually tend to support increasing greenhouse gas emissions.

"We have little time left to create a practical path to achieving an 80

percent reduction in greenhouse gases by 2050" (the deadline set by the National Research Council and other agencies to begin to stabilize atmospheric carbon concentrations), Thaler writes.

Failing to reduce fossil fuel reliance, he says, will result in average global temperatures rising more than the internationally agreed targeted ceiling of 2 degrees C.

In his article, "Fiddling as the World Floods and Burns: How Climate Change Urgently Requires a Paradigm Shift in the Permitting of Renewable Energy Projects," Thaler for the first time integrates the ongoing and predicted effects of climate change—increased weather extremes, glacial melting, sea temperatures and drought conditions—with a "detailed roadmap" for reforming environmental processes used in reviewing proposed renewable energy projects.

Using offshore wind power as a case study, Thaler examines the obstacles confronting a potential developer and showed that in an increasingly carbon-constrained world, existing environmental laws and regulatory processes no longer achieve the long-term goal of ecosystem conservation.

"The existing regulatory process should be quickly reformed so that offshore wind and other clean, renewable energy sources can help us escape the escalating consequences of our carbon-intensive economic system," writes Thaler.

Thaler traces the "byzantine labyrinth of laws and regulations" to the 1970s when "some of the nation's fundamental environmental laws were enacted—before we were aware of climate change threats—so as to slow down the review of proposed projects by requiring more studies of potential project impacts before approval."

Today, the outdated and often "self-defeating maze" of regulatory requirements poses significant barriers to domestic and international interest of increasing viable carbon emission-free renewable energy sources to decrease use of fossil fuel energy, Thaler says.

Regulation of renewable energy initiatives remains "unduly burdensome, slow and expensive," and results in a chilling effect on investment and substantial growth in renewable energy initiatives.

That's particularly unfortunate for a renewable energy initiative such as offshore wind projects, Thaler says, which "have the potential to generate large quantities of pollutant-free electricity near many of the world's major population centers, and thus to help reduce the ongoing and projected economic, health, and environmental damages from climate change."

Thaler's article provides perspective on the primary federal permitting and licensing that typically affects offshore wind development: the Energy Policy Act; regulations of the Bureau of Ocean Energy Management, Regulation and Enforcement; the National Environmental Policy Act; Endangered Species Act; Marine Mammal Protection Act; and the Migratory Bird Treaty Act.

For offshore wind developers, the National Environmental Policy Act (NEPA) is "the most onerous statute," Thaler says, because its broad scope has the potential to spark litigation. The lengthy NEPA process requires those not exempted to conduct an environmental assessment, which usually requires a year or more to complete.

Thaler calls for a paradigm shift in order to create new, targeted policy efforts to accelerate the implementation of clean, renewable energy sources. Such reform in licensing and permitting would make it possible for the U.S. to reduce its greenhouse gas emissions by 80 percent in

2050 by increasing electricity production from renewable sources from the current 13 percent to 80 percent, he says.

According to Thaler, who has been involved in energy and environmental policy, law and ethics for almost 30 years, concrete steps to streamline regulatory and permitting processes and requirements to benefit renewable energy project would include prioritizing the regulatory review of renewable energy projects in new and existing laws; establishing expedited timelines for agency reviews and decisions; and amending the National Environmental Policy Act to expand the types of projects excluded—especially small-scale pilots—and to require that the "hidden" costs of energy from fossil fuel be taken into account.

"We must first understand where our carbon-driven energy and electricity technologies are taking us, and learn from the experiences and lessons climate change scientists are trying to teach us, because we are on the verge of losing—for the next thousand or more years—the environmental and economic quality of life that we inherited," Thaler concludes.

"Second, we must understand, in an increasingly carbon-constrained world, how our existing environmental laws and regulatory processes no longer achieve their underlying goals of long-term ecosystem conservation," he says. Third, we must "significantly revamp the legal process in order to greatly accelerate the development of renewable energy projects like offshore wind power."

More information: Paper: law.lclark.edu/live/files/1315 … ready-for-websitepdf

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