

## Climate Policy Will Be A Heavy Lift For New Calif. Gov.

By **Keith Goldberg**

*Law360 (January 8, 2019, 7:26 PM EST)* -- When Gavin Newsom became the 40th governor of California on Monday, he inherited arguably the most aggressive long-term plans to tackle climate change in the U.S., and Golden State watchers say his administration must clear several regulatory, legislative and practical hurdles to put those plans into action.

Former Gov. Jerry Brown laid down several ambitious markers for Newsom before leaving office, including signing legislation requiring 60 percent of the state's electricity to come from renewable sources by 2030 and envisioning 100 percent zero-carbon electricity by 2045, and issuing an executive order that sets the even loftier goal of statewide carbon neutrality by that year.

"Jerry Brown made climate change and clean energy a legacy issue," said Covington & Burling LLP energy and environmental partner Kevin Poloncarz, who's also a registered lobbyist in the state. "I don't think the [Newsom] administration is going to come out with some big new goals. They're going to have to roll their sleeves up and get to work."

Experts say Newsom does have a couple of things going for him right out of the gate. He's taking over from a fellow Democrat in Brown — in the first Democratic hand-off of the governorship since the 1880s — so it's likely business as usual within the administrative agencies tasked with crafting climate-related policy. Newsom will also be able to work with a Democratic supermajority in the state Legislature.

"[California] has a veto-proof Legislature," said Alston & Bird LLP environmental partner Maureen Gorsen, a former California environmental official. "That's a big advantage."

Newsom will have to thoroughly milk those advantages to put California on a path to meeting the 2045 goals of 100 percent zero-carbon electricity and statewide carbon neutrality, goals that likely go hand-in-hand.

"Using the electrification effort to support the larger decarbonization goals is a can't-miss. California has to make it work," said Tim O'Connor, senior director of the Environmental Defense Fund's California energy program. "At the same time, the affordability and reliability of the system is going to be key."

For starters, Poloncarz expects the Newsom administration and allied lawmakers to take another crack at a bill allowing California utilities to join a regional, multistate electricity market through an expansion of regional grid operator California Independent System Operator, or CAISO, beyond its current

California-only footprint. The bill failed to make it out of the Legislature last year because of concerns that regionalization would allow fossil fuels to get onto California's grid from neighboring states that don't share the same clean energy goals and that a regional CAISO would place California more at the mercy of the Federal Energy Regulatory Commission and, ultimately, the Trump administration.

"I think that bill is going to be a priority for the administration and influential members of the Legislature," Poloncarz said. "It's a critical piece of how you go about delivering the promises of clean electricity."

But Stoel Rives LLP environmental and energy partner Allison Smith, who is based in Sacramento, said that state regulators will bear the brunt of responsibility of implementing policies to get to 60 percent renewable by 2030 and 100 percent zero-carbon by 2045.

Smith will be closely watching the California Public Utilities Commission to see if it crafts stiffer energy storage mandates to accommodate the state's abundant but intermittent supply of solar power, as well as how the regulator deals with the continued shift in electricity demand from traditional utilities to so-called community choice aggregators that allow communities to broker their own electricity purchase deals with power producers. Community choice aggregators are still relatively new and may not be seen as creditworthy as traditional utilities by would-be financiers of large renewable projects, Smith said.

"Power purchase agreements aren't that hard to come by these days in California, but the mechanics of getting those projects financed have been difficult," Smith said.

Gorsen also said the Newsom administration's zero-carbon electricity efforts could be immediately complicated by the uncertain fate of Pacific Gas & Electric Co., which faces billions of dollars in potential liability from wildfires that have scorched the state.

But when it comes to climate policy nuts for the Newsom administration to start cracking, decarbonizing the transportation sector is the biggest one. If the goal of carbon neutrality by 2045 has any chance of being realized, widespread electrification of the transportation sector, by far the biggest source of greenhouse gas emissions in the state, is an absolute must, experts say.

"The bugaboo for California is really mobile source emissions and getting those down, and coincidentally it's the bugaboo for reducing air pollution," Smith said.

Brown signed an executive order in January 2018 outlining a goal of 5 million zero-emission vehicles on the road by 2030, but the federal government is poised to throw up a major roadblock. The Trump administration is proposing to roll back GHG and fuel economy standards for vehicles and yank California's waiver authority under the Clean Air Act to set its own GHG standards as well as its waiver authority to mandate zero-emission vehicles.

"This administration's proposal to flatten fuel efficiency and deny California the ability to move forward is a huge challenge," said Poloncarz, who is representing challengers to the Trump administration's decision to withdraw the existing Obama-era standards, which were part of a grand bargain among the federal government, automakers and California. "That's something that's going to be front and center for [Newsom's] team and I'm sure already is."

If the standoff with the Trump administration continues, experts say the state will have to get creative about ways to encourage more vehicle electrification, from cracking down on criteria air pollutants in a

way that isn't federally preempted to further building out charging infrastructure and redesigning electricity markets to create even greater incentives for owners of large vehicle fleets.

"We need to create market drivers where we have large fleet owners working alongside California to facilitate achieving those goals," O'Connor said. "It's going to require political acumen on [Newsom's] part."

Another test of Newsom's political smarts will be his ability to maintain California's influence on U.S. and international climate policy, experts say. That's something Brown, his predecessor, tackled with gusto.

"I'd be surprised if Newsom didn't try to assume that mantle of progressive energy policy at the state level and the mantle of California as an international leader with respect to climate change," said Nossaman LLP energy partner Marty Mattes, a former CPUC official.

Newsom hinted at that during his inaugural address Monday, as he paid tribute to climate progress made under Brown's administration.

"People's lives, freedom, security, the water we drink, the air we breathe — they all hang in the balance," Newsom said. "The country is watching us. The world is waiting on us. The future depends on us. And we will seize this moment."

--Editing by Brian Baresch and Alanna Weissman.

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