**American Bar Association**
**Section of Environment, Energy, and Resources**

# The Lawyer's Role in the "Green Energy" Economy

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**18th Section Fall Meeting**
**September 29-October 2, 2010**
**New Orleans, LA**

## ABSTRACT

*The goal of this paper will be to suggest to legal professionals several areas in which they may already be well- equipped to advise the companies that are building the "Green Energy Economy" in the United States. The paper will highlight a number of topics where lawyers can contribute value by using or expanding existing skill sets, but it is not intended to be a comprehensive discussion of opportunities or an exhaustive list of topics.*

*Like any large infrastructure project, a given green energy project will command a wide variety of legal skills, ranging from real estate to permitting to project finance to M&A and everything in between. The very complexity of these projects creates many areas in which attorneys can add value, as long as they are willing to make the effort to learn about renewable energy as a business rather than as a set of legal problems—"renewable energy law" is not like "tax law" in its intellectual focus, but it is a happy stomping ground for those who enjoy taking a more generalist approach to their practice.*

*The paper's main message for lawyers wishing to work in the green energy area is that the goal is not so much about mastering a discrete area of law as it is about understanding a potentially world-changing business in order to ease its path forward. Successful "green energy" practitioners will learn how to practice as teams across multiple technical and legal disciplines to serve their clients well.*

## I. Green Energy Economy 1.0: Where Lawyers Work Today

### a. Welcome to Real Estate Law.

As a Courtesy Professor at the University of Oregon, I have taught a class called "Renewable Energy Law" each Spring for the last three years. One of the early classes in the course focuses on real estate law. My goal in part is to remind the students that the course is a lesson in the law, not just renewable energy policy, and in part to see who's really serious about

rolling up their sleeves and learning the ropes. There's nothing like the phrase "welcome to the real estate business" to acquaint the aspiring renewable energy lawyer with the harsh facts of life.

Wind and solar energy projects in particular are very land intensive, and they call for lawyers who are expert in real estate law. For example, since few wind projects these days are smaller than 100 MW and many are in the 200-300 MW range or larger, there will be a lot of real property involved in each project. Projects in some parts of the country such as the Midwest or parts California are commonly composed of a patchwork of landowners, sometimes running into dozens or even hundreds of separate ownerships. Other projects in the western part of the US have fewer landowners but are more apt to involve lands owned by the state, federal or tribal governments, all of which come with their own complexities, including National Environmental Policy Act compliance.

A "green energy" lawyer involved in this aspect of the practice needs to understand both the needs of the renewable technology under development and the nuances of real estate law. The skill set is driven by the resource—lawyers working on geothermal projects will need to understand the differences between surface and mineral estates and how those differences affect the ownership of the geothermal resource; those who work on wind or solar projects need to understand the importance of the project's "capacity factor" as well as the law and customs that apply in the farming or ranching community where the projects will be built.

In the wind energy business, for example, most developers use a long term "wind energy lease" or "wind easement" to acquire land rights. These instruments address a number of issues unique to wind projects, such as protecting wind turbines from interference by structures built on the leased premises or adjacent land, or integrating the land owner's ongoing farming activities with the operation of a power plant. Because the developer often doesn't know whether the leased property will be valuable for energy production until after it has had a year or two to gather wind data, there is often a tension between the lessor's desire for prompt installation of revenue-producing generators and the lessee's desire to develop the property only if it contains a valuable, financeable resource.[1]

The land lease, of course, is only the beginning. Most renewable energy projects are remote from urban centers--the wind, sun, geothermal, biomass, or hydro resources may be abundant, but the transmission lines are scarce. The aspiring developer will often find that it needs to build miles of radial transmission line from the project's generators to a point of interconnection with a transmission line that has sufficient voltage and available capacity to wheel the energy to market. Of course, the developer will need to acquire rights of way for the radial line, and that process will again require real estate expertise. Other features of the project, such as the substation or switchyard facilities, may require the developer to acquire lands in fee.

As the developer assembles a suitable collection of leases, rights of way and fee lands, the preliminary title reports and the survey will invariably reveal a host of interesting issues

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[1] For an overview of issues commonly encountered in negotiating and drafting wind leases, see *The Law of Wind: A Guide to Business and Legal Issues* Chapter 1 (6th ed 2010) ("*Law of Wind*"); Farmers' Legal Action Group, Inc., *Farmers' Guide to Wind Energy: Legal Issues in Farming the Wind* Ch. 3 (2007). Interestingly, the tension between the "pro-development" preferences of the land owner and the lessee's need for time in which to evaluate the resource and secure financing is also an issue in mineral leasing, the law of which provides useful inspiration for those addressing similar issues in renewable energy leasing transactions.

worthy of a law school exam.[2] The most common title problems involve prior liens or mortgages (typically addressed using a subordination or non-disturbance agreement), mineral leases or severed mineral estates (sometimes dealt with by a non-interference agreement or careful analysis of the risks of mineral development), existing easements that must be crossed by transmission lines or collector systems (resolved by "crossing agreements" with the prior easement holder), or errors involving the proper identification of the lessor or grantor.

b. **Green Energy Facility Siting For Environmental and Land Use Lawyers.**

Several states have statewide energy facility siting statutes that govern the siting of energy facilities, including renewable energy projects.[3] County or local land use laws may continue to apply to certain types of projects, and the determination of whether the state siting process or the county land use process will govern is often based on the size or characteristics of the resource. State environmental quality acts may also require completion of a detailed environmental analysis similar to a federal Environmental Impact Statement. Energy facility siting statutes, land use and environmental laws usually apply to transmission facilities as well as the power plants that generate renewable energy.[4] In states that lack sophisticated energy facility siting or permitting regimes, questions about the propriety of siting a given project may be fought out in nuisance actions.[5]

Green energy projects also frequently raise issues under state and federal endangered species laws. The risk of a "take" under the Endangered Species Act (ESA) has sidelined some wind energy projects[6] and forced substantial modifications in others. Some of the proposed solar projects in California struggle with their potential effects on the desert tortoise. The renewable energy industry has become increasingly sophisticated about addressing ESA issues effectively, and the complexity of the issues and the science involved often warrant the focused attention of skilled ESA counsel early in the development of a project.

**c. The Green Energy Tax Lawyer.**

Although my law students are often at peace with the idea of practicing environmental or land use law while developing green energy projects, many are surprised (or perhaps appalled) to

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[2] *See generally Law Of Wind*, *supra* note 1.

[3] For a good example of the application of a state energy facility siting statute in the context of a controversial wind project, see *Residents Opposed to Kittitas Turbines v. The State Energy Facility Site Evaluation Council*, 165 Wn.2d 275 (Wash 2008 (*en banc*) (Washington's governor has authority to approve Energy Facility Site Evaluation Commission's recommendation to site a wind energy facility under Washington's energy facilities site locations act, RCW 80.50, without authorization from county in which turbines would be placed).

[4] For an overview of permitting issues affecting renewable energy projects, see *Lex Helius: The Law of Solar Energy: A Guide to Legal and Business Issues* Ch. 6 (2d ed 2009) ("*Lex Helius*").

[5] *See, e.g., Rankin v. FPL Energy, LLC*, 266 SW3d 506 (Tex App 2008) (holding that wind farm did not constitute a nuisance), *petition for review denied* (Tex Sup Ct 2009).

[6] *See, e.g., Animal Welfare Institute v. Beech Ridge Energy LLC*, 675 F. Supp 2d 540 (D Md 2009) (Maryland District Court required developer to apply for an incidental take permit and enjoined a proposed West Virginia wind project that threatened to "take" endangered Indiana bats).

learn that renewable energy in the United States is largely driven by federal and state tax policy. Historically, wind energy has been supported by the "production tax credit" (PTC), while solar energy has been supported by the investment tax credit (ITC). Over the years, Congress has gradually extended tax credits to biomass, geothermal, ocean, hydro and other types of renewable energy. Because renewable energy project developers often lacked a "tax appetite" that would enable them to take advantage of the credits, tax equity was brought into the project using a "flip" structure that allowed the tax equity investor to take advantage of the tax credits and depreciation benefits, after which control of the project would eventually "flip" back to the developer.

The American Recovery and Reinvestment Act (ARRA) of 2009 made the ITC available to wind energy for the first time and also allowed renewable energy developers to elect to convert the ITC to a cash grant from the Treasury. The latter innovation addressed the fall out of the financial crisis of 2008, which reduced the number of available tax equity investors and thus stalled numerous renewable energy projects for want of tax equity financing. Although the cash grant program greatly simplified the process of monetizing available tax credits, some developers still saw a need to involve tax-motivated investors to take advantage of accelerated depreciation and other tax benefits associated with each project.[7]

Unfortunately, although the cash grant program very successfully stimulated the construction of green energy projects that otherwise would have been mothballed in 2009 and 2010, it is currently only available for projects that begin construction before December 31, 2010 and thereafter achieve the "placed in service date" applicable to the renewable resource being developed. Because of uncertainty over whether Congress will extend the cash grant program into 2011 and beyond, as well as industry disappointment over Washington's failure to set a national renewable energy standard or cap greenhouse gas emissions, the renewable energy industry in general and the wind industry in particular suffered a substantial decline in project construction and pipeline in 2010.[8] State tax credits intended to encourage the development of renewable energy have suffered a similar fate. Oregon's Business Energy Tax Credit (BETC[9]), for example, successfully encouraged the development of renewable energy projects and manufacturing facilities in Oregon, but the credit has recently been curtailed in the face of a state budget crisis and perceived abuses.[10]

The "take home lesson" for lawyers who practice "green energy law" is that they need to study and account for the vagaries of the tax credits that drive renewable energy development. For example, renewable energy power purchase agreements have elaborate provisions not found

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[7] For an overview of tax issues affecting renewable energy projects, see *Lex Helius*, *supra* note 5, at Ch. 8; *Law of Wind*, *supra* note 1, at 8.

[8] In a press release issued on July 27, 2010, the American Wind Energy Association (AWEA) reported that, with only 1,230 MW of new wind capacity added through June 30, 2010, US wind power installations year-to-date had dropped by 57% relative to 2008 levels and by 71% relative to 2009 levels. AWEA also reported that there is a dramatic drop in the project development pipeline after the 5,500 MW currently under construction. AWEA attributed the decline to difficulty in obtaining power purchase agreements, "the locomotive that drives the project pipeline," because of reduced electricity demand, lower gas prices, and the lack of a clear national renewable energy policy. http://www.awea.org/newsroom/releases/07-27-10_AWEA_Market_Report.html The "boom-bust" cycle in renewable energy development is a phenomenon painfully familiar to long-time renewable energy practitioners.

[9] Affectionately pronounced "Betsy."

[10] *See* http://www.oregon.gov/ENERGY/CONS/BUS/tax/BETC-FAQ.shtml .

in other energy PPAs that deal with, among other topics, (i) changes to the purchase price if *force majeure* prevents a project from beginning construction in time to qualify for the cash grant, (ii) changes to the purchase price if *force majeure* prevents the project from meeting the "placed in service" deadline required to qualify for a tax credit, (iii) rights to terminate the PPA if *force majeure* or other permitted factors (such as delays in the construction of planned transmission or interconnection facilities) prevent the project from qualifying for cash grants or tax credits, (iv) designing purchase options in favor of the buyer so that they do not inadvertently extinguish tax credits, and (v) making the seller whole on an after-tax basis in the case of buyer breach or permitted economic curtailment where the breach or curtailment prevents the project from generating and thus deprives the project of production tax credits.[11] Similarly, royalty clauses in wind leases often define "gross proceeds" to make it clear that the proceeds subject to the royalty *do not include* any tax credits, grants or similar benefits. Depending on the circumstances, turbine supply agreements, engineer, procure and construct (EPC) agreements, and other green energy construction and procurement contracts may need to include provisions sufficient to cause the supplier or contractor to satisfy the "begin construction" requirement so as to enable the project to qualify in 2010 for the cash grant.

**d. The Traditional Energy Lawyer in a Green Landscape.**

Regardless of whether energy is "green" or "brown," it is subject to regulation on both the wholesale and retail levels. Traditional energy lawyers will still find themselves participating in proceedings before the Federal Energy Regulatory Commission concerning, among other things, transmission and interconnection policy and wholesale energy transactions. Renewable energy presents many unique issues, one of the most important of which is the intermittent nature of resources like solar and wind, but to some extent electric energy is electric energy.

Because 29 states and the District of Columbia now have renewable portfolio standards (RPS) that generally require utilities to obtain a specified amount of energy from renewable energy sources, lawyers also find themselves involved in state regulatory proceedings to determine questions such as whether a utility may count "unbundled" renewable energy credits (RECs) toward RPS compliance or whether renewable energy procured from out of state can be counted toward a state's RPS. Counsel will also need to understand state RPS law to address the provisions in power purchase agreements that utilities commonly propose to make sure that developers will be obliged to do whatever it takes (whatever it costs) to cause the energy they are selling to meet state RPS requirements.

**e. First Generation Renewable Fuels and Rural Electricity Development.**

[11] If a project that relies on the PTC is curtailed, it loses both the sale—the purchase price per MWh that the buyer would have paid had the energy been generated—but also the production tax credit of (currently) about $21/MWh. This is one of the reasons why wind project curtailment has been vigorously litigated in Texas. *See TXU Portfolio Management Company, L.P., v. FPL Energy, LLC, et al.,* 2010 Tex. App. Lexis 5905 (Tex App 2010); *FPL Energy Upton Wind I, L.P., v. City of Austin*, 240 SW3d 456 (Tex App 2007), *reh'g denied* 2007 Tex App LEXIS 9306 (Tex App 2007). For a heated explanation of how allocation of curtailment risk to wind and solar developers can make such projects difficult or impossible to finance, see the pleadings filed by the California Wind Energy Association, et al., in 2010 in *Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program,* Rulemaking 08-08-009 (California Public Utility Commission).

First generation renewable fuels include corn-based ethanol and biodiesel, which are typically used to fuel vehicles rather than to fire power plants.[12] Due to factors such as the downturn in the economy as well as consolidation and restructuring in the biofuels industry, green fuels development is not as robust as it was three to five years ago, and the opportunities for lawyers have diminished accordingly. Nevertheless, there is continuing interest in developing renewable electricity from biomass, in which material from forests or farms is used to fire or co-fire a boiler and generate electricity.[13]

In addition, wind and solar projects are often developed in rural areas. Practitioners who are familiar with farming, ranching and other aspects of agricultural law are well suited to advising landowners or developers about issues unique to rural environments. Lawyers who understand the issues raised by contracts for commodities like corn or timber can advise clients concerning the sale and transportation of feedstock for biofuels or biomass facilities.

### f. And a Few Other Disciplines Worth Mentioning

Renewable energy projects also require the assistance of lawyers skilled in other disciplines. Equipment procurement and construction contracts are required to enable the developer to build the project, and operations and maintenance (O&M) agreements will often be used to keep the plant running. Once the leases, rights-of-way, permits, power purchase agreement, interconnection, construction contracts and other material project agreements are in place, the project will need to be financed. And at some point in the project's history, whether as a greenfield asset in the fairly early stages of development or as an operating power plant, the renewable energy development may be conveyed in whole or in part to a partner, investor or buyer, amid the customary flurry of due diligence and detailed transaction documents.

Experienced construction, M&A, environmental and project finance lawyers are, of course, generally well equipped to advise clients on these aspects of energy project development , operation and disposition. However, the aspiring green energy lawyer (or the team on which the lawyer works) will also need to have a good understanding of customs and usages in the renewable energy industry as well as knowledge of the regulatory overlay that sometimes complicates energy transactions. For example, buyers who are purchasing greenfield assets often avoid paying too much up front for the assets, preferring to pay the bulk of the sales price when the project actually obtains financing or achieves commercial operation. This deferred payment is sometimes structured as an overriding royalty tied to the plant's performance over a specified period of time. The developer wants to receive as much payment as possible upon the closing of the sale, or at least reserve the ability to participate in development of the assets to assure a pay date, while the buyer usually wants to delay payments as much as possible and sometimes wants complete control over project development. The point is that there is a fair amount of development risk in projects that appear to be fully baked, and parties seeking to acquire such projects will often reflect that risk in the payment structure for greenfield acquisitions. Operating projects present their own set of issues, not the least of which is the need to obtain FERC approval of any prior transfer of the operating asset under Section 203 of the Federal Power Act.

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[12] *See generally The Law of Biofuels: A Guide to Legal and Business Issues* (2d ed 2008).

[13] *See generally The Law of Biomass: A Guide to Legal and Business Issues* (2010).

Skills in many substantive areas of the law will of course be readily transferrable to green energy project development, but lawyers should be careful not to treat a green energy project as "just another widget," an approach that will not impress clients who know the business.

## II. Green Energy Economy 2.0: Back to the Future

### a. Integrating Intermittent Energy: Transmission and Electric Energy Storage.

Geothermal, biomass and some hydroelectric resources are dispatchable, but wind and solar plants are distinguished by their "intermittency." Wind plants produce energy only when the wind blows, and many plants generate most of their energy at night when demand is low. And, although developers are now much more able to forecast the wind than they were a few years ago, there are still many occasions when the wind does not do what predicted. If the wind blows harder or longer than expected, the wind plants involved may need to be curtailed[14] or other power plants may need to back down. And since wind plants tend to be concentrated in discrete, windy places within balancing authority areas (BAAs), the variable effects of the wind are amplified across hundred or even thousands of installed megawatts. Thermal and hydroelectric plants are not designed to be ramped up and down to accommodate fluctuations in wind generation, so there is a cost associated with integrating wind onto the grid. Grid operators are now trying to recover these costs by imposing "wind integration charges" on wind plant operators,[15] and more such charges are likely to be imposed in the future as wind energy reaches higher penetration levels.[16]

Solar plants generate energy during the daytime when loads are highest. Their generation is fairly predictable on clear days, but their output becomes quite erratic and difficult to manage when the skies are partly cloudy. Although solar projects have not yet been the target of integration charges, that has more to do with the fact that there is currently more wind on the system than there is solar, so the effects of wind are more immediately apparent to grid operators.

At some point, integration charges will become high enough that they will amount to a very clear price signal saying "stop building intermittent renewable energy plants!" How can the green energy industry and its counsel avoid this problem?

One approach is to build more transmission. The wind may be blowing too much (or too little) in one spot, but if the transmission system is robust enough, the BAA may be able to export or import energy to keep the system in balance. To the degree that utilities and grid operators turn to transmission to solve the problem of renewables integration, lawyers will be kept busy

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[14] For an explanation of why curtailment can be a very bad event for a wind plant, see the discussion and cases cited in note 12 *supra*.

[15] *See, e.g.*, Bonneville Power Administration's Administrator's Final Record of Decision in the 2010 Wholesale Power and Transmission Rate Adjustment Proceeding (BPA-10), issued July 2009, and approved by FERC in *Order Confirming and Approving Rates on a Final Basis*, 132 FERC ¶ 62,098 (2010); *Puget Sound Energy, Inc.*, 132 FERC ¶ 61,128 (2010) (rejecting Puget Sound Energy's proposed new Schedule 12, Wind Integration Within-Hour Generation Following Service).

[16] In *Puget Sound Energy, Inc.*, note 16 *supra*, Xcel Energy and the Bonneville Power Administration submitted comments supporting Puget's efforts to recover certain costs that Puget was required to incur in order to accommodate variations in wind output.

with Federal Energy Regulatory Commission (FERC) and state public utility commission (PUC) regulatory work, rate recovery proceedings, real estate acquisitions, transmission line siting and permitting, environmental and endangered species act issues and other matters.[17]

Another alternative, either alone or in combination with improved transmission, is electric energy storage (EES).[18] Historically, the rule has been that energy must be used the instant it is generated. EES has generally been an expensive proposition and its only extensive application in the United States has been in pumped storage hydroelectric facilities. In the 1970s, utilities did not want to back down nuclear power plants and other large thermal generating facilities at night, so pumped storage hydroelectric plants were built as an efficient way to store excess energy generated at night (when demand was low) for later use during daytime peaks. At night, excess energy would be used to run pumps that would move water into an upper reservoir; during peak hours, the water would be released to flow back into the lower reservoir, spinning turbines to generate hydroelectric energy. The pumped storage plants are, in effect, very large batteries.

As intermittent renewable energy (especially wind) has become more common, pumped storage developers have argued that their power plants could be used as a load sink at night (absorbing excess energy from wind plants) and as a peaking facility during the daytime (in lieu of a gas-fired peaking unit). To the degree that pumped storage is viewed as a potential solution to intermittency, it presents some interesting questions of regulatory law, such as whether it ought to be viewed as a transmission or generation resource or as something else entirely.[19] The siting, financing, construction and operation of a pumped storage facility is challenging and likely to require the involvement of lawyers skilled in energy regulation, energy facility siting, project permitting, Endangered Species Act compliance, NEPA, public lands, tax, power purchase agreements and energy project finance.

Another variation on the EES theme involves using chemical batteries. Xcel Energy recently announced favorable results from its experimental deployment of a 1 MW sodium sulfur storage battery at an 11 MW wind project in Minnesota. The battery has been operating since October 2008 and was able to store about 7.5 MWh of electricity, with a charge and discharge capacity of 1 MW. When fully charged, the battery could power 500 homes for seven hours. Xcel's preliminary conclusion is that the battery can be used to shift wind energy from off-peak to on-peak, and can help support the regional electricity market by responding to real-time imbalances between generation and load. Xcel is continuing to test the battery to see how it

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[17] For a thorough discussion of the opportunities and challenges presented by transmission, see Lisa M. Barton, "Sustainable Jobs in Support of Sustainable Energy Future in the Electric Transmission Industry," ABA-SEER 18th Section Fall Meeting (2010).

[18] A very good summary of EES and the opportunities and challenges it presents can be found at California Public Utility Commission, Policy and Planning Division Staff White Paper, *Electric Energy Storage: An Assessment of Potential Barriers and Opportunities* (July 9, 2010).

[19] *Compare Western Grid Development, LLC,* 130 FERC ¶ 61,056 (2010) (proposed energy storage device projects constitute wholesale transmission facilities) *with Nevada Hydro Co.*, 117 FERC ¶ 61,204 (2006) (absent information from CAISO about how it expected to use and integrate pumped storage facility into grid and energy market, it was premature for FERC to determine whether costs of pumped storage should be included in CAISO's transmission access charge).

handles larger transfers of wind energy to the grid, and the next phase of the project will evaluate the technology's cost-effectiveness.[20]

In the meantime, wind energy developer First Wind announced on July 27, 2010 that its 30 MW Kahuka Wind project on Oahu's North Shore would include a 10 MW battery storage system developed by Xtreme Power, Inc., which will be used to help the project meet performance standards and to smooth fluctuations in wind energy output.[21] The project is supported by a $117 million loan guarantee from the U.S. Department of Energy.

The potential for batteries creates a number of opportunities—and issues—for lawyers. For example, should a wind or solar lease include a provision that allows the lessee to add battery storage? From a regulatory perspective, who is responsible for bringing the battery to the table? Is it the utility, or the wind energy developer? How is the cost of the battery to be recovered—in the price that the developer charges to its offtaker, or in a utility's rate base?[22] What environmental issues does a chemical battery pose, and how should those be addressed in a wind or solar lease?

### b. The Role of Intellectual Property and Capital Formation.

Green energy covers the gamut from well-understood, reliable technology like wind turbines to edgier but promising platforms like wave and tidal energy, so-called NextGen biofuels from cellulose or algae, advanced battery and flywheel storage technology, Smart Energy and hydrogen fuel cells. Emerging technologies in their early stages will require the advice and assistance of patent and intellectual property lawyers, as well as attorneys skilled in capital formation transactions. Such lawyers will need to develop a broad understanding of the US energy industry, so that they can provide their clients with strategic advice on green energy technology that may seem promising but is likely to be impeded by regulatory structures or the absence of a market.

## III. Conclusion

It should be apparent at this point that "green energy" is a phrase that covers a great deal of ground. The most effective green energy practitioners will be attorneys who try to understand green energy as a business rather than as just a discrete set of legal problems. Renewable energy developers are very, very passionate about what they do, and they look for and appreciate counsel who share their passion. The issues involved are sufficiently diverse and complex that it is

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[20] *See* U.S. Department of Energy, Energy Efficiency and Renewable Energy, EERE News, http://apps1.eere.energy.gov/news/news_detail.cfm/news_id=16228 (August 11, 2010); J. Himelic & F. Novacheck (Xcel Energy), *Sodium Sulfur Battery Energy Storage and Its Potential to Enable Further Integration of Wind (Wind-to-Battery Project): Data Collection and Analysis Report (Milestone 5),* http://www.xcelenergy.com/SiteCollectionDocuments/docs/W2BMilestone5Report_Public.pdf (July 7, 2010).

[21] *See* Press Statement: First Wind Confirms Receipt of DOE Loan Guarantee for Oahu-Based Kahuka Wind Project," http://www.firstwind.com/aboutFirstWind/news.cfm?ID=21007fd8-5470-4df6-843f-190c620a9d0a (July 27, 2010).

[22] On June 14, 2010, FERC published a Request for Comment regarding rates, accounting and financial reporting for new electric storage technologies. *FERC Docket No. AD10-13-000.* Comments were due on August 9, 2010. FERC's request provides a useful overview of the regulatory issues it is wrestling with as it considers how to treat EES.

difficult for one or two practitioners to master the whole river, thus giving an advantage to lawyers who are able to work together in teams to efficiently answer questions and quickly resolve issues. Attorneys who successfully develop a team approach with a multi-disciplinary group of like-minded, passionate practitioners will be well equipped to tackle the soup-to-nut complexity of a green energy project.