

Clean and Renewable Energy - Finance

Maximizing the Value of Available Incentives

Making clean and renewable energy deals frequently requires both ingenuity and practical knowledge of the changing regulatory scene. Andrews Kurth guides its clients to secure the economic benefit of the full range of special incentives created by regulation to foster clean energy production. Such incentives are central to the financial viability of these projects. They can derive from federal or state energy, environmental or financial incentive programs.

Renewable Energy Credits (RECs)

Our ability to structure effective purchase and sale agreements for renewable energy credits can play an important role in making clean energy projects commercially competitive. The Resource Portfolio Standards imposed by individual states require utilities to purchase percentages of their total power requirements from clean energy sources. We help project sponsors market the renewable energy credits originated by their renewable energy projects and thereby improve the cash flow from these projects. We have facilitated bilateral trading contracts for clients seeking to buy and sell RECs. A member of our team is the Co-Chair of a national initiative to develop a standard master contract for the trading of both "compliance" and "voluntary" green tags, which provides the foundation for what may ultimately be a liquid trading market analogous to those for energy commodities.

Environmental Credits

The expanding markets for purchase and sale of legally created emissions rights are an important source of a project value for clean and renewable energy projects. We build upon our experience with the federal and state regulations affecting non-attainment areas under the Clean Air Act. These allow purchase of rights to emit specified amounts of certain pollutants, notably NOx and SOx, from parties that have abated their emissions at other locations. We actively monitor the near term potential for opportunities presented by federal, state and regional programs to reduce greenhouse gas emissions. Already our work with industrial firms, wind and biofuel projects has given us practical capabilities to help clients meet environmental goals through acquisition of voluntary emissions reductions (VERs). We represent both aggregators and marketers of VERs produced in agricultural, biofuels, energy efficiency and other industrial settings, and know how to apply our experience to unique and often highly complex financial transactions. Internationally, the Andrews Kurth team has already helped clients use emission reduction credits (ERCs) in countries that have signed the Kyoto Accord, through use of the related Clean development Mechanism and Joint Implementation Programs to monetize ERCs for project finance and trading purposes. Having worked with a voluntary, pilot greenhouse gas emissions and offsets in North America and with offset programs in international settings, Andrews Kurth is prepared to help clients derive maximum value from carbon credit trading, both in countries that have adopted carbon "cap and trade" systems and in countries like the U.S., which are moving in that direction.

Tax Credits and Other Financial Incentives

We guide renewable energy producers and investors to maximize production tax credits and energy tax credits extended by the Energy Policy Act of 2005, as well as other federal and state tax incentives.

For example, in the biofuels area these include:

- Exemption of renewable energy production from state excise taxes
- Volumetric credits applied to federal excise taxes
- Business energy tax credits (BETCs) for ethanol and biodiesel blenders
- Tax and tariff reductions for clean energy products from the Caribbean region.

Our lawyers have advised producers and blenders of biofuels to secure the most advantageous mix of tax incentives, including consideration of project location, in order to optimize tax treatment. Similar experience with tax advantages of other renewable technologies helps our clients utilize project specific incentives, as in the case where we are

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working to obtain tax write-offs for solar-powered dryers used in ethanol production.

The available grants, loans, loan guarantees, tax abatements, supportive regulatory programs and other incentives for clean and renewable energy continues to proliferate. Sometimes these programs overlap or preclude benefits otherwise obtainable. Our lawyers understand how the complex interplay of these programs can be maximized through transaction structuring, incorporating their knowledge of clean and renewable energy matters gained from trade association and government experience.

Global Applications

We apply our project finance skills globally. Andrews Kurth's reputation for project finance excellence has been recognized in leading publications as diverse as *The American Lawyer*, *Chambers Global Guide to the World's Leading Lawyers* and *Project Finance* magazine. Notable energy projects on which we have worked are found throughout the caribbean, Latin America, Europe and India, and include wind, biomass, hydro and geothermal installations. We have exhibited particular strength in facilitating the licensing and construction of fuel ethanol and biofuels facilities throughout Asia, including Bangladesh, China, Indonesia, Malaysia, the Phillipines and Sri Lanka. We also structure renewable energy venture funds for investment in South Asian projects, represent the Inter-American Development Bank, and work with the Overseas Private Investment Corporation, the Export-Import Bank and the International finance Corporation. By taking maximum advantage of bilateral and multilateral financial and risk management mitigation programs, we have furthered successful clean and renewable energy development worldwide.

In sum, Andrews Kurth knows that to get deals done in clean and renewable energy, it is important to always be on the lookout for applicable incentives and to craft each deal carefully. It is what we have done in all aspects of the energy industry for over 100 years and what we are particularly well positioned to do in the renewable and clean energy fields.