

→ Energy, Infrastructure and Project Finance

Sheppard Mullin's Energy, Infrastructure and Project Finance team comprises over 55 attorneys, each highly trained in a particular legal discipline and having the requisite electrical power, oil and natural gas, renewables and biofuels experience to understand our clients' objectives. But it is our steadfast client-focused approach that sets us apart from other law firms and that is the reason some of the largest and most innovative energy industry players, including leading utilities, pipeline operators, municipalities, independent power producers, commercial banks, equity and tax investors, EPC contractors and energy technology companies come to us for assistance on their most important energy related legal matters.

Corporate/M&A/Strategic Alliances

Our attorneys counsel clients on the structure, negotiation and documentation of agreements relating to the joint ownership of business organizations that develop, own, and operate energy projects, including joint ventures, contribution agreements, shareholder agreements, tandem structures, securities offering documents, federal and state securities law compliance, and equity take out arrangements. We also advise clients on acquisitions of energy projects and portfolios of energy projects, sales, workouts and restructurings, including structuring and negotiating the underlying transactions and performing due diligence. We have direct experience in the purchase and sale of projects and project companies in both early and late stage development as well as operating projects. We also have experience in purchasing assets where the purchaser's intent is to repower the project.

Engineering, Procurement and Construction

Our team includes members of the firm's nationally renowned construction practice. We frequently advise developers, contractors, and financing parties on all aspects of engineering, procurement and construction ("EPC") contracts, from the negotiation of such contracts to the enforcement of rights in mediation, arbitration, litigation and related appeals. Our attorneys have represented clients in EPC agreement negotiations and related disputes across the full range of project types, from major natural gas fired facilities and nuclear facilities, to utility scale and distributed generation renewable energy projects.

Environmental, Entitlements and Land Use

Environmental concerns factor closely into energy policy, particularly as the U.S. and other industrialized countries restrict emissions and promote energy efficiency and sustainability. Our energy attorneys understand the relationship between energy and the environment, and are leading experts in the environmental issues involved in the siting, permitting, and operation of power and oil & gas facilities, including air quality, water quality, hazardous substances, land use, compliance and regulatory issues. We obtain the necessary licenses, permits and approvals from numerous federal, state and local agencies such as the Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Department of Interior ("BLM"), state Fish & Game Commission, the state Coastal Commission and local planning and pollution control agencies. We develop and implement strategies for project licensing and permitting, including assisting in the preparation of environmental studies,

impact reports and data statements. For instance, we have deep expertise in California, one of the most prolific states in terms of environmental regulation, in preparing and processing applications to the Energy Resource and Development Commission, the Public Utilities Commission and various local air quality management districts.

We help clients enter and participate in global carbon markets, advising them on participation in emissions trading in North America, Latin America, Europe and China. Companies turn to us to create, acquire and sell emission offset and emission reduction credits and acid rain allowances under the United States Clean Air Act, SCAQMD RECLAIM and other new source review and air credit programs. Companies not subject to regulatory emission reduction obligations seek experience, skills, contacts and other benefits from reducing or offsetting their greenhouse gas emissions. Many carbon reduction projects create viable, diversified investment opportunities, particularly for energy and electric generating companies.

FERC and Regulatory Compliance

Our energy team includes several of the nation's foremost experts in U.S. energy regulatory matters, including federal regulation of the electric and natural gas industries. Our legal guidance in energy regulation ranges from general public policy counseling to practical compliance strategies regarding complex and interrelated energy statutes, regulations and policies. We represent interstate and intrastate natural gas pipelines and storage companies, oil and petroleum products pipelines, regional transmission organizations, independent power producers, developers of wind, solar and gas-fired generation, power marketers, and commercial class electric customers, before the Federal Energy Regulatory Commission ("FERC"), state utility commissions and appellate courts. We advise and represent energy industry participants regarding tariff-related issues, natural gas pipeline certificates of public convenience and necessity, Department of Energy export and import authorizations, FERC market-based rate authorizations, compliance with energy market rules and regulations, standards of conduct, interconnection issues, rate cases and purchases and sales of FERC-jurisdictional energy facilities. We counsel clients not just on an individual statute, but (when requested) across multiple statutes and industries (e.g., FERC and bankruptcy proceedings; Federal Power Act and Natural Gas Act interaction).

Hedging and Trading

The Firm has a substantial derivatives and structured products practice that represents swap dealers, asset managers, financial intermediaries, hedge funds and end-users in a broad array of transactions ranging from highly structured transactions to more traditional trading or hedging transactions. In the renewable energy arena, we have a long track record of representing sponsors, developers, lenders and project companies in both physical and financially settled transactions, often using the ISDA, EEI or NAESB documentation platforms. Many of the transactions hedge the long term cost of power, project revenue flows and basis risk. Others monetize RECs and other environmental attributes. We have been involved in transactions that have been entered at each stage of the development process, that cut across every major energy market and that involve a range of collateral packages, both on and off balance sheet. We also advise project managers on ways to enhance value through the management and trading of generated electrons. We believe that the breadth of our experience and insights into the hedging markets provide a competitive advantage.

Intellectual Property

The intellectual property attorneys on our Energy, Infrastructure and Project Finance team advise clients from major utilities to startups on their intellectual property needs. We help clients develop, plan and protect their intellectual property portfolios by carefully reviewing their innovations and the state of art in the corresponding field, and then by crafting a strategy to maximize the strength of our clients' IP position. Our work includes the filing of patent and trademark applications, the prosecution of applications through the Patent and Trademark Office, and the ongoing maintenance and protection of intellectual property assets.

Interconnection

The rules and regulations concerning interconnection of generating facilities are established in the tariffs and operating rules of regulated utilities, regional transmission organizations and independent system operators as well as municipal and cooperative utilities. We have worked with generating project developers across the U.S., including the Midcontinent Independent System Operator, Inc. ("MISO") on interconnection and transmission issues as well as on the review and negotiation of interconnection agreements. Many aspects of interconnection are technical in nature and we have relationships with energy consultants that evaluate congestion, curtailment and interconnection risk for project developers. We have also negotiated unique transmission arrangements with unregulated transmission owners developing D.C. interties between regions in the U.S.

Litigation

We represent public utilities, independent power providers, midstream and downstream pipelines and transportation fuel suppliers, industrial companies and more on high-stakes disputes concerning contractual performance and third party liability. Our recent and current work includes complex environmental and tort litigation arising out of contamination and related claims; representation in a high-profile litigation involving the owners of a nuclear power generating station and the manufacturer of a failed steam generator; representation of a wind project developer in an approximately \$50 million power purchase agreement dispute; and representation of the nation's largest natural gas distribution company against 18 lawsuits brought by insurers, governmental entities and landowners alleging tort and inverse condemnation claims in connection with southern California wildfires.

When a client faces significant administrative litigation at FERC, we bring a level of experience in live, on-the-record proceedings that few other firms can match. We have extensive experience representing clients in litigated electric and natural gas rate proceedings involving the panoply of rate case disputes addressing, for instance, return on equity, depreciation, cost of service and other rate making issues. We also counsel and if necessary litigate in matters such as enforcement proceedings, as well as matters involving wholesale electric power market design and administration, RTO settlements, market power monitoring and mitigation, open access transmission service, transmission planning, interconnection, and electric reliability. We have performed critical due diligence review in connection with potential sales of natural gas and oil pipelines, and gas-fired, wind, hydro and solar electric generation facilities. We also have been involved in nuclear decommissioning cost estimation.

Power Purchase/Sales Contracts

Our energy attorneys have significant experience with power purchase agreements of all types and purchasers ranging from commercial and industrial customers, investor-owned utilities, community aggregators, municipal utilities and cooperative utilities. We have negotiated various forms of power purchase agreements including bulk power sales, busbar sales, physical and financial hedges -- “virtual PPAs” -- and distributed generation power purchase agreements. We represent clients across a wide range of energy markets and understand the structures and requirements for financeability. We have worked across the broad spectrum of generating technologies. In addition to wind and solar, we have represented clients with biomass and biogas technologies, cogeneration, as well as small-head hydro and natural-gas fired generation. In addition to our work on power sales, we have represented clients in renewable energy credit (REC) transactions. Finally, we have substantial experience with carbon trading markets.

Project Development & Finance

Our team includes attorneys with deep domestic and international experience negotiating the commercial contracts and financing agreements relating to limited recourse financings for power, petrochemical, infrastructure, natural resources and other projects. Our attorneys have led the negotiation and documentation of multibillion-dollar projects and five million dollar projects, and we understand how the fundamental principles of project finance need to be applied differently in both extremes and those in between. We have earned a reputation in the industry as being strong advocates, capable “project managers” and skilled drafters who produce documentation that can be understood even by non-lawyers not present during the negotiations. We assist with all stages of a project’s development and financing, including real estate transactional matters, land use and entitlements, environmental permitting, EPC agreements, feedstock or fuel supply agreements, offtake agreements, tax matters, flip partnership agreements, and, of course, credit agreements and security documents.

Tax

Governmental goals relating to stimulating investment in various energy resources and energy efficiency and clean technology often takes the form of tax relief and incentives. Our tax attorneys advise on the myriad of tax planning matters related to energy projects including advice on structuring equity investments for the monetization of investment tax credits or production tax credits, special allocations in partnership arrangements, implementing tax advantaged financing and acquisition techniques, sales tax issues, real estate tax issues and international tax planning.

Tax Equity

Our team has deep experience negotiating the commercial contracts and financing agreements relating to limited recourse financings for renewable power for both debt and tax equity. We are practical and solution-oriented while looking to minimize risk and obtain market or better terms for our developer clients. U.S. tax incentives are said to account for 50% or more of the installed cost of wind and solar facilities. Leveraging those tax incentives is often key to a successful development. Our tax lawyers are involved in all issues that arise during the life cycle of financing a renewables project, from building the base case model through confirmation of the flip point and exercise of a purchase option. With energy tax incentives scheduled to phase out and new changes in U.S. tax law, deep prior experience is more important than ever to navigate “begun

construction”, “binding contract” and “placed in service” requirements through structures that have been financed and withstood scrutiny in the past. Moreover, the number of transactions we see each year puts us in a strong position to access best practices and advise on market terms for structure and the allocation of tax risk. The team at Sheppard Mullin has worked closely together in this specialty for over a decade and we are at the forefront of anticipating where financing challenges may arise and developing solutions.

U.S. and International Experience

U.S. Experience

Below is an example of some of the work we have done recently

- Represented an investor-owned electric utility company in litigation relating to construction defects and regulatory matters concerning the early decommissioning of a nuclear power plant.
- Represented developers, investors and lenders in the course of multiple representations, in the development and financing of greenfield utility scale and distributed generation solar power projects.
- Advised the nation’s largest independent power producer on real estate, land use and environmental matters concerning operational conventional power plants.
- Advised one of the nation’s largest developers of wind projects on multiple bids, development projects, and financing of operating facilities in the United States.
- Advised one of the nation’s largest independent power producers on land entitlement issues for a multisite 250 megawatt solar project in Imperial County California.
- Represented one of the world’s largest producers of batteries in bankruptcy proceedings and in connection with its environmental matters.
- Represented the nation’s largest natural gas distribution company against 18 lawsuits alleging tort and inverse condemnation claims in connection with wildfires.
- Negotiated in the course of several representations utility scale and distributed generation engineering, procurement and construction (EPC) contracts for solar energy facilities across multiple jurisdictions.
- Represented several project developers in their power purchase agreement negotiations with investor owned utilities, public universities, or commercial and industrial purchasers of power.
- Advised developers of proposed energy storage projects on land use and real estate entitlement issues.
- Represented multiple fortune 500 companies in their independent electrical power procurement agreements.

The following matters are representative of the legal advice Sheppard Mullin attorneys have provided in connection with energy project finance and development:

Renewable Energy Facilities (Solar, Wind, Geothermal)

- Represented the developer in real estate and project financing issues for of an approximately \$300 million photovoltaic solar project.
- Represented the developer in project financing and development matters for an approximately \$100 million photovoltaic solar project in Arizona.

- Advised the contractor in connection with the EPC contract for the \$100 million solar energy project in Canada.
- Advised the developer in its negotiation of the EPC agreement for a utility scale solar project in Hawaii.
- Representation of a lender to draft and develop a project debt financing program for photovoltaic solar projects.
- Representation of a REIT in connection with the largest single roof top (10 MW) photovoltaic solar project in the U.S.
- Represented the developer in the bidding for and negotiation of utility scale power purchase agreements for multiple renewable energy projects.
- Representation of the developer in connection with power purchase agreement, siting and financing issues for multiple photovoltaic solar projects hosted on government facilities.
- Represented the developer of solar photovoltaic facilities in the creation of a form power purchase agreement for distributed generation projects.
- Represented an energy investor and developer in due diligence matters with respect to utility scale solar project acquisition opportunities.
- Represented the developer in acquiring or leasing over 20 utility scale photovoltaic solar project sites across the US.
- Represented the lender in connection with construction financing for a photovoltaic solar project in California supported by 1603 Grant funds and California's MASH incentive program.
- Represented the lender in connection with construction and term financing for a photovoltaic solar project in New Jersey supported by 1603 Grant funds and New Jersey SRECs.
- Advised the lender in connection with construction and term financing for a photovoltaic solar project in Massachusetts supported by 1603 Grant funds and Massachusetts SRECs.
- Represented a vertically integrated module manufacturer and project developer in due diligence matters with respect to distributed generation photovoltaic projects.
- Represented the host and off-taker in connection with the negotiation of a power purchase agreement for various distributed generation photovoltaic projects on the client's facilities.
- Represented the developer in project financing issues in connection with a construction loan for a distributed generation solar project.
- Negotiated a master financing facility on behalf of a developer with respect to multiple sale-leaseback transactions for a portfolio of photovoltaic solar projects.
- Represented the developer in real estate and financing issues for a photovoltaic solar project built on a land fill in Massachusetts.
- Advised the developer in connection with the completion of licensing before the California Energy Commission of five 30 MW natural gas enhanced solar facilities (approximately \$100 million each).
- Advised the developer regarding project development and licensing issues for an 80MW \$230 million natural gas enhanced solar facility.
- Advised the seller in connection with the proposed sale of a 25% working interest in a 1GW geothermal project.

- Represented the equity investor in an approximately \$200 million photovoltaic solar project.
- Advised a wind turbine manufacturer in connection with a series of debt and equity financings of a series of wind powered electrical generating facilities.
- Advised the developer in connection with PPA negotiations for the first large scale wind project development in Mongolia.
- Advised various clients regarding project lease financings and re-financings of four different geothermal electrical generating facilities and cogeneration facilities aggregating \$530 million.

Conventional Energy Facilities

- Advised the owner in the negotiation of a construction agreement relating to a 260 MW gas-fired power plant.
- Represented an independent power producer in connection with project development and financing issues for an approximately \$700 million combined cycle gas power plant.
- Represented an independent power producer in its EPC negotiations with a leading construction contractor for the construction of a gas-fired power plant located in Hayward California.
- Represented the developer in its EPC contract negotiations for the construction of a 1200 MW thermal power plant located in southern Vietnam.
- Represented the developer in its EPC contract negotiations for the construction of a 200 MW thermal power plant located in Indonesia.
- Advised a multinational bank syndicate in connection with the multi-currency financing of a \$750 million coal project in Queensland, Australia.
- Represented the project lenders in their review of the EPC agreement for a 2000 MW thermal power plant located in Indonesia.

E.U. Experience

Renewable Energy Facilities (Solar, Wind, Geothermal)

- Represented, a renewable energy developer in a planned 200 MW wind and solar farm investment in Belgium; drafting of all project contracts (land leases; PPAs; etc).
- Assisted a renewable energy developer in its project to install a wind turbine on one of its factory/distribution premises; contract review of CCC's existing power purchase agreements.
- Advice regarding all legal aspects of the development of large photovoltaic installations in the B2B and public sectors, including drafting of PPA and land use agreements as well energy regulatory matters (connection to the electric grid, green power credits, and urban/environmental permits) and assistance during negotiations with investors and lenders.
- Advised a manufacturer of solar panels, with project documentation for rooftop solar panels.
- Advised a Belgian municipality on its project to install photovoltaic modules on municipal buildings to obtain the relevant electricity (via a direct offtake mechanism), including the drafting of contracts (a long lease agreement and a PPA) and the drafting of the tender specifications for the public procurement procedure.
- Advised an offshore wind turbine contractor as to whether contracting out construction works relating to a planned offshore wind farm in an Eastern European country by way of an exclusive concession right is

compliant with EU public procurement and competition law.

- Advised a major shipping company with regard to its renewable energy project and the connection of wind turbines to the grid (issues of access to network and the right to connect).
- A waste and sludge incineration plant in Belgium. Advice on its green power credits and the relevant contracts for obtaining and transferring these credits.
- Advised an EU energy sector federation on the different regulatory regimes regarding renewable energy certificates in the EU.
- Assisted a biofuels company in filing a complaint to the European Commission on alleged unlawful state aid in the biofuels sector.
- Represented a bioethanol producer in Belgium in the defense of a legal action by a competitor disputing the legal quorum that was awarded by the Belgian government to bioethanol producers under a tax incentive scheme.
- Advised a bioethanol producer in Belgium on the European and Belgian regulatory framework on biofuels, environmental legislation, energy taxation, state aid issues, and drafting the project contracts.

Conventional Energy Facilities

- Advised one of Europe's largest power utility, with the review and re-negotiation of a long-term LNG import and gas swap agreement concluded with a major European energy company.
- Advised natural gas exporter with regard to the new EU rules on gas network unbundling and energy investment protection in Europe.
- Advised Japanese power company on possible energy-related acquisitions in Europe.
- Represented a Serbian national electricity company, in its joint venture to of a 700 MW (2 x 350 MW) lignite fired power plant in Kolubara, Serbia (JV agreement; SHA; PPA; coal – lignite supply agreement).
- Counsel to crude oil and natural gas exploration and production company with regard to CBM exploration activities in Belgium, France and the Netherlands and review of key contracts, in particular the joint operating agreement.
- Advised an integrated oil and gas company on a Final Mutual Assurances Agreement (FMAA), a type of parent company guarantee.
- Advised energy and commodity company in a possible dispute with the Ukraine Government regarding the latter's decision to allocate certain industry customers to Naftogaz in view of security of supply issues.
- Represented a subsidiary of an oil major in filing a complaint against the Belgian Federal Government for having established price caps on petroleum products.
- Providing advice to a major chemical company, regarding the EU legal qualification of a direct pipeline in the Port of Antwerp and in particular the transfer of the pipeline to the (non) regulatory asset base of the gas grid operator.
- Advice regarding EU legislation on energy security of supply, including analysis of the existing framework covering energy relations with third countries and Russia in particular.
- Successful complaint to the European Commission (DG Internal Market and DG Competition) on behalf of an eastern European energy company on a breach of rules on the free movement of goods (as they relate to the distribution of fuel) by a Central European government that curtailed the outcome of a public tender.

- Advice on a protocol to several energy producers between the Belgian Federal Government and Electrabel (part of ENGIE) extending the lifetime of certain nuclear power plants (preparing a complaint to the European Commission for alleged abuse of dominant position).
- Represented several energy producers in legal proceedings before the European Commission for alleged cartel behavior, which were concluded without the imposition of any penalties
- Cabinet Office of the Belgian Minister of Energy:
 - Competition advice regarding the merger between Gaz de France (GDF) and SUEZ
 - Drafted a statute (law) giving the Belgian State a 'golden share' in the SUEZ/Gaz de France merged entity
 - Drafted an amendment to the Nuclear Reactor Dismantling Law
 - Drafted an energy MOU between Belgium and Qatar
 - Drafted a ministerial decision on an underground direct gas pipe between the Netherlands and a company located in Belgium
 - Drafted a ministerial decision on the APETRA agency to maintain minimum stocks of crude oil and/or petroleum products
 - Drafted a law creating a fund for the financing of research proposals on petroleum

Transmission/Transport

- Advise a natural gas transmission system operator and LNG terminal operator in Europe, on a variety of legal issues regarding gas transportation including:
 - cross-border gas investments (gas interconnectors; LNG terminals) and markets (e.g. merging of gas balancing zones between German and Belgian markets)
 - long-term transit contracts and their applicability and validity under EU law
 - tariffs and remuneration models (regulated asset base)
 - corporate structure and regulatory obligations in view of unbundling obligations
 - various issues under the EU Third Energy Package on liberalization (upstream, infrastructure, retail aspects)
 - legal proceedings against the Belgian energy regulator regarding validity of the grandfathering of long-term transport and capacity reservation contracts
- Advise a power transmission system operator in Belgium and Germany, on a variety of legal issues regarding electricity transmission including:
 - tariff issues (tariff structure, methodology and the relevant regulatory approval)
 - legal feasibility study for a submarine power transmission cable between Belgium and the UK
 - balancing regime for offshore wind power farms
 - review of green credit regime for offshore wind power
 - drafting of access, access responsible party and connection agreements and inter-TSO compensation arrangements

- Advised a Lithuanian gas grid operator, with the review and re-negotiation of a long-term natural gas transport agreement (concluded with a major non-EU gas producer).
- Advised a Luxembourg-based grid operator and energy supplier on issues of liberalisation law (unbundling), procurement law and transparency of financial accounts.
- Drafted a comprehensive country overview of certain EU member states and their regulatory frameworks for the electricity sector which serves as a key input to Kazakhstan electricity grid operating company when drafting its IPO documentation and also during its negotiations with the national energy regulator when determining regulated asset base, its valuation and the compensation levels for its activities.
- Advised Japanese bank regarding the regulation of the South Stream gas pipeline from Russia through Black Sea into Europe in view of its potential stake in the pipeline project.