HUNTON & WILLIAMS

RENEWABLE ENERGY NEWSLETTER

MAY 2017

Contents

New Partner Announcement

Hunton & Williams' energy and infrastructure team is pleased to announce **Mike Klaus** has been **promoted** to partner and has relocated to the firm's San Francisco office to expand our team on the West Coast. Mike joined our Washington office from SunEdison in 2014, and since that time he has represented banks and sponsors on tax equity investments, construction and term loans and project acquisitions. The addition of a transactional energy partner in our San Francisco office, along with the firm's existing team of permitting, environmental and real estate attorneys based in our Los Angeles and San Francisco offices, will enhance our ability to serve clients on projects in the western United States, as well as clients based in California.

2017 ACORE Corporate Procurement Executive Meeting

On March 15, 2017 Hunton & Williams' **renewable energy and clean power practice** hosted the 2017 ACORE Corporate Procurement Working Group Executive Meeting at the firm's DC office. Attendees included over 100 executives, corporate off-takers, leading financiers, developers, utilities and other key players in the renewable energy sector.

The meeting addressed how potential policy and regulatory changes might affect approaches to corporate procurement of renewable energy under the new Trump Administration and Congress.

ACORE
American Council On Renewable Energy

Panel sessions focused on the following key objectives:

1. Understanding how potential policy and regulatory changes might affect approaches to renewable energy procurement and achievement of sustainability and renewable energy objectives;
2. Assessing the impact of potential policy and regulatory developments on project financing and PPA pricing; and
3. Evaluating potential market constraints for C&I off-takers and best practices to address them, such as treating energy as a service and deploying integrated systems.

Eric Pogue, partner and co-chair of the firm's renewable energy and clean power practice, moderated *The Financiers' Perspective – Tax Reform & PPAs* panel, which was made-up of executives from Morgan Stanley, US Bank, Hannon Armstrong and Cohn Reznick. The panel discussed the availability of project capital for commercial and industrial projects, trends with respect to corporate PPAs, and approaches for financing projects and optimizing incentives. An industry insights report on the executive meeting is expected to be published in June 2017.

Tax Equity Take-Out Options

– *Eric Pogue* and *Geoff Lorenz*

For an increasing number of "first-generation" partnership-flip tax equity transactions, the target flip date is scheduled to occur in the next few years. In many cases, the actual flip date is not expected to occur on schedule. For that reason, tax equity investors are increasingly interested in utilizing structures that will facilitate a take-out of any investments that are approaching (or beyond) the originally anticipated investment horizon. The following is a summary of some of the structures tax equity investors are exploring to achieve that purpose:

Asset Sale

As there seems to be a robust market for renewable projects (including a number of foreign investors and US strategic investors such as unregulated utility affiliates), sponsors and investors could collaborate to sell the equity (cash and tax equity) in one or more of the projects. Obviously, an asset sale of this nature would require the sponsor to divest its interest, but the goal would be to use the sale proceeds for the tax equity take-out. Such a structure may create other opportunities for the tax equity investor — *e.g.*, if the sale price would be maximized with a "stapled hedge" or "stapled financing" provided by an investor affiliate.

Project (Re)finance

Assuming revenue contracts are still in place (or that the project(s) can be hedged), the transaction parties could enter into a project-level debt facility—again, with the proceeds being utilized to take-out tax equity. As in the case of an asset sale, there may be the opportunity for a stapled hedge/financing.

Contributing New Assets to Accelerate Flip

Sponsors and investors would benefit from a relatively unique structure in which new assets (*e.g.*, a small solar facility that is not otherwise large enough for a standalone tax equity deal) are contributed into existing wind partnerships. In this structure, the sponsor gets the benefit of accelerating the takeout of tax equity and moving a solar project that may be difficult to finance on a standalone basis.

Take-Out Securitization

It is possible to utilize a securitization structure for assets in tax equity partnership. In this structure one or more projects, which have the benefit of an operating history and, assuming tax equity would be taken out with the initial proceeds, absence of the typical tax equity intercreditor concerns, could be packaged together for a securitization.

Recent Developments in Section 1603 Grant Litigation

– *Tim Jacobs*

Several decisions involving the Section 1603 grant were recently issued by the U.S. Court of Federal Claims. In the Alta Wind case, the Government suffered a major setback. The Court held that the cost basis for 1603 grant purposes is established by the arm's length purchase price of the large-scale renewable energy projects at issue. The Court rejected the Government's argument that cost basis (and the related grant) were limited to development and construction costs and that a substantial portion of the costs must be allocated to intangible assets (e.g., power purchase agreements). The fallout from Alta Wind has caused the Government to appeal to the U.S. Court of Appeals for the Federal Circuit. It also appears to have forced the Government to the settlement table in the Sequoia case (involving residential solar systems).

In the LCM Energy case, the Government managed only a draw after devoting considerable resources to False Claims Act-related counterclaims. The Court of Federal Claims determined that the cost basis which Treasury used for its awards – the installation costs for each residential solar system plus a 20% profit – was the "more reasonable approach" in that case.

These developments and other developments are discussed in more detail in the following **client alert**.

SEIA Finance & Tax Seminar

SEIA's Finance and Tax Seminar is the preeminent solar industry conference dedicated exclusively to finance and tax issues facing the solar industry today. This year's agenda will focus on issues related to tax reform and its potential impact on the solar industry. The event will take place in New York on June 1-2 and is hosted by JPMorgan. Hunton & Williams is pleased to offer a 20% discount code for registrants: **20TAXNYC**.

Hunton & Williams' Renewable Energy Newsletter is prepared quarterly to provide general information about selected clean power developments and issues for attorneys at Hunton & Williams LLP, and is provided to clients and friends of Hunton & Williams LLP. It is not intended to provide legal advice or legal opinions and must not be relied on as such.

If you have questions related to any of the articles in this issues, please contact any of the article contributors or any of the following members of the Renewable Energy and Clean Power group of the Energy and Infrastructure practice at Hunton & Williams LLP:

Eric R. Pogue
202.955.1847
epogue@hunton.com

Jeff P. Schroeder
202.955.1599
jschroeder@hunton.com

David S. Lowman
202.419.2070
dlowman@hunton.com

HUNTON & WILLIAMS