



INSIDE THIS ISSUE

2 Polsinelli Shughart to Sponsor Solarpraxis Conference in Phoenix

2 Lawsuit Threatening Arizona's RES Officially Struck Down

2 Changes to Arizona Transmission Siting Procedures Likely Considered in Next Legislative Session

3 Arizona Legislation Allowing Nuclear Power as a Renewable Energy Source Likely to Be Reintroduced

3 IRS Weighs In On Energy Storage Devices

4 State Updates

7 Prominent Energy Attorneys Join Polsinelli Shughart in Chicago and Washington, D.C., Offices

THE POLSINELLI SHUGHART RENEWABLE ENERGY group is experienced in the areas of corporate/transactions law, energy, real estate, construction, environmental, land use, zoning, finance, governmental affairs and litigation. With more than 570 attorneys in 16 cities stretching from Washington, D.C., to Los Angeles, Polsinelli Shughart is where energy development is occurring. For more information and contacts within the Energy group, see last page.

SunCarrier LLC Completes Development of Solar Project at the Navajo Tribal Authority District Headquarters

Congratulations to Polsinelli Shughart client Gildemeister Energy Solutions' solar business, SunCarrier LLC, on its first installation of a series of Solar Photovoltaic installations for the Navajo Tribal Utility Authority (NTUA) in Chinle, AZ. The project, which received direct funding and technology approval from the Department of Energy under the ARRA, is part of a growing focus by the Navajo Tribal Utility Authority on renewable energy projects.

The units installed by SunCarrier are at the forefront of solar capture technology. Each bank utilizes over 3,000 square feet of solar panels, as well as a single-axis tracking system which continuously adjusts the surface of solar modules to the current position of the sun.

Collectively, the two units will achieve up to 2,300 kWh/kWp/year in solar energy production. This type of anticipated performance using a single-axis tracker can only be accomplished with proven and reliable tracking technology, especially when using efficient crystalline PV panels.

Based upon the strong working relationship between the NTUA and SunCarrier, the NTUA has asked SunCarrier to install additional systems at other NTUA facilities including the Crown Point, NM operations center and the Fort Defiance, AZ NTUA headquarters building. The NTUA's satisfaction with SunCarrier and its new DG solar power is evident in the following shared words of CEO Walter Haase and Chairman Sid Dietz: "We appreciate the great working relationship with SunCarrier, they having done an outstanding job at our new operations center."

SunCarrier LLC is headquartered out of Lone Tree, Colorado, and is wholly-owned and guaranteed by the Gildemeister Group. Gildemeister is a "M-Dax" (top 80 German companies) German stock exchange listed company that has been in existence for more than 140 years. Since 2003, the Energy Solutions Division has designed, installed and operated Solar Photovoltaic plants exceeding

(continued on page 2)



(continued from page 1)

150 megawatts throughout the world. In the U.S. SunCarrier's development and installation work has spanned across customer profiles ranging from the U.S. military, small municipalities, community colleges, state-owned utilities (e.g. Nebraska Public Power District) and private golf clubs (e.g. Napa Valley Country Club).

Polsinelli Shughart attorneys represented SunCarrier LLC in the development of this project. ■

Polsinelli Shughart to Sponsor Solarpraxis Conference in Phoenix

Polsinelli Shughart is sponsoring the third annual U.S. Solarpraxis Conference – PV Power Plants to be held in Phoenix November 30–December 1. Leading industry experts will provide discussions about the industry's innovative projects, technologies and opportunities. Polsinelli Shughart Shareholder Margaret LaBianca will present "Planning and Building a Solar PV Project."

Contrary to the slowdown in major European markets (primarily Germany and Italy), the U.S. market is proving that PV manufacturers and developers are seeking opportunities in the United States. With the 887 megawatts of grid-connected PV in 2010, it is imperative that decision makers, project developers, utilities, EPC's, investors and bankers come together to discuss the latest technology developments and market trends. This conference will provide the platform for keeping the conversations going.

The PV Power Plants conferences promise to provide substantial content for:

- Chief executives, product managers and project developers of module and cell manufacturers, producers of inverters and power components, suppliers of foundations, substructures, cabling and other components
- Planners, contractors, installers, engineering and construction companies
- Utilities and manufacturing/service companies from the conventional power industry
- Sales managers responsible for large-scale systems
- Insurance companies, brokers and agencies
- Investment banks and investors
- Political representatives
- Energy agencies
- Attorneys involved in large-scale PV projects
- Journalists addressing economic, technological and energy issues ■

Lawsuit Threatening Arizona's RES Officially Struck Down

The Goldwater Institute asked the Maricopa County Superior Court to strike down renewable energy regulations imposed by the Arizona Corporation Commission. The lawsuit argues that the rules exceed the Commission's limited constitutional and statutory authority, violate separation of powers and impermissibly interfere with the relationship of all utilities and their customers. On September 2, 2009, the Court ruled in favor of the Arizona Corporation Commission. The Goldwater Institute appealed this decision, and on May 9, 2011, filed an Appellate Petition for Review to the Supreme Court of Arizona. However, without comment, on September 20, 2011, the Arizona Supreme Court refused to consider the Goldwater Institute's appeal of the Arizona Court of Appeals ruling. ■

Sweeping Changes to Arizona Transmission Siting Procedures Likely Considered in Next Legislative Session

In the 2011 legislative session, Rep. Frank Pratt (chairman of the Arizona House Energy and National Resources Committee), introduced an amendment to legislation which supporters claim would remove a big procedural hurdle for new interstate power lines in Arizona. The amendment, which has been attached to SB 1517, proposes three key modifications to the ACC's normal siting procedure:

- The ACC would be permitted to decide on a case-by-case basis whether transmission proposals will be evaluated by the Line Siting Committee, an 11-member appointed body, or whether the issue will go directly before the five-member Commission. Currently, any proposal for a line of more than 115 kilovolts must be heard by both the Line Siting Committee and the ACC.
- For individual power lines, the ACC would be directed to approve any project that meets federal guidelines under the National Environmental Policy Act. It should be noted, however, that even with this change the Line Siting Committee could still impose certain conditions on a line's construction.



- The ACC would be allowed, but not required, to hold public hearings on proposed power lines.

This legislation managed to clear the House Energy and Natural Resources and Rules Committees, but failed to reach a final vote prior to the adjournment of the legislature. Nonetheless, due to its long life in the legislature, it is expected to be resurrected in the next legislative session. ■

Arizona Legislation Allowing Nuclear Power as a Renewable Energy Source Likely to Be Reintroduced

A bill introduced in the 2010 legislative session by Arizona Representative Debbie Lesko could be reintroduced in 2012. The bill would establish nuclear power as a renewable or carbon-free energy source. As introduced in the 2010 legislative session, there would have been two conflicting energy standards in the state. The ACC's requirements, passed in 2006, does not include nuclear or hydro as power sources. If enacted, HB2701 would establish a new standard allowing for nuclear and hydro. The bill, if it had passed could require a court ruling to determine which entity – the ACC or the Legislature to determine who will set energy policy due to the differing RES standards. Arizona Public Service (APS) is a private entity and adamantly opposed this bill. Salt River Project (SRP), who has oversight by the Legislature, supported this effort. This bill will more than likely be revisited by the Arizona Legislature in this next session. ■

IRS Weighs In On Energy Storage Devices

In a yet-to-be published private letter ruling, the Internal Revenue Service provided favorable guidance regarding whether a large storage battery connected to a wind farm can be “qualified property” as a “storage device” under provisions of the I.R.C. § 48 energy credit related to wind energy property. This ruling also has positive implications for solar and other renewable energy since “storage devices” are also “qualified property” under the I.R.C. § 48 energy credit provisions related to such property. Further, the ruling

has implications for the “30% Grant in Lieu” program under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 which authorizes the U.S. Treasury Department to provide a cash grant to taxpayers who place energy property in service as part of an electricity production facility or otherwise eligible for the renewable electricity production credit or qualifying property otherwise eligible for the energy credit. Generally, the grant amount is 30 percent of the basis of the property that would (1) be eligible for the I.R.C. § 48 energy credit or (2) be part of an I.R.C. § 45 credit-eligible facility (the “Energy Credit” regime).

As background, one of the more critical things as the grid moves to integrate intermittent renewable sources of energy is the question of “frequency regulation services.” In essence this is keeping the voltage on the power grid uniform, despite changing loads throughout the day. To accomplish this, utilities organized in a Regional Transmission Organization (“RTO”) to purchase power from power providers based on daily auctions. Some of the most expensive power to handle peak loads is often called spinning reserves provides short bursts of electrical power to allow the grid to maintain voltage. This is often accomplished by using gas turbines at great cost. Battery storage can provide this benefit. At issue in the ruling is whether the storage device described is qualified property under the Energy Credit regime and, by implication, the 30% Grant in Lieu regime.

As to solar and wind sourced power, the respective I.R.C. § 48 regulations state that “storage devices” are includable as qualified property whereas transmission equipment is not. Guidance as to whether the battery described is qualified property was presumably sought to ensure the battery was eligible for the credit.

In the ruling, a large commercial shipping container was placed on a large wind farm site in the vicinity of the wind turbines, was connected to the same bus bar and controlled by the wind farm's SCADA system (computers that control the turbines pitch, yaw and output and other functions). The ruling outlined the taxpayer's plan for selling wind generated electricity, on a merchant basis, into the RTO power pool such that the battery would enable the project to provide regulation service to the RTO and a more favorable price for the wind-generated power. The battery would be used to store electricity in order to accomplish the function of managing deliveries of wind electricity to the grid at the best times. The ruling stated the “majority of the electricity” stored in the battery would come from the wind farm but did not expand as to whether the grid-sourced electricity was negligible.

The ruling continued by stating that regulation service ensures a balance between the supply and consumption of electricity over different time periods ranging from seconds to several hours. The implication is that the regulation service at issue is an ancillary service to the grid in addition to capacity and electricity production. The Internal Revenue Service held the battery was not transmission equipment but was “qualified property” as a “storage device” and as such eligible for Investment Tax Credit (ITC) and 1603 Grant in lieu of ITC treatment. ■

State Updates

Colorado

Boulder Continues Exploring Possible City-Owned Electric Utility

Continuing a long-standing process, voters of Boulder, Colorado, recently approved two new ballot measures that will permit the city to continue exploring a possible break with Xcel Energy. Beginning in 2005, Boulder, a community that is historically at the forefront of progressive energy policies, has been analyzing the possibility of ending its relationship with Xcel in favor of forming a municipal utility.

The question recently came before the voters in the form of two ballot items in the November 1, 2011, election. The first item sought authorization for the creation of a locally-run

electric utility, but only if the new rates would not be higher than Xcel Energy’s rates at the time of acquisition. The second item asked voters if they would extend and increase the Utility Occupation Tax to fund the preliminary costs associated with setting up the local utility. Voters approved the two items with 51.78 percent and 50.27 percent respectively.

Despite the outcome of these votes, a new Boulder municipal utility will not be created overnight. A final decision about whether to form a municipal utility has still not been made, and likely will lead to further rounds of debate before regulators and the court system. Nonetheless, the City is moving forward with additional engineering work and has reportedly entered into negotiations with Xcel. Ultimately, no bonds will be issued until there has been a full study of the potential costs and other consequences of the transition.

Illinois

Clean Coal Takes Center Stage in Illinois

This year began on a positive note for clean coal projects in Illinois when in January the General Assembly passed legislation supporting two substitute natural gas (“SNG”) production projects: Leucadia’s SNG Brownfield project at a former steel mill site in Chicago and PowerHoldings’ SNG project located at a greenfield site in southern Illinois. The supporting legislation attempted to mandate that Illinois gas utilities buy the full production of SNG from these facilities at preferential prices. Support for the SNG legislation came from various sectors, primarily the union construction trades and mining interests. However, hopes for these projects were soon dashed as the Governor vetoed both bills noting that consumers were not adequately protected from large price increases. The developers quickly indicated their desire to continue to pursue revised legislation in the spring. The spring session heated up in May when the Leucadia and PowerHoldings legislation was again considered along with legislation aimed at essentially rate basing (Illinois deregulated its power market in 1997) Tenaska’s proposed Taylorville Energy Center, a hybrid integrated gasification combined cycle plant that has the ability to produce both SNG and electricity. Additionally, indemnity legislation to support the carbon capture and sequestration efforts of the FutureGen 2.0 project, which will employ oxy-combustion technology, was introduced as well as legislation supporting Denbury’s pipeline project that will move carbon dioxide generated by Midwest plants to the Gulf Coast for enhanced oil recovery. Finally, legislation supporting Illinois utility Commonwealth Edison’s (“ComEd”) smart grid development effort was also considered.





The Leucadia, PowerHoldings, FutureGen 2.0, Denbury and ComEd legislation all passed. However, the Tenaska legislation never came up for a vote. Despite the legislative success, events quickly turned negative as two of the four Illinois gas utilities (Peoples Gas and North Shore Gas), using a loophole in the SNG legislation, recently announced that they will refuse to enter into contracts with the SNG projects citing high prices for the gas. Additionally, Ameren Generation, the FutureGen 2.0 plant operator, has warned that project costs are skyrocketing, putting the future of that project in doubt. Further, the Governor amendatorily vetoed a key portion of the FutureGen 2.0 legislation, inserted at the last minute by the Speaker of the Illinois House as a condition of passage. The Governor also vetoed the ComEd legislation which will likely, either directly or tangentially, impact future clean coal legislative negotiations. Accordingly, all of the clean coal legislation, with the exception of the Denbury project (which in large part depends on the other clean coal projects being built) may be considered again in the 2011 fall veto session. It is impossible to predict what will happen this fall with so many complex bills, supporting billions of dollars in investment and thousands of jobs, potentially moving through a compressed legislative session. What is certain is that clean coal supporters will want to closely follow developments in Illinois through the end of this year.

Kansas **BP Wind Energy North America Announces New Project**

Polsinelli Shughart would like to congratulate BP Wind Energy North America Inc. (BPWENA) on its announcement of a new 420 MW wind project located in Barber and Kingman Counties, Kansas. The new wind project, known as Flat Ridge 2, will be located approximately 60 miles southwest of Wichita, Kansas.

Flat Ridge 2 and BPWENA have worked diligently with the residents and government officials of these counties to ensure a positive local reception to the project. To that end, Flat Ridge 2 has entered into payment in lieu of taxes (PILOT) agreements and road maintenance agreements (RMA) with Harper County and Kingman County, and has entered into long-term leases with area landowners for placement of all wind turbine generators necessary for successful completion of the Project.

Commercial operation of the Project is currently planned for January 1, 2013.

Polsinelli Shughart is acting as regulatory counsel for this project.

Kansas Wind Project to Sell 200 MW of Power to Tennessee Valley Authority

The Caney River Wind Project, developed by TradeWind Energy of Lenexa, Kansas, and owned by Enel Green Power North America of Italy, will sell 200 MW of power from the project to the Tennessee Valley Authority under a 20-year power purchase agreement. The Caney River Wind Project is located in western Elk County, Kansas, near the southeastern Oklahoma border. In developing the project, TradeWind collaborated with stakeholders, including the U.S. Fish and Wildlife Service, the State of Kansas and the Sierra Club, in order to promote wildlife and grassland conservation throughout Kansas while at the same time providing significant economic benefits to the county and local landowners.

Due to TVA's Federal ownership, it is required to comply with the National Environmental Policy Act (NEPA), which mandates adherence to strict procedures for assessing potential environmental impacts to threatened and endangered species, wetlands and cultural resources. The project will interconnect with a 345 kV transmission line owned by Westar Energy in Elk County, Kansas, and will have 111 Vestas V90 1.8-MW wind turbines, covering 14,000 acres. The power will be delivered to TVA's customers in the Southeast U.S.

Polsinelli Shughart is development counsel for the project.

Duke Energy Renewables Purchases Kansas Wind Project From CPV

In July, Duke Energy Renewables, a commercial business unit of Duke Energy, announced that it will build, own and operate the 131 megawatt (MW) Cimarron II Windpower Project in Gray County, located approximately 200 miles west of Wichita. Duke purchased the fully developed and contracted wind power project from Silver Spring, Maryland-based CPV Renewable Energy Company for an undisclosed sum. CPV will continue to own the first phase of the wind project – Cimarron I.

As announced in May 2011, Kansas City Power & Light will purchase all of the electricity and associated renewable energy credits produced by Cimarron II under the terms of a 20-year agreement. Duke Energy Renewables plans to start construction of the Cimarron II Windpower Project in the fall of 2011 and achieve commercial operation by June 2012. The wind farm, which will be sited on 16,000 acres of leased farmland, will be capable of generating enough electricity to power nearly 40,000 homes.

Polsinelli Shughart's Energy Group represented CPV in the development and sale of the Cimarron II project.

Post Rock Wind Energy Facility Will Bring Jobs and Economic Investment to Kansas

St. Louis-based wind energy developer Wind Capital Group recently announced the signing of a power purchase agreement with Kansas-based electric utility Westar Energy. Pursuant to the PPA, Westar will purchase 201 MW of electricity from Wind Capital Group's Post Rock Wind Energy Facility, located in Ellsworth and Lincoln counties in Kansas. Construction is expected to commence in the fourth quarter of 2011, and the facility is anticipated to be online in the fourth quarter of 2012. Westar's PPA with Post Rock was approved by the Kansas Corporation Commission on May 9, 2011.

Polsinelli Shughart's Energy Group is serving as lender's counsel on the Post Rock project.

Kansas to Be Home of Commercial Scale Biorefinery

Abengoa announced in mid-August that its subsidiary, Abengoa Bioenergy, has been selected by the U.S. Department of Energy's Loan Programs Office to receive an offer of a conditional commitment for a \$133.9 million federal loan guarantee for the construction of its "first of a kind" commercial scale biorefinery facility to produce renewable liquid fuel from an abundant organic feedstock source – plant fiber or cellulosic biomass.

Abengoa Bioenergy has announced that it intends to start construction on the site, which is located near Hugoton, in Stephens County, Kansas, in the very near future. It is anticipated that the new cellulosic ethanol plant will pave the way for the next generation of biofuels, which will be even more energy efficient and environmentally friendly than current technologies.

The biofuels refinery is expected to bring an estimated 300 new direct jobs to the area, providing critical economic benefit to the town of Hugoton and to the state of Kansas. The plant is designed to produce approximately 23 million gallons of advanced cellulosic ethanol each year, as well as enough energy to meet the electric power needs of the plant.

Polsinelli Shughart's Energy Group is involved in this transaction.

Missouri

On September 6, the Missouri legislature began a special session. During this time the legislature can only work on issues included in the Governor's call. Prior to the session beginning, there was discussion of the nuclear energy early site permit issue and Proposition C being included in the call. However, without an agreement between all interested parties, including the renewable energy industry, these topics were not included in the call.



With the nuclear and Prop C issues off the table, the main focus of the special session has been economic development incentives and tax credit reform. The economic development measures being considered include a proposal to make Lambert International Airport in St. Louis an international cargo hub and the Missouri Science and Reinvestment Act aimed to attract high-tech businesses to the state. The tax reform measures include establishing various sunsets and caps for most tax credit programs and creating more accountability measures for taxpayers receiving such credits. The House and Senate continue to disagree on these issues, so numerous versions of the bills are being considered.

Polsinelli Shughart's Public Policy group, through its Jefferson City office, represents The Wind Coalition.

Oklahoma Oklahoma Project's PPA with Alabama Power Company Receives Approval

On September 9, 2011, the Alabama Public Service Commission approved a purchase power agreement between Chisholm View Wind Project, LLC and Alabama Power Company. The developer of the Chisholm View Wind Project is TradeWind Energy, LLC which is headquartered in Lenexa, Kansas. The Chisholm View Wind Project is located approximately 15 miles north and east of Enid, Oklahoma,



and directly adjacent to Hunter, Oklahoma. The project sits within Garfield and Grant counties.

Pursuant to the terms of the executed PPA, Alabama Power will purchase up to 202 MW of wind energy produced by Chisholm View. Along with the energy, Alabama Power also obtains rights to all related environmental attributes, including any fuel-related, emissions-related and air quality-related credits and offsets, at no additional cost above the price of energy.

Polsinelli Shughart is development counsel for the project. ■

Prominent Energy Attorneys Join Polsinelli Shughart in Chicago and Washington, D.C., Offices

Polsinelli Shughart welcomes attorneys David D. Streicker and Matthew E. Ross to the firm's growing national Energy practice. The addition of Streicker and Ross complements the firm's existing energy attorneys and will increase services for clients with expanding energy needs in development, finance and complex transactional work.

Streicker is based in Chicago and advises domestic and international clients on issues ranging from public sector financial participation, tax credits, public/private partnerships, negotiation of power purchase agreements, environmental and natural resources regulation, land use and property rights issues and legislative matters, among others. He previously served as general counsel and ethics officer for the Illinois Department of Commerce and Economic Opportunity (DCEO) and was the state's lead attorney for all major development projects, including brownfields reuse, manufacturing expansion, ethanol/biodiesel plants, wind farms, power plant construction and retrofits, coal gasification facilities (including IGCC, CTL and SNG projects) and corporate site selection.

Ross is based in the firm's Washington, D.C., office. He has extensive experience in renewable energy from both a transactional and regulatory perspective. He advises project developers, tax equity investors, private equity funds and contractors on developing and financing renewable energy projects. He also focuses on working with energy services companies (ESCOs) and large end users of energy on energy efficiency solutions. In that regard, Matthew actively works with both ESCOs and commercial real estate developers, investors and manages to achieve energy cost

savings through effective energy efficiency management strategies such as utilizing on-site generation and cogeneration, rooftop solar and wind technology and high efficiency lighting and/or HVAC systems.

Earlier this year, veteran energy attorneys Alan Anderson and Britton Gibson joined Polsinelli's Kansas City office. ■

Polsinelli Shughart Expands West to Los Angeles

Polsinelli Shughart can now serve clients' needs coast to coast. The firm has acquired Quateman LLP, California's largest women-owned municipal bond counsel firm. With the acquisition, Polsinelli Shughart adds Los Angeles to its roster of offices which also includes Chicago, Dallas, Denver, Kansas City, New York, Phoenix, St. Louis and Washington, D.C. Quateman Managing Partner Lisa Quateman, who founded her firm 22 years ago, remains managing partner of the Los Angeles office. "We plan on building the Los Angeles office on the base of our core practices as we have recently done in Chicago, Phoenix and Denver," said Polsinelli Shughart Chairman Russ Welsh. The addition of Los Angeles expands the firm's national footprint to nine states and 16 cities. ■

About Polsinelli Shughart's Renewable Energy Development Group

Polsinelli Shughart is a recognized leader in renewable energy. Our lawyers have broad experience in all aspects of the development, financing, operation and purchase and sale of renewable energy assets, including experience in the wind, solar, biomass, geothermal, biofuels and other renewable energy sectors. We represent developers, utilities, investors, owners and lenders in connection with projects at all stages, from investment and tax

structuring, through development, construction, financing and operations. We draw on our historical experience in the energy industry in representing our renewable energy clients with respect to strategic transactions and litigation. Polsinelli Shughart has more than 570 attorneys in 16 cities from Los Angeles to Washington, D.C., including offices in Dallas, Denver, Kansas City, Chicago, New York and St. Louis. ■

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Polsinelli Shughart is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.