

Addressing Renewable Energy Project Development Risk

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Primary Elements of Risk

- Equipment cost and performance
- Construction timeline and cost
- Fuel supply availability and cost
- Electricity price and REC values
- O&M cost
- Creditworthiness of counterparties
- Interest rates



Mechanisms to Allocate and Minimize Risk

- Third party project ownership
- Long-term Fuel Supply Agreement / PPA
- Major equipment procurement agreements
- EPC agreements
- Liquidated Damages
- Parent Guaranty and Letters of Credit
- Government financial incentives
- Interest rate swap / collar



Third Party Ownership

- Turn-key project: third-party assumes risks
 - Procurement, ownership, construction, operation and maintenance, removal
 - Third-party may allocate risk to others
 - Non-recourse to host
- Allows full utilization of tax incentives
- Purchase option for host
- Typically coupled with long-term PPA
- Site lease or site license by host



Long-Term Fuel Supply and Power Purchase Agreements

- Full vs. specific requirements
- Guaranteed performance dates
- Guaranteed minimum supply / output
- Price: fixed or indexed
- Timing of payments
- Early termination / default
- Liquidated damages
- Allocation of incentives, RECs, attributes
- Mutual creditworthiness requirement



Major Equipment Procurement Contracts

- Guaranteed completion and delivery date
- Payment milestones
- Performance warranty
- Bonus / LD provisions
- Suspension
- Termination: convenience / default
- IP ownership
- Indemnity and limitation on liability
- Installation / long-term service agreement
- Short-term subrogation of payments



EPC Agreements

- Full wrap vs. construction management
- Completion / integration of design
- Stacking / full wrap of completion guarantees, performance guarantees, and warranties
- LDs to cover contractual risks / debt service
- Price / change orders
- Termination (convenience / default)
- Indemnity / limitation on liability
- Performance bond / insurance



Federal Financial Incentives

- American Recovery and Reinvestment Act
 - Direct Spending Provisions
 - Smart Grid Technology, Advanced Battery Manufacturing, Renewable R&D / Demonstration Projects, State Energy Program
 - Tax Incentives
 - Extension of the PTC and ITC, Grant Program, Advanced Energy Manufacturing Credit
 - Loan and Bond Programs
 - Renewable Energy Loan Guarantee Program, CREBs



Questions and Contacts

WilmerHale's Energy and Clean Tech practice builds on our strengths in corporate, project finance and development, climate change, energy, intellectual property, tax and real estate law. These strengths, combined with our national and international experience in matters affecting the traditional and alternative energy industries, uniquely position WilmerHale to expertly advise energy and clean technology companies on complex issues.

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