

Renewable Energy Development and Finance

Miller Canfield's multidisciplinary Renewable Energy Development and Finance Team works with clients across the spectrum of needs—our experience in both the private and public sectors includes all aspects of the due diligence, negotiation, structuring, and execution of both project and financing documentation as well as navigating the myriad of regulatory, real estate, environmental, and tax issues. We represent a variety of stakeholders, including utility companies, investors and lenders, developers, and public entities such as municipalities, schools and universities.

The firm's principals involved in various aspects of this practice area average more than 25 years of practical legal experience and include former high-level environment and utility government officials, permit engineers, technical consultants, litigators and appellate advocates. Through that experience, we have developed effective and efficient processes for the staffing, management and reporting of these complex and time-sensitive transactions.

Our engagements typically include representation and due diligence in the follow areas:

Project Structuring

Consultation and collaboration with respect to the potential public and/or private alternatives for structuring and financing of the proposed transaction, based in large measure on both our clients' goals and our broad private and public sector experience

Project Agreement Negotiations, Documentation and Closing

- Drafting and negotiation of all necessary transaction documents
- Coordination and management of the closing process
- Management of the post-closing process as required

Zoning and Land Use Diligence and Resolution

- Assistance with local permitting, zoning and land use, as well as regulatory requirements to confirm project feasibility and compliance
- Review, analysis and management of actions required to resolve issues disclosed as a result of analysis of zoning reports, survey analysis and independent investigation
- Identifying and obtaining necessary site development approvals and permits, including wetlands, floodplains and storm water management permits, and watershed and drain code authorizations
- Coordination of loan document compliance with applicable local law

Real Estate Due Diligence

- Analysis of title commitments, surveys and documents of record, as well as maintenance of identified issues in a single database

Continued

- Preparation of related title and survey objections and requirements to address real estate, development and operational risks, as well as drafting, review and negotiation of effective curative documents
- Review and negotiation of final title policies and endorsements to confirm broadest insurance coverage available to the extent agreed
- Review of underlying lease and easement documentation, to identify issues and to develop necessary amendments
- Review and analysis of estoppel certificates to identify potential project impacts raised by landowners
- Confirmation that the property rights necessary to build and operate the project are in place and that conflicting third-party rights are addressed
- Utilization of an extensive forms bank that permits us to further expedite on an expert and efficient basis the cure of related title matters

Financing Structuring and Documentation

- Drafting, review and negotiation of financing documentation, including application letters, commitments and loan and other financing documents
- Managing the flow of information and documentation to other parties, their counsel and advisors
- Drafting, review and negotiation of opinion letters as necessary

Environmental Regulation and Due Diligence

- Determination and assistance in understanding the patchwork of environmental and natural resource requirements applicable environmental regulations
- Review and counselling regarding the legal and regulatory aspects of environmental, site and engineering assessments and other relevant technical reports, and assistance to clients in navigating the complex and often overlapping state and federal requirements
- Representation in obtaining licenses, franchises, certificates of necessity and other required authorizations and approvals, including representing municipal and private sector clients before state and federal regulators, and negotiating permit conditions and consent decree terms
- Assistance in obtaining environmental permits in all media (e.g.; air, water, wetlands, storm water, solid and hazardous waste, oil and gas), conducting environmental audits and responding to government violation notices and requests for information

Energy Regulation

- Counsel for clients in complex rate making, tariff and service issues; meeting reliability, renewable energy and energy efficiency standards, obtaining required approvals for mergers, acquisitions and sales of jurisdictional regulated utilities and assets; gas and power supply cost reviews and cost recovery, and providing representation and advice in franchise, siting condemnation and certification proceedings for natural gas storage facilities and pipelines and electric transmission lines and generation and distribution facilities

Continued

- Advice and legal opinions on a wide variety of oil and gas leasing, operation and production issues, title examinations for exploration and acquisition purposes, representation of oil and gas clients in administrative proceedings in connection with operating gas wells under vacuum and in connection with well spacing, unitization and statutory pooling

Taxation

- Experience in federal, state and local taxation, including addressing tax issues with public officials at the outset of a transaction
- Advise and issue opinions on qualification for the federal investment tax credit, depreciation of renewable energy assets, state tax credits and local tax incentives, such as tax increment finance
- Advise on property tax liability for new solar and wind development projects
- Meet with state and local public officials to discuss incentives available for development of greenfield and brownfield renewable energy projects

Representative Matters

The following are examples of the breadth of our experience and expertise on behalf of representative clients and in connection with individual engagements described below.

Public/Governmental Off-Takers

- Counsel on multiple wind energy development projects on behalf of lenders, investors and a major utility company developer/acquirer, including representation of various utility companies in acquisition of wind energy projects, some in excess of \$150 million dollars and the development of several new wind energy projects
- Negotiation of a first-of-its-kind-in-Michigan solar lease agreement between a public school district and a solar energy developer. The transaction allowed the developer to design, build, finance, operate and maintain solar arrays on-site at several schools throughout the district. The schools then agreed to purchase the renewable energy generated at a reduced rate, estimated to save the district \$45,000 annually.
- Counsel to universities purchasing all of the output of the solar project that was built, owned and operated by third-party investors and developer
- Underwriter's counsel for a large energy efficiency financing for the State of Delaware, through a state-owned utility created for this purpose, in which improvements were made and paid for by private parties, which were repaid from energy savings. At the time, it was a novel approach to sustainable energy development, and was the first pooled sustainable energy project in the United States.

Tax Equity Investors and Lenders

- Represented tax equity investor and construction lender in financing of 150 megawatt (MW) project valued in excess of \$260 million

Continued

- Lender's counsel in financing of a portfolio with respect to an 81.6 MW wind project
- Represented sponsoring investor in forming and documenting renewable energy investment fund

Utility Companies

- 110 MW aggregate of wind projects in Michigan's Thumb region
- Multiple wind projects in excess of 160 MW
- 50 MW expansion of existing wind project
- Multiple solar projects in excess of 100 MW
- Preparation and revision of easement and option agreements for wind and solar projects

Developers

- Acquisition of 75 MW wind project
- Acquisition of 161.3 MW wind project
- Assisted developers in securing local and state governmental incentives for energy projects
- Advise developers across the country on solar power purchase agreements

Other Renewable Energy Matters

- Negotiated power purchase agreement to acquire 100MW of wind capacity
- Represented numerous companies on the development of Midwest solar projects
- Assisted with environmental permitting of biomass project
- Advised landowners in the negotiation of leases for 100+ acre solar projects
- Advised biomass generating facility owner on incentives from state and local government
- Advised municipal utility on energy project involving acquisition of wind capacity
- Counsel to underwriter of \$60 million in energy efficiency bonds for the State of Delaware