

Practices

Renewable Energy and Electric Power

Fueled by demand for cost-effective and sustainable energy sources, renewable energy development continues to escalate in the United States. Regulatory and economic factors can be challenging in this growing field, requiring experienced legal counsel to effectively navigate the ever-changing terrain.

Akerman assists a wide range of private and public sector clients throughout the United States with the challenges and opportunities emerging from developments in renewable energy and delivery of electric power and natural gas. Our team, which includes former counsel for local governments and state and federal agencies, as well as recognized leaders in Brownfields and infrastructure development, has extensive experience in all facets of environmental, transactional, financing, permitting, and regulatory matters related to green energy projects.

Our work encompasses renewable energy and fuels such as solar, wind, hydroelectric, co-gen, and biofuel, climate change regulation, carbon trading, and major environmental infrastructure project development and project finance. As counsel to both emerging and Fortune 500 companies, our multidisciplinary team provides comprehensive representation in all areas related to project development and project finance, including land use, construction, government affairs, corporate, economic development incentives, and tax credit financing. We regularly guide clients through energy-related transactions, including private equity deals, mergers and acquisitions, capital market

Connect With Us



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Our Team

Related Work

Bankruptcy and
Reorganization
Commercial Disputes
Government Strategies
Intellectual Property
Intellectual Property
Licensing
Intellectual Property
Litigation
International

transactions, and financings. In addition, with longstanding relationships at administrative and regulatory agencies, we counsel clients on complex compliance matters.

International Trade and
Customs
Labor and Employment
Patent Litigation
Patent Prosecution and
Portfolio Management
Real Estate
Tax

Electric Power Regulation & Transmission

- FERC/NERC compliance
- Utility state regulatory and compliance
- Market design/market power and related issues
- Administrative litigation (state and federal) including rate cases and rate design in various jurisdictions
- Regulatory advice before federal, state and regional agencies, such as Regional Transmission Organizations (RTOs), covering facility operations and reliability, including Qualifying Facilities (QFs) status, energy distribution and marketing, grid access and interconnection, net metering, emissions trading, self-generation, and self-supply
- Interconnection agreements and tariffs, net metering agreements and tariffs, queue management, milestones and transmission
- Market restructuring to facilitate renewable generation, storage, and other new technologies in wholesale and retail electricity markets
- Native American Law, First Nations, and tribal negotiations
- Public Utility Regulatory Policies Act (PURPA) Compliance and Avoided Cost Rates
- Federal Power Act (FPA) and Public Utility Holding Company Act (PUHCA) Compliance
- Utility Resource Planning and Competitive Bidding (RFPs)
- Rate and tariff Issues
- Community Solar Programs

- Municipal Aggregation

Power Purchases Agreement (PPAs) and Sales

- Utility-Scale Power Purchase Agreements
- Corporate Power Purchase Agreements
- Prepaid and Other Non-Traditional Power Purchase Agreements
- Virtual Power Purchase Agreements (VPPAs)
- Sleeved PPAs
- International Swaps and Derivatives Association (ISDA), and North American Energy Standards Board (NAESB), based physical and financial transactions, and other hedging of risk through swap arrangements
- Energy-related derivatives Power Purchase Agreements with investor owned utilities, municipal owned utilities, rural co-ops and Commercial and Industrial (C&I) off-takers
- Agreements to buy and sell Renewable Energy Certificates (RECs) and other environmental attributes, and Renewable Portfolio Standards (RPS) compliance and trading
- Agreements to buy and sell capacity attributes
- Structured power supply agreements
- Long term tolls and other power sales arrangements
- Hedge agreements with financial institutions and proxy revenue and generation swaps
- Retail power purchase negotiations with competitive suppliers in de-regulated state jurisdictions

Energy M&A; Strategic Transactions

- M&A and capital markets transactions
- Membership Interest Purchase Agreements (MIPAs)

- Acquisitions and divestitures of projects, portfolios, and development pipelines, including through the use of a Special Purpose Acquisition Company (SPACs)
- Asset auctions
- Mergers and stock transfers
- Purchases and sales of portfolio assets
- Generating equipment purchases and sales
- Due diligence of renewable assets for financing and M&A transactions
- Private equity matters

Energy Facility Finance

- Project finance, acquisition finance, private placements, convertible loans, debt capital markets, state bank funding, and subsidies
- Tax equity transactions and advice on monetization of U.S. federal, state and local tax benefits, including the U.S. federal investment tax credit (ITC) and the federal production tax credit (PTC), as well as other federal, state, and local incentive programs
- Equity Financing
- Tax Review and Considerations
- Project-Level Debt and Back-Leveraged Financing
- Rural Utilities Service (RUS) financing
- Clean Renewable Energy Bonds (CREB) financing
- Property Assessed Clean Energy (PACE) and Commercial Property Assessed Clean Energy (C-PACE) financing
- Registered and privately-placed taxable and tax-exempt debt offerings
- Construction and long-term financings with commercial lenders, term loans, back leverage, project bonds and private placements

- Leveraged leases

Power Project Development

- Projects spanning gas, coal and renewable facilities (solar, wind, biomass, biofuels, hydro, and geothermal)
- Services across all required legal disciplines (project agreements, tax, real property, regulatory, environmental, energy performance contracting (EPC), finance & land use)
- Joint ventures for development
- Decommissioning and state regulatory compliance and agreements. (for example, we have experience in reclamation agreements required by Illinois Dept. of Agriculture)
- Renewable Energy Credits (RECs) and Solar Renewable Energy Credits (SRECs). These are credits that are commodity Renewable Energy Credit tradable, environmental asset that represents the clean attributes of solar electricity. (in Illinois 1 REC = 1,000 kWh). This opportunity is different than a net metering agreement with the utility where system owners are credited for excess generation. RECs are valued for the total energy production from a solar array and therefore represents the carbon or pollution avoided from the grid. RECs are a way to track and monetize these environmental benefits and compensate owners for the countless benefits created by the project.

Permitting

- Construction and operating permits
- Required certificates and licenses including environmental and historical and cultural resource reviews and reporting.
- Approvals governed by environmental statutes and regulations, including National Environmental Policy Act (NEPA), Endangered

Species Act (ESA), California Environmental Quality Act (CEQA)

Real Estate

- Strategic site control and Real estate work
- Real estate purchases
- Ground leases
- Rooftop leases and licenses
- Options to lease
- Title Examination, title work, and procurement and negotiation of title commitments and insurance
- Easements and Rights-of-Way
- Land Use, Zoning, and Subdivision Approvals
- Private and Public Land/Resource Leases
- Title and site control issues arising in connection with American Indian and Tribal Law
- Surface Use Agreements
- Mineral Rights subordination and surface waiver agreements

Environmental

- Facility siting arrangements, permits and certificates
- Permitting and compliance for power generation facilities, including distributed energy resources (gas, coal, hydro, wind, solar, biofuels, biodiesel, biomass)
- Permitting and compliance for industrial concerns
- Due diligence

Construction; Procurement; Operation and Maintenance

- Build Own Transfer Agreements

- Design Build Operate Manage (DBOM), Design-Build, Design-Bid-Build Agreements
- Development Services and Construction Management Agreements
- Engineering, Procurement, and Construction (EPC) Agreements
- Equipment Supply and Acquisition Agreements
- Fuel Supply Contracts
- Gathering, Processing, and Transportation Agreements
- Master Services Agreements (MSAs)
- Operation and Maintenance Agreements
- Shared Facilities Agreements
- Wind Turbine Supply and Commissioning Agreements
- Power projects and other industrial construction agreements
- Procurement procedures concerning the construction and operation of renewable energy facilities
- Equipment procurement, TSAs, design contracts, EPC agreements, Safe Harbor equipment procurement agreements, Master Supply Agreements and Frame Agreements
- Dispute management
- Litigation

Taxation (Federal and State Tax Incentives & Grants)

- Tax equity advice on monetization of U.S. federal, including the U.S. federal investment tax credit (ITC) and the federal production tax credit (PTC), as well as other subsidy programs
- Tax benefits and incentives enabled by the Inflation Reduction Act (IRA)

- Tax review and considerations
- State and federal income taxes
- Property taxes
- Sales and use taxes
- State tax credits and incentives
- Tax litigation

Electric Vehicle (EV) Infrastructure Development

Micro Grid Development and Funding

Nuclear Energy Facility Siting and Permitting

Representative Experience

- Assisted energy developer with project finance structure and permitting strategy for redevelopment of 45 MW decommissioned coal fired power plant to use biomass solid fuel utilizing next generation coop structure and state based investment tax credits.
- Assisted energy developer with project financing for various biomass and organic fertilizer facilities in the Midwest and West including assistance with tax credit financing utilizing the renewable energy investments tax credits (ITC's).
- Representation of Owner/Developer of a 75 megawatt biomass-energy plant involving the conversion of a former paper mill into a state-of-the-art power generation facility, involving litigation in three forums, resulting in client recovery of damages and dismissal of contractor claims.
- Assisted large utility client with site selection, acquisition and development for a nuclear power

plant project.

- Assisted with power procurement negotiations related to a 60+ acre data center campus development in Texas including a negotiated sleeving arrangement on power.
- Assisted a short list of confidential clients with delivery of data center campuses intended for proprietary use and master planned for 350+ MW. Projects of this scale have allowed us to deploy our core competencies associated with grid power procurement and PPA negotiations and renewable energy procurement and/or energy facility development.
- Assisted power procurement negotiations and sleeving arrangement related to a 90+ acre data center campus development in Texas.
- Assisted large tech company with special contract negotiations development of tariff to allow them access to market based rate power pricing.
- Assisted various clients with purchase of unbundled RECs.
- Assisted a major utility in projects for the development and expansion of distributed energy resources (DERs), battery storage and mobile capabilities, advanced metering and rate structuring, and energy efficiency initiatives, and in the resulting challenges of connecting and dispatching to the power grid and the impact on load management.
- Assisted a big box retailer with planning and financing issues associated with 100 MW Multi-Site deployment of roof top solar across more than twelve jurisdictions for a major big box retailer.
- Assisted various clients with the following solar facility projects including issues related to development and permitting, FERC regulation, electrical power agreements (PPAs) and master lease agreements, interconnection agreements,

net metering, renewable energy investment tax credits (ITC) and monetization, and renewable energy credits (REC) and monetization.

- 4 MW rooftop and 22MW offsite solar deployment with two New Jersey Housing Authorities.
- 3MW solar system deployment with Missouri municipality.
- 6MW solar system deployment with Texas County.
- 2MW solar system deployment with Massachusetts municipality.
- 6 MW solar system deployment with Massachusetts school district.
- 2MW solar system deployment with Maryland municipality.
- 5 MW solar system deployment with New Mexico prison facility.
- Solar system deployment on behalf of a Missouri corporation with a solar developer.
- Representation of a solar site developer negotiating with Wal-Mart for solar development rights.
- Assisted a solar developer with 54 MW of total installed production capacity. Our work included project financing, project development and permitting, FERC regulation issues, electrical power agreements (PPAs) and master lease agreements, interconnection agreements, net metering, renewable energy investment tax credits (ITC) and monetization, and renewable energy credits (REC) and monetization on various locations throughout Texas, New Jersey, Maryland, Massachusetts, New Mexico, Hawaii, and Georgia.
- Assisted large bank and affiliated leasing company with sale lease-back program to

facilitate over 50MW of community solar project various eastern states, including New York and Massachusetts.

- Assisted a solar developer with JV Agreement negotiations and MIPA negotiations on a 1GW, multi-phase, solar project spanning two western states on tribal lands.
- Assisted a solar developer with JV Agreement negotiations and MIPA negotiations on a 375 MW multi-phase solar project in New Mexico. Ongoing work on this project includes assisting same group with project financing, project development and permitting, FERC regulation issues, electrical power agreements (PPAs) and master lease agreements, interconnection agreements, net metering, renewable energy investment tax credits (ITC) and monetization, and renewable energy credits (REC) and monetization.
- Assisting solar developer with development and finance of a 500MW portfolio of community solar. Our work includes project financing, project development and permitting, FERC regulation issues, electrical power agreements (PPAs) and master lease agreements, interconnection agreements, renewable energy investment tax credits (ITC) and monetization, and renewable energy credits (REC) and monetization on various locations throughout US.
- Assisted energy developer with real estate assemblage, land use, permitting, project finance structure and permitting strategy for development of 200 MW, 300 MW and 350 MW solar facilities in Illinois.
- Assisted energy developer in finance structure of several wind farm facilities in Missouri and Illinois.
- Assisted energy company in securing RUS financing for four solar energy facilities in Illinois.

- Assisted a solar developer in securing real estate and options in connection with prospective solar facilities in Illinois.
- Representation of an acquiror of a solar photovoltaic energy project where the generated energy will be purchased under a long-term power purchase agreement by the largest municipal electric utility in the State where the project is located.
- Representation of an acquiror of a solar photovoltaic energy project located at a distribution center of a national retailer in Riverside, CA where the solar system will be built on land that is part of a development project of a global alternative asset manager and the target entity will sell the generated energy under long term contracted offtake by the distribution center.
- Representation of an acquiror of a portfolio of solar photovoltaic energy projects located at several schools in Middlesex County, NJ that are being developed by the target entity under long term contracted offtake with the school district's Board of Education.
- Representation of an acquiror of a portfolio of solar photovoltaic energy projects located at several schools in an Ocean County, NJ that are being developed by the target entity under long term contracted offtake with the school district's Board of Education.
- Representation of an investor in the acquisition of a significant minority stake in a solar development company with a focus on developing projects in the Northeast.
- Represented tax-credit investors as real estate counsel in connection with over 100 ground mounted solar projects.
- Represented a developer in the leasing of a portion of a landfill for the construction and

operation of a waste to energy power plant in Florida.

- Represented a developer as real estate counsel in development of a 75 MW biomass power plant in Florida.
- Represented an equity investor as real estate counsel in the development of a biomass power plant in Massachusetts.
- Represented a client as real estate counsel in the purchase of landfill gas power plants in New York.
- Real estate advice on solar energy projects in the Northeast and South.