

# Renewable Energy

Governments and energy companies alike are investing heavily in renewable energy projects and cutting-edge technologies to produce cleaner power and meet increasing demand.

Cozen O'Connor's Renewable Energy team has deep experience representing national and international clients in their most significant renewable energy projects. The firm can provide sophisticated legal advice to clients operating in the areas of offshore and onshore wind, solar and photovoltaic, hydroelectric, biomass/biofuels, battery storage, and other renewable energy projects.

With leading attorneys in the full range of relevant practice areas, Cozen O'Connor is able to guide clients through the entire lifecycle of renewable energy projects — from conception, permitting, regulatory approvals, and compliance to construction, financing, operation, and exit. The firm can quickly assemble geographically diverse multi-disciplinary teams and partner seamlessly with in-house and outside counterparts to resolve a wide array of logistical, technical, and legal challenges.

Cozen O'Connor's core renewable energy capabilities include:

## Utility & Energy

The firm represents utility companies, renewable energy developers, manufacturers, investors, lenders, and large energy consumers in negotiation of sophisticated commercial contracts, conveyance of real property and real estate interests for siting of energy projects, pursuit of federal and state government incentives, regulatory filings and compliance, agency outreach, permitting and approvals, and civil and administrative litigation. Our team has experience responding to state agency solicitations for renewable energy project bids and, if selected, representing clients with regulators during development and operation of the project. We can assist in obtaining capacity interconnection rights, negotiating power purchase agreements with and on behalf of power off-takers, and addressing alternative energy credit ownership issues.

## Environmental & Regulatory

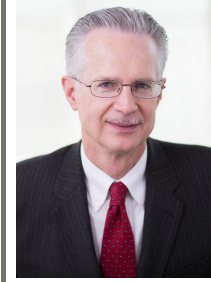
Cozen O'Connor's Environmental team supports every phase of renewable energy projects, including application, permitting, mitigation, regulatory compliance, and litigation. Our environmental lawyers help clients navigate local, state, and federal permit requirements to help secure all necessary project approvals and defend against third-party or governmental permitting challenges. They lead state and federal-level project applications, design detailed environmental management and compliance plans, spearhead remediation of contaminated sites for renewable energy uses, and troubleshoot environmental regulatory issues and routinely interface with government agencies.

## Public Strategies

Cozen O'Connor's bipartisan government affairs firm, Cozen O'Connor Public Strategies, has deep experience lobbying for and advocating on behalf of critical but controversial development projects, including in the area of renewable energy infrastructure. The firm coordinates community outreach campaigns, marshals necessary statements of public support from key stakeholders, interfaces with elected and appointed government officials, and drafts legislative proposals that can meaningfully advance the interests of the renewable energy industry on the state and federal level.

## Real Estate and Land Use

Cozen O'Connor is experienced in managing real estate and site control issues in connection with energy project development, including site acquisition, ground leases, option agreements, zoning, land use, and development matters. We provide real estate services in the areas of rights of way,



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## Related Practice Areas

- Business
- Government & Regulatory
- Infrastructure
- Utility & Energy

easements, substation interconnection, and approvals from local zoning and land use agencies. We appear on our clients' behalf at zoning hearings regarding variances, special exceptions, conditional uses, and substantive validity challenges to zoning ordinances, and we frequently negotiate agreements with landowners and governmental entities to clear any hurdles to project advancement.

## **Construction Law**

Construction attorneys at Cozen O'Connor are widely recognized as go-to counsel for renewable energy infrastructure development projects. The firm represents owners/developers, contractors, construction managers, architects, engineers, and subcontractors and is engaged at the earliest stages of complex, multi-year projects. Cozen O'Connor construction attorneys handle bidding and contract negotiation, beginning-to-end construction execution support, and resolution of execution-phase issues and disputes. When litigation is unavoidable, Cozen O'Connor's construction advocates have extensive experience successfully representing clients in mediations, DAB/DRB proceedings, arbitrations (both domestic and international), and trials, including in "Mega Project" disputes with amounts in controversy of more than \$1 billion.

## **Maritime & Logistics**

Cozen O'Connor has extensive experience representing U.S. and foreign entities involved in maritime and transportation activities related to energy project development, including offshore drilling and dredging, construction, cable and pipe laying, and chartering and operation of vessels. Our world renowned maritime attorneys can assist with the financing and registration of vessels and other marine equipment, compliance with U.S. cabotage laws including the Jones Act and Passenger Vessel Services Act, riparian and littoral rights, and seabed permitting and right of way grants. Attorneys also have notable experience leveraging government funding sources, contracting for transportation of high-value components, and interfacing with U.S. Customs and Border Protection, Federal Maritime Commission, U.S. Maritime Administration, and Federal Motor Carrier Safety Administration.

## **Labor & Employment**

Large-scale renewable energy infrastructure development typically creates both permanent and temporary employment opportunities and generates demand for specific categories of employees. Cozen O'Connor handles both traditional labor law matters (workplace relations, collective bargaining agreements, labor arbitrations, and unfair labor practice proceedings) and employment litigation (defense of claims of discrimination, harassment, wage and hour violations, defamation, non-compete violations, and wrongful discharge). The firm also has a robust Immigration practice, which provides innovative and cost-effective solutions to U.S. and multinational companies in all aspects of corporate immigration and employment.

## **Corporate**

The firm's award-winning Corporate Practice is able to provide comprehensive corporate and transactional counsel to renewable energy clients. Our attorneys have experience advising foreign and domestic energy industry clients on corporate structure, joint venture formation and financing, M&A transactions, and taxation.

## **Experience**

### ***Wind***

- Represented an EPC contractor in pursuing £330 million in breach of contract, variation, and delay claims against the project owner arising out of the construction of a 550 MW offshore wind farm in the North Sea off the coast of the United Kingdom, one of the first so-called "Phase 2" (deep water)

wind farms and the largest offshore wind farm of its kind ever built. The claims arose out of alleged variations to the welding and non-destructive testing (NDT) code requirements the project owner imposed on the contractor, and the project owner asserted counterclaims for alleged fabrication defects, ranging in value from £140 million to £330 million. The case involved highly technical issues surrounding welding codes, NDT codes, and the structural integrity of the foundations for 140 individual wind turbine generators. Wendy's involvement began shortly after offshore installation began in 2009 (when the disputes first arose). She served as project counsel to the EPC Contractor through the conclusion of construction, and then continued as lead arbitration counsel for 8+ weeks of hearings in London. The arbitration was administered by the LCIA, and was conducted using the LCIA International Arbitration Rules.

- Represent the global leader in offshore wind, Ørsted, a Danish company with wind farms in Denmark, the United Kingdom, Germany, the Netherlands, Taiwan, and the United States. Cozen O'Connor has served as Ørsted's U.S. regulatory counsel since 2018.
- Assisted Ocean Wind, a subsidiary of the Danish company Ørsted, in the preparation and prosecution of its application to the New Jersey Board of Public Utilities for the rights to build up to 1,100 megawatts of offshore wind power off the coast of New Jersey, resulting in an award of all 1,100 megawatts of capacity. This was the first offshore project of that scale to be awarded to any one offshore wind bidder in the United States (Ocean Wind I).
- Represented Ocean Wind II, a subsidiary of Ørsted, in the preparation and prosecution of its application to the New Jersey Board of Public Utilities in the second New Jersey offshore wind solicitation, resulting in an award of the rights to construction an 1,148 megawatt offshore wind project off the New Jersey coast (Ocean Wind II).
- Represented Ocean Wind in petitions to the New Jersey Board of Public Utilities for authority to acquire Capacity Interconnection Rights for the Ocean Wind I project.
- Represent Ocean Wind in petitions before the New Jersey Board of Public Utilities for authority to site the onshore electric transmission lines and acquire related easements for the Ocean Wind I project.
- Represent Ørsted and its subsidiaries in various real estate transactions relating to offshore wind projects along the eastern coast of the United States.
- Assisted a client in the drafting of legislation that gave New Jersey qualified offshore wind projects siting, permitting and eminent domain rights related to the onshore electric transmission and distribution elements of such projects.
- Assisted Mehoopany Wind in the permitting and approvals for a 141 MW wind farm. This 88-turbine project spans 9,000 acres in four townships in Wyoming County, Pa. and is currently the largest wind facility in Pennsylvania. We served as the project's lead counsel responsible for the legal aspects of securing environmental permits, zoning, subdivision, and land development approvals. We worked in concert with the client to obtain all of the required zoning and land use approvals from the four townships and the county, and assisted with related real estate issues and represented the project on environmental permitting legal issues before the PADEP and the U.S. Fish and Wildlife Service, including protection of endangered and threatened species.
- Engaged in offshore wind component transportation and installation on behalf of a major European offshore contractor. Advised on all aspects of the Jones Act, Dredging Statute, Towing Statute, and Passenger Vessel Services Act in relation to proposed vessel operations involved in the transportation and installation of subsea cable, offshore substations and foundations, monopiles,

wind turbine components, and scour protection for various projects on the U.S. East Coast. In addition, we reviewed contracts with project owners relating to same.

- Engaged in offshore wind turbine generator installation on behalf of a major European offshore contractor. Advised on the application of the Jones Act in relation to proposed vessel operations involved in the installation of wind turbine generator units for various projects in the United States.
- Evaluated and developed a Jones Act-compliant solution for the for the installation of subsea cable, offshore substations and foundations, monopiles, wind turbine components, and scour protection on behalf of a major European offshore contractor. Also submitted a ruling request on behalf of such contractor to U.S. Customs and Border Protection to establish a record of the solution's compliance with U.S. cabotage laws.
- Advised on the application of the Jones Act, Passenger Vessel Services Act, and U.S. shipbuilding contract law on behalf of a major U.S. shipbuilder with regard to a joint venture for the construction and financing of a series of Jones Act-compliant Service Operation Vessels for use in the U.S. offshore wind market.
- Negotiated a joint venture on behalf of a major U.S. vessel operator with a major European vessel operator in the offshore wind market for the construction, financing, and ship management of a series of Jones Act-compliant Service Operation Vessels for use in the U.S. offshore wind market. We drafted and are currently negotiating a shipbuilding contract with U.S. shipyards.
- Advised on all aspects of the Jones Act, Passenger Vessel Services Act, and U.S. shipbuilding contract law in the financing of a start-up crew transfer vessel owner/operator entering the U.S. offshore wind market.
- Advised the developer of an 80 megawatt wind farm in Iowa on Clean Water Act Section 404 permitting and the applicability of nationwide permits to site construction activities that the local district engineer believed triggered formal Army Corps review.

#### **Hydro**

- Defended a project owner (a utility company) against claims by a contractor arising out the refurbishment of a 1912 hydroelectric power plant in Millers Falls, Mass., on the Connecticut River. The contractor sought payment for extra work and delays, and the project owner counterclaimed for defects in the refurbished turbine installation. The case involved highly technical vibration analysis and other technical issues and lasted approximately two years (including seven weeks of hearings) before a AAA panel. The matter settled after hearings concluded but before an award was issued.
- Advised a hydroelectric facility on amending its project boundary and the regulatory requirements under the Federal Power Act in connection with a proposed restructuring.

#### **Solar**

- Represented The Trustees of the University of Pennsylvania in drafting and negotiating a 25-year solar power purchase agreement for up to 220 megawatts of solar energy, capacity, and AECs from a planned solar farm – the largest solar power project in Pennsylvania.
- Represented a publicly traded REIT in a transaction to transform several surface parking lots shared by multiple office buildings owned by the client into canopy-style solar generating facilities (with parking beneath) to provide electrical energy for those buildings.
- Represented a developer of utility-scale solar farms in Ohio and Florida in acquiring necessary regulatory approvals, negotiating power sales agreements, and associated due diligence reviews.
- Represented a regulated electric utility in the development of utility-owned solar generation

programs, including program development, associated agreements, and obtaining regulatory approvals.

### ***Biofuel***

- Represented a biofuel refiner in waiver petition filed with the EPA demonstrating pursuant Clean Air Act §211(f) that a biofuel-gasoline blend was “substantially similar” to a prior EPA waiver, and therefore did not cause or contribute to a failure of any vehicle emission control device or system.
- Represented a biofuel refiner in connection with the registration of a biofuel additive with the EPA pursuant to the Clean Air Act §211(b). We worked with health effects consultants in developing Tier 1 and Tier 2 information on combustion, evaporative emissions, and toxicity in support of registration.

### ***Other***

- Represented the developers of a major thermal energy plant in the negotiation of comprehensive energy sales agreement and other transaction documents and the securing of project finance.
- Served as main drafter of legislation permitting utilities to own renewable energy projects and efficiency measures and to earn a full return on the investment.
- Defended, in both state and federal court, a New Jersey Board of Public Utilities’ decision that allowed utilities to retain ownership of renewable energy certificates for pre-existing power purchase contracts.