

Our Renewable Energy Practice



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Our Renewable Energy Practice

Crowell & Moring lawyers represent domestic and international clients in a wide range of renewable energy industries, including wind, solar, biomass, hydroelectric, refuse derived fuel, municipal solid waste, geothermal, and other technologies and “green” initiatives. With over 500 attorneys in fully integrated offices in Washington, DC, California, New York, Alaska, London, and Brussels, and affiliated offices in Cairo and Riyadh, Crowell & Moring keeps pace with clients all over the world in the fast moving, innovative business of renewable energy. We have advised clients in the renewable energy industry, ranging from large private and publicly traded companies to emerging companies and start-ups, in a wide variety of matters, including project development and implementation, financing, joint ventures and other corporate transactions, energy regulation, tax, intellectual property, environmental, government contract, labor and employment, litigation, public policy and lobbying, and dispute resolution.

Project Development and Implementation

Our attorneys have advised renewable energy companies on all aspects of project development and implementation, including:

- » Letters of intent, memoranda of understanding, non-disclosure and confidentiality agreements, feasibility studies and terms of reference, term sheets, and other preliminary negotiations and documentation among commercial parties;
- » Structuring, negotiating, and documenting of joint ventures, limited liability companies, corporations, and partnerships;
- » Due diligence regarding potential commercial parties and counterparties;
- » Legal and regulatory analysis, including incentives and funding;
- » Tax implications and planning;
- » Negotiation and documentation of interconnect agreements, equipment purchases, engineering, procurement and construction contracts, power purchase agreements, land leases and easements, royalty agreements, financing and loan agreements;
- » Federal and state permits and licenses – Federal Energy Regulatory Commission (FERC) transmission access, hydroelectric pre-licensing, and preliminary licensing, Bureau of Land Management, Forest Service, and EPA permits, environmental impact reports and statements, and state and local licensing.

Corporate/Securities

Crowell & Moring’s Corporate/Securities lawyers offer a full range of corporate transactional and counseling services to companies in the renewable energy industry across the United States and internationally. Our lawyers handle complex corporate transactional, governance and compliance matters for large public companies, mid-sized and emerging businesses and privately held firms. We assist our clients with sophisticated business transactions and arrangements, including mergers and acquisitions, joint ventures, corporate finance matters, venture capital and private equity financing, initial public offerings and other securities offerings and compliance, complex corporate governance and compliance issues, power purchase agreements (PPAs), other commercial contracts, and intellectual property licensing.

For our renewable energy clients, our Corporate attorneys regularly team with attorneys in other practice areas to provide seamless and efficient access to the broad range of multi-practice expertise necessary to optimize value for our clients in any complex transaction. In renewable energy industry transactions, we typically coordinate closely with attorneys in our Energy, Environmental and Natural Resources, Tax, Antitrust, Labor and Employment, and Intellectual Property practice areas, calling upon lawyers with the appropriate expertise at various stages of the transaction to address any legal issues in those specific subject matters.

In the global economy in which the renewable energy industry operates, we find that clients internationally are looking to experienced U.S. transactional lawyers to structure and negotiate their complex corporate transactions regardless of jurisdiction or location. Our Corporate attorneys are answering this call, working with clients not only in the United States, but also across Europe, Russia, the Middle East, Asia and India.

Tax

In the renewable energy industry, taking advantage of federal and state tax incentives is often integral to success. Crowell & Moring's Tax attorneys can assist renewable energy clients with all aspects of developing and implementing a successful tax strategy. Partnering with our Corporate attorneys, we have extensive experience in counseling clients in all aspects of corporate tax planning for transactions including equity ownership and debt financings, joint ventures, and acquisition and disposition transactions. We also have counseled clients on renewable energy production tax credits and investment tax credits, advised clients on state and local income, sales, and excise tax issues, provided advocacy on behalf of our clients to congressional tax-writers and administrative officials, and represented clients in tax audits, administrative appeals and in litigation before the U.S. Tax Court, the Court of Federal Claims, U.S. district courts, and in many state courts.

Intellectual Property

Crowell & Moring provides full service intellectual property legal services, including the protection and defense of patent, trademark, copyright, and trade secrets in a wide variety of technological and commercial fields. Our intellectual property practice employs an integrated approach that by bringing our experience and judgment to bear on the matters we handle provides value. For example, our Intellectual Property litigators have substantial trial expertise in complex intellectual property litigation. Our patent prosecution attorneys draw on this experience to prepare and prosecute patent applications designed to withstand attacks that frequently occur during litigation. We also design and implement licensing techniques and technology transfer agreements for all types of intellectual property assets. Our attorneys regularly conduct training seminars on intellectual property protection and assist clients on design and implementation of internal intellectual property development and protection policies.

The renewed interest in utilizing alternative technologies to protect and preserve the environment is unmistakable. As the demand for renewable energy increases, so does the need to develop next generation clean technologies. Crafting a strong intellectual-property strategy for these technologies requires a deep understanding of both the technological innovations that provide a competitive advantage and also of the domestic and foreign legal framework in which rights in those innovations exist and are enforced. In this regard, Crowell & Moring attorneys work across practice groups and across offices to provide full service legal representation to our clients. Our attorneys come from a wide variety of industries, providing them with extensive knowledge of renewable energy creation, utilization and storage technologies. This is important as we assist our clients in developing and protecting technologies that are changing the way people regard the environment and their energy use.

We work closely with our clients who create and commercialize renewable energy and next-generation clean technologies. Our attorneys have prosecuted and obtained patents for our clients across the full spectrum of such technologies. We have also done extensive product clearance studies for electric vehicle designs,

fuel cells, and power turbine systems, negotiated and implemented technology transfer agreements in solar energy systems, and enforced patents on control systems for solar arrays. We also have assisted clients in preparing and presenting patent applications concerning next generation hydrocarbons as well as handling the licensing of these patents to the leaders in the industry. Our attorneys have guided our clients in building assets, capturing value, avoiding risks, and executing transactions relating to renewable energy and next generation clean technologies.

Green Construction

Crowell & Moring attorneys advise clients on a variety of existing and emerging “green” building standards, practices, and guidelines, including the Leadership in Energy and Environmental Design (LEED) rating system, Green Globe, REGREEN standards, as well as local regulations and guidelines. We have prepared for clients detailed analyses of these green building certification programs. To better assist our clients, several firm attorneys have earned certification as a LEED Accredited Professional. We also have counseled clients on Federal Trade Commission (FTC) rules for marketing “green” products.

Our construction practice services both owners and contractors in navigating the potentially troublesome future of striving to meet new consumer expectations for green building practices, including pertinent contract clauses, certification issues and insurance coverage for new or unproven green materials. Crowell & Moring has a long history of dealing with federal, state and local agencies in both the negotiation and performance phases of a construction project, a background that will serve clients well when attempting to comply with ever-evolving standards for green building construction and sustainability.

Regulatory and Government Relations

Energy

Any of the range of renewable and clean-tech sources of energy that generate electricity will also generate issues of regulation by the Federal Energy Regulatory Commission (FERC). Sellers and buyers of such power will need to assure that they have access to the transmission grid and the necessary interconnect arrangements in order to deliver it to the market, as well as the necessary permits to buy and sell the power. They will also need assistance in assuring that they are structured so as to minimize regulatory burdens while maintaining compliance with all applicable FERC requirements such as data collection, reporting and standards of conduct. All of these are constantly changing, and our clients benefit from our ability to keep them up-to-date with developing public policy and assure that they are optimizing their opportunities under the available programs. Hydroelectric projects are also subject to FERC’s jurisdiction. These are all areas in which Crowell & Moring’s energy lawyers have decades of experience.

Environment and Natural Resources and Renewable Energy

By their nature, renewable energy initiatives implicate a wide range of environmental and natural resource issues. Wind farms, solar energy fields, biofuel facilities, and other alternative energy projects involve a complex web of land use planning and media-specific, multi-jurisdictional permitting. These projects, and associated transmission lines and ancillary facilities, are frequently challenged by community organizations concerned about aesthetic and other impacts on landscapes, watersheds, and flora and fauna. For example, wind farms are often delayed over their potential effect on endangered species, eagles and raptors, migratory birds, and bats. Building a large-scale renewable energy project therefore requires careful strategic planning and community outreach initiatives.

Crowell & Moring’s Environment and Natural Resources lawyers can guide clients through the complex framework of legal, scientific, and policy issues surrounding renewable energy projects. Our lawyers have built a national reputation in such areas as environmental planning, endangered species regulation, federal land use, water and air quality, climate change, nanotechnology, brownfield redevelopment, and litigation.

We also have extensive experience working with Congress, the environmental and natural resource agencies, and courts developing, negotiating, and litigating environmental and natural resources legislation and rules on behalf of our clients. We are proud of our commitment to client service and our creative approach to problem solving.

The following is a brief description of several of our relevant practice specialties:

Climate Change

Crowell & Moring environmental lawyers are actively helping guide our clients through the fast-changing realities of a carbon-constrained world. We have advised clients on a myriad of climate change issues and potential liability, including carbon regulation and policy, sequestration, and the application of the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) to carbon emissions from large-scale power plants and other facilities. We have also defended major natural resource companies involved in global warming tort litigation. Our partners with climate change expertise have served as Deputy Administrator, Chief of Staff, and Deputy General Counsel in the U.S. Environmental Protection Agency (EPA).

Endangered Species

Our lawyers are at the forefront of shaping the law under the ESA, the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), and other wildlife protection laws. In particular, we have represented clients in all aspects of the ESA, including listing and delisting endangered and threatened species, designating critical habitat, recovery planning and species reintroductions, habitat conservation planning, negotiating incidental take permits, and consulting with the U.S. Fish and Wildlife Service and National Marine Fisheries Service on federal permits and other actions. We have also litigated ESA issues in all federal circuit courts of appeal and before the U.S. Supreme Court. One of our partners is serving as an industry representative on the Secretary of the Interior's Federal Wind Turbine Guidelines Advisory Committee.

Environmental Impacts and Historic Preservation

Our lawyers are experienced in guiding land developers, mining and timber companies, telecommunications providers, renewable energy firms, and other clients through the complex environmental planning requirements of NEPA and the National Historic Preservation Act. We also defend those planning efforts when they are challenged by citizen groups, neighboring landowners, and other entities in court.

Federal Lands

Because one-third of the land base in the United States is owned by the federal government, we assist a wide range of resource developers in obtaining access to those federal lands. We also frequently defend their interests in administrative appeals and litigation. Our efforts have included litigating with and against, and appearing before, the federal land management agencies to secure favorable resource planning policies and decisions under the Federal Land Policy and Management Act (FLPMA), the National Forest Management Act (NFMA), the Alaska National Interest Lands Conservation Act (ANILCA), the Healthy Forests Restoration Act of 2003, the Wild and Scenic Rivers Act, the Wilderness Act, and NEPA. We have performed the same tasks in securing access for clients to resources by sale, lease, permit, or land exchange under FLPMA, NFMA, the General Mining Law, the Mineral Leasing Act, the Onshore Oil and Gas Leasing Act, the Outer Continental Shelf Lands Act, the Submerged Lands Act, and other federal land laws. Among our Supreme Court victories concerning federal land issues is the principal federal land planning case that curtailed the ability for activists to challenge federal land management plans. One of our partners, while serving as counsel to the Senate Energy and Natural Resources Committee, was the principal staff member in charge of drafting FLPMA, NFMA, and ANILCA. Three of our partners have served in the Department of the Interior as Deputy Under Secretary and as attorney-advisors in the Solicitor's Office.

Water Quality

Our water quality practice encompasses administrative and judicial enforcement proceedings, citizen suits, legislative efforts, participation in rulemakings, and judicial challenges to those rules. Our lawyers have advised numerous developers, trade associations, and other clients on point source discharge and storm water permitting issues, wetland development questions, and complex jurisdictional matters involving the scope of “navigable waters” and the exemption from permitting for farming, silviculture, and ranching activities. Two of our partners have served as Associate General Counsel for Water and Assistant Administrator for Solid Waste and Emergency Response in EPA.

Labor & Employment

Our Labor & Employment lawyers help companies meet the challenges of the modern workplace, both in the United States and in Europe. Our experience includes litigation and counseling related to federal and state wage-and-hour laws, discrimination laws, union organizing campaigns, disputes over the interpretation of collective bargaining agreements, strikes, picketing, and boycotts. We regularly represent clients in class action wage and hour and EEO litigations, as well as in ERISA litigations. We also assist clients in disputes involving trade secrets, non-competition agreements, executive compensation, and the drafting and implementation of personnel policies and procedures. Our extensive experience with employers in the engineering, construction, transportation and manufacturing industries has translated into an understanding of the labor and employment issues facing our renewable energy clients.

With the Green Jobs movement a focal point of the new Administration, our clients in the renewable energies industry will be faced with important choices about how to structure their workforce and which “green energy” incentives make long-term business sense. In making these decisions, employers must consider the complex web of existing labor and employment laws and regulations, as well as new and emerging laws specific to “green energy.” And with sweeping changes to the nation’s labor laws on the horizon and a White House more sympathetic to organized labor, employers will face new challenges relating to unionization, particularly in emerging industries or businesses that complement existing lines of business. With our breadth of traditional labor law experience, we stand ready to assist clients as they consider their options in this changed landscape.

Government Contracts

Due to recent laws and policy changes, the U.S. government is now required to reduce its use of fossil fuels and significantly increase its utilization of renewable energy sources. For example, the Energy Independence and Security Act of 2007 requires the government to reduce fossil fuel usage in new or renovated buildings by 55% by 2010 and by 100% by 2030. Executive Order 13423, issued in January 2007, requires agencies to improve energy efficiency, reduce greenhouse gas emissions, and ensure that at least half of the statutorily required renewable energy consumed by the government comes from new renewable sources. Thus, the U.S. government’s participation in the renewable energy market will likely increase significantly, presenting companies in the renewable energy industry with lucrative opportunities to sell their products and services in the government marketplace.

Contracting with the federal and state governments presents unique challenges and risks. Crowell & Moring offers unparalleled depth and breadth of experience in assisting clients to navigate the laws and regulations applicable to government contracts. Our government contract attorneys have extensive experience with Department of Energy contracts as well as with all other federal agency contracting and grant programs. We currently provide counseling to a number of renewable energy clients on government contract issues, including review of contracts, assistance with technology investment agreements, guidance on intellectual property rules specific to government contracting, advice on cost and export control rules, and counseling on the government’s “green” purchasing regulations and initiatives. (See <http://www.crowell.com/documents/The-Greening-of-Government-Procurement.pdf>) We have also litigated on behalf of renewable energy clients on issues such as government contract administration issues, bid protests, and breach of licensing agreements.

Public Policy and Government Affairs

Renewable energy is at the forefront of the policy debate in both state and federal governments. Recent high energy prices, concerns over energy security, and the desire to promote rural business and to reduce air pollutant and greenhouse gas emissions have driven congressional interest in promoting greater use of alternatives to fossil fuels. This in turn has produced a major increase in development grants, loan guarantees, and partnership opportunities between the private sector and the federal government.

Crowell & Moring's public policy group provides technical, policy development, and public affairs services to renewable energy clients seeking government relations, consulting, and lobbying assistance before the U.S. Congress and federal agencies, including the departments of Agriculture, Energy, and Interior, and the Environmental Protection Agency. Our team of former congressional staff and Administration officials, scientists, and economists knows how Congress and the Administration work and know how to communicate effectively the needs of our renewable energy clients to decision makers. The collective expertise of our attorneys and consultants allows us to translate the technical aspects of regulation and policy in the renewable energy industry into easily understood formats for use by clients before Congress, the Executive Branch, and the media.

Working with the Department of Energy's Office of Energy Efficiency and Renewable Energy, our Public Policy Group can assist inventors and developers with funding for energy efficiency and renewable energy technologies. We also will work with clients to secure loan guarantees from the Department of Energy to enable project developers to bridge the financing gap from pilot and demonstration projects to full commercially viable projects that employ new or significantly improved energy technologies. Our Public Policy Group also works with clients before the departments of Agriculture, Energy, and Transportation to increase their partnerships with private industry for the development and use of renewable fuels.

Litigation

Crowell & Moring attorneys routinely counsel and represent energy clients in litigation before administrative agencies, state and federal courts, and domestic and international arbitral bodies. We represent a wide range of energy industry clients with major interests in issues decided by the Federal Energy Regulatory Commission (FERC) and other administrative agencies which have also led to a very active appellate practice in the United States Court of Appeals for the District of Columbia Circuit and other circuits. In addition, our litigation attorneys are experienced in the area of complex commercial disputes and have handled a variety of high-stakes commercial and business tort cases involving contract, business fraud, corporate governance, property rights, and commercial real estate disputes. We have extensive experience with class actions, multi-district actions, and multi-party proceedings in both federal and state courts throughout the country as well as a thriving alternative dispute resolution practice involving both domestic and international arbitrations.

Renewable Energy Epicenters

California

In the United States, California has been the epicenter of activity in the renewable energy field, and Crowell & Moring's California-based attorneys have long and deep relationships with the business leaders at its forefront. We work closely with startup companies, venture capitalists, and other early stage companies in Silicon Valley and elsewhere to advise and assist entrepreneurs in starting and funding renewable energy companies. We also work closely with important networking groups such as the Keiretsu Forum and the MIT-Stanford-Berkeley Nano Forum as well as sponsor and participate in renewable energy conferences, such as those organized by The Cleantech Group to help entrepreneurs connect with funding sources. Through this process we have assisted entrepreneurs to start successful solar, solar thermal, lithium ion battery, fuel cell, biofuel and other companies.

Our California attorneys cover the full range of practice areas necessary to serve renewable energy companies locally in California and elsewhere. These services include intellectual property, corporate transactional, labor and employment, construction, government contracting, litigation, and alternative dispute resolution. We also routinely team with our environmental and regulatory, tax and other practice areas in order to bring their expertise to bear for our clients based in California.

European Union (EU)

The EU has been at the forefront of renewable energy development globally, and Crowell & Moring's London and Brussels offices have worked seamlessly with our U.S. offices as this energy industry transition has evolved. Energy markets, especially in the electricity and gas sectors, have seen their traditional supply structures undergo significant change, and this development is likely to accelerate in the future. Principal drivers of this transition are legislative and other regulatory initiatives often agreed at a supranational level (for example, the Green Paper of the European Commission on developing a European strategy for energy markets). Crowell & Moring has a long history of advising traditional energy utilities and newer, renewable energy market entrants on these matters. We are noted for our particular expertise in German and EU competition law in the energy sector, experience in state assistance, and in monitoring critical regulatory developments.

For many years, energy utilities benefited from generous state aid policies of the EU Member States. As a result of the new liberalization policy and its effect on the role of the former monopoly providers in a competitive environment, our competition counseling also focuses on compliance with the EU state aid rules. In this area, our core activity is counseling clients that apply for grants of new aid as well as representations of beneficiaries in proceedings before national courts in cases relating to the recovery of existing aids. The following areas are particularly relevant to state assistance in the energy sector: allocation of CO2 emission certificates; renewable energy investment subsidies; "rescue", restructuring and emergency aid; aid for research, development and innovation; and Public Private Partnerships (PPP).

Our lawyers also advise clients on the complete spectrum of competition law in the energy sector. Principal engagements in this area include "abuse of a dominant position" analyses and actions before the European Commission and within the framework of applicable national law. Typical cases that are often relevant to renewable energy development include: access to essential facilities; access to confidential information; abusive pricing (e.g. discrimination, margin-squeezing, rebates); tying agreements; and "bottleneck" management and network expansion.

Our European competition law practice includes horizontal cooperation and cartel matters in which we represent companies subject to investigations before the European Commission and national antitrust authorities, train and counsel clients in dealing with dawn-raid investigations by the European Commission and national cartel or regulatory authorities, and develop and implement compliance programs. In addition, we regularly advise clients on questions relating to structuring of joint ventures and other forms of legitimate cooperation, including such matters as codes of conduct and compliance programs and joint selling.

We also advise clients on challenging anti-competitive arrangements, particularly cross-border distribution agreements, and merger control matters. For example, contract provisions that may give rise to concern include market segregation, exclusive distribution agreements and non-compete arrangements, field of use restrictions, and obligations to share competitor information. In the merger control area, we have extensive experience in notification procedures before the European Commission and national antitrust authorities, including negotiating remedies, such as identifying and selecting possible purchasers should a disposal of a business become necessary, as well as complementary, compliance measures.

Beyond these capabilities, our EU engagements often include regulatory representations and monitoring of important legal developments of particular relevance to our clients. We have considerable experience in representing companies and industrial associations in the legislative process in the energy sector, an in-depth understanding of the EU decision-making process, and personal contacts with officials from all EU institutions, as well as a working knowledge of World Trade Organization rules that have considerable influence on the EU legislative process.

Global

International interest and investment in renewable energy is expanding exponentially. Crowell & Moring attorneys understand the unique challenges and issues that arise in investing in renewable energy overseas. Our attorneys speak over 35 languages and have worked with clients in countries around the world. With offices in New York, Washington, D.C., California, Alaska, Brussels, and London, and affiliated offices in Cairo and Riyadh, we provide a complete and seamless suite of services dedicated to assisting our clients with the challenges of international business.

Our Energy and Corporate attorneys have extensive experience in assisting clients in energy project development and implementation the world over, including Abu Dhabi, Argentina, Bangladesh, Barbados, Bolivia, Brazil, China, Equatorial Guinea, Egypt, Gabon, Guatemala, Libya, Mexico, Peru, the Philippines, Russia, and elsewhere. More specifically to renewable energy, we have advised clients on wind and hydroelectric projects in Mexico, biomass projects in Egypt and the Philippines, and a solar joint venture with global applications.

Our International Trade attorneys assist companies with the increasingly complex matrix of U.S. and international laws and regulations governing the movement of goods, technology, and services across national borders.

Our International Dispute practice has been recognized as “the largest arbitration outfit in Washington, DC” by Global Arbitration Review and has worked on a range of energy related matters, including international investment treaty disputes as well as international commercial arbitrations.

Our C&M International affiliate provides international trade and consulting services to renewable energy clients. C&M International’s team of experienced former trade negotiators, economists, and political scientists — many of whom have served in the Executive branch and as senior congressional staff — are equipped to bring the issues of renewable energy companies to the attention of foreign capitals and the headquarters of international organizations across the globe.

Crowell & Moring Representative Matters in Renewable Energy

- » Wind energy project developer on wind turbine transactions
- » Wind energy project developer on joint venture and financing
- » Fuel cell power systems manufacturer regarding freedom to operate studies
- » Solar power pumping station manufacturer regarding patent prosecution and litigation resulting in royalty-bearing licensing agreements
- » Biodiesel, ethanol and bioalcohol companies regarding patent prosecution and freedom to operate studies
- » Solar energy developer regarding the application of the federal environmental and natural resource laws to a major development on tribal lands
- » Three wind energy companies on the application of the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Endangered Species Act to specific projects
- » Solar energy company on issues concerning permitting of large solar project on federal land in the California desert
- » Employees of a company in the power generation industry in a leveraged buyout of the company, including negotiation of two levels of financing to fund the purchase
- » Representation of the owner/developer of a 46 MW power plant in the drafting and negotiation of a design/build contract for the construction of the plant, and review of related subcontracts and financing arrangements for the project
- » Fortune 500 company in forming a \$120 million joint venture to develop utility-scale solar power generation projects, including licensing of significant intellectual property assets
- » Construction and building materials trade associations on green standards, practices, and guidelines for buildings and building products
- » Leading alternative energy company in obtaining favorable change in restrictions on section 45 tax credits from the IRS and Treasury Department
- » Manufacturer of nano devices for clean water on contracts, technology investment agreements, and government contracts related intellectual property issues
- » Magnesium alloy manufacturer on Department of Defense initiatives to reduce weight in military vehicles and products and general government contracting issues
- » Solar energy technology company in litigation related to breach of licensing agreement
- » Municipal utility on all aspects of refuse derived fuel project
- » Wind turbine manufacturing company on customs duty regulations
- » Secured a multi-million dollar jury verdict for wind energy supplier for wrongful curtailment of power available for dispatcher
- » Solar start-up company using Concentrated Solar Power (CSP) on developing favorable public policy and developing project to self power to utility in the Southwest
- » Foreign solar project developer on transmission issue in western US

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