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COVER STORY

Energy lawyers turn to smaller scale work

By Kylie Reynolds / Daily Journal Staff Writer

On any given rooftop of a Walmart chain in California, you might find a spread of shiny, energy-generating solar panels. Among the retail giant's myriad sustainable efforts, it has pledged to equip three-quarters of its stores in the state with solar systems — a move that may hint at the future of the commercial sector's efforts to stabilize energy costs. But such small-scale efforts are also likely the fate of energy attorneys in California, where renewable energy work reigns supreme.

With large utility projects on the decline, in-state energy attorneys are in the midst of a shift away from the massive undertakings that brought many to the practice and toward smaller generation schemes, experts say.

"Here in California, attorneys are going to have to adjust and expect more distributed generation-type projects, be it commercial rooftop or residential, as opposed to utility-scale," said Baird Fogel, a solar specialist and partner at **Crowell & Moring LLP**.

California has boasted some of the largest utility deals in the country. Such projects boomed in the last decade to comply with the California Renewables Portfolio Standard, a 2002 state law that now mandates electricity supply companies produce 33 percent of their energy from renewable resources. Energy attorneys followed en masse to meet the manpower needs of these complex deals, said Jerry R. Bloom, chairman of Winston & Strawn LLP's energy practice.

The execution of these large-scale projects, however, relies on a slew of factors, and energy attorneys say they're starting to reach their expiration date.

Even in an expansive state like California, land suitable for these projects is becoming scarce, Fogel said — and such projects are costly and often dependent upon uncertain federal subsidies. Take the wind sector, which has been left in a limbo of sorts after Congress let a production tax credit for U.S. wind farms expire at the beginning of this year.

But maybe more importantly, the demand for utility projects is simply down.

Nearly 20 percent of retail electricity sales for California's three largest utility companies — Pacific Gas and Electric Co., San Diego Gas & Electric and Southern California Edison — came from renewable power in 2012, according to the California Public Utilities Commission. These utilities are "easily" going to surpass the mandated 33 percent by 2020, Fogel said, so the need to construct large-scale projects to meet the target has waned.

"There was such a build-up for this utility-scale with the new RPS standards, very attractive tax credits and a lot of land available," Fogel said. "But we had a gold rush on that and it had to slow down."

Despite this somewhat precarious time for the California renewable energy sector, most attorneys agree that renewable energy is here to stay. What will change is the size and use of these projects.

"I think the path of least resistance and best economics is going to turn out in favor of more distributed energy than those large-scale projects," said Marc Gottschalk, a Sidley Austin LLP partner who focuses on clean technology.

Distributed generation projects produce energy from many small sources. Beyond Wal-Mart Stores Inc., retailers such as Walgreen Co., Costco Wholesale Corp. and Kohl's Corp. have emerged as players in the commercial renewable energy space, similarly installing solar panels and, in some cases, wind turbines at their stores and headquarters. Residential communities are also likely to grow as a sector seeking to generate their own energy, Bloom said.

The issues involved with developing distributed generation projects are often equally complex as utility projects, despite their smaller size, Fogel said. Wal-Mart, for example, must negotiate power purchase agreements with third-party companies to install and operate the solar panels on its rooftops. While the retail giant doesn't own the solar systems, these agreements secure Wal-Mart long-term rates to buy the electricity and obtain the green credit.

In the short-term, there likely won't be the same kind of burst in the distributed generation renewable energy market that took place with

the state's utility projects, Bloom said.

There are still utility projects in the pipeline, and how active this market becomes relies on the companies involved — especially those on the scale of Apple Inc., Google Inc. and Yahoo Inc. Although some of these businesses are "aggressively" going after renewable energy efforts, it remains to be seen how much work they will produce in the next few years, he said.

Bloom added that he can't predict if these distributed generation projects can sustain the high volume of renewable energy attorneys currently practicing in the state — it's just too early to tell.

In the meantime, some California renewable energy lawyers may look to new areas, like hydraulic fracturing and energy storage, or return to a traditional fossil fuel practice, attorneys said.

So-called "fracking" has at times seen low public support in the state: the Los Angeles City Council, for example, recently passed a ban on the practice until it could prove fracking didn't harm public safety or drinking water. But it may be generating more interest among energy attorneys because California is a prime location for development, Gottschalk said.

The growing investment in fossil fuel projects over the past few years will also likely increase the state's market for attorneys outside the renewable energy realm, said Mark Johnson, an Alston & Bird LLP partner.

"The renewable projects are going to be here, but from an energy lawyer perspective, it's good to keep in mind that fossil fuels are going to be here as well," Johnson said.

Additionally, energy storage could be considered the "new kid on the block" in the state's energy practice, Bloom said. He's already begun negotiating storage contract agreements for clients in California, and he expects more attorneys to get involved in coming years.

After all, if there's a constant about the state's energy practice, it's that it's ever changing, Bloom said.

"There's nothing static about the energy industry," he said. "It's always evolving and changing, and attorneys will follow the next evolution."