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ENERGY ROUNDUP

WSJ.com's look at energy news

Ask a Wind-Power Lawyer

Posted by Keith Johnson

The U.S. is the world's hottest wind-power market and has been for the past two years, with new installations expected to surpass 4,000 megawatts this year, according to new data released this week. Wind power is growing fast – but the market is getting crowded, and its future depends heavily on the whims of government policy.

Benjamin Israel (Bracewell & Giuliani)

We took an opportunity to chat with one of the increasing number of Washington lawyers focusing on wind: **Benjamin Israel**, head of the renewable - energy group at Bracewell & Giuliani in Washington. He represents wind - power project developers in the U.S. and in Latin America. His message: **This is not a market for the faint of heart.**

Energy Roundup: *The forecasts for wind power look strong, but there is always the lingering uncertainty of the regulatory climate. What's your outlook for the sector?*

Benjamin Israel: I am particularly optimistic about wind power over the next five years. It is still a small share of the overall power market, but it is the fastest-growing segment of that market.

Now, the U.S. wind power market is very attractive to investors and is attracting a lot of foreign capital for that reason. But it is also a very sophisticated market, and **investors really have to do their homework.** There are a lot of issues – from turbines, to licensing, to state-to-state regulatory variations - that can become fatal flaws in proposed projects. You have to be more sophisticated to be a player.

ER: *There has been a lot of concern about component shortages leading to a tight wind - turbine market, even though it is growing fast. How big a factor is that?*

BI: Turbine supply is a factor affecting smaller developers. It's a long-term problem that will resolve itself. But it forces everybody to get their hands on turbines and makes for a more competitive market where bigger players have more leverage. You can see from the third-quarter numbers released by the American Wind Energy Association that there are fewer developers than in the past who are doing most of the projects. There are also fewer turbine manufacturers supplying most of the projects.

But, in any event, you are more likely to see project delays, not cancellations, as a result of the turbine supply situation. A much bigger factor is the PTC [the production tax credit, a tax incentive for wind power projects.]

ER: *The PTC is set to expire at the end of 2008. The periodic expiration has led to a roller-coaster development of the sector in the past. How is that affecting development now?*

BI: It's no surprise that development is strong in 2007. **The true test will come in the second, third, and fourth quarters of next year.** In years when the PTC expires, or is due to expire, project development virtually comes to a standstill. If you had a PTC in place for 5 years– rather than 2 - you would have a much bigger window for development.

Because construction times are at least eight months, if you haven't started building by April of next year, you run the real risk of having to sit on your permits because the PTC will have expired.

But **state regulations are almost more important at driving development now.**

ER: *In what way?*

BI: States that have renewable energy standards – about half the states do – are leading wind power development. Look at Texas, which leads the nation. They are now attracting wind investment through CREZs (competitive renewable energy zones) which require construction of the necessary transmission facilities between the CREZ and urban areas.

ER: *And why not federal renewable energy standards, then?*

BI: Because that would assume a national energy market. But **there are only state and regional energy markets.** It's simply a function of geography and meteorological conditions. What you could do is work toward an energy policy that targets renewable energy standards across the U.S. that would establish objectives for regional markets.

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