RENEWABLE NEWS

POLSINELLI

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Inside This Issue

Polsinelli's Energy and Public Utilities law practice is one of the leading energy practices and has widespread national experience representing energy companies, developers, lenders and investors in connection with the acquisition, development, finance and operation of a variety of energy facilities – including oil, gas and electric facilities and wind, solar, geothermal, biomass and biofuel renewable energy projects. With more than 630 attorneys in 16 cities stretching from Los Angeles to Washington, D.C., Polsinelli is where energy development and transactions is occurring. For more information and contacts within the Energy group, see last page.

Polsinelli Attorneys Featured in *North American Windpower*

Polsinelli attorneys Alan Claus Anderson, Britton Gibson and Luke Hagedorn are featured in this month's edition of *North American Windpower*, one of the leading publications for the wind energy industry. The article, entitled "Lessons From the Frontlines: Defending Your State RPS," provides the Polsinelli attorneys' unique perspective as participants in the dramatic fight that has occurred in the Kansas legislature this year over the state's Renewable Portfolio Standard. Drawing upon the lessons learned in successfully fighting off several bills designed to reduce or repeal the RPS requirements, Anderson, Gibson and Hagedorn provide insights and tips for groups in other states that are likely to face similar legislative attacks in the future. ■

Kansas Renewable Portfolio Standard Survives Legislative Attacks

While the ongoing battle over the federal Production Tax Credit has received the majority of the attention over the last few months, an equally important but far more subtle battle is being waged against RPS policies in state capitols all across the country. In the 2013 legislative session alone, 14 of the 29 states with RPS policies in place have considered legislation to repeal or reduce the state RPS requirements. In many ways, Kansas has stood at the forefront of these attacks.

In July of 2012, the Beacon Hill Institute, a conservative think tank based out of Suffolk University, released a report that claimed to calculate the economic impacts of the Kansas RPS on the state. The analysis that Beacon Hill provided for Kansas was virtually identical to other reports that it has submitted in 11 states over the last few years (to date, Colorado, Delaware, Maine, Michigan, Minnesota, Missouri, Montana, New Mexico, North Carolina, Ohio, Oregon and Pennsylvania).

Juxtaposing its tax formula for city tax initiatives with energy policy, Beacon Hill predicted that Kansas' RPS goal of 20 percent renewable energy by 2020 would result in the following economic impacts for the state:

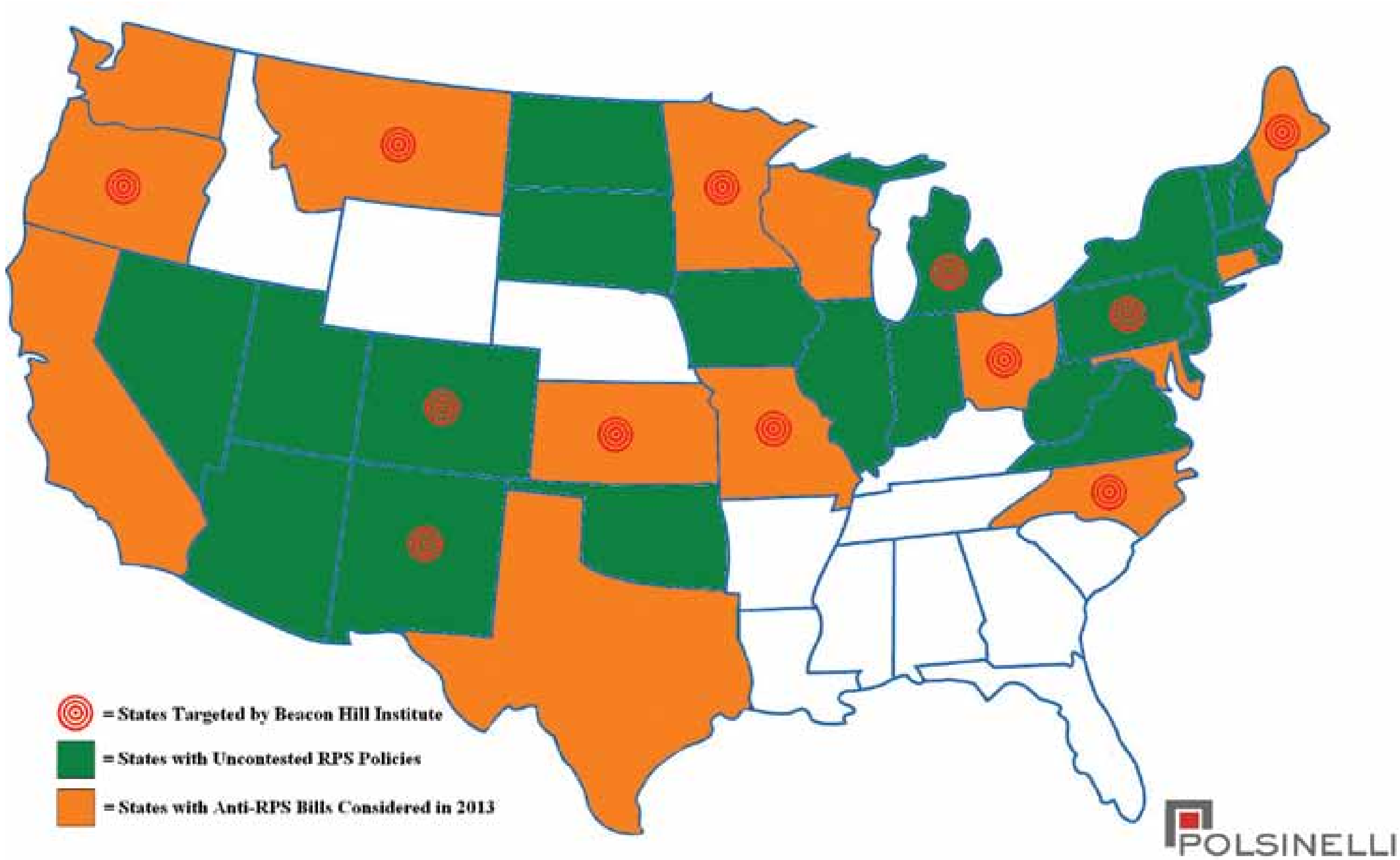
- Electricity prices would increase by 45 percent;
- 12,110 jobs would be lost;
- Disposable income would drop by $1,483,000,000; and
- Investment in the state would decrease by $191,000,000.

In order to combat the impact of the Beacon Hill report, the energy practice group

| continued on page 2 |

Kansas Renewable Portfolio Standard Survives Legislative Attacks

| continued from page 1 |



of the Polsinelli law firm partnered with the Kansas Energy Information Network to prepare a report analyzing the true economic impacts of wind energy and the Kansas RPS (the "Polsinelli Report"), which was released just prior to the start of the 2013 legislative session.

As expected, early in the 2013 legislative session, two bills were introduced in Kansas to reduce the impact of the state RPS. The first bill, Senate Bill 82, was introduced by the Senate Utilities Committee. This bill sought to delay each RPS threshold by two years and to provide the Kansas Corporation Commission ("KCC") the right to waive the requirements if one of the following conditions had been met: 1) there was a lack of firm transmission; or 2) if compliance would lead to excessive costs for ratepayers. The second bill, House Bill 2241, was introduced by the House Committee on Energy and Environment. This bill sought to delay the thresholds for 10 percent and 15 percent compliance by two years, to eliminate the 20 percent by 2020 requirement altogether, and to implement the same "firm transmission" and "excessive cost" exceptions discussed in Senate Bill 82.

Committee hearings were held for both House Bill 2241 and Senate Bill 82, during which a representative from Beacon Hill presented oral and written testimony describing the conclusions of their report. Fortunately, every time Beacon Hill presented its analysis, authors of the Polsinelli Report were able to present actual data that showed the true positive benefits of the RPS and exposed the serious flaws in the analysis conducted by Beacon Hill.

Despite the strong conservative leanings of the Kansas legislature and the coordinated efforts of state and national anti-RPS groups, both legislative efforts to reduce or repeal the Kansas RPS were defeated. Unfortunately, it is likely that this was merely one front in a much broader assault on state RPS policies. Thirteen other states have seen legislation in this legislative session alone seeking to reduce or repeal their RPS policies, and there can be no doubt that more attempts are in the works.

Polsinelli prepared independent analysis regarding the economic benefits of the Kansas RPS, and presented testimony to several Kansas legislative committees on these issues. ■

Federal Policy Update

President Obama continues to push for action to address climate change. However, translating words into action remains difficult. The president has asked Congress for comprehensive climate legislation. However, with solid Republican opposition and several moderate Senate Democrats up for reelection in 2014, any legislative proposal appears to be DOA for the balance of the year.

In the absence of congressional activity, the president is doubling down on regulatory action to limit carbon. Even here the administration is encountering frustration. EPA recently announced that it will not meet its deadline to finalize rules setting the first ever greenhouse gas limits on new power plants. These regulations were expected to push new fossil fuel electricity generation to natural gas. However, EPA is having difficulty writing these regulations that will withstand court challenge. The Agency may be forced to backtrack and prepare new proposals that could offer more technological flexibility.

In one area of bipartisan agreement, offshore energy production is receiving renewed attention. Senators from coastal states are pushing for new drilling so that their states can receive a share of federal royalties. The proposal would divert some revenue to renewable energy development, making the plan more acceptable to Democrats.

Top Republicans and Democrats are also working together on plans to reform the Renewable Fuel Standard (RFS). There is growing opposition from an unusual coalition of oil refiners, food manufacturers, environmentalists and anti-hunger groups that are pushing for changes to the law. The House Energy and Commerce Committee is developing a series of white papers on various provisions aimed at reforming the fuels standard.

Despite constant talk regarding comprehensive tax reform during the 2012 campaign, political will for such a difficult and high profile debate is waning. The House Ways and Means Committee continues to meet with stakeholders to gather input, but it will be months before legislation is even drafted. Chairman Camp (R-Mich.) and the Republican leadership will continue resisting any energy-specific tax measures unless those issues can be addressed as part of a much bigger comprehensive reform package.

Senate Democrats have yet to even agree on the goals of tax reform. Progressives want to close loopholes and preferences to generate additional revenue to reduce the deficit. Finance Committee Chairman Baucus (D-Mont.), some Democratic moderates and nearly all Republicans prefer a revenue neutral approach. Until these factions come to an agreement, the Senate is unable to move forward. ■

TradeWind and Alabama Power Announce PPA for Kansas Project

TradeWind Energy, LLC and Alabama Power Company recently announced that they have entered into a 20-year power purchase agreement for 202 MW of wind energy to be generated by the Buffalo Dunes Wind Project in Grant, Haskell and Finney Counties, Kan.

The Buffalo Dunes project represents an approximately $300 million investment, and will result in the creation of approximately 150 construction jobs and 15 full-time

| continued on page 4 |

Incentives Announced for $66 Million Biodiesel Facility Planned for Alabama

GreenStar Biofuels Mobile LLC recently received some very positive news, as the Mobile, Ala. Industrial Development Board approved about $2.75 million in noneducational property tax abatements over the next five years for a planned biodiesel facility in Theodore, Ala. The refinery will utilize waste grease, vegetable oils, tallow and similar feedstocks to create biodiesel.

Polsinelli attorney Matthew Ross, counsel to GreenStar, said the company expects to purchase 32 million gallons of feedstock per year, to be converted into 30.5 million gallons of biodiesel and a small amount of glycerin. GreenStar would then sell the finished products to companies that market biofuels to large oil and gas companies and other commodities purchasers.

"We would have both rail access and road access to take the feedstock in, and to also transport the biodiesel out," he said. "This site is very attractive to us not only because of the size and the neighbors, but also the port access," said Ross. GreenStar also looked at Louisville, Ky., Jackson, Miss., Hardeeville, S.C., and Memphis, Tenn., for potential site locations before settling on Mobile, Ala.

The company will start work on the plant in mid-to-late summer, with the total project expected to be finished by mid-2014.

Polsinelli serves as development counsel for the project. ■

Missouri Legislature Debating ISRS, Several Renewable Energy Proposals

The debate over whether to allow electric utility corporations to recover costs they incur in certain infrastructure replacement projects by filing for a rate adjustment infrastructure system replacement surcharge ("ISRS") has dominated the energy policy debate in the Missouri legislature. Senate Bill 207 and House Bill 398 have proven to be controversial pieces of legislation and have occupied the majority of the legislature's energy policy agenda.

Additionally, several renewable energy proposals are currently being debated during the 2013 Missouri legislative session, most notably: (1) a provision that would expand the definition of a renewable energy source in Missouri's Renewable Energy Standard; (2) legislation that would expand Missouri's net metering laws; and (3) a bill that would gradually phase out the solar rebate available to customers of electric utilities.

Expanding the definition of a renewable energy source in Missouri's Renewable Energy Standard

House Bill 44, introduced by Representative Bart Korman (R-High Hill), would expand the definition of a renewable energy source in Missouri's Renewable Energy Standard ("RES") to include: (1) algae grown for energy production; and (2) all hydropower except for hydropower produced from pumped storage. House Bill 44 is viewed by certain interest groups as a "step backward" for Missouri's renewable energy policy, as it would amend the law put in place by Proposition C in 2008 to allow power from large existing hydropower facilities to be counted as a renewable energy resource under Missouri's RES.

House Bill 44 has been passed out of the Missouri House of Representatives ("House") and has been referred to committee in the Missouri Senate ("Senate").

Expanding Missouri's Net Metering and Easy Connection program

House Bill 119, introduced by Representative T.J. Berry (R-Kearney), would modify the Net Metering and Easy Connection Act to allow a customer-generator with system capacity of up to 250 kilowatts ("kW") to participate in the Net Metering and Easy Connection program. Under current law, a customer-generator can only participate in the program if the system's generating capacity does not exceed 100 kW. House Bill 119 specifies that a customer's electric generation capacity could not exceed 120 percent of the customer's own electric energy requirements.

Additionally, House Bill 119 would allow the customer to receive a credit for the retail value of the excess energy produced. Current law provides that a customer-generator can be credited an amount at least equal to the avoided fuel cost of the excess kilowatt-hours in a billing cycle to be applied during the following billing cycle. House Bill 119 would amend current law by allowing: (1) a customer-generator to receive a credit based on the retail value of the excess energy during a bill cycle; or (2) the customer-generator can elect at the time of application for interconnection to annually have the credit converted to a dollar amount equal to the avoided fuel cost.

House Bill 119 was heard in the House Utilities Committee but has not been voted out of committee or debated on the House floor.

| continued on page 6 |

Missouri Legislature Debating ISRS, Several Renewable Energy Proposals

| continued from page 5 |

Phasing out of Missouri's solar rebate program

Senate Bill 420, sponsored by Senator Brad Lager (R-Savannah), contains provisions to expand the Net Metering and Easy Connection program and a phase-out of the solar rebates available to customers of electric utilities.

Senate Bill 420, which enjoys the support of both the Missouri solar industry and investor-owned utilities, would phase out the $2-a-watt solar rebate program that was implemented as part of Proposition C. Current law provides that the investor-owned utilities, except those utilities that qualify for an exemption under Missouri law, shall provide a $2 rebate per installed watt for customer-based new or expanded solar projects. Senate Bill 420 would reduce this rebate in the following manner:

1. Two dollars per watt for systems becoming operational on or before June 30, 2014;
2. One dollar and fifty cents per watt for systems becoming operational between July 1, 2014 and June 30, 2015;
3. One dollar for systems becoming operational between July 1, 2015 and June 30, 2016;
4. Fifty cents for systems becoming operational between July 1, 2016 and June 30, 2018; and
5. Zero cents for systems becoming operational after June 30, 2018.

As of this writing, Senate Bill 420 has passed out of Committee but has not yet been voted upon by the full Senate. ■

Arizona Renewable Advocates Successfully Defend Renewable Energy Standard

Gary Pierce, a commissioner with the Arizona Corporation Commission ("ACC"), has withdrawn a proposal to alter the state's Renewable Energy Standard and Tariff ("REST") by reducing the amount of renewable energy required to 13.5 percent by 2025. Under the current REST standards, ACC requires utilities to obtain 15 percent of their annual electricity sales from renewable power sources by 2025.

Commissioner Pierce presented the amendment as a way to decrease costs for residential ratepayers, who currently pay a maximum of $4 per month to fund solar rebates. The recommendation was met with limited support, even from the Republican dominated ACC. Before a vote could be taken on the proposal, the issue was tabled to allow ACC staff time to review the legality of the changes. Commissioner Pierce's withdrawal puts an end to the measure for the time being.

This victory provides some solace to an otherwise difficult year for the Arizona solar industry. In January, Commissioner Pierce successfully spearheaded an effort to drastically reduce the performance-based incentives for commercial solar systems and upfront incentives for residential systems provided by Arizona Public Service Company and Tucson Electric Power, the state's two investor-owned utilities. Those cuts, which reduced the state's solar rebates from a scheduled level of $41.8 million down to $3.5 million, came unexpectedly via an amendment by the commissioners on the last day of a half-year public evaluation process. ■

Colorado Legislators Pushing for Expansion of Renewable Energy Standard

New legislation proposed in Colorado is seeking to expand the state's Renewable Energy Standard ("RES") for cooperative electric associations. The legislation, Senate Bill 252, proposes to expand the RES for co-ops by raising the percentage of retail electricity sales that must be obtained from renewable resources to 25 percent starting in 2020. Under Colorado's current RES statute, rural providers only have to meet a 10 percent requirement.

The legislation, sponsored by Senate Majority Leader Morgan Carroll (D-Aurora), also increases the current statute's cap on the retail rate impact from implementation of the RES from 1 percent to 2 percent, making it more difficult for co-ops to seek a waiver from the RES requirements due to cost increases.

In addition to the RES modifications, Senate Bill 252 also seeks to do the following:

- Remove preferences for Colorado-based resources in lieu of granting "extra credit" for all resources acquired through 2015.
- Require rural electrical cooperatives to generate a small portion of their existing energy requirement from local projects.
- Increase opportunities to capture vented methane gas from active and inactive coal mines.

As of this writing, the bill has passed out of the Senate and is now before the House Transportation & Energy Committee. ■

TradeWind and Alabama Power Announce PPA for Kansas Project

| continued from page 3 |

operations jobs. The project itself will be constructed across approximately 42,000 acres, and will be hosted by more than 120 landowners.

"TradeWind is so pleased to be building a second large project for Alabama Power," said Frank Costanza, TradeWind executive vice president business development. "We want to commend the leadership of Alabama Power for its continued commitment to alternative sources of power that can provide direct economic benefit to its customers."

"Our agreement with Buffalo Dunes Wind Project is great for our customers, in multiple ways," said John Kelley, Alabama Power's director of forecasting and resource planning. "It will deliver to us cost-effective electricity and helps further diversify our energy portfolio. What's more, it provides us renewable energy credits that we have the option of using ourselves or selling to others, with the proceeds benefiting our customers."

This PPA marks the third project that TradeWind has developed that will send power to the Southeastern United States, and marks its second agreement with Alabama Power. In total, TradeWind is actively developing 3,500 MW of clean, renewable energy in nine states throughout the central United States, and by the end of 2013 it plans to have completed construction of more than 1,000 MW of wind projects.

Polsinelli serves as development counsel for the project. ■

NextEra Energy Resources Finalized Purchase of Kansas Project

NextEra Energy Resources, LLC recently announced the successful completion of a nearly $200 million purchase and financing for the 165-MW Cimarron I Wind Energy Center from CPV Renewable Energy Company. The project, located in Gray County in southwest Kansas, comprises 72 Siemens 2.3-MW turbines spread across approximately 14,000 acres. All of the power from the project is being sold to the Tennessee Valley Authority under a 20-year power purchase agreement.

> *"In addition to generating clean, emission-free energy, this project will have a positive impact on the local economy for years to come.*

"The addition of the Cimarron Wind Energy Center is consistent with our strategy to add fully contracted clean energy projects to our portfolio," said Armando Pimentel, president and CEO of NextEra Energy Resources. "In addition to generating clean, emission-free energy, this project will have a positive impact on the local economy for years to come. With continued public policy support for wind energy generation, we look forward to bringing the economic and environmental benefits of wind energy to other communities across the nation."

"CPV is extremely pleased to have worked with NextEra Energy Resources on this transaction; a company that is leading the way increasing the amount of clean, renewable resources available to power our electricity-intensive lives," said Sean Finnerty, senior vice president of renewable development, CPV Renewable Energy Company. "With excellent wind resources, an ideal location, a 20-year contract with a blue-chip off-taker, and dedicated firm transmission, Cimarron Wind Energy Center is a prime example of the type of clean energy project CPV is proud to develop."

NextEra Energy Resources currently owns and operates the 112-MW Gray County Wind Energy Center and the approximately 99-MW Ensign Wind Energy Center in Kansas. The Cimarron and Ensign Wind Energy Centers are part of the approximately 1,500 MW of U.S. wind projects that NextEra Energy Resources had brought into service in 2012.

Polsinelli served as developer's counsel and provided representation relating to the financing of the Cimarron I project. ■

White House Working to Open MLPs and REITs to Renewable Projects

Earlier this week, President Obama's top climate and energy advisor Heather Zichal stated that the White House is working with Congress to open up new financing avenues for renewable energy projects that would help put them on more equal footing with their incumbent, fossil fuel counterparts.

Zichal indicated that the White House is reaching out to both Democrats and Republicans in both chambers of Congress on several energy-related tax measures that could be included in a more comprehensive tax reform effort later this year. Specifically, the administration is working with members of Congress to "help get their heads around" two financial structures called Master Limited Partnerships (MLPs) and Real Estate Investment Trusts (REITs) that would allow renewable energy companies to leverage more equity financing for building new infrastructure.

"Because we view the tax code as an important way to actually affect energy policy, we're doing a lot of groundwork right now to help provide technical assistance to some of the other members on both sides of the aisle," Zichal said.

MLPs allow a business to organize a partnership where ownership interests are traded in financial markets like common stock, allowing a broad pool of investors to put up needed capital. A REIT is a security that sells like a stock and invests in real estate property directly.

Neither MLPs nor REITs have traditionally been available for renewable projects, forcing developers to partner with tax equity investors that provide financing in exchange for the benefits of the renewable energy tax credits. This arrangement increases financing costs and limits the universe of possible investors to about $3 billion to $5 billion by some estimates. However, the MLP and REIT products open up potential pools of $350 billion and $800 billion of market capitalization, respectively.

Senators Chris Coons (D-DE) and Jerry Moran (R-KS) introduced legislation last Congress that would extend MLPs to renewable projects and Coons has promised to reintroduce his legislation this year. REITs, meanwhile, could be extended to renewable energy through administrative action by the Treasury Department, or Congress could pass new legislation authorizing renewable developers to access the tax structure.

In addition to Zichal's comments, Ernest Moniz, nominated to be the next Secretary of the Department of Energy (DOE), also spoke out in favor of "Green MLPs" in his confirmation hearing before the Senate Energy Committee April 9. DOE

has already convened several workshops to explore how it can assist companies that want to organize MLPs or REITs to attract investment. These include ongoing efforts focusing on how to standardize power purchase contracts to make them easier to use as investment vehicles and on continuing DOE's role as an information clearinghouse for the private sector.

While conservative members in Congress have been widely critical of the Production Tax Credit (PTC) for renewable electricity generation, MLPs and REITs offer ways to support energy development with little cost to the federal government. Neither is a direct subsidy for the industry. Rather, they are designed to attract additional private investment in renewable projects. These financial vehicles can also help the renewable power sector avoid more boom-and-bust cycles that have plagued the industry's reliance on tax credits.

In a time of hyper-partisanship in Washington, extending MLPs and REITs to the renewable energy sector offers a rare opportunity to enact meaningful, bipartisan public policy that can both increase domestic energy production and level the playing field for energy technologies. ■

Renewable Energy Law Insider

Published by Luke Hagedorn

Polsinelli attorney Luke Hagedorn started Renewable Energy Law Insider in 2011 as a way to inform Renewable Energy project developers about some of the significant, surprising, and sometimes counter-intuitive ways in which Renewable Energy projects can be affected by local, state, and federal policy initiatives. Stay up to date on Renewable Energy news by following the blog at www.renewableenergylawinsider.com.

About Polsinelli Renewable Energy Development Group

Polsinelli is a recognized leader in renewable energy. Our lawyers have broad experience in all aspects of the development, financing, operation and purchase and sale of renewable energy assets, including experience in the wind, solar, biomass, geothermal, biofuel and other renewable energy sectors. We represent developers, utilities, owners and lenders in connection with projects at all stages, from investment and tax structuring through development, construction, financing and operations. We draw on our historical experience in the energy industry in representing our renewable energy clients with respect to strategic transactions and litigation. Polsinelli has more than 640 attorneys in 16 cities from Los Angeles to Washington, D.C., including offices in Dallas, Denver, Kansas City, Chicago, New York and St. Louis. ■

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