

ABA RENEWABLE ENERGY RESOURCES COMMITTEE:  
National Teleconference: Federal and State Perspectives on  
the Prospects for Renewable Energy

Overview of the Issues

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**A. Introduction: Renewable Energy Resources Committee, ABA  
Section on Environment, Energy & Resources**

1. Focus:
  - (a) All types of renewable energy resources including wind, geothermal, solar, hydro, landfill gas, biomass, fuel cells, hydrogen
  - (b) All types of distributed energy (whether or not fueled by renewables)
  - (c) Energy management programs such as DR
  - (d) Other “clean energy” programs
2. Committee Focus

The overriding purposes of the Committee are to examine and disseminate information on those legal policy and practical implementation issues which affect expansion of markets for renewable energy resources. The Committee will have five primary areas of focus:

- (a) Innovative approaches to stimulating renewable energy resource development. Broadly stated, these include (a) economic, tax and other market incentives; (b) portfolio standards, market trading incentives and programs; (c) interfaces of domestic and international programs for renewable energy incentives, trading and market creation programs.
- (b) Measures for commoditization and value maximization of fuel, environment and tax-related legal attributes of renewable energy and distributed generation production.
- (c) Constraints on fitting renewable resources and distributed generation (whether or not powered by renewable fuels) into the

framework of national and states' energy policy, e.g., electricity transmission and distribution

(d) Relating renewable energy resource and distributed generation development to environmental legal requirements, including (a) relationship to climate and offset trading initiatives; and (b) permitting and standards issues with respect to particular resources, e.g., wind, geothermal, distributed generation.

(e) Issues related to structuring finance for renewable energy and distributed generation.

3. Objectives of Teleconference:

(a) To provide insight into both the tax and non-tax incentives, which the Energy Act or its successors may provide to renewable energy/distributed generation.

(b) To understand the new commercial initiatives which States are now implementing to give clean, green and sustainable resources the type of financeable economic recognition they need to realize their potential public benefits

(c) To lay the foundation for a series of Committee programs which will examine in dept, topics such as "green tag" trading; transaction finance structures; Federal and State tax policy interplay; offshore wind development; national energy policies and renewables.

**B. Background on Renewable Energy Resources Issues**

1. Premise: There is an ongoing role for renewable energy. Different rationales may, however, apply for the development of different “resources”

- (a) economically competitive
- (b) economically competitive if externalities properly accounted for
- (c) use provides special benefits to users or community generally, e.g., reliability, power quality, cost reduction; risk management
- (d) Has great future promise to be developed for national security or economic reasons
- (e) Could serve to alleviate environmental problems caused by use of conventional energy sources.
- (f) Use of fuel as source of economic development for region of production

2. Core Issue: There generally is a gap between the economics of use of renewables and conventional fossil fuels. Therefore, some sort of public-private partnership or other arrangement is necessary to offset that gap. Its structure may vary depending on the commercial and technical status of the resource in question.

- (a) direct subsidy (renewable energy funds)
- (b) tax benefit, e.g., credit, depreciation
- (c) public credit enhancement of private debt
- (d) mandatory usage requirements – market creation
- (e) monetization of value of “green” and/or environmental benefit attributes to energy produced from renewable sources
- (f) facilitation of trading of monetized values
- (h) R&D assistance or indirect support for R&D
- (i) Net metering
- (j) Feed in tariffs

3. Key Problems:

- (a) Absent appropriate incentives, finance of renewables has proved to be particularly difficult:

(b) This is notably true for project finance of renewables.

(1) Non-recourse financing based on off-take credits have been difficult, particularly for equity sponsors of high first cost assets who are not well capitalized

(2) Lack of long term government commitment to incentives

(3) Shifts in economic markets for conventional fuels make longer-term reliance on renewables as credit support particularly difficult

(4) Risk mitigation is also hampered in some cases by technological uncertainties. The need to aggregate sufficient customers to make a technology market economic.

(5) The uncertain or inappropriate application of regulatory laws applied to utilities (such as those with respect to interconnection and transmissions)

(c) Absence of well defined markets for environmental attributes of some renewable fuels

(d) There has been considerable fragmentation in governmental response to these investments between the federal government and the states, as well as among different states affording different degrees of importance to renewable energy. Integrating those approaches to renewables remains a current issue.

4. Implications:

(a) Effective support for renewables needs to mesh:  
(i) objectives with respect to resource/technology  
(ii) appropriate types of incentives given stage resource of technical and economic maturation  
(iii) scale of incentives required  
(iv) type of financing contemplated  
(v) regulatory environment in which resource operates

(b) Federal and state program must be evaluated in terms of  
(i) effectiveness of support  
(ii) extent to which provisions are complementary  
(iii) net impact on scenario for renewable development

**C. Framework of Teleconference Presentations**

1. Presentations on Federal Perspectives
  - (a) Energy Act
    - Ways in which renewables addressed
    - Policy/economic considerations in play
    - Prospects for enactment of all or portion of Energy Act relating to renewables
  - (b) Other proposals for Federal legislation
  - (c) Related environmental policy issues – collateral impacts on renewable energy resources.
  
2. State Regulatory Responses
  - (a) Public benefit funds
  - (b) Incentives for renewables; e.g., RPS; net metering
  - (c) Special regulatory requirements for renewables, e.g., equipment certification
  - (d) Environmental regulation
  - (e) State deregulation and retail sales policies, e.g., interconnection standards
  
3. State Financing Initiatives
  - (a) Separating “energy” and “green” characteristics
  - (b) Special financial incentive programs
  - (c) Special off-take market creation program
  - (d) Market creation

**D. Invitation to Join Committee**

- (a) Notify: [r.feldman@bingham.com](mailto:r.feldman@bingham.com)
- (b) Please specify area of interest, expertise potential publication