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# Project Finance Roads Led To Clean Energy In 2019

By **Keith Goldberg**

*Law360 (December 13, 2019, 1:23 PM EST)* -- Investment dollars continued to stream into clean energy projects in 2019, with developers and investors eager to cash in on the full value of federal renewable energy tax credits, as well as build large-scale energy storage.

The 2020 expiration of a federal tax credit for wind projects and devaluation of its solar counterpart sparked a rush to get projects financed and under construction by year's end, with an eye on striking bigger and more streamlined development deals.

A good chunk of the investor cash from those deals has come from a private equity sector that is starting to show some reluctance to invest in oil and gas, joining public market investors that have already closed their wallets.

Meanwhile, large-scale storage projects continue their ascent in investor popularity, especially as they are increasingly linked with solar development.

Here are five significant project finance trends that stood out to attorneys in 2019.

**Tax Credit Sunsets Spark Wind, Solar Project Rush**

The American Wind Energy Association said in October that wind projects either under construction or in advanced development are up 22% year-over-year through the first three quarters of 2019, while the Solar Energy Industries Association said on Thursday that 21.3 gigawatts of utility-scale solar projects were announced in the first three quarters of the year, nearly doubling the total U.S. utility-scale project pipeline.

Project lawyers point to the sunset of federal renewable energy tax credits as a factor.

The federal production tax credit primarily used by wind developers is scheduled to expire in 2020, while the investment tax credit primarily used by solar developers will start decreasing in value in 2020. Both credits require project developers to begin construction by the end of this year to be eligible to collect the credits' current full value.

"For sure, it certainly has had an impact on the volume we're seeing," said Holland & Hart LLP partner Billi McCullough, who frequently represents renewable project developers. "People are scrambling to get projects safe harbored by the end of the year."

There's legislation in Congress that would revive and extend those credits, but passage is far from a sure thing, especially during a presidential election year. But lawyers expect solar and wind development to continue chugging along even if the credits aren't rescued, thanks to a continued drop in technology costs and more aggressive renewable energy requirements from states and corporate power purchasers.

"Strong projects are still going to move forward," Mayer Brown LLP global projects counsel Chadron Edwards said. "It's just going to be some very cuspy ones that are probably going to be on the knife's edge. The fundamentals of a healthy project are still going to get it financed."

**Renewable Project Deals Look to Cut Red Tape**

With many renewable projects that are smaller in size and in their construction timelines — rather than power plants and other large facilities — lawyers say there's a continued push to string multiple projects together into portfolios large enough to be financed and eventually sold en masse, and make the financing process more efficient.

Sidley Austin LLP partner Brian Bradshaw said one method that's gaining favor is creating "aggregation facilities" that combine financing for project construction and project operation. These historically have been separate financing deals because construction debt tends to be a riskier prospect for investors than the debt for operating a project.

"Aggregation facilities are trying to accommodate both construction debt and permanent debt," Bradshaw said. "They're more complex, but it allows you to do more things underneath one overarching umbrella."

Even if aggregation facilities aren't doable, lawyers say developers and investors are trying to finance projects more efficiently by combining all the different credit facilities needed to move a project forward. Edwards said he's recently worked on project construction deals that rolled up four separate credit facilities.

"Three, four years ago, that might have been effectively four deals and four different kinds of closings over the course of the way a project is financed," Edwards said. "Now it's gotten collapsed into being one debt financing and one tax equity financing. That holds true even for the big [projects]."

**Oil and Gas Cos. Forced To Get Creative**

Capital and debt markets remain wary of sinking more money into oil and gas development amid persistent oil price volatility, though lawyers say pipelines and other midstream infrastructure are somewhat insulated from oil price swings and thus still able to attract cash.

But some say even private equity oil and gas investment is starting to slow, creating a chilly environment for oil and gas companies to not only make acquisitions, but also to develop the assets they already have.

"The financing part and the deal structure go hand-in-hand because of the macro situation for oil and gas companies," said Gibson Dunn & Crutcher LLP partner Shalla Prichard, who specializes in oil and gas project finance.

With traditional sources of financing increasingly unavailable, drillers have tried tapping other sources of cash. That means things like pursuing more entity-level or asset-level joint ventures or tapping the Term B loan market — essentially high-yield, longer-maturity, syndicated loans that are offered to a wider group of potential investors than just commercial banks.

Drillers are also getting more creative. The latter half of the year saw a pair of deals where companies rolled up interests in producing oil and gas wells into securities that carry investment grades, though lawyers caution that securitzation is only an option for companies with the right kinds of assets and creditors.

"You're seeing more targeted, non-cookie-cutter structures," Prichard said.

**Private Equity Splashes Project Cash**

Its growing aversion to oil and gas aside, private equity has been a welcome source of investment cash for energy project developers, lawyers say.

"Energy-related capital markets are challenging places to be right now, but private equity is still going on just fine," Bradshaw said. "To be candid, all the deals we're doing in this space are all PE-based."

Blake Winburne, the global head of Orrick Herrington & Sutcliffe LLP's energy and infrastructure group, said private equity and other nonbank lenders such as infrastructure funds are increasingly sinking cash into midstream oil and gas infrastructure, the power sector and especially, renewable energy.

Examples of private equity investment in the renewables sector include KKR & Co. Inc. in March sinking $900 million into a joint venture with NextEra Energy Partners LP that gives the private equity giant a stake in a portfolio of U.S. wind and solar projects. KKR in July agreed to form a joint venture with Brookfield Renewable Partners to own a Spanish solar plant developer in which Brookfield is kicking in $500 million.

"What we're seeing more of is that capital continues to be raised, but the fund managers are looking for different ways to deploy that capital," Winburne said. "We're seeing more creativity in how this private capital enters the capital structure of targets."

**Large-Scale Energy Storage Gathers Steam**

With more states, municipalities and utilities demanding energy storage as part of their clean energy goals, development winds remain firmly at the back of large-scale projects, either on their own or paired with solar projects.

"They are solidly financeable now," Schiff Hardin LLP projects partner Sarah Fitts said.

Large-scale storage projects advancing in 2019 include a 690-megawatt solar-plus-storage project that has a 25-year power purchase agreement with Nevada utility NV Energy that state utility regulators approved Dec. 4, and a proposed project with 400 MW of solar power and 300 MW of battery storage greenlighted by Los Angeles' municipal utility in September.

But Fitts said the most eyebrow-raising development may have been New York utility regulators'

October approval of LS Power's plans for a 316-megawatt battery storage project on the site of a gas-fired power plant in New York City that would replace most of the plant's older gas turbines.

There are plenty of aging, struggling fossil fuel power plants in the U.S. that could be attractive candidates for retrofitting with large-scale storage, especially in the Rust Belt, Fitts said.

"Suddenly, the idea you could raze [a plant] and put a bunch of batteries there just opens up a tons of possibilities," Fitts said.

--Editing by Kelly Duncan and Brian Baresch.