

OUR PRACTICE

Energy Finance

Baker Donelson works with clients in all sectors of the energy industry and has broad experience in energy finance. We offer a practical, industry-specific approach for both traditional and renewable energy transactions, including transactions related to anaerobic digester, landfill gas-to-energy, solar, co-generation and natural-gas-fired power generation facilities located throughout the country; debt, equity and other investments in, and divestitures of, interests in fossil fuels (coal, oil, gas); and financings and investments related to the biofuels industry.

Our experience covers a broad range of transactions, including:

- Project finance
- Reserve-based loans secured by oil and gas reserves
- Volumetric production payment financings
- Construction-to-term-loan financing facilities
- Syndicated facilities
- Stand-alone and portfolio projects
- Acquisitions
- Tax equity investments and tax leases
- Mezzanine finance

Energy finance clients include bank and non-bank lenders, captive finance companies, tax equity investors, lessors and other providers of capital or funds, as well as borrowers, developers, management teams, exploration and production (E&P) companies, contractors and other companies involved in energy finance.

Our team includes a former general counsel/chief legal officer and business executive in the alternative/renewable energy sector. We also have attorneys with decades of experience in the oil and gas industry, including attorneys who in their pre-law careers worked with an independent exploration and production company and an energy consulting firm. In addition, the Firm is a founding member of TenneSEIA, Tennessee's solar trade association, and members of the Firm have served on TenneSEIA's board of directors and as its general counsel.

Some examples of the energy finance services we offer include the following:

- **Power generation.** We prepare and conduct due diligence on key project documents related to power generation development, construction and operation, and to key revenue streams supporting equity or debt financing. These project documents include PPAs (power purchase agreements), advanced renewable tariffs, operation and maintenance agreements, carbon asset and development agreements, renewable energy certificate purchase and sale agreements, fuel supply agreements, EPC (engineering, procurement and construction) agreements, design agreements, licensing agreements, site leases and interconnection agreements.
- **Natural resources, including oil and gas.** We prepare and conduct due diligence on documentation for financing and investing in the exploration and development of natural resources, both foreign and domestic, onshore and offshore. This documentation includes development and production agreements; farmout, joint operating, joint venture and participation agreements; master service agreements; foreign oil and gas exploration and production agreements; domestic offshore oil and

gas exploration, production and operation agreements; and geophysical exploration and joint venture agreements. We also address issues related to the acquisition and divestiture of producing oil and gas properties; pooling and unitization issues; oil, gas, and mineral leasing and conveyance issues; and surface use issues.

- **Tax incentives.** We structure transactions in light of federal, state, local and utility incentives including investment tax credits, production tax credits, new market tax credits, income tax credits, sales and use tax exemptions, property tax exemptions, tax abatements, utility cash back rewards programs, and governmental grants, including 1603 grants (under prior law), as well as grants from the Rural Energy for America Program (REAP) and Environmental Quality Incentives Program (EQIP).
- **Land management.** We address land issues, including title, leasehold mortgages, and subordination and non-disturbance agreements.
- **Risk management.** We structure transactions to mitigate construction, design, technology, performance, operational, maintenance, casualty and other project finance risks, including the use of credit enhancements such as bonds, letters of credit, performance guaranties, limited recourse and springing guaranties, and sponsor support agreements. We also structure transactions in light of insolvency and other risks, including the use of special purpose entities (SPEs) and addressing fraudulent transfer issues.
- **Cash flow management.** We address cash flow risk by crafting cash application hierarchies with maintenance reserve and equity holding accounts; by designing payment structures using sculpted payment methodologies, cash sweeps and target debt balances; and through the use of hedging arrangements both for commodity inputs and for purposes of interest rate protection.
- **Security and Revenue Protection.** We manage collateral assignments and other issues needed to preserve the project's revenue stream for purposes of realizing the equity or debt investment, including negotiating consents to collateral assignments with utilities, land owners, operators, maintenance providers, fuel suppliers and other counterparties to key project documents.
- **Intercreditor Relationships.** We structure, negotiate and document transactions among debt, equity, mezzanine, bridge loan lenders, deferring suppliers and other participants, including intercreditor, lien subordination and standstill agreements.
- **Regulatory oversight.** We conduct diligence on governmental or other third-party approvals such as energy regulatory matters and environmental regulatory matters, including permits and environmental site assessments.
- **Foreign investment.** We advise on foreign investor and cross-border issues, including import/export matters and related regulations, EB-5 investment vehicles and establishing facilities abroad.



Representative Matters

- Represented lenders or borrowers in numerous non-recourse project financing transactions involving energy generation facilities, having an aggregate value in excess of \$1 billion, including anaerobic digester, landfill gas-to-energy, co-generation and natural-gas-fired turbine projects located throughout the country.
- Represented lender in connection with the financing of its customer's acquisition of renewable energy projects in North Carolina and Georgia from a hedge fund in a transaction involving investment tax credit recapture issues related to Native American equity investments.
- Represented publicly traded oil and gas company in the divestiture of more than \$1.3 billion of producing oil and gas properties located in Texas, Louisiana, Mississippi, Oklahoma, New Mexico, and Utah.
- Represented lender in connection with a \$36 million landfill gas-to-energy project in Nevada and a \$26 million landfill gas-to-energy project in New Jersey, both involving turbine generator sets.
- Represented lender in connection with a \$22 million cattle farm based digester project located in Idaho and a \$21 million swine farm based digester project located in Utah.

- Represented lender in connection with a construction-to-term-loan facility for a \$62.5 million landfill gas-to-electricity facility in California, and the subsequent sale by such lender of a participation interest in the financing.
- Represented independent oil and gas company in connection with equity investment by private equity fund for exploration and production activities in Louisiana and Texas.
- Counsel for biofuels logistics company in connection with a \$150 million syndicated facility plus a later upsizing to \$250 million.
- Represented lender in connection with a \$31 million anaerobic digester project that earned the American Biogas Council's "Merchant Biogas Project of the Year" award and that processes food waste produced by Disney World in Orlando, Florida.
- Represented a major municipal utility, the second largest locally-owned electric utility in Florida and 16th-largest in the nation, currently serving nearly 400,000 customers.
- Prepared specialized documentation allowing for a portfolio financing of construction and/or operating projects to be accomplished by way of supplements to a Master Agreement, with automatic cross-default, cross-collateralization, bankruptcy remote and other protections.
- Represented borrower in a \$23 million senior credit facility secured by oil and gas leases on the Outer Continental Shelf, which included warrants to the lenders.
- Borrower counsel in a \$105 million syndicated non-recourse project financing facility with approximately 20 landfill gas-to-energy projects across the country, plus a later \$50 million upsizing that financed the acquisition of approximately one dozen more landfill gas-to-energy projects.
- Represented lender in connection with the financing of its customer's acquisition of renewable energy projects in North Carolina and Georgia from a hedge fund.
- Represented lender in connection with an inside-the-fence, cogeneration project providing power, steam, hot water and chilled water to hospitals.