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Exclusive Insight on Power M&A and Project Financing

Power Finance & Risk

The weekly issue from **Power Intelligence**

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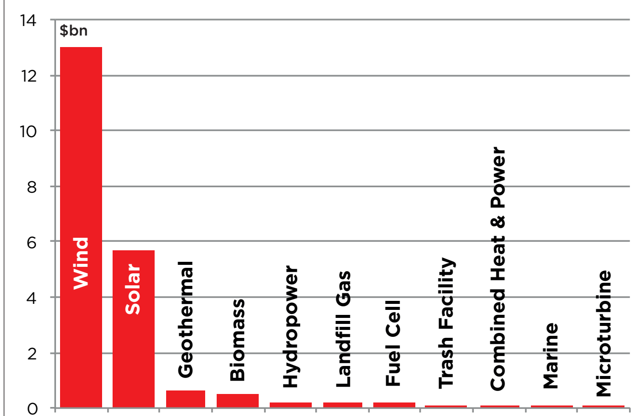
Cash Grant Litigation Volume Escalates

A growing number of developers are suing the U.S. government for allegedly not paying out the full amount of cash grants awarded to qualifying renewable projects under the section 1603 program of the American Recovery and Reinvestment Act. There are up to 20 cases pending in the U.S. **Court of Federal Claims**, according to observers, who add that the projects in litigation involve hundreds of millions of dollars of investment.

Developers contend that the U.S. **Department of Treasury** arbitrarily lowered project valuations upon application for the cash grant, which provides project owners with 30% of a project's cost. "All of these cases are going to have the same fact basis, which is that Treasury made an arbitrary decision about what the cost basis was," says an attorney in Washington D.C. representing several solar and wind developers in separate cases.

(continued on page 12)

Section 1603 Awards (as of February 1, 2014)



Source: U.S. Department of Treasury

NextEra Unveils Novel MLP-Like Yieldco

NextEra Energy's proposed **NextEra Energy Partners LP** carries a yield company structure that resembles a master limited partnership more than yieldcos that have gone public to date.

NextEra Energy Partners is seeking to raise $50 million in a public offering led by **Bank of America Merrill Lynch** and **Goldman Sachs** with **Morgan Stanley** as a managing bookrunner. It would have an initial portfolio of 10 wind and solar assets totaling 989.6 MW in Canada and the U.S.

NextEra would retain ownership of a certain percentage via a series of affiliates and would receive payments under a scheme called incentive distribution rights—colloquially known as high splits—that is commonly found in MLPs. This structure would evolve the ratio of payments and ownership over time as the

(continued on page 11)

Pattern Continues To Squeeze Pricing

Pattern Development is shooting for LIBOR plus 162.5 basis points for a debt package backing its 180 MW Armow wind project, undercutting the market low of LIBOR +175 bps that it nailed down for its recent K2 wind financing.

Deal flow has been light enough this year that many lenders are willing to push down pricing and terms to ink transactions, note financiers in the U.S. and Canada. "It's gotten crazy. People are desperate," says a financier, noting that some term sheets look like packages pre-financial crisis.

The company is reaching out to the coterie of lenders on its C$850 million ($757.78 million) non-recourse mini-perm K2 deal. Pattern is looking for takers on a roughly C$450 million ($413 million) package, say deal watchers.

However, financiers at some of the 15 lenders to K2 are

(continued on page 12)

SunEdison Stalks Yieldco IPO

SunEdison is working with a trio of bookrunners as it works toward a public offering for a proposed yieldco

See story, page 7

Ohio Gen Auctions Await Capacity Results

Prospective buyers will be submitting bids for AES Corp. and Duke Energy's unregulated fleets centered in Ohio after PJM releases its capacity auction results. *See story, page 6*

Generation Sale DATABASE

Check out the latest asset trades in *PI*'s weekly calendar, compiled from our exclusive Generation Sale Database.

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THE BUZZ

Renewables developers and scores of their attorneys are keeping a close watch on several sets of proceedings at the U.S. **Court of Federal Claims** in Washington D.C. A growing number of sponsors have filed suit in the court against the U.S. government seeking reimbursement under the section 1603 cash grant program (see story, page 1). The U.S. **Department of Treasury**, which oversees the program, is arbitrarily lowering valuations of qualifying projects, plaintiffs claim.

With little recourse structured into the program, sponsors that have the funds to endure a legal battle are resorting to lawsuits and court. "There was no appeals process in the Section 1603 program—our legal complaint was the only way to appeal the administrators' decisions and that's why we filed it," notes a spokesman for **SolarCity**, a plaintiff in one such case.

In other news, **AES Corp**. has upsized a rare floating rate note issuance to $775 million from $500 million (see story, page 5). There were roughly five floating rate note issuances in power and energy last year. While the choice in instrument is unusual, it's typical for companies to maintain some floating rate exposure, notes a credit analyst. The notes carry a coupon of 3% over three-month LIBOR.

The project finance market is flush with liquidity but face a shallow projects looking for capital. The dynamic is pushing down pricing across all types of fuel types from wind to quasi-merchant gas deals, financiers say. **Pattern Development** is out to find a cadre of lenders that will commit to a loan package with pricing at LIBOR plus 162.5 basis points (see story, page 1).

TELL US WHAT YOU THINK!

Do you have questions, comments or criticisms about a story that appeared in ***PFR***? Should we be covering more or less of a given area? The staff of ***PFR*** is committed as ever to evolving with the markets and we welcome your feedback.

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Generation Sale DATABASE

GENERATION AUCTION & SALE CALENDAR

These are the current live generation asset sales and auctions, according to *Power Intelligence*'s database. A full listing of completed sales for the last 10 years is available at www.powerintelligence.com/AuctionSalesData.html

Seller	Assets	Location	Advisor	Status/Comment
▶ AES Corp.	Stakes (DPL Energy Coal, Gas, Oil)	Various	Barclays	Binding bids due after PJM capacity results (see story, page 6).
Acciona	Portfolio (Wind, Solar)	Various	Lazard	First rounds bids submitted (PI, 3/31).
Advanced Power Systems	Cricket Valley (1 GW CCGT)	Dutchess County, N.Y.	Whitehall & Co.	TIAA-CREF has taken a stake (PI, 4/28).
ArcLight Capital Partners	Juniper Generation (Cogen portfolio)	Various, California	McManus & Miles	Sale relaunched after several PPAs were extended (PI, 3/17).
ArcLight Capital Partners	Peakers (2 GW Gas)	Various, Georgia	TBA	Carved peakers out of Southeast PowerGen to sell (PI, 3/24).
ArcLight Capital Partners	Victoria (330 MW CCGT)	Victoria, Texas	UBS	Sale is near launch (PI, 4/7).
ArcLight Capital Partners	Sun Peak (222 MW Gas)	Las Vegas, Nev.		Nevada Power is buying them (PI, 5/12).
Atlantic Power Corp.	Fleet (2.1 GW)	Various	Goldman Sachs, Greenhill	Tapped two advisors to run strategic evaluation (PI, 5/12).
BNB Renewable Energy	Mesquite (200 MW Wind)	Lamesa, Texas		Sumitomo bought the remainder of the project (PI, 5/5).
Calpine	Portfolio (3.5 GW Gas)	Various		LS Power is buying the fleet in the Southeast (PI, 4/28).
Corona Power	Stake (Sunbury, 900 MW Repowering)	Shamokin Dam, Pa.	Perella Weinberg	First round offers due April 14 (PI, 3/31).
▶ Duke Energy	Portfolio (6.6 GW Coal, Gas, Oil)	Various	Citi, Morgan Stanley	First round bids due around 5/30 (see story, page 6).
EmberClear	Portfolio (660 MW CCGT developments)	Good Spring, Pa.	CCA Capital	Tyr has partnered on the development assets (PI, 3/31).
Entegra Power Group	550 MW Stake (2.2 GW Union Station CCGT)	Arkansas	Bank of America	Gearing up to sell the unit that has a tolling agreement (PI, 3/31).
Essar Group	Algoma (85 MW CCGT)	Algoma, Ontario	Barclays	Teasers are on the market (PI, 1/13).
▶ Exelon Corp.	Stake (417 MW Safe Harbor Hydro)	Conestoga, Pa	None	Brookfield is buying the stake (see story, page 7).
FGE Power	FGE Texas (726 MW CCGT)	Westbrook, Texas	Fieldstone	Fieldstone is advising on equity hunt in tandem to debt raise with Goldman.
GE Capital	Stake (250 MW Wind)	Finney, Kansas		Enel is buying out the rest of the farm (PI, 5/19).
Invenergy	Parc des Moulins (135.7 MW Wind)	Kinnear's Mills, Quebec		La Caisse has bought a minority stake (PI, 5/5).
MACH Gen	Portfolio	Various		Second lien creditors have taken it over via Ch. 11 deal (PI, 5/19).
▶ Meridian Energy	CalRENEW-1 (5 MW Solar)	Mendota, Calif.		SunEdison bought the asset (see story, page 6).
NRG Energy	Various (Gas, Solar)	Various	None	Dropdowns to NRG Yield (PI 4/14).
NextEra Energy Resources	Pheasant Run II (75 MW Wind)	Huron County, Mich.	None	DTE Electric is considering buying the farm via a PPA option (PI, 3/3).
Norvento USA	Bloom (180 MW Wind)	Dodge City, Kan.	TBA	Capital Power bought the project (PI, 3/24).
Ontario Teachers Pension Plan Board	Stake (Northern Star Generation)	Various	Citigroup	CalPERS, Harbert emerge as frontrunners (PI, 4/28).
Optim Energy	Portfolio (1.4 GW Coal, Gas)	Texas	Barclays	Mulling a sale via bankruptcy filing (PI, 3/10).
Pattern Development	Panhandle 1 (218 MW Wind)	Carson County, Texas	None	Pattern Energy Group, tax equity investors are buying it (PI, 5/12).
Power Resources Cooperative	Stake (605 MW Boardman Coal)	Boardman, Ore.		Portland General is upping its stake as retirement, refueling loom (PI, 4/28).
Project Resources Corp.	Rock Aetna (21 MW Wind	Minnesota	Alyra Renewable Energy Finance	Looking for a buyer with access to turbines to qualify for PTC (PI, 1/13).
▶ Rainy Rivers Nations	Stake (25 MW Solar)	Pinewood, Ontario		Two infrastructure investors stook stakes (see story, page 6).
Southwest Generation	LV Cogen 1, 2 (274 MW Gas)	Las Vegas, Nev.		Nevada Power is buying them (PI, 5/12).
Starwood Energy Group	Neptune (25% Stake Transmission)	New York		Northwestern Mutual is buying Starwood's stake (PI, 5/19).
Terra-Gen Power	Alta (947 MW Wind)	California	Citigroup, Morgan Stanley	Brookfield, Berkshire Hathaway Energy lead second round contenders (PI, 5/5).
We Energies	Presque Isle (425 MW Coal)	Marquette, Wis.	None	No buyers submitted proposals in RFP (PI, 3/10).
Exelon Corp.	Stake (417 MW Safe Harbor Hydro)	Conestoga, Pa	None	Brookfield is buying the stake (see story, page X).

▶ **New or updated listing**

*The accuracy of the information, which is derived from many sources, is deemed reliable but cannot be guaranteed. To report updates or provide additional information on the status of financings, please call Managing editor **Holly Fletcher** at (212) 224-3293 or e-mail hfletcher@iiintelligence.com.*

PROJECT FINANCE DEAL BOOK

Deal Book is a matrix of energy project finance deals that Power Intelligence is tracking in the energy sector. A full listing of deals for the last several years is available at http://www.powerintelligence.com/projectfinancedeal.html

Live Deals: Americas

Sponsor	Project	Location	Lead(s)	Loan	Loan Amount	Tenor	Notes
Alterra, Fierra Axium	Jimmie Creek (62 MW Hydro)	British Columbia, Canada	TBA	TBA	TBA	TBA	Sponsor will likely tap LifeCos for the detb (PI, 5/5).
Cameron LNG	LNG Export Facility	Hackberry, La.	TBA	TBA	~$4B	TBA	Sponsor is shooting for pricing of L+175 bps (PI, 3/10).
Cape Wind Associates	Cape Wind (420 MW Wind)	Nantucket Sound, Mass.	BTMU, Natixis, Rabo	TBA	TBA	TBA	Sponsor adds Natixis and Rabo as leads with BTMU (PI, 3/31).
Cheniere Energy	Sabine Pass Trains 3 & 4 (LNG Export Facilities)	Sabine Pass, La.	TBA	TBA	$4.4B	TBA	Company issues $2B in notes to refi debt and fund construction (PI, 5/19).
Competitive Power Ventures	St. Charles	Charles County, Md.	GE EFS	TBA	~$600M	TBA	Sponsor is looking to tighten pricing following on from the Woodbridge deal (PI, 4/14).
Dalkia/Fengate	Merrit (40 MW Biomass)	Merrit, B.C.	BTMU	TBA	$168M	TBA	Sponsor aims to wrap the financing early next year (PI, 12/2).
EDP Renewables North America	Headwaters (200 MW Wind)	Randolph County, Ind	TBA	Tax Equity	$350-400	TBA	The sponsor is looking to secure both equity and tax equity investment (PI, 6/24).
Exmar NV	Floating Liquefaction Project	Colombia	TBA	B Loan	$170M	TBA	Sponsor looking to land a B loan for the debt on the project (PI, 5/5).
FGE Power	FGE Texas (726 MW Gas)	Westbrook, Texas	Goldman Sachs	TBA	TBA	TBA	The sponsor is close to lining up equity and will tap Goldman Sachs to launch a B loan (PI, 1/27).
Freeport LNG	Freeport (LNG Export Terminal	Freeport, Texas	Credit Suisse, Macquarie	TBA	~$4B	TBA	More than 20 lenders are eyeing the deal, with some offering tickets of $600M (PI, 2/10).
Invenergy	Nelson (584 MW Gas)	Rock Falls, Ill.	GE EFS	TBA	TBA	TBA	Sponsor is looking for a bank loan backing the merchant facility (PI, 9/2).
KSPC, Samsung	Kelar (517 MW Gas)	Chile	Natixis	TBA	TBA	TBA	The JV appoints Natixis as lead on the deal (PI, 1/13).
Lake Charles Exports	Lake Charles (LNG Export Facility)	Lake Charles, La.	TBA	TBA	TBA	TBA	Sponsor begins preliminary financing search for the potentially $11B project (PI, 8/26) .
Magnolia LNG	Magnolia LNG (LNG Export Facility)	Lake Charles, La.	BNP, Macquarie	TBA	$1.54B	TBA	Sponsor issues shares to bridge to closing of the debt (PI, 5/12).
NextEra Energy Resources	Bluewater (60 MW Wind)	Lake Huron, Ontario	TBA	TBA	TBA	TBA	Sponsor is talking to lenders in the U.S. to finance the project (PI, 5/19).
New Generation Power	NGP Texas (400 MW Wind)	Haskell County, Texas	TBA	Construction/ Term/Tax Equity	~$700M	TBA	This is the sponsor's largest deal to date (PI, 4/14).
NTE Energy	Multiple (Gas)	U.S.	Whitehall	TBA	TBA	TBA	Sponsor is looking to line up equity investors and then debt backing three projects in the U.S. (PI, 3/10).
▶ Pattern Energy	Armow (180 MW Wind)	Kincardine, Ontario	TBA	TBA	$450m	TBA	Sponsor is looking for tighter pricing than its K2 financing (see story, page 1).
Radback Energy	Oakley (586 MW Gas)	Contra Costa County, Calif.	BTMU	Term	$990M	4-yr	Deal is temporarily put on hold following an appellate court decision (PI, 11/11).
Sempra U.S. Gas & Power	Energía Sierra Juárez (156 MW Wind)	Baja California, Mexico	BTMU	TBA	~$250M	TBA	A club of banks and agencies are near close on the deal (PI, 3/24).
SolarReserve	Rice (150 MW Solar Thermal)	Blythe, Calif.	Morgan Stanley	TBA	$450M	TBA	Sponsor taps Morgan Stanley to secure debt, tax equity and equity (PI, 8/26).
Tenaska	Imperial Solar Energy Center West (150 MW CPV)	Imperial County, Calif.	BTMU, Union	TBA	TBA	TBA	The company has launched the deal at a bank meeting (PI, 5/19).
Transmission Developers	Champlain Hudson Transmission Line	New York	RBC	TBA	~$1.6B	TBA	Sponsor is aiming to line up the debt by year-end (PI, 3/3).

▶ **New or updated listing**

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STRATEGIES

AES Upsizes, Wraps Floating Rate Notes

AES Corp. has closed a $775 million floating rate note issuance after upsizing the deal from $500 million.

The five-year notes, which priced at the tighter end of pricing talk last week, according to an observer. The notes carry a coupon of 3% over three-month LIBOR and an original discount of 99.75. The transaction wrapped Tuesday.

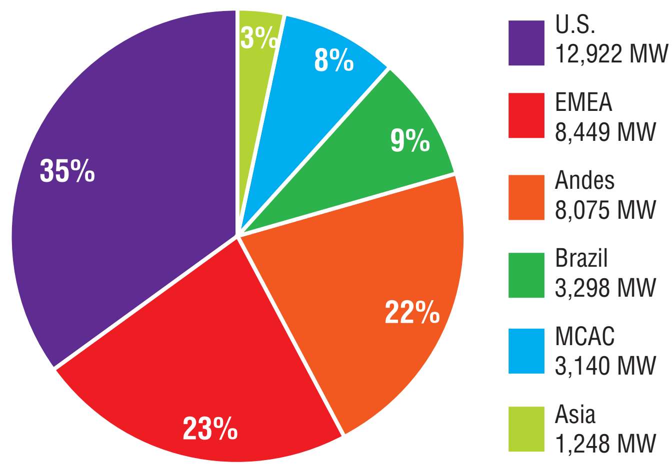
Citigroup is lead left and a joint bookrunning manager. **Barclays**, **Bank of America Merrill Lynch** and **Credit Suisse** are the other joint bookrunning managers. **BNP Paribas**, **Crédit Agricole**, **HSBC**, **Mitsubishi UFJ Securities**, **Royal Bank of Scotland** and **Société Générale** are co-managers.

While floating rate notes are unusual, it's not atypical for AES to issue this type of note since the company has little floating rate exposure, says an analyst at a rating agency. Companies with BB or BBB ratings generally keep about 10% to 15% of their debt at floating rate, he adds. Standard & Poor's rates AES Corp. BB-.

Proceeds from the notes will pay down the AES Corp.'s senior term loan facility that matures in 2018 and carries an effective interest rate of 5.2%. As of March 31, the company had $797 million outstanding on the term loan. Some of the underwriters or their affiliates are also lenders on the term loan and will receive a portion of the proceeds from the offering.

Bankers and spokespeople at the joint bookrunning managers in New York and AES Corp. in Arlington, Va., declined to comment or did not respond to inquiries by press time.

AES Corp. Global Generation



Source: U.S. Securities and Exchange Commission

MERGERS & ACQUISITIONS

Meridian Exits U.S. With Solar Sale To SunEd

New Zealand-based retail energy company **Meridian Energy** has sold a solar facjility in California to **SunEdison**—the final step in Meridian's exit from the U.S. power market.

SunEdison bought the 5 MW CalRENEW-1 solar facility in Mendota, Calif., that was completed in 2010 by **Meridian Energy USA**. CalRENEW-1 was the first solar asset to be connected to the CAISO grid under the state's renewable portfolio standard program. It has a long-term power purchase agreement with **Pacific Gas & Electric**.

CalRENEW-1 is Meridian Energy USA's largest asset and the sale brings to an end the company's five-year stint in the U.S. renewable energy market. Meridian is leaving the U.S. market "to focus on our operation in New Zealand and Australian," according to **Guy Waipara**, general manager for external relations in Christchurch, N.Z. The company is developing a solar platform in its home country.

Details such as purchase price were not disclosed.

Developer Ropes Infra Pair For Ontario Solar Equity

Connor Clark & Lunn Infrastructure and **Terrma Capital Corp**. have bought into a trio of solar projects in Ontario owned by **Rainy Rivers First Nations**.

CC&L Infrastructure and Terrma Capital will be the minority owners in the 25 MW Rainy River solar project that consists of two, 10 MW and one, 5 MW projects near Pinewood, Ontario. Construction is set to begin soon with commercial operations beginning in the first half of 2015. The power will be sold to the **Ontario Power Authority** under three power purchase agreements.

CC&L Infrastructure is a middle market infrastructure investor affiliated with asset manager **Connor Clark & Lunn Financial Group**. It targets $25-750 million investments in North America projects, such as roads, bridges, generation and transmission. It will look at opportunities from development stage to operational. It invested in the 100 MW Grand Renewable solar project co-owned by **Samsung Renewable Energy** and **Six Nations of the Grand River** in fall 2013. **Matt O'Brien** is president of CC&L Infrastructure in Toronto.

Terma Capital is an investment company in Toronto backed by a group of high net worth individuals that are focused on the infrastructure sector. **Pat Madigan** is president of Terrma Capital.

Officials for the firms did not respond to inquiries regarding the deal structure and whether any debt is being used to fund construction.

AES, Duke To Take Bids After PJM Capacity Results

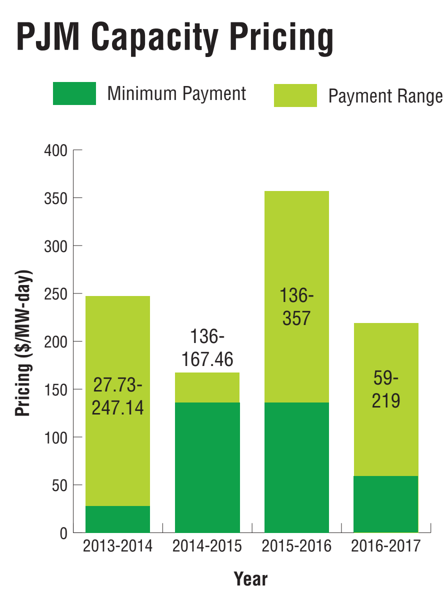
AES Corp. and **Duke Energy** are awaiting the outcome of the 2017-2018 capacity auction in PJM before setting deadlines for bids in their respective auctions of unregulated generation in Ohio.

Many power industry players are eagerly awaiting the PJM auction results, which are scheduled for release after 4 p.m. EDT on May 23. The auction was held May 12-16.

For sellers with assets on the market—and Ohio is littered with unregulated generation being sold by AES and Duke—having clarity on pricing into the future gives buyers confidence when making bids. Lower than expected PJM capacity pricing last year tempered the outlook on the region's merchant prospects as a record amount of power was imported from other regions.

The 2016-2017 pricing results came in at $59-219 per MW-day for 2016-2017—numbers that were lower than some expected (PI, 5/31). The results reflected an increased amount of imports from other regions that tried to take advantage of higher wholesale prices in PJM. MISO supplied most of the imports, doubling its exports into PJM to 4.7 GW from the year prior. Capacity pricing is the wholesale price of power and the level is determined by analyzing the cost of power from facilities that bid into the market.

This year, a number of greenfield projects that are slated to be online in central PJM in the 2017-2018 timeframe could impact pricing more than imports or coal-fired retirements, say analysts. PJM is expected to exercise existing rules to limit the amount of imports (PI, 4/17). PJM's 2014-



Source: PJM

MERGERS & ACQUISITIONS

2015 pricing scheme of $136-167.46 per MW-day starts June 1.

With both AES and Duke looking to shift to a regulated profile in Ohio, the outcomes are shaping the timeline of the auctions. The AES auction has been in the works since early in the first quarter. The seller decided to delay the final round of bids to wait on the PJM results, say deal watchers. The first round bids for Duke will be due around May 30, says a deal watcher.

Barclays is advising AES on the sale of stakes in coal, diesel and gas-fired assets totaling about 8.4 GW (PI, 2/14). **Citigroup** and **Morgan Stanley** are advising Duke on 6.6 GW of coal-and gas-fired assets (PI, 4/17).

Spokepeople for the advisors either declined to comment or did not immediately respond to inquiries.

SunEdison Nears Public Yieldco S-1

SunEdison is closing in on making a public S-1 filing for its initial public offering of **SunEdison YieldCo**.

SunEdison has hired **Barclays** and **Goldman Sachs** as bookrunners for the IPO, say observers. The filing could be as early as this week although it is expected before June, says a deal watcher. A third bookrunner is expected to join.

SunEdison took pitches from prospective bookrunners about two months ago (PI, 3/21). SunEdison YieldCo is how SunEdison refers to the yield vehicle in its financial reports.

SunEdison YieldCo will have a different growth model from NRG Yield—the marquee yieldco to date—because there is greater liquidity in solar distributed generation. Distributed solar assets go into operation quicker than utility scale assets so SunEdison will have access to a wider pool of assets to dropdown. The yieldco portfolio will be a mix of utility scale, commercial and residential assets in North America, the U.K. and Chile.

The portfolio that is earmarked for the yieldco could raise $300-500 million by several estimates although that range doesn't hint at the overall valuation of the IPO without clarity about what percentage of SunEdison's assets are being sold. SunEdison will own at least 51% in SunEdison YieldCo.

Deutsche Bank has been a key lender to SunEdison this year. The bank has arranged upwards of $500 million in project debt and credit facilities for SunEdison (PI, 5/1). It had been expected to be in the line-up but is not as of yet.

Spokespeople for Barclays, Deutsche Bank and Goldman either declined to comment or did not respond to an inquiry. A SunEdison spokeswoman did not immediately respond to inquiry.

MLP Picks Up Stake In Iberdrola Plant

Energy Transfer Equity LP is buying out **Iberdrola USA**'s stake in a gas-fired facility in Pennsylvania.

Iberdrola USA owns 50.1% of the 43.7 MW PEI Power II facility in Archbald, Pa., according to a filing with the U.S. **Federal Energy Regulatory Commission**. Iberdrola USA subsidiary **Cayuga Energy** and **PEI Power Corp**., a subsidiary of Energy Transfer,

Brookfield Ropes Remainder Of Safe Harbor

Brookfield Renewable Energy Partners has agreed to buy **Exelon Corp**.'s stake in Safe Harbor Hydro for $613 million—a deal that makes Brookfield the full owner.

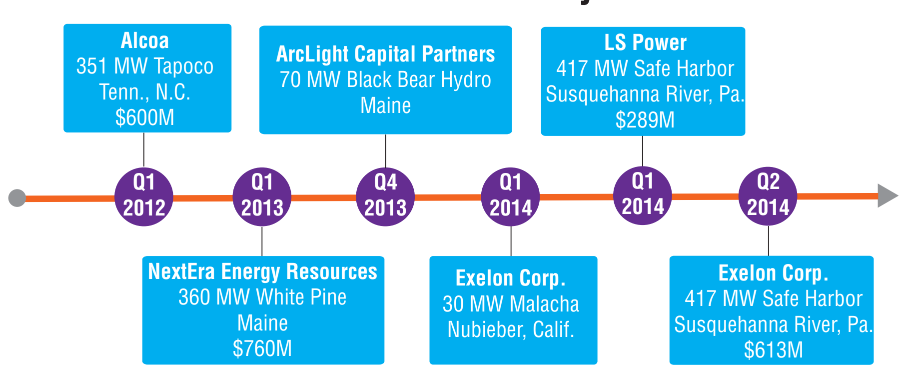
Safe Harbor Hydro is a 417 MW facility on the Susquehanna River in Pennsylvania. Brookfield bought a 33.7% stake from **LS Power** in Safe Harbor for $289 million earlier this year (PI, 2/12). The acquisition of Exelon's 66.7% stake is roughly $222 per kW, a touch more than the $221/kW it paid LS.

Brookfield expects to finance the acquisition with capital from institutional partners as well as a non-recourse, fixed-rate facility for a portion of the price. Brookfield Renewable is likely to own about 40% of Safe Harbor once institutional partners contribute equity, according to an analyst.

This year, Brookfield has refinanced a hydro portfolio in Maine with a bridge loan and issued bonds to finance a hydro acquisition in Maine from **ArcLight Capital Partners**.

Exelon owns the facility via subsidiary **Constellation Power Source Generation** and has been trying to exit the assets that it does not consider core. Brookfield bought out Exelon's 50% stake in the 30 MW Malacha hydro facility in Nubieber, Calif. (PI, 11/5).

Brookfield Renewable's Recent Hydro Deals



Source: Power Intelligence

MERGERS & ACQUISITIONS

entered into joint ownership of the plant in July 2000. Energy Transfer owns the other 49.9%.
Energy Transfer, the master limited partnership associated with **Energy Transfer Partners**, owns an adjacent 30 MW facility in Archbald, Pa.

Spokespeople for the firms could not immediately comment.

N.C. Solar Developer Lands Growth Capital

FLS Energy, a solar developer out of North Carolina, has lined up equity from a trio of investors.

FLS Energy will use the proceeds from funds managed by **New Energy Capital, North Sky Capital** and **Novus Energy Partners** to finance acquisitions and pipeline development. The investment is in the tens of millions, says an observer.

Hanover, N.H.-based New Energy Capital has been an investor in FLS Energy since 2010. Its recent investment is via its $100 million **NEC Cleantech Infrastructure Fund**. North Sky, based in Minneapolis, invested from its **Cleantech Alliance Direct Fund**.

FLS Energy, based in Asheville, N.C., is in the market to add to its development pipeline and recently launched a request for proposals as a way to source up to 100 MW of potential acquisitions in **Duke Energy** or **Dominion North Carolina Power** footprints (PI, 4/23). The company is interested in buying projects or development platforms.

The solar shop, headed by **Dale Freudenberger**, owns solar projects totaling 50 MW across the Southeast. It expects 90 MW to be online this year with an additional 150 MW online in 2015.

Elias Hinckley and **Lewis Segall**, partners at **Sullivan & Worcester** in Washington, D.C., led the team that advised FLS Energy. **Rath, Young** and **Pignatelli**, **P.C.** advised New Energy Capital.

Officials or spokespeople could not immediately comment on the deal.

PEOPLE & FIRMS

Bostonia Hires Renewable M.D.

Bostonia Partners has hired **Randall Male** as managing director.

Male will focus on renewable energy Bostonia's Boston office. He will help grow the firm's investment banking team, source investment opportunities and work on financing products for sponsors. Bostonia Partners is an affiliate of **Bostonia Group**, a boutique investment bank.

Male was previously president of boutique advisory **REM Energy** in North Yarmouth, Maine. where he worked in renewable energy strategy and financial consulting. He was also a senior developer at **Citizens Energy**, a developer in the U.S. and Canada.

This is the second managing director that Bostonia has hired this year to build out its renewable practice. **Scott Foster** joined the outfit from **Hannon Armstrong Sustainable Infrastructure** to grow the firm's federal energy and infrastructure finance practice (PI, 3/20).

Male was not immediately available to comment.

POWER TWEETS

The #Power Tweets feature tracks trends in power project finance and M&A in the Americas on **Twitter**. For more news and coverage, follow @power_intel on Twitter, as well as Managing Editor @HollyFletcher and Editor @SaraReports.

@Stphn_Lacey: Hawaii commissioner: "The model is changing. It's no longer a central power plant model" in the state.. #DRTM2014

@CostaSamaras: I agree with this from the Brookings piece: Incentives should not be based on output but on the reduction in emissions by renewable energy.

@cleantechvc: Yes, there's a big delta between off-peak baseload cost and peaker costs. You know what else replaces peakers? Demand response and solar.

@johnbringardner: Two days of Energy Future Holdings hearings kick off momentarily. First up, motion to transfer case from Delaware to Dallas.

@EIAgov: Today In #Energy: U.S. wood pellet exports double in 2013 in response to European demand http://go.usa.gov/89Nz pic.twitter.com/rKGFkgJso5

@AmyAHarder: 7 Senate Dems, including Warner, Landrieu & Pryor, pen letter to Obama expressing concern re: CCS in @EPA rule: http://1.usa.gov/1IRJV8w

@hollyfletcher: And thus far Deutsche Bank, a key lender to SunEdison in 2014, is not on the bookrunner list. DB has arranged $500M+ for SunEd since Q1

Industry Current: Will new REIT Rules Help Reduce Capital Costs? — Part II

THIS WEEK'S INDUSTRY CURRENT was written by **John Marciano**, partner at **Chadbourne & Parke**, examines how, and whether recent regulation proposals released from the U.S. **Internal Revenue Service** open the door for real estate investment trusts being able to invest in solar assets.

John Marciano

The power industry is busy trying to digest proposed regulations that define the types of assets a real estate investment trust may own or lend against.

The big question is whether a power plant owner will be able to use a REIT to raise capital (debt or equity) more cheaply than through other sources. The jury is still out. The industry hopes it can persuade the U.S. **Internal Revenue Service** to revise the rules to fit President **Obama**'s goal of making REIT capital more accessible to renewable energy projects.

A REIT is a corporation with a tax profile that is similar to a partnership. A REIT generally is not taxed on earnings distributed to shareholders. Shareholders are taxed on dividends. The fact that there is no corporate level tax in a REIT allows the REIT to offer a higher dividend yield than a regular corporation.

REITs hold an advantage over most partnerships (other than master limited partnerships) because a REIT can be publicly traded without losing the benefit of the single layer of tax. An MLP can be publicly traded and also has no entity level tax. However, it is hard to see how an MLP could be used efficiently without several statutory changes.

REITs are not a panacea. Their operational rules are difficult to navigate.

Yet, the complication may be worth it if involving a REIT means reducing the all-in cost of capital.

REITs will not supplant tax-equity as a capital source. A REIT's tax bill is usually very low because it distributes most of its revenue to shareholders, so it cannot use tax benefits efficiently, to the extent it is eligible for them. In addition, tax benefits that accrue to a REIT do not flow through to its shareholders to offset taxes on dividends.

The proposed rules clarify that a REIT could provide debt against at least a portion of most renewable power plant assets. They clarify that a REIT could provide cash equity in some tax-equity transactions. To do so, there are several hurdles to clear.

One big hurdle to providing equity is that a REIT cannot sell power (i.e., inventory); income from power sales is subject to a 100% tax rate. A REIT could participate in a venture that sells power only through a taxable REIT subsidiary.

Another hurdle is to identify how much of the project is "good" REIT property. That is, how much of it is real estate? At least 75% of the value of the REIT's total assets must consist of real estate assets and certain cash type items. The REIT must also earn at least 75% of its income in general from rents from real property, mortgage interest, and other specified real estate-source income.

The new regulations focus exclusively on what is real property for these purposes.

A REIT can own or lend against land, structures that are permanently affixed to land and structural components of those items.

The new proposed regulations provide an angel list of per se permissible assets. The angel list does not include renewable energy assets, but general guidance does suggest limited portions of some renewables projects would be eligible.

Portions of utility scale solar projects could potentially be "good" REIT assets under the proposed rules. These are portions that are deemed to be permanent, such as underground cables, foundations, transmission equipment and certain mounting systems. The rules explicitly would permit these items to support an active renewable power project. The market had already assumed this was OK, but this certainty would reduce the need to obtain a specific IRS ruling on the subject.

Active assets would be off limits under the current proposal. A REIT could not own an asset used to produce goods, like electricity, and have it be counted in the good REIT asset category unless the asset provides a utility-like service to a building and the REIT owns both the building and an "equivalent interest" in the asset.

This raises several questions that should be addressed in formal comments to the IRS.

First, while the REIT rules are designed to help pool capital of static assets, the fact that the assets "produce" a good isn't necessarily relevant. The IRS should consider limiting the active asset restriction to assets that sell goods, rather than merely producing it. This is consistent with the current restriction against REITs selling inventory and fits the Obama administration's goal of helping a meaningful number of renewable energy projects fit into the REITable category. It would be a big step towards permitting REITs to lease distributed solar projects, which are largely passive in nature.

Second, it is unclear why the IRS believes that a REIT must have an equivalent interest in both a structural component and a

(continued on page 10)

INDUSTRY CURRENT

New REIT Rules *(Continued from page 9)*

building it supports.

Yes, a structural component must be a component of real property to qualify. However, it does not follow that there must be common ownership between the two. Ownership does not establish permanence or whether a component supports a larger asset.

The focus should be on the utility of the item to the building.

In the investment tax credit regulations, storage equipment (e.g., a battery) is ITC eligible equipment if it is "used in connection with" solar generation equipment. Those regulations explicitly permit the storage equipment to be owned by a person other than the owner of the generation equipment. The same concept should be used in the REIT rules to determine whether something is a structural component. Separate owners should be permitted and the structural component should be allowed to serve more than one use. That is, a power generation unit that is a structural component of a building should be able to provide power to a building and deliver excess to a third party under a net metering regime.

At a minimum, if one of the goals is to crystalize the fact that solar systems can fit into the REIT metric, the REIT rules should clarify that, if joint ownership of a structural component and the building it serves is required, the interest in each need not be "equivalent." Equivalence is very difficult to determine in highly structured transactions. Common ownership would rarely be present in the context of a renewable power project.

A low bar in common ownership will help facilitate tax-equity transactions, which currently are essential to financing renewable energy transactions.

If a REIT can meet its real estate ownership/income requirements and it does not receive income from power sales, it will be able to participate in certain tax-equity transactions. This assumes that the broad REIT definition of real property does not bleed into the IRS thinking about what qualifies for tax credits and accelerated depreciation. The energy credit was added to the tax code specifically to clarify that structural components of buildings could qualify for an investment credit; however, if components of certain projects (like permanent racking and foundations) are treated as akin to buildings themselves, that raises the question of whether the IRS believes they are credit-eligible. The final regulations should address this concern if the IRS wants to advance the ball.

Project developers use three primary structures to raise capital with tax benefits: a partnership-flip transaction, a sale-leaseback transaction or an "inverted" lease.

A REIT that meets the minimum requirements for real estate holdings and income from real estate can be fairly flexible in its investments, as long as it does not sell power.

For example, a large REIT that owns shopping malls or hotels may view its interest in a fairly substantial distributed solar project as immaterial for purposes of the minimum real estate holdings and income tests. Special purpose REITs designed to own only a portfolio of power projects, on the other hand, will have a harder time meeting the rules.

REITs can avoid investing in "bad" REIT assets altogether and instead focus solely on owning or lending against "good" REIT assets. For example, the REIT could lend to a utility-scale solar project and take security only in the land lease and racking systems (assuming they are permanent). It could also buy the good REIT assets that are part of a project and lease them back to the project owner. This is easier in a world without tax credits since pulling a credit-eligible asset, like the racking in a solar plant, out of the project company and putting it under a REIT would make the credit unavailable to tax-equity. That being said, if the tax-equity already claimed an investment tax credit, selling and leasing back pieces of the project may not cause the credit to be recaptured.

In a partnership flip, a tax-equity investor purchases an interest in a limited liability company that owns the facility. The tax benefits would be allocated mostly to the investor. Once the investor reaches its specified return, its share of the deal would be reduced substantially.

A REIT could take all or part of the sponsor-side partnership interest without affecting the tax benefits available to the tax-equity investor, as long as the partnership did not sell power. The REIT would siphon off tax benefits to the extent of its share of profits prior to the "flip." However, that share would be very small and that is no different than what a typical sponsor would receive.

In a sale-leaseback, the sponsor would sell the project (or just the good REIT assets) to a REIT just prior to placing it into service and lease it back. A REIT also could partner with the sponsor or (as mentioned above, the tax-equity). Any tax benefits allocated to the REIT would be lost, but unlike bringing in a tax-exempt investor into a deal, the share of lost benefits is limited to the REITs current profit sharing percentage. That differential permits a REIT to participate as cash equity in a flip partnership.

If the REIT is the lessee, it does not affect the availability of tax benefits to the lessor. It would be important for the REIT to sublease the project. It could not sell power.

An inverted lease presents a more complicated picture for a REIT. In a typical deal, a developer leases the project to an investor and agrees to pass through any tax credits to the lessee. A REIT is not permitted to pass through tax credits. However, a REIT could lend to either a lessor or lessee of in an inverted lease if the security was real property that was part of the project. It could also be a partner in a lessee partnership if the lessee subleases the property. This could provide the added benefit of taking the management duties off the hands of the investor.

Comments to the proposed regulations must be submitted by August 12, 2014. A public hearing is scheduled for September 18, 2014 to discuss comments.

NextEra Unveils *(Continued from page 1)*

yieldco hit certain benchmarks. NextEra, for example, might start off owning 70% of the stock of the NextEra Energy Partners and the ownership would gradually decrease over time while its share of payments increased.

Proponents of the high splits structure say that it incentivizes the company to build the portfolio in order to maximize its own payments. This in turn distributes more payment to shareholders compared to a structure akin to **NRG Yield**, where the parent itself has more tempered upside to follow-on acquisitions. The high splits structure also brings with it questions about tax issues which could be trickier with renewable assets.

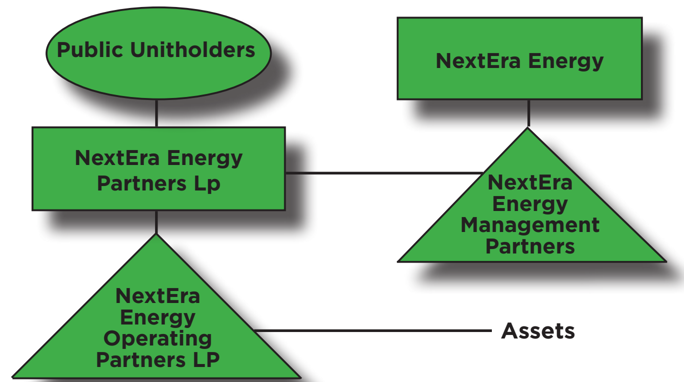
The $50 million target surprised some analysts and yieldco observers for being low across the sector although the ultimate valuation of NextEra Energy Partners has yet to be determined. NextEra has not publicly identified how much of the yieldco it will own nor has it specified how the high splits will work or advance. NextEra Energy Partners will list on the **New York Stock Exchange**. Under the Jumpstart Our Business Startups Act, or JOBS act, a company must wait at least 21 days after the filing to begin the road show. NextEra filed the public S-1 with the U.S. **Securities and Exchange Commission** on May 20 (PI, 5/20).

The wind and solar portfolio has five assets in the U.S. and five in Canada. Nine of the assets are operational with the 59.9 MW Bluewater wind project in Ontario expected to be online in the third quarter. The portfolio consists of seven wind assets and three solar assets. None of the initial portfolio will generate production tax credits.

All are fully contracted with offtakers that have a capacity weighted average of an A2 rating from **Moody's Investors Service** and offtake agreement life of 21 years. The initial portfolio will include:

-174.3 MW Northern Colorado wind farm in Colorado
-98.9 MW Elk City wind farm in Oklahoma
-20 MW Moore solar facility in Ontario
-20 MW Sombra solar facility in Ontario

NextEra Energy's Proposed Yieldco Structure (simplified from S-1)



Source: U.S. Securities and Exchange Commission

-99.2 MW Perrin Ranch wind farm in Arizona
-22.9 MW Conestogo wind farm in Ontario
-120 MW Tuscola Bay wind farm in Michigan
-124.4 MW Summerhaven wind farm in Ontario
-250 MW Genesis solar facility in California
-59.9 MW Bluewater wind project in Ontario

NextEra Energy Partners is targeting a 12-15% growth rate in its cash available for distribution. It will have the right of first option to buy 15 wind and solar assets totaling 1,549 MW from affiliate NextEra Energy Resources. It will also look to acquire assets outside of those owned by its affiliate.

NEE Operating LP, the subsidiary that will own the assets, is arranging $250 million revolving credit facility that will mature five years from the completion of the offering. NextEra Energy Partners will have $1.39 billion in debt, according to the S-1, not including the planned credit facility.

NextEra filed its preliminary S-1 with the SEC in early April (PI, 4/30).

– Holly Fletcher

Cash Grant *(Continued from page 1)*

"Basically some of the judgments made by the administrators of the 1603 program don't comply with the law that governs the program, and in some cases, the Treasury Department even changed the rules of the program and applied them retroactively," notes a spokesman for **SolarCity**, which has an affiliate that is a plaintiff in one such case.

The structure of the cash grant program gives developers very little recourse to resolve disputes, noted **Gregory Jenner**, partner at **Stoel Rives**, in a panel hosted by the **American Council on Renewable Energy** in Washington D.C. on Wednesday. "There is very little accountability short of taking the U.S. government to court and, as you can imagine, that becomes very, very expensive," he said, adding that "many of these disputes die in the Treasury Department." A spokeswoman at the Treasury did not respond to inquiries by press time.

"A lot of tax equity investors these days want nothing to do with the 1603 grant. They've completely washed their hands of that"

—Gregory Jenner

LCM Energy and affiliates of **Invenergy** are among plaintiffs in active cases.

Solar developer LCM Energy was one of the first sponsors to file against the Treasury for cash grant remuneration. The company is now the subject of a counter-claim from the government, which is accusing LCM of fraud and suing for the cash grant LCM has already received plus damages on the order of $1.4 million. That case, which was originally filed in 2012, is in discovery and will likely go to trial in the next 12 months, says another attorney following the saga.

Discovery has begun in the SolarCity case and will continue until November. The case will go to trial in 2015 if it's not settled by early next year, the spokesman says.

Kenneth Dintzer, assistant director of the civil division of the litigation branch of the U.S. **Department of Justice** working representing the government against SolarCity and LCM Energy, did not respond to an inquiry. LCM did not respond to inquiries and **John Hayes Jr**., partner at **Nixon Peabody** representing the developer, declined to comment on the matter.

If one or some of the developer plaintiffs are successful in their suits, the Federal Claims Court could see a surge in such claims, notes another attorney, adding that some of the claims could be resolved as early as this year.

The ambiguity that stems from the uncertainty of the size of a cash grant coupled with the delays associated with responding to the Treasury's inquiries into a project's cost has deterred tax equity investors from participating in several transactions. "A lot of tax equity investors these days want nothing to do with the 1603 grant. They've completely washed their hands of that," noted Jenner on the panel.

A spokeswoman for Invenergy declined to comment.

– Sara Rosner

Pattern Squeezes *(Continued from page 1)*

uncertain that their firms will go that low for pricing. The roster of financiers who sign on for Armow is expected to be thinner. Pattern is looking for less debt because Armow is not as large as K2 and some lenders may not be able to take pieces of a deal with that pricing.

The downward pressure on pricing that began to emerge when Japanese lenders took more of a center stage in the North America project finance market is also at play in this deal, say lenders, noting that the Japanese shops are still able to do cheaper debt than other firms.

Mizuho was the agent on the seven-year K2 deal with **Bank of Montreal, Bank of Tokyo Mitsubishi-UFJ, BayernLB, CIBC, Crédit Agricole, KeyBanc Capital Markets, ManuLife, NordLB, National Bank of Canada, Royal Bank of Scotland, Siemens Financial Services, Société Générale, Sumitomo Mitsui Banking Corp.** and **Union Bank** participating (PI, 3/24).

The Armow wind project in Kincardine, Ontario, is slated to be online in the fourth quarter of 2015 and has a 20-year power purchase agreement with **Ontario Power Authority. Samsung Renewable Energy** owns half of the project (PI, 9/13/11). The project is among the candidates to be sold into **Pattern Energy Group**, the public affiliate of Pattern Development.

The Armow project will be Pattern's third wind financing in Ontario in the last year. It and Samsung closed the C$400 million ($388.3 million) non-recourse debt package financing the 150 MW Grand wind project at L+225 bps (PI, 9/18). Bank of Tokyo Mitsubishi UFJ, Mizuho and Union Bank led the deal.

K2 wind is a 270 MW project in Ashfield-Colborne-Wawanosh, Ontario that is co-owned by Samsung and **Capital Power**.

A spokesman for Pattern declined to comment.

– Holly Fletcher

QUOTE OF THE WEEK

*"There is very little accountability short of taking the U.S. government to court and, as you can imagine, that becomes very, very expensive."—**Gregory Jenner**, partner at **Stoel Rives**, on the costs associated with lawsuits that a growing number of developers are bringing against the U.S. government for allegedly not paying out the full amount of cash grants (see story, page 1).*

ONE YEAR AGO

Goldman Sachs and **Credit Suisse** were gearing up to launch a term loan B to finance **Panda Power Funds** and **Moxie Energy**'s 825 MW Liberty natural gas-fired project in Bradford, Pa. [The package, including a $435 million B loan and $150 million delayed draw loan closed at LIBOR plus 650 basis points (PI, 8/26).]