

Power Finance & Risk

The weekly issue from **Power Intelligence**

www.powerintelligence.com

Treasury Project Valuation Irks Some Cash Grant Applicants

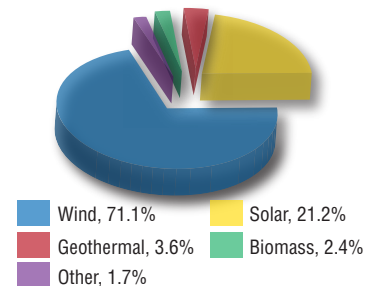
The U.S. **Department of the Treasury** is facing criticism from sponsors and attorneys who say it is increasingly assigning lower values to projects seeking cash grants than the numbers submitted by sponsors. At least one sponsor is taking legal action over a valuation.

In the early stages of the scheme's life the valuation cuts were not as common, an attorney says. Sponsors and their financiers structured deals on the basis that they would get the full grant. A Treasury official says the department has closely scrutinized claimed costs where such scrutiny is warranted and has made reductions when appropriate.

The Section 1603 cash grant, which was created through the American Recovery and Reinvestment Act of 2009, gives

qualifying renewables projects 30% of their value in a lump sum in lieu of the production tax credit or investment tax credit. The program was intended to stimulate investment in renewables because it is difficult for a potential tax equity investor to gauge its tax exposure over the life of the PTC or the ITC.

**Section 1603 Awards
By Fuel Type**



Source: Power Intelligence

(continued on page 11)

THE BUZZ

Many project finance deals have slowed down as the market approaches the height of the summer doldrums and decision makers take vacation before the year-end crunch. Heavily banked sponsors, however, are still managing to lurch deals forward. **Duke Energy Renewables** is looking for some pricing below the market floor for its 402 MW Los Vientos wind project in Texas. Bankers note that the Charlotte, N.C.-based shop will likely get the lower spread as lenders continue to focus business on core clients in a time of sparse deal flow. Duke is reportedly also making a compromise by coming in on the tenor of the deal – seven years instead of its usual 10 or longer. In a bit of a twist, Duke is also in the process of

For PFR's take on this story and the rest of the market, see page 2.

Utilities Face Rash Of ROE Complaints

Transmission users are looking to clamp down on investor owned utilities' return on equity in transmission projects, with four complaints filed with the U.S. **Federal Energy Regulatory Commission**. The users are doing so for the first time in years.

The emergence of the cases, brought either by wholesale customers who buy power from the lines or state commissions, is attributed to the sustained economic downturn, industry officials say. The argument behind lowering ROE is to make it reflect the lower costs of capital, i.e. historically low interest rates.

FERC determines the base ROE by evaluating a number of factors, including discounted cash flow analysis, and using peer groups of transmission owners.

(continued on page 12)

Industry Current: Hunting Unicorns

David Burton, partner at **Akin Gump Strauss Hauer & Feld**, writes about the challenges of passing tax credits through to individual investors.

See story, page 9

New Project Finance Loans

We've added updates to our weekly round-up of the latest project finance deals in the Americas, with details on projects, sponsors and debt.

See Deal Book, page 4

Generation Sale **■ DATABASE**

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

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THE BUZZ

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securing a tranche of debt from the **North American Development Bank**.

Meanwhile, **LS Power** tows the solar line with its roughly \$400 million deal backing its 100 MW Centinela solar project in California. The company has tapped **Banco Santander** and **Prudential Financial Services** to arrange a bank and bond financing that mirrors the structure the duo set up for LS' 127 MW Arlington Valley II solar project ([PI, 2/10](#)).

The European bank debt woes continue to shape the project finance landscape. **Ralph Cho**, an executive director, left **Portigon Financial Services**, which is formerly **WestLB**, this week. The early farewell signals what will be a stream of departures over the next six months. Bankers at Portigon have been assured jobs until the end of the year although industry officials indicate the firm may offer early buyouts to some.

In M&A, a few generating facilities are hitting the market as shops, particularly financial players, look to exit by year-end. Tax purposes are often a factor in auctions in the second half of the year, as are plans to make final or initial investments in funds—sometimes the year stamped on the closing date is important.

Olympus Power, a Morristown, N.J.-based power company, is busy with two external auctions being run separately by **Credit Suisse** and **Fieldstone Private Capital Group**. The two assets it's selling, along with co-owners, have been under its umbrella since it broke off from **Delta Power Co.** in early 2007. Another financial player-strategic alliance, **Rockland Capital**, **John Hancock Life Insurance** and **Atlantic Power Co.**, will be putting their Gregory cogeneration combined cycle facility in Texas on the market in the coming weeks ([PI, 8/8](#)).

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.

Feel free to contact **Sara Rosner**, managing editor, at (212) 224-3165 or srosner@iintelligence.com.

Power Intelligence

EDITORIAL

Steve Murray
Editor

Tom Lamont
General Editor

Peter Thompson
Executive Editor (Chicago)
(773) 439-1090

Sara Rosner
Managing Editor
(212) 224-3165

Nicholas Stone
Senior Reporter
(212) 224-3260

Holly Fletcher
Senior Reporter
(212) 224-3293

Katie Segreti
Data Editor

Kieron Black
Sketch Artist

PRODUCTION

Dany Peña
Director

Deborah Zaken
Manager

Melissa Figueroa,
James Bambara,
Douglas Lee
Associates

Jenny Lo
Web Production &
Design Director

ADVERTISING

David Blide
Associate Director
(212) 224-3187

Patricia Bertucci
Associate Publisher
(212) 224-3890

Adrienne Bills
Associate Publisher
(212) 224-3214

Customer Service

PO Box 4009, Chesterfield, MO 63006-4009, USA

Tel: **1-800-715-9195**

Fax: **212-224-3886**

UK: **44 20 7779 8704**

Hong Kong: **852 2842 8011**

E-Mail: customerservice@iintelligence.com

Institutional Investor Hotline

(212) 224-3570 and (1-800) 437-9997 or Hotline@iintelligence.com

Editorial Offices

225 Park Avenue South, New York, NY 10003

Power Finance & Risk is a general circulation newsweekly. No statement in this issue is to be construed as a recommendation to buy or sell securities or to provide investment advice.

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Institutional Investor, LLC

Issn# 1529-6652

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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/Comments
► ArcLight, Olympus Power, John Hancock, Atlantic Power Corp.	Delta Person (140 MW Gas Peaker)	Albuquerque, N.M.	Fieldstone Private Capital Group	The sale launched in the last 10 days (see story, pg. 6).
Bicent Power	BIV Generation (147 MW CCGT) Colorado Power Partners (90 MW CCGT)	Brush, Colo. Brush, Colo.		A unit of Xcel is buying the facilities (PI, 8/13).
Duke Energy	Various (7.5 GW Coal, Gas, Oil)	Ill., Ohio, Pa.	Citigroup, Morgan Stanley	Recently retained two banks to run the sale (PI, 7/27).
EQT Infrastructure Fund, Fortistar	Midland (1.56 GW Gas Cogen)	Midland, Mich.	Credit Suisse, Royal Bank of Canada	Teasers went out this month (PI, 7/23).
Edison Mission Group	Beaver Valley (Stake, Nuclear)	Shippingport, Pa.	TBA	FirstEnergy is buying out EME's stake as a lessor (PI, 7/23).
Energy Investors Funds	Rathdrum (275 MW Gas-fired) Plains End 1 & 2 (228.6 MW Gas-fired) Stakes (245 MW Cottage Grove Gas-fired) Stakes (249 MW Whitewater Gas-fired)	Rathdrum, Idaho Arvada, Colo. Cottage Grove, Minn. Whitewater, Wis.	Scotiabank	Teasers went out late in the week of 7/31 (PI, 8/6).
► Exelon	Brandon Shores (1,273 MW Coal) H.A. Wagner (976 MW Coal) C.P. Crane (399 MW Coal)	Anne Arundel Co., Md. Anne Arundel Co., Md. Baltimore Co., Md.	Citigroup, Goldman Sachs	Riverstone is buying the plants for \$400M, will look to finance (see story, page 5)
GDF Suez Energy North America	Hot Spring (746 MW CCGT)	Malvern, Ark.	UBS	Arkansas Electric Co-Op has reached an agreement with the state over the fuel agreement; on track to finalize purchase (PI, 8/6).
GSO Capital, Starwood Energy, Tyr Energy	Vaca Dixon (49 MW Peaker) Panoche (49 MW Peaker) Border (49 MW) Enterprise (49 MW)	Vacaville, Calif. Firebaugh, Calif. San Diego, Calif. Escondido	Scotiabank	The portfolio sale will launch soon (PI, 5/28).
GSO Capital, Strategic Value Partners	San Joaquin (48 MW)	Lathrop, Calif.		San Joaquin, from Bicent, is part of the CalPeak sale (PI, 7/3).
Gamesa Energy USA	Pocahontas (80 MW Wind) Sandy Ridge (50 MW Wind) Senate (150 MW Wind) Minonk (200 MW Wind)	Pocahontas County, Iowa Blair County, Pa. Texas Illinois	JPMorgan	Algonquin Power & Utilities a controlling interest in the four projects.
Harbert Power	Hanford (95 MW Gas-fired) Henrietta (97 MW Gas-fired) Tracy (314 MW Gas-fired)	Kings County, Calif. Kings County, Calif. Stockton, Calif.	Morgan Stanley, Merit Capital Advisors	July 13 pegged for first round bids (PI, 7/3).
IPR-GDF Suez Energy North America	Various (287 MW Wind)	Various, Canada	CIBC	GDF has tagged CIBC on the sale (PI, 6/25).
Iberdrola Renewables	Various (wind, solar)	Various	JPMorgan, Blackstone	The Spain-based parent is driving the sale of 700 MW of spinning wind plus wind, solar development assets (PI, 7/16).
Iberdrola Renewables	Klamath (636 MW CoGen)	Klamath Falls, Ore.	Royal Bank of Canada	First round bids are in (PI, 6/4).
LS Power	Bluegrass (495 MW Gas Simple Cycle)	LaGrange, Ken.	TBA	Kentucky Utilities, LG&E cease the process to buy (PI, 7/3).
Luminus Management, CarVal Investors, Fortress Investment Group	Bosque (507 MW Gas)	Laguna Park, Texas	Bank of America	Bidders are in due diligence (PI, 6/18).
MACH Gen	Harquahala (1 GW Gas)	Maricopa County, Ariz.	Goldman Sachs	The facility has drawn utility eyes (PI, 7/16)).
NRG Solar	CVSR (250 MW Solar PV)	San Luis Obispo County, Calif.	Credit Suisse, Morgan Stanley	NRG is out talking to potential investors (PI, 3/5).
► Olympus Power, John Hancock	Stakes (123 MW Michigan Power Cogen)	Ludington, Mich.	TBA	ArcLight is buying out what it doesn't already own in the facility (see story, page 6).
Olympus Power, Metalmark Capital	Brooklyn Navy Yard (Stake, 286 MW Gas-fired)	Brooklyn, N.Y.	Credit Suisse	High competition for the facility as management presentations get underway (PI, 7/27).
► Perennial Power	Mid-Georgia (300 MW Cogen)	Kathleen, Ga.	Fieldstone Private Capital Group	Consortium is set to ink the deal soon; Georgia Power declined first right of refusal (see story, page 6).
Rockland Capital, John Hancock Life Insurance and Atlantic Power Corp.	Gregory Power Partners (400 MW CCGT Cogen)	Gregory, Texas	TBA	Rockland has been listening to pitches from prospective advisors (PI, 8/13).
Starwood Energy	Neptune (65-mile Transmission)	Sayreville, N.J. to Long Island, N.Y.	Barclays	Recently hired Barclays to run the sale (PI, 6/11).
Tenaska Solar Ventures	Imperial Solar Energy Center South (130 MW Solar PV)	Imperial County, Calif	Royal Bank of Canada	Tenaska is looking to bring in a minority owner that has tax appetite (PI, 6/4).
► Western Wind Energy Corp.	Windstar (120 MW Wind) Windridge (4.5 MW Wind) Mesa (30 MW Wind) Kingman (10.5 MW Wind, Solar) Yabucoa (30 MW Solar)	California California Arizona Puerto Rico	Rothschild, PI Financial	Recently mandated co-advisors to sell itself (see story, page 7).
Wind Capital Group	Various (1.3 GW Wind development)	Various	Energy Advisory Partners	Put the pipeline on the block as a way to raise capital (PI, 5/7).

► 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 Senior Reporter **Holly Fletcher** at (212) 224-3293 or e-mail hlfletcher@iintelligence.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
AES Gener	Cochrane (532 MW Coal)	Chile	TBA	TBA	\$1B	TBA	Sponsor taps HSBC as financial advisor ahead of deal and eyes equity (PI, 6/11).
	Alta Maipo (531 MW Hydro)	Chile	TBA	TBA	TBA	TBA	IFC, IDB and OPIC are participating in multilateral tranche. Sponsor also talking to commercial lenders (PI, 7/2).
AES Solar, 8minutenergy Renewables	Mount Signal (200 MW Solar PV)	Imperial Valley, Calif.	TBA	TBA	\$700M	TBA	Mandates expected soon (PI, 5/21).
BP, Sempra	Flat Ridge 2 (419 MW Wind)	Wichita, Kan.	Banco Santander, Bank of Tokyo-Mitsubishi, Prudential Financial	TBA	\$500-600M	TBA	The deal will hit the market next month. Structure will include bonds (PI, 8/10)
Cape Wind Associates	Cape Wind (420 MW Wind)	Nantucket Sound,	Barclays	TBA	TBA	TBA	Financing to be re-ignited (PI, 4/16).
Cogentrix	Portsmouth (110 MW Coal)	Portsmouth, Va.	RBC, Scotia	Refi	\$120M	5-yr	Sponsor tags RBC to lead refi, with Scotia as co-lead (PI, 5/7).
Competitive Power Ventures	St. Charles (650 MW Gas)	Charles County, Md.	TBA	TBA	\$500M		Sponsor talking with banks for a club deal (PI, 7/9).
Diamond Generating Corp.	Mariposa (200 MW Gas)	Alameda County, Calif.	SMBC, DZ, CoBank, Sumitomo Trust	TBA	\$150M	10-yr	Sponsor mandates four lenders (PI, 5/14).
► Duke Energy Renewables	Los Vientos (402 MW Wind)	Willacy County, Texas	TBA	TBA	TBA	7-yr	Sponsor looking for pricing below 250 bps over LIBOR (See story, Page 5).
Energy Investors Funds	Pio Pico (300MW Gas)	San Diego County, Calif.	TBA	TBA	\$300M	TBA	Sponsor has a favorable reputation with lenders (PI, 7/23)
GCL Solar	Various (77 MW PV)	Puerto Rico	Union Bank, WestLB	TBA	\$200M	TBA	Deal to wrap this week (PI, 5/28).
Inkia Energy	Unidentified (500 MW Hydro)	Cerro del Aguila, Peru	BBVA, Crédit Agricole, HSBC, Scotia, SocGen, SMBC	TBA	\$600M	12-yr	A dozen lenders expected to make commitments (PI, 4/30).
InterGen	Unidentified (Gas Pipeline)	Zacatecas, Mexico	TBA	TBA	\$200M	TBA	Sponsor considering club deal (PI, 6/11).
► LS Power	Centinela (100 MW Solar)	Calexico, Calif.	Banco Santander, Prudential Financial	TBA	\$400M	TBA	Sponsor taps banks for bank/bond deal (see story, page 5).
Odebrecht	Chaglia (406 MW Hydro)	Peru	BNP Paribas	Term	\$650M	17.5-yr, 20-yr	Pricing set at roughly 350 over LIBOR (PI, 7/9).
Pattern Energy	Ocotillo (315 MW Wind)	Imperial Valley, Calif.	TBA	Mini-Perm	\$400M	C+ 7-yr	Sponsor targets \$400 million financing; 10 lenders eye deal (PI, 5/14).
Ridgeline Energy	Meadow Creek (120 MW Wind)	Bonneville County, Idaho	TBA	TBA	\$180-200M	TBA	Sponsor discusses financing with lenders, equity with Diamond Generating Corp. (PI, 5/28).
Rockland Capital, Broadway Electric Co.	Mass Solar (Solar PV)	Massachusetts	TBA	TBA	\$200M	TBA	Sponsors talking to four lenders about financing (PI, 5/14).
Sempra U.S. Gas & Power	Copper Mountain 2 (92 MW PV)	Boulder City, Nev.	TBA	TBA	\$130M	18-yr	Deal wraps, priced at LIBOR + 250 bps (PI, 7/2).
Solarpack	Various (22 MW Solar PV)	Tacna and Moquega, Peru	TBA	TBA	\$120M	20-yr	Sponsor is talking to lenders for funds for two projects (PI, 4/30).
Standardkessel, Green Energy Team	Unidentified (6.7 MW Biomass)	Koloa, Hawaii	TBA	TBA	TBA	TBA	WestLB exits deal; sponsor tap another bank as lead (PI, 5/21).

► New or updated listing

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PROJECT FINANCE

Santander, Pru Tapped For Centinela

LS Power has mandated **Banco Santander** and **Prudential Financial Services** to lead a roughly \$400 million financing backing its 100 MW Centinela photovoltaic project in Calexico, Calif.

The duo will look to replicate the bank loan and bond structure they used in financing LS' 127 MW Arlington Valley II solar project ([PI, 2/10](#)). "They've got all the documents and they've done it once, why not do it again?" says a banker familiar with the deal. Price talk on the bank loan component for Centinela is around 300 basis points over LIBOR, he adds. The deal is slated to close in the fourth quarter.

Prudential is also leading a bond component backing **BP Energy** and **Sempra U.S. Gas & Power's** 419 MW Flat Ridge 2 wind project in Wichita, Kan. ([PI, 8/7](#)). Bank and sponsor officials either declined to comment or did not return calls.

San Diego Gas & Electric has a 20-year power purchase agreement for Centinela.

Duke Wind Deal Details Emerge

Duke Energy Renewables is looking for pricing below 250 basis points over LIBOR for its 402 MW Los Vientos wind project in Willacy County, Texas. The subsidiary of **Duke Energy** is also looking for a tenor of seven years on the financing, says a banker familiar with the deal.

The **North American Development Bank** is slated to provide \$220 million in financing backing the project ([PI, 5/23](#)). **Geronimo Gutierrez**, managing director for the NADB in San Antonio, and a spokesman for Duke in Charlotte, N.C., did not return calls by press time. Whether any lenders have committed to the financing could not be learned.

CPS Energy has a 25-year power purchase agreement for the 200 MW Los Vientos I project and **Austin Energy** has a 25-year PPA for the 202 MW Los Vientos II. The wind projects are slated for operation by year-end.

MERGERS & ACQUISITIONS

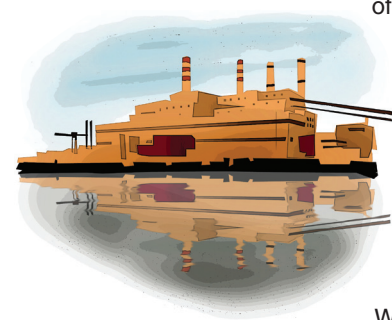
Riverstone Targets Exelon Financing

Riverstone Holdings is preparing to set up financing for its acquisition of three coal-fired plants in Maryland totaling 2.648 GW from Exelon for about \$400 million. The \$150 per kW bid was placed without a financing contingency and Riverstone will look to put a long-term package in place, says a deal watcher.

The private equity firm has already been contacted by a number

of financiers looking to pitch funding options. Riverstone is expected to take a conservative financing route that does not highly lever the assets, says an official.

The facilities, the 1,273 MW Brandon Shores in Anne Arundel Co., the 976 MW H.A. Wagner in Anne Arundel Co., and the 399 MW C.P. Crane



Wagner

in Baltimore County, were attractive to Riverstone for their location, their level of emissions and the near-term maturity of their coal contracts, says a deal watcher. Riverstone will have a chance in the next 18 months to lower costs at the plants as the facilities are nearing the end of their coal contracts, says the deal watcher.

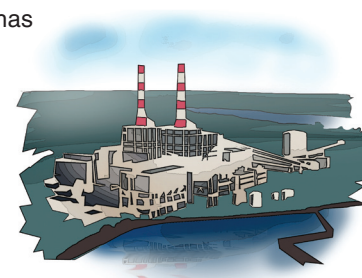
The merchant plants are located within PJM so their forward pricing is known through the 2015-2016 cycle. At one point a deadline for bids was pushed back so bidders could see the outcome of the capacity auction ([PI, 5/31](#)).

Two of the plants will probably need minor environmental upgrades in the coming years, which Riverstone will look to do. The

largest facility, Brandon Shores, has already been retrofitted with a scrubber.

The purchase price came in lower than some had expected, according to a report from **Royal Bank of Canada**, which anticipated a \$200/kW price, or \$530 million. One official notes the sale price stems

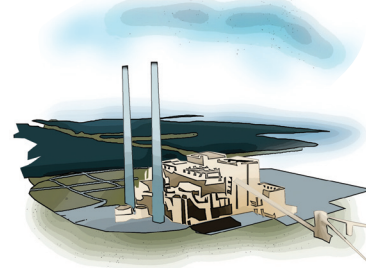
from the unusual situation that surrounded the sale. Broadly, it's a trying time for coal because the plants don't make a lot of money in a market where the price of power is set by natural gas. In this instance, Exelon was selling the plants in a fixed timeline auction under its merger agreement with



Crane

Constellation Energy that prohibited some local players from taking part ([PI, 3/13](#)).

The transaction needs federal approval and is slated to close in the fourth quarter. A new subsidiary of Riverstone, **Raven Power Holdings**, will own the



Brandon Shores

facilities. Riverstone did not use an advisor. **Citigroup** and **Goldman Sachs** advised Exelon.

A Riverstone official declined to comment through a spokesman, pointing to a statement the firm released on the acquisition.

Consortium Markets N.M. Peaker

A consortium of strategic and financial players is selling a peaker near Albuquerque, N.M., and have retained **Fieldstone Private Capital Group** to handle the deal. **Olympus Power**, **John Hancock Life Insurance**, **Atlantic Power Corp.** and **ArcLight Capital Partners** launched the sale of the 140 MW Delta Person gas-fired peaker in the last few days, says a deal watcher.

The plant is contracted to **Public Service Company of New Mexico**

FAST FACT

The plant is contracted to **Public Service Company of New Mexico** through July 2020 and has the option for extension.

through July 2020 and has the option for extension. How much power the utility takes and for how many months of the year could not be learned.

The facility started out as one of six assets in the Morristown, N.J.-based Olympus Power portfolio when it spun out of **Delta Power Co.**, which was sold to **Arroyo Energy Investors**—then a unit of **Bear Stearns** ([PI, 2/2/07](#)). The plant went online in 2000. Whether there is any existing project level debt could not be learned.

Officials or spokespeople for the firms declined to comment.

Olympus, John Hancock To Trade Mich. Gas Stake

Olympus Power and **John Hancock Life Insurance** are selling their stakes in a Michigan cogeneration combined cycle facility to **ArcLight Capital Partners**, which is already a minority owner.

ArcLight has agreed to buy the 69.6% stake in the 123 MW Michigan Power plant via its latest fund, **ArcLight Energy Partners Fund V**, according to a document filed with the U.S. **Federal Energy Regulatory Commission**.

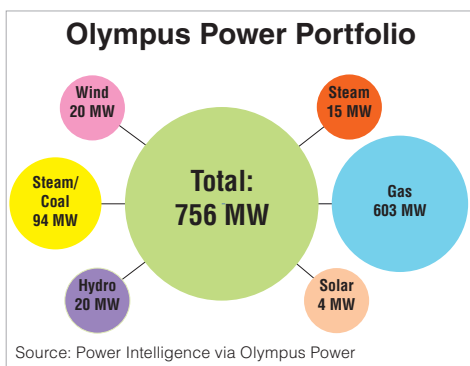
Olympus Power is in the process of exiting two other facilities in which it is a co-owner through auctions being run separately by **Credit Suisse** and **Fieldstone Private Capital Group** ([PI, 7/26](#) & see story above). This transaction is a deal struck between co-owners and is not affiliated with the sales of Brooklyn Navy Yard in New York or the 140 MW Delta Person in New Mexico, says an industry official. No outside financial advisors are involved in

stake sale.

The Michigan Power plant has a long-term power purchase agreement for most of its power with **Consumers Energy** and sells steam to **Oxy Chem**. As part of the PPA, Consumers Energy has the right to waive the power at which point the power can be sold wholesale, according to the FERC filing.

The plants that Olympus Power is exiting have been in its portfolio since its establishment in 2007 when **Delta Power Co.** was sold to **Arroyo Energy Investors**—six plants not included in the sale were split off as Olympus.

In Boston, a John Hancock spokeswoman could not comment while an ArcLight spokeswoman did reply to an inquiry. Olympus Power officials in Morristown, N.J., did not comment.



Georgia Power Waives Right To Perennial Cogen

Georgia Power has waived its right of first refusal for **Perennial Power's** Mid-Georgia cogeneration facility, paving the way for a consortium led by **ArcLight Capital Partners** to buy the facility.

ArcLight along with **GE Energy Financial Services** and **Government of Singapore Investment Corp.** are on track to buy the plant, says a deal watcher, noting there are a few legal complexities to work out. The facility will be a part of **Southeast PowerGen**, an operating company that is a subsidiary of ArcLight. Whether it will close late this quarter or early in the fourth couldn't be learned.

agreement with the facility until 2028 and had 90 days from the purchase and sale agreement signing May 11 to exercise its right to buy the 300 MW cogen plant in Kathleen, Ga. ([PI, 5/14](#)).

The plant also sells steam to potato chip manufacturer **Frito-Lay** for an adjacent food processing plant. The facility will have \$60.1 million in outstanding debt at year-end.

Fieldstone Private Capital Group is advising Perennial.

The purchase price and financing plans couldn't be learned. Officials and spokespeople for the firms either declined to comment or weren't immediately available.

Recent GE EFS Equity Investments

Seller	Project	Announced
Geronimo Wind Energy	Prairie Rose 200 MW (Wind)	August 2012
LS Power	Arlington Valley II 127 MW (Solar)	March 2012
First Solar	Desert Sunlight 550 MW (Solar)	October 2011

Source: Power Intelligence

Georgia Power, a unit of **Southern Co.**, has a power purchase

Western Wind Taps Two Advisors

Western Wind Energy Corp. has hired two advisors to sell its wind and solar portfolio in North America. The company will work with **Rothschild** and **PI Financial**, which is a Vancouver-based boutique firm that specializes in Western Canadian companies.

The auction is expected to take several months; teasers are not expected to be released until next month, says an industry official. The company is selling in order to return capital to investors, some of which are ready to exit ([PI, 7/30](#)). **GCIC**, the investment management division of wealth management company **DundeeWealth**, is an investor in the company, says an analyst.

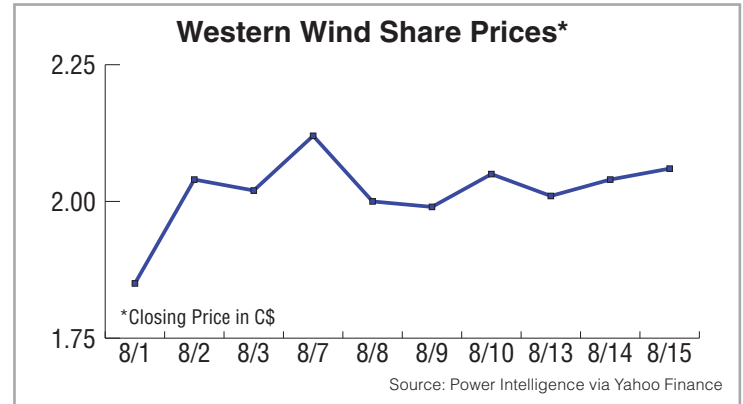
Rothschild was the advisor on the lender-requested auction of the Cross Sound Cable ([PI, 9/6](#)). **Darryl Sagel** heads up the power team in New York.

The 12-year-old company owns three operating wind farms in California: the 120 MW Windstar, 4.5 MW Windridge and the 30 MW Mesa. It also owns the 10.5 MW Kingman solar and wind facility in Arizona.

Western Wind financed last year its \$120 million, 30 MW

solar project in Yabucoa, Puerto Rico, that is under construction ([PI, 2/8/11](#)). Yabucoa has a 20-year power purchase agreement with the **Puerto Rico Electric Power Authority**. It has other development projects including three wind projects in California and Arizona.

Officials at Western Wind, Rothschild and PI either declined to



PEOPLE & FIRMS

Fieldstone Adds M.D.

Howard Matz has joined **Fieldstone Private Capital Group** as a managing director in the New York office. Matz landed this month in a newly created position from **56 Squared Partners**, a boutique advisory shop he founded.

Matz will be advising on buy- and sell-side transactions for thermal and renewable projects and equity raises. He will also help clients that want guidance on accessing capital in the project finance landscape, he says. He reports to **Manfred Ernst**, managing director.

Prior to 56 Squared, Matz was managing director and head of debt and capital markets at private equity shop **Abatis Capital**. He was also senior v.p. and head of project finance at **Covanta Energy**.

Fieldstone is currently advising a consortium comprised of **ArcLight Capital Partners**, **Atlantic Power Corp.**, **John Hancock**

Life Insurance and **Olympus Power** on the sale of a peaker in New Mexico (see story, page 6).

Cho Exits Former WestLB

Ralph Cho, executive director of loan syndications at **Portigon Financial Services**, née WestLB, is leaving the bank. Aug. 14 will be his last day in the New York office of the German-government owned project financing giant that had to sell itself as a condition of taking government aid in 2008 ([PI, 2/9/11](#)).

Project financiers at WestLB were assured employment through the end of year under the firm's break-up plan that was finalized June 30 ([PI, 6/7](#)). It emerged as asset management company Portigon July 1.

Cho was not immediately reached for comment on his immediate plans.

Calls to **Tom Murray**, global head of energy, and **Manish Taneja**, global head of syndications, were not immediately returned.

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BORROWER STRATEGIES

Xcel Sub. Taps Record Low Coupon

Xcel Energy subsidiary **Northern States Power** has sold \$800 million of first mortgage bonds with some of the lowest coupons for an electric utility, bankers say. The company sealed coupons of 2.15% and 3.4% for 10-year and 30-year notes, respectively, this week.

The issuance consists of \$300 million of 10-year notes and \$500 million in 30-year notes. The yield is 2.167% on the 10-year notes and 3.441% on the 30-year notes. **JP Morgan**, **UBS** and **Wells Fargo** are the active joint bookrunning managers for the sale, with **Barclays Capital** and **Keybank** acting as passive bookrunners. **BMO Capital Markets Corp.** and **BNY Mellon Capital Markets** also are

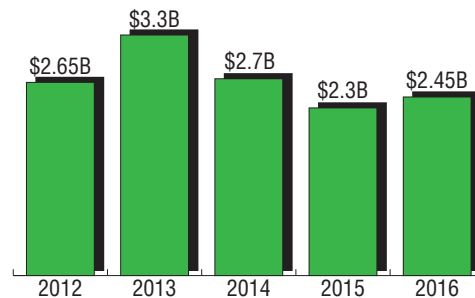
managers. Representatives from banks did not respond to calls by press time.

Utility bond coupons have been coming down as investors flock to the low risk sector, say analysts.

Proceeds will be used to repay short-term debt, long-term debt, including the \$450 million of 8% first-mortgage bonds due Aug. 28, and for general corporate purposes. Until the net proceeds from the sale have been used, the company may also invest them temporarily in interest bearing obligations, says a spokeswoman in Minneapolis.

Both tranches were rated A1 by **Moody's Investors Service**, A by **Standard & Poor's** and A+ by **Fitch Ratings**.

Xcel Energy Capital Expenditures



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INDUSTRY CURRENT

Hunting Unicorns: Individuals As Tax Equity Investors

THIS WEEK'S INDUSTRY CURRENT was written by **David Burton**, partner focusing on tax and global project finance at **Akin Gump Strauss Hauer & Feld** in New York.



David Burton

As tax equity yields remain high and renewable energy is touted by the White House, the phone rings several times a month with the request to structure a fund that permits tax credits and accelerated depreciation to be passed through to individual investors. I call these eager, hopeful fund managers, unicorn hunters, as they are pursuing a valuable quarry that does not exist.

The best proof that tax equity for individuals is not feasible under current law is that the bulge bracket investment banks have yet to launch such a fund. Every investment bank in the country has retail clients asking to invest in green energy, and the banks would be thrilled to provide these clients with a fund that generated a 6% after-tax yield (which is significantly below current tax equity rates).

The obstacles in the tax law for tax equity for individuals stem from the fact that in the 1980s tax shelter promoters ran amuck peddling transactions that required little equity investment or operating risk but purported to produce substantial tax benefits. Congress was not pleased and took decisive action to preclude individuals from using tax benefits associated with tax credit, depreciation and non-recourse debt deals. Congress determined that such exotic species were suited only for widely-held C-corporations, which were already subject to two layers of tax and presumably had management sophisticated enough to sort through the good, the bad and the ugly.

Congress excluded individuals from this arena by enacting the passive activity loss rules and the at-risk rules. At a high level, the passive activity loss rules provide that individuals cannot use depreciation, tax credits, or interest expense (other than the home mortgage deduction) to reduce their taxes on income from their jobs or investment portfolios. The at-risk rules provide that individuals may not deduct interest from non-recourse debt (broadly defined) or claim depreciation deductions funded thereby.

The passive activity loss rules have an exception for activities in which individual taxpayers "materially participate." When the aspiring renewable energy fund managers hear that, they think they have caught a glimpse of the unicorn's tail. Certainly, if there's an exception, they can meet it by having their investors oversee the investment by holding a few management meetings, preferably in a location with a PGA golf course.

The problem is the passive activity loss rules define "material participation" narrowly. There are three ways to "materially participate" that are relevant in this context:

- spend more than 500 hours a year working at it: obviously

not realistic for most individuals investors;

- the individual's participation consists of substantially all of the participation in the activity for all individuals (including individuals who are not owners): this means when the blade on the wind turbine breaks, the investor has to tie a rope around her waist and climb up to fix it; or
- the individual participates in the activity for more than 100 hours and no other individual participates more (including individuals who are not owners): this means no one can work even part-time at the renewable energy project.

The challenge of meeting this material participation standard is demonstrated by a recent trilogy of Tax Court cases involving solar hot water heaters in Hawaii. The individual taxpayers purchased solar hot water heaters that were installed at the homes of third-party customers. The customers made monthly payments for the hot water heaters. The payments were collected and accounted for by a contractor affiliated with the manufacturer of the hot water heaters. The taxpayers asserted that they were entitled to use the federal investment tax credits and depreciation deductions from the hot water heaters to offset their other taxable income. The Tax Court disagreed, even though one of the taxpayers solicited potential customers and handled the collections for the first year, because the taxpayers did not materially participate as the contractor "collected most of the ratepayer's payments, maintained records regarding the income, and made ... excise tax payments," according to *Lum v. Commissioner*, T.C. Memo. 2012-103.

The way to enable individual investors to invest in these transactions is to exempt renewable energy deals from the passive activity loss at-risk rules. Proposals to change these rules actually achieve initial traction with the renewable energy industry's friends in Congress, until the politicians discuss it with the lawyers employed by Congressional committees to advise on tax issues. Those technicians remember, or at least read about in law school, the 1980s cattle farm and **Andy Warhol** lithograph tax shelters sold in shopping malls. They find the idea of waiving these rules for renewable energy about as appealing as removing modern plumbing from the Capitol.

Here's what the technicians do not understand. Tax equity under the current rules is expensive—a very good rate is 8% after-tax and many deals require double-digit returns. Introducing retail investors to the market will bring down returns—lower tax

equity returns mean each dollar of tax benefit results in more watts of green energy. For example, one developer recently estimated that a 1% reduction in a project's cost of capital reduced project costs by 10%.

Further, the problems of the 1980s will not be repeated. The industry is content to have the tax benefits only be able to be passed through by master limited partnerships. An MLP is a publicly traded entity with a board, general counsel, cfo and tax manager. Therefore, it has the necessary professionals to make prudent investments and comply with complex tax rules. It files financial statements with the **Securities and Exchange Commission** and tax disclosures with the U.S. **Internal Revenue Service**.

The annual 90% qualifying income test for MLPs would also need to be amended to deem gross income for renewable energy

to be qualifying income. The investment tax credit recapture rules would also need to be amended to have transfer of MLPs interests not trigger recapture of the investment tax credit.

Further, the MLP could be made subject to the "uncertain tax position" rules which require accounting reserves and financial statement and tax return disclosures for any tax position that is not likely to survive IRS scrutiny. In addition, the IRS audit rules could be changed to empower the IRS to audit and collect tax underpayments from the MLP directly, rather than having to chase thousands of individual investors. Thus, such transparency and accountability will preclude a repeat of tax problems of the 1980s, while resulting in more green energy for each dollar of tax benefits. Rather than hunting unicorns, the renewable energy industry should coalesce in support of the necessary MLP legislative changes.



NEWS IN BRIEF

News In Brief is a summary of publicly reported power news stories. The information has been obtained from sources believed to be reliable, but **PFR** does not guarantee its completeness or accuracy.

- Republican vice presidential candidate **Paul Ryan** has publicly criticized President **Barack Obama's** stimulus for the power industry. However, Ryan wrote letters to the U.S. **Department of Energy** Secretary **Steven Chu** and U.S. Labor Secretary **Hilda Solis** seeking stimulus grant money for two Wisconsin energy companies in 2009, according to federal records (*The Silicon Valley Mercury News*, 8/15).



Paul Ryan

- **David King**, cfo at **Suntech Power Holdings Co.**, will take over as ceo at the company, which is the world's largest maker of solar modules. King replaces **Zhengrong Shi**, who remains the company's executive chairman and will look over the company's strategy. (*Bloomberg Businessweek*, 8/15).
- The U.S. **Federal Aviation Administration** has ruled that the Cape Wind project in the Nantucket Sound does not pose a threat to planes. The determination comes after the FAA completed an aeronautical study that finds that "construction of the 130 wind turbines, individually and as a group, has no effect on aeronautical operations." The **Alliance to Protect Nantucket Sound** and the town of Barnstable appealed an earlier determination by the FAA, forcing it to re-evaluate its approval of the project two years ago (*The Boston Herald*, 8/15).
- American taxpayers will only recover \$24 million lost of a \$527 million loan to **Solyndra** that the U.S. **Department of Energy** made under its loan guarantee program, a report by the **Dow Jones** (*The Wall Street Journal*, 8/15).
- The **South Mississippi Electric Power Association** will buy the Batesville gas-fired plant in Batesville, Miss., for about \$286 million

after winning a bankruptcy court-run auction. The sale will close by the end of 2012 (*Energy Business Review*, 8/15).

- **Allison Macfarlane**, the new chairman of the U.S. **Nuclear Regulatory Commission** as of July 9, is prioritizing how to dispose of spent atomic fuel, including finding a permanent disposal site. The NRC will also put greater focus on earthquake risks to the country's nuclear fleet (*Bloomberg*, 8/14).
- Energy has taken center stage in the election rhetoric as President **Barack Obama** and Republican presidential candidate **Mitt Romney** travel across the Midwest speaking to voters about the future of the energy sector from a wind farm and a coal mining company, respectively (*Wall Street Journal*, 8/14).
- Southern Co. is trying to maintain the rising cost of its 582 MW integrated coal gasification combined cycle project that is in construction in Kemper County, Miss. The project that is scheduled to be online in 2014 runs the risk of costing more than the \$2.88 billion that **Mississippi Power** will be allowed to recover (*Reuters*, 8/14).
- **Black Hills Corp.** will close two coal-fired plants and one gas-fired plant in Colorado, South Dakota and Wyoming rather than completing upgrades to meet environmental standards. The shut-downs will start at the end of August and extend into 2013 (*Energy Business Review*, 8/10).
- Solar panel manufacturer Canadian Solar has landed a five-year C\$93 million (\$93.8 million) loan from the **China Development Bank Corp.** to fund its expansion into project development in North America. The loan will partly finance its acquisition of 16 solar projects in Ontario (*Bloomberg BusinessWeek*, 8/13).

Treasury Project *(Continued from page 1)*

Developers' estimations of project values, however, have exceeded those of Treasury in several instances. The precise number of cases could not be determined, but they are centered in applications that involve the sale of project stakes to equity investors before the receipt of the grant, deal watchers say. When a cash grant comes up short, the project financing can become untenable, a banker says. "It leaves a gap [in the financing]. Somebody has to fill the gap or else the loan won't be paid in full," he notes.

The Treasury determines the amount of the grant by evaluating the "eligible basis of the property" which includes the costs of equipment, labor and other expenditures submitted by cash grant applicants. Treasury officials also work with the U.S. **National Renewable Energy Laboratory** to determine "standard industry prices" or "fair market value," says an official in Washington. When a developer brings in tax equity or equity investors ahead of the cash grant, the perceived value of the project increases, resulting in a discrepancy between the sponsor and the Treasury's valuation of the project.

The Treasury doesn't reject a project when there is a discrepancy in valuation, but will offer the reduced grant, a Treasury official says. She added that she has noticed "higher prices" when related parties are involved in the transactions. The

Treasury has also not seen eye-to-eye with developers when intangible assets—such as power purchase agreements—are factored into a project's valuation, say lawyers familiar with the deals. Some sponsors are in discussions with the Treasury to increase grants for their projects, although their identities could not be learned.

LCM Energy Solutions, a Dallas-based company that leases solar panels, has filed suit against the Treasury after applying for \$889,638 in cash grants for a bundle of panel installations and receiving \$482,504. LCM claims that Treasury "has issued a final adverse determination regarding [its] eligibility to receive full grant payments under Section 1603," according to documents filed with the U.S. **Court of Federal Claims**, which is a Washington-based federal court that hears monetary claims against the U.S. government. The claim is looking to recoup the money the company believes it is owed as part of the undervaluation. Company officials and **John Hayes**, partner at **Nixon Peabody** in Washington, D.C., who is representing LCM did not respond to inquiries by press time.

The Treasury has received more than 54,000 applications for cash grants, says the official, adding that many of those are parts of bundled rooftop solar installations. The Treasury has awarded 6,942 grants totaling more than \$12.9 billion under the program.

—**Nicholas Stone & Sara Rosner**

Cash Grants: How The Process Works

- Developers submit their applications digitally via an official government system available online.
- The web site has a checklist of documents that developers need to submit to be eligible.
- The applications go first to the **National Renewable Energy Laboratory's** headquarters in Golden, Colo., for assessment and analysis.
- NREL then makes a recommendation to the Treasury as to how it should proceed on each application. Treasury officials say it is very rare for them to go against NREL recommendations.
- The Treasury has 60 days in total to assess each complete application. The 60 days resets if any questions are raised.
- According to Treasury officials, NREL does most of the deep digging into the viability of projects. The Treasury mostly double checks the process.
- The team at the Treasury consists of six full-time staffers, who say they are accessible to developers, lawyers and financiers and meet with them often.
- Most cases are straight forward and easy to assess, say Treasury officials.
- As of July 19, Treasury had issued \$12,967,852,949 in grants.
- Wind energy has been the biggest winner in the program, with **E.ON Climate & Renewables North America Inc.** scoring the single biggest grant of \$542,528,114 for six wind farms in Texas and Pennsylvania.

Important Dates

- For all properties placed in service in 2009, 2010, or 2011, the applicant must submit a Placed in Service application before Oct. 1, 2012.
- For all properties placed in service after 2011, the applicant must submit a Begun Construction or Combined application before Oct. 1, 2012.
- Treasury expects a rush on applications as the statutory deadline of Oct. 1 arrives.
- Projects may also submit preliminary applications or an indication of an intent to fully apply for grants, if they do not meet certain criteria by Oct. 1.
- After Sept. 30, 2012, the online system allows applicants to convert their previously submitted Begun Construction application to demonstrate that the energy property is placed in service. Applicants have 90 days from the placed in service date to convert.
- To be eligible, a property must be placed in service in 2009, 2010, or 2011 or placed in service after 2011 but only if construction of the property began during 2009, 2010, or 2011.
- Treasury will be assessing applications and delivering grants until the end of 2016 when the investment tax credit is set to expire.

Utilities Face *(Continued from page 1)*

Three of the cases involve the formula for return for a single investor owned utility while one involves a consortium of transmission owners in New England. A complaint against **Progress Energy Florida** by **Seminole Electric Cooperative** and **Florida Municipal Power Agency** is petitioning for the base ROE to be lowered from 10.8% to 9.02% on all existing and future transmission assets, according to filings with FERC. There are also complaints pending against the ROE for **Southwestern Public Service** and **Public Service Co. of Colorado**.

In New England, the state commissions are requesting that power companies including **Central Maine Power Co.**, **Northeast Utilities**, **United Illuminating Co.**, **Unitil** and affiliates of **National Grid** and **NextEra Energy** lower the base ROE from 11.14% to 9.2% on all existing and future transmission assets.

For investors, transmission is an opportunity to garner steady, long-term returns. If the returns are lowered significantly on a number of fronts then some of the companies rushing to get

involved in transmission projects, particularly in the Midwest where companies have set up numerous joint ventures, could cool slightly, officials say.

Bertram Solomon, executive consultant at engineering and consulting firm **GDS Associates** in Marietta, Ga., who was a witness for the power companies and cooperatives challenging the utilities in the three individual cases, does not think that a lower ROE would significantly impact future investment. "Investors would still be fairly compensated and if capital costs should go up the base ROE can go [back] up," Solomon told *PI*.

The cases are on the Wall Street radar and firms are tracking the developments, says an analyst, despite the long headwinds before a decision is reached. A judge ordered a procedural schedule for the New England transmission case with a hearing set for May 6, 2013, with an initial decision coming in September. "It's going to take a while" for an outcome in New England, says one attorney, who is watching the three individual cases for any guidance on where the commission may go.

Lawyers representing the entities involved in the New England case either declined to comment or did not respond to calls.

ALTERNATING CURRENT

The Power Of Human Waste

Sometimes in this life you come across things that baffle you. Whether it is a new food idea like the pizza cone or **Lady Gaga's** latest outfit, certain things just challenge basic human understanding of the world.

Enter the Solar Toilet. This throne uses solar power to turn human waste into hydrogen and electricity. It is so mind-bogglingly impressive that the power-producing John has won the \$100,000 first prize in **Reinvent the Toilet Fair** sponsored by the **Bill & Melinda Gates Foundation**.

The event in Seattle this week used more than 50 gallons of soy-based synthetic feces to test the toilets that aimed to create an inexpensive and environmentally friendly alternative to the flush. The designs are an attempt to combat the lack of sanitation in developing nations that kills 1.5 million children under the age of 5 every year, says philanthropist and tech mogul Bill Gates.

Michael Hoffmann of the California **Institute of Technology** in Pasadena developed the winning design, called the "Self-Contained, PV-Powered Domestic Toilet and Wastewater Treatment System." The toilet uses a solar panel to run an electrochemical reactor that breaks down human waste to produce hydrogen gas, which can be stored or used to run the generator at night or during cloudy weather. The water in the system is also recycled for future flushes, which could be plentiful, given the toilet's ability to host up to 500 visits per day.

Human waste is surely one fuel that will never run out. Could toilets challenge gas-fired plants or wind farms in the future? Only time will tell.

—**Nicholas Stone**



CONFERENCE CALENDAR

- **Solar Energy Industry Association** and the **Solar Electric Power Association** will host Solar Power International 2012 Sept. 10-13 at the Orange County Convention Center in Orlando, Fla.
- **Euromoney Seminars** and **Project Finance Magazine** will host the 7th Annual North American Energy and Infrastructure Finance Conference Sept. 11-12 at The Westin New York at Times Square, New York.
- **Platts** will host the 14th Annual Financing U.S. Power Conference Oct. 18-19 at the Marriott Marquis in New York.

QUOTE OF THE WEEK

"Investors would still be fairly compensated and if capital costs should go up, the base ROE can go [back] up." — **Bertram Solomon**, executive consultant at engineering and consulting firm **GDS Associates** in Marietta, Ga., who was a witness for the power companies and cooperatives challenging investor-owned utilities' transmission base return on equity in three individual cases brought before the U.S. **Federal Energy Regulatory Commission** (see story, page 1).

ONE YEAR AGO

Tenaska Solar Ventures along with advisor **Citigroup** was beginning to sift through financing proposals from lenders for its 130 MW Imperial Solar Energy Center South project in Imperial County, Calif. [Tenaska sealed the 10-year, \$500 million deal at roughly LIBOR plus 250 basis points with **Bank of Tokyo-Mitsubishi UFJ** and **Union Bank** leading the deal. Seven banks participated ([PI, 4/9](#)).]