

OUR PRACTICE

Energy Finance

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

Our experience covers a broad range of transactions, including:

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

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

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

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

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

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

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



Representative Matters

- Represented independent oil and gas companies in connection with equity investments by private equity funds for exploration and production activities in Louisiana and Texas.
- Prepared specialized documentation allowing for a portfolio financing of construction and/or operating projects to be accomplished by way of supplements to a Master Agreement, with automatic cross-default, cross-collateralization, bankruptcy remote and other protections.
- Represented lessor on \$330 million syndicated synthetic lease construction to permanent financing of energy company's new Texas headquarters building.
- Advised an energy company in connection with a \$100 million project for a major university.
- Represented a financial services corporation in the structuring, documentation, negotiation and closing of a non-recourse project financing covering five biogas energy cogeneration facilities in California, that also involved a tax exempt overlay with the California Pollution Control Finance Authority.

- Closed \$60 million in senior secured financing for energy industry client, refinancing a \$45 million loan previously closed by Baker Donelson. The loan proceeds were used by the client to refinance existing debt and fund the drilling of additional wells in the Gulf of Mexico.
- Represented an international bank affiliate as lessor, administrative agent, and mandated lead arranger on a more than \$250 million syndicated non-construction period synthetic lease financing for the acquisition of one tower within an energy company's Texas headquarters' campus.
- Represented the equipment finance subsidiary of multiple banks in connection with the sale leaseback transactions of solar generation facilities in Alabama, Tennessee, Georgia.
- Represented lead banks in leveraged lease financing of fractional interest in \$320 million offshore drilling platform.
- Performed real estate due diligence for a major bank in connection with its financing of a new solar energy development comprising thousands of acres of land. Provided advice regarding title commitment and proforma review, mineral waivers, easements and access, and flood zone matters, among other things.
- Represented a clean energy technology company in connection with its \$12 million Series A Preferred Stock financing transaction.
- Represented an energy company in the Chapter 11 bankruptcy of another business that held a coal lease with the company. Negotiated the sale and assumption of the debtor's coal lease.
- Represented an energy company as main counsel in its bankruptcy proceeding, which involved \$54 million in senior secured debt and approximately \$50 million in remaining debt. Also represented the company and related entities in connection with financial and operational issue prior to the bankruptcy filing.
- Represented project developers in the negotiation of lease and purchase option agreements for development-stage renewable energy projects.
- Represented a client in the sale of its nationwide solar asset management company, which was valued at \$26 million and provided solar power system operations and maintenance services, to a private equity company.
- Represented multiple landlords in the negotiation of real estate options and leases with various solar developers.
- Assisted Firm team that served as local counsel in transaction involving both the acquisition and financing of a public utility company, valued at \$4.7 billion.