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### **Wind Energy: Planning for the Future**

"Clean energy" was a frequent topic during this fall's political campaigns, and there's plenty of substance behind the talk. The United States recently became the world leader in wind power capacity, eclipsing Germany and Spain which were pioneers in the field. The United States Department of Energy's 2008 report, *20% Wind Energy by 2030*, suggests, as the title implies, that the United States could feasibly satisfy 20 percent of its electrical needs through wind power by the year 2030. It appears that wind energy development is likely to continue to be a major force in meeting America's energy needs for a variety of reasons, including the United States' abundant wind resources, the need to reduce reliance on foreign sources of oil, increasing availability of federal and state incentives and environmental factors.

The industry, however, has encountered various challenges. Some of its major challenges include the lack of high voltage transmission lines in remote locations with high wind velocity, difficulties in assembling the large tracts of land necessary for wind farms, the lengthy amount of time necessary to develop a viable wind project, lack of financing sources, relatively low cost of competing forms of power, relatively high up-front capital requirements, and various issues related to the sufficiency and manufacturing of available and cost-effective turbines.

At Thompson Coburn, we have worked on a range of issues affecting wind energy development projects, including the following:

**Acquisition of land rights.** Wind energy developments require the assembly of vast tracts of land, frequently from multiple landowners. Typically, this is done by entering into an option to lease while the project is in an exploratory phase. Later, a wind developer typically obtains a lease or easement (often both) from the landowners for the operation of the farm (as well as any construction staging requirements). These documents frequently contain a fairly complex formula for rental payments, based on any number of factors which may include the number of turbines and other equipment on the property and the amount of energy produced at the leased location. Our lawyers have assisted wind energy clients with the array of issues involved in land assemblage and leasing of such property.

**Diligence and permitting.** Title and survey issues abound when dealing with tracts of land of the size necessary for a wind farm. Likewise, wind projects typically require numerous permits. In addition to the environmental, building and energy permits one might expect, wind energy farms can require permits from the Federal Aviation Administration (confirming that the project does not create flight hazard concerns) and the U.S. Fish and Wildlife Service (confirming that endangered or threatened species are not adversely impacted by the project). Our lawyers are experienced at handling these complex diligence and permitting issues.

**Financing.** Many of the U.S. lenders who were active in the wind energy sector have either left the market or no longer exist. As a result, wind energy developers are increasingly turning to different sources of financing, often including tax incentives, private equity and foreign lenders. We provide advice on the various issues which arise in a complex financing.

**Energy transactions and regulatory compliance.** Our Utilities practice group has extensive experience with negotiating interconnection arrangements, power sale agreements and joint ownership agreements, representing clients in Federal Energy Regulatory Commission proceedings relating to rates, terms and conditions for transmission and other wholesale electric services, and assisting clients to develop compliance programs, prepare for audits, and resolve potential violations relating to the Reliability Standards developed by the North American Electric Reliability Corporation.

If we can assist your business in achieving its goals with respect to renewable energy, please contact one of the attorneys listed below:

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