

5 KEY TAKEAWAYS

An In-House Counsel's Guide to Corporate Energy Procurement and Pathways to Meet Sustainability Goals

Kilpatrick's [John Livingston](#) recently presented "**An In-House Counsel's Guide to Corporate Energy Procurement and Pathways to Meet Sustainability Goals**" at the firm's annual **In-House Counsel Summit** in Raleigh. Mr. Livingston pointed out that most companies are committing to carbon reduction and green energy goals so they need to ensure that they are up to speed with corporate initiatives, renewable energy available and procurement methods, and specialized terminology. The discussion covered current topics in energy procurement and structures for procuring renewable energy credits and green energy.

Key takeaways from the presentation include:

1

More companies than ever are contracting for renewable energy, including many small- and medium-sized businesses, not just the early adopting tech and retail companies. Roughly half of the Fortune 500 companies have at least one climate initiative, and over 3,200 companies have signed up for the EPA's Science Based Targets Initiative (SBTi). As a result, the contracted capacity that companies have procured increased from 0.1 Gigawatts in 2012 to 16.9 Gigawatts in 2022.

2

Companies have many motivations for procuring renewable energy, including sustainability goals, investment return, electricity price hedging, marketing, resiliency, and requirements of their corporate customers. The motivations of each particular company will affect the procurement method that is right for them.

3

Measuring a company's greenhouse gas emissions is a difficult process with many different protocols and accounting standards. Additionally, much of a company's emissions can be considered indirect. Emissions are often categorized as scope 1 (emissions from the company's direct actions), scope 2 (emissions from electricity and other power purchased by the company), and scope 3 (emissions from upstream and downstream activity in the lifecycle of a company's product or service). Scope 3 are the most difficult to manage but can be a large part (or even majority) of the emissions of a company.

4

Methods to procure renewable energy to offset emissions can come in many forms, including onsite generation (including rooftop), the purchase of renewable energy credits (RECs), power purchase agreements (PPAs), green tariff programs, and virtual power purchase agreements. Each procurement method has advantages and disadvantages, including cost, complexity, potential hedging of electricity costs, and concerns of greenwashing.

5

Greenwashing (or the assertion that environmental claims marketed by companies do not match their actual behavior) are on the rise and have recently transformed from concerns that affected a company's reputation to ones that have direct legal consequences. Actions are being taken by some federal agencies and the European Parliament to prohibit the practice, states taking enforcement actions against companies with misleading advertising, and even consumer lawsuits being filed against companies. The enforcement aspect of greenwashing is in its infancy, but it is something that companies should be monitoring and ensuring that the marketing of their environmental claims are accurate and concrete to prevent facing lawsuits or enforcement actions.