

TABLE OF EXPERTS

A look at New York State's renewable energy goal

Albany Business Review publisher, Walter Thorne, recently led a discussion with three leaders in the energy space to learn what business leaders need to know about the industry and the impacts and possibilities associated with New York's Climate Leadership and Community Protection Act.

MEET THE EXPERTS:

ADAM CONWAY

Partner,
Couch White LLP

Chair
Couch White
Renewable Energy
Transactions Group



Adam Conway has been an attorney specializing in energy law at Couch White for more than a decade. Adam has helped clients successfully develop projects across the energy spectrum, focusing on project development, policy and utility rate regulation. Adam works closely with a cross-disciplinary team at Couch White, focusing on energy regulatory, permitting, and real estate, to provide comprehensive and cost-effective renewable energy development advice to companies looking to develop, acquire, or finance projects in New York State and surrounding states. He has experience with large-scale and distributed-scale solar, wind, hydroelectric, battery storage, fuel cell, anaerobic digester, and biomass projects.

DAVID FLYNN

Partner
Phillips Lytle LLP



David P. Flynn is a leader of the firm's Environmental Law Practice. He is also the co-leader of the firm's Energy and Renewables Industry Team and its Cryptocurrency and Blockchain Practice Team. His practice is concentrated in the areas of energy, environmental law and emerging technologies. David advises clients on business development issues and the regulation of energy before state and federal authorities. He also advises clients on the development and siting of renewable energy facilities, licensing of hydropower projects, hydrogen projects and energy storage facilities. He regularly speaks on energy topics across New York State.

ANDREW WEIDERT

Partner, Senior Vice
President of Integrated
Solutions Division
Stark Tech



Andrew Weidert brings more than 20 years of experience and knowledge in energy efficiency, decarbonization, and electrification to the industry. A key member of Stark Tech's leadership team, Weidert has been a champion in successfully building and executing turnkey projects through customized integrated solutions that meet the sustainability goals of national and regional clients.

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What can we do to align the market with New York's energy future?

David Flynn: One of the key issues that we're all grappling with is, how do we align the market from an economic development standpoint in New York with the goals set out in the Climate Leadership and Community Protection Act (CLCPA). Up to this point, goals have driven the dialogue and many of the actions. That is, how do we increase generation based on renewables? Not a lot of attention has been paid to what the market really needs and wants, and how do we gain some of the economic benefit that's associated with this relatively rapid and significant transformation of our energy marketplace to become an economic driver for the State?

At this point, we see a lot of the economic benefits from the program basically leaving New York State, while New York State businesses and individuals are going to be paying an increased amount of money for the energy that's generated from renewables. So, our view is we've got to bring those two pieces together so that as we're driving this transformation, we're also seeing the economic benefits from it.

Andrew Weidert: Simplifying the message of what this means to the community, what it means to New York State is going to be critical. The education on renewable technologies and how they're going to be implemented is something that we struggle with every day trying to get people comfortable with and understanding why and where New York is going and the impact it has on them.

What advancements are needed in energy storage and grid infrastructure to support renewable energy?

Weidert: I would start with incentivizing from the utility and the State. I think the State has done a yeoman's effort, regarding providing programs in ways that you could start to prepare for renewable projects and to help landowners. To really adopt fully what we've already committed to - landowners, business owners, industrials - need incentives and financing mechanisms to be able to achieve these renewable goals. I think you'll get mass

adoption when incentives mirror what the regulation is calling for. Right now, it's heavily regulated, somewhat incentivized. If we can match the incentives with the regulation, I think you'll get adoption.

What makes renewable energy transactions so complex in New York state?

Adam Conway: You have a lot of moving parts and a lot of interrelated parts, and everything has to work together in order to make these projects successful. One of the things that we've learned over the years is that these projects typically take longer to develop and come to fruition than folks might anticipate at the outset. A lot of things must hang together from the beginning to the end to make a project successful. There are several pitfalls along the way that any of these projects can hit that could send a project sideways.

What's really key from our perspective is making sure that the underlying regulatory scheme and regulatory foundation for what these projects are built on, and assumed to be built on, remains as stable as it can possibly be over time. We think there's been, at least from my perspective, some very good success stories in New York State on that, which have allowed a number of these renewable generation project types to take hold and really grow from the ground up.

Weidert: Adam used a great word, which is pitfalls. I would say all renewable projects fall at the town level in regards to if they get final approval or not. We could do everything right from an economic development standpoint. We could have the State identify it's good, the utilities say this is a great project, the landowner be in agreeance, and we could get to the town board meeting to approve or deny a renewable project for a development on somebody's parcel of land. If the town shoots that down, they're ultimately the deciding factor. So, that's a potential pitfall. Further qualifying and unifying of where everyone is going and getting everyone rolling in the same direction is key.

Adam, you've helped to create a new practice area at Couch White called Renewable Energy Transactions. Can you talk to us about why it started, the need for

it, and how it differs from the way firms previously approach energy transactions?

Conway: We started noticing about seven to ten years ago that we were getting a lot of questions from companies coming into New York, looking to invest in New York, looking to purchase projects, looking to develop projects, looking to finance projects. We've had a leading energy regulatory practice in New York for decades. We started getting questions, are these new renewable energy programs real? How do they work? How do I get paid? How do I get this financed? Will a bank lend against it, et cetera?

The second wave of questions from those same group of companies came when they ran into a problem with the town or landlord that they're leasing property from. We had attorneys at Couch White that were doing local permitting for a variety of commercial and industrial concerns. We had attorneys doing commercial real estate deals for general real estate development projects. What we realized as we started

talking to each other is that we have all of the disciplines in-house that can help the companies that were running into the same problems over and over again on the renewable energy front.

We said, let's package this together. Let's offer this service to companies that want to come to New York and want to build projects, buy them, finance them, and we can navigate all these different subject areas that companies run into from a legal standpoint.

It's not just limited to the project development side either. The other big development we've seen in recent years is companies that want to go carbon neutral, or they have greenhouse gas reduction targets and they need legal help to navigate the different contracts that they're signing up for, the renewable energy purchases they're making, the carbon offset purchases they're making. We've developed that side of the practice in parallel with the pure project development side.

How can investments in clean energy be made more attractive to landowners and what role do

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communities play in the development and adoption of clean energy projects?

Weidert: The role that communities play is a critical one. We talked about earlier that ultimately the local townships are really the end all, be all on if a project is going to be approved or not. I think there needs to be a good understanding in the qualifying phase, is that town, is that board receptive to renewable energy projects? Are they proactively thinking about how they're going to solve the problems for their town and the people that live in it with this opportunity for community projects?

Qualifying an alignment between the State and the townships, making sure that we're not spending time and money to develop a project only to see it fall flat at the very end. It is something that is way more common than you think. The other thing that would make it more attractive to landowners is streamlining what that process looks like between identifying a great opportunity and executing a construction project. That is a very long timeline right now. Sometimes

that's a year and a half, two, three, four years before somebody would sign up and identify a parcel to when we'd bring that renewable energy online. When you have aggressive New York state goals, that timeline needs to be shrunk down.

Flynn: We're hearing about this tech corridor, Buffalo to Syracuse. We've got Micron making a pledge to essentially use all renewable energy. We're seeing numbers of three gigawatts of energy for just Micron, let alone the support structure. Where is that renewable energy going to come from?

We're concerned that ultimately, the way New York is approaching this, and some of the comments regarding having to deal with all of these localities and being beholden to their ultimate decisions is going to become an impediment or a roadblock to realizing some of these economic gains. There's a real problem if the energy infrastructure isn't there when multiple millions, if not billions of federal and state dollars are being committed to the tech corridor.

In reality, looking at projects, five megawatts, 10 megawatts, 100

megawatts at a time and having to deal with multiple localities across upstate New York is just two trains on the same track heading at each other.

Why is energy storage critical to New York State's efforts to meet its energy goals?

Flynn: Well, the renewables, by their nature, are intermittent. The one thing that entities require is large quantities of high-quality power. Anything less than that is a real issue and problem for them. If you don't have storage with an intermittent source, you're creating an untenable position. The New York State Independent System Operator (NYISO) is saying, "We're going to have some reliability issues here in New York given the blend of generation and where we are with transmission." That does not jive well with looking to maximize the benefits of a tech corridor or other economic development across the state.

One of the key components in our view is to increase energy storage. It's critical to leveraging the renewables we have, the renewables we're going to get with the market requirements for quantity and quality of power, and as a larger statewide market, we're going to have to embrace and we're going to have to fast track some significant strategic storage across New York State.

Conway: I view energy storage as the coming wave of energy projects in New York State. We had a wave of solar and wind come in first, and now the State just recently authorized what they call their next energy storage roadmap. It is a whole suite of incentives that's designed to incentivize small-scale and large-scale storage projects. The expectation is that these new incentives will get off the ground in the very near future here and there are a lot of energy storage projects in various stages of development that will look to utilize these incentives.

And once those incentive dollars start getting out into the market, I think you'll see that energy storage projects, which will form a critical piece of the transition to renewable energy, will be the next wave of projects that we're going to start to see built in the state.

Weidert: The expectation that we could generate and push enough power through our existing electrical infrastructure is not possible, as we

try to electrify and get off fossil fuels. This thought process of harnessing a renewable and being able to redistribute that renewable energy to help power our needs is a critical piece to how we get there.

What regulatory barriers need to be addressed to accelerate the adoption of clean energy technologies?

Weidert: From a regulatory standpoint, New York is certainly one of the more proactive regarding the amount of qualifying and hurdles that need to be jumped to implement different battery technologies. I think the regulatory landscape is there. I think it's holding everyone to a high standard of expectation in regard to safety and how those systems would operate.

The better question is, what incentives can match with that regulatory landscape to be able to spearhead what Adam was talking about earlier, which is deployment of these systems. Right now, you have heavy regulation which is driving how the systems need to be implemented and designed, but you really don't have the incentive programs to match for somebody to be able to start to deploy that into their portfolio.

It's safe to say that community solar projects in New York aren't as controversial as utility scale projects. What's so appealing about community solar projects and why have they been more successful than large scale projects? Are there benefits of community solar projects worth it?

Conway: From our perspective, this has been maybe one of the most, if not the most successful renewable energy project development markets in the state. I don't think the state takes enough credit for the level of success that they've had in setting targets, meeting those targets, exceeding those targets, and doing so within the budgets that have been established.

What makes these projects appealing is that the project footprint of them is much smaller. We're talking about projects that are only taking up between 10 to 25 acres versus hundreds or thousands of acres for some of these larger scale projects. You're typically only dealing with one town and one landowner.

Those two stakeholders are usually

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aligned on supporting the project. The landowner gets additional lease revenues from the projects. The town, county and school district get additional tax revenue from the projects. At the end of the day, it's generally a win-win-win for the landowner involved, for the project developer involved, for the local community involved, and for the state regulator who's incentivizing these programs. From our perspective, these projects have been an unqualified success story as far as the New York state renewable energy development community is concerned.

What would you say to a local business or entity that has land or facilities that could be repurposed for renewable energy production? What are the things they should explore or consider first?

Conway: What I would say, as a lawyer, is talk to a lawyer. Oftentimes, these can be long-term commitments that you're going to make and you should understand the deal that you're making and the fact that this is going to tie up your land for a long period of time. As a customer that wants to participate in a renewable energy project, understand that it's likely going to commit you to a contract term that will run a minimum of 10 years or longer.

Those are serious commitments, and you want to feel comfortable that you'll be getting the benefits that you expect out of these projects. It's important to talk to somebody who understands the market and understands the benefits that these projects can produce. These contracts can be readily structured in a way that can result in a win-win situation for the business or the entity.

Weidert: I think part of the education needs to be on the value proposition that you can get out of these projects and the value stacking that can occur. There's a lot of instances where not only you improving your resiliency onsite, helping your own systems, controlling your own destiny in regard to how and when you disperse power, but there's additional value propositions that can exist that make that an economic benefit.

It's understanding the regulatory landscape and the dynamic of the relationship of your energy you're entering, and then also to quantify all the different value propositions you could

stack to make it beneficial.

What is the role of nuclear energy in New York under the CLCPA?

Flynn: Kind of quietly and in a very sublime way, nuclear was included in the scoping document that came out of the Climate Action Council's work. I think there still are some significant perception issues with nuclear and everybody thinks of the mushroom cloud coming off the tall cooling tower. The small modular reactors are much, much different than that and it's taking hold in Europe and Canada. It's nothing but a relatively small square building with a small nuclear reactor in it.

I think it can play a critical role going forward because while we're increasing the amount of renewables, which is a great thing, and carbon-free energy sources, the intermittent nature of them and the fact that they're displacing baseload, which is generation that continues to operate all of the time, is creating some of the volatility in the marketplace to the point that the NYISO is starting to be concerned about it in terms of reliability.

A small nuclear reactor can be located closer, or close to the actual consumer of that energy. If you have a large facility, nearby you could have a small reactor and it reduces the amount of investment you need to put into your infrastructure like transmission and distribution. It also importantly is a carbon-free source of energy. There is a future for nuclear in New York, particularly using the small modular reactor approach and it's wholly consistent with both the CLCPA and the scoping document.

It's not going to happen overnight and there's a lot of education that needs to come along, but it can be a very effective, safe, and replicable approach to producing energy where we need it across the state.

Weidert: Decentralizing electric needs is critical. Instead of having large centralized substation and trying to push all of this mass amount of power through the lines to where they're required, the way we're going to evolve as a state to meet our needs is to create microgrids, many substations of power distribution closer to where those high demands are. That's a cost-effective approach to solving the problem and I think nuclear

plants at a smaller scale are one thing that can be evaluated to do that along with energy storage and other microgrids.

What's one thing you want our audience to know about this topic?

Weidert: Regardless of the federal landscape, New York state is committed to what they have put forth. We're getting to the point where New York state is fully committed to this decarbonization goal. It's not a question of if it's going to happen, it's when it's going to happen. We're not suggesting people make that move right now, but they should understand that they really should start to develop a plan in place to get there.

Flynn: I think it's critical that the market speak and speak now. There are environmental groups, clean energy groups, they're well-established, they've got their talking points, and they're aggressive in their support of the goals under the CLCPA.

Up to this point, the market, those that are going to be paying for it, have been either fractured, not paying attention to

it, or in a worst-case scenario, kind of have their head in the sand. They don't want to deal with it because it's not on their plate today and it's mind-numbingly complicated and expensive to try and get your head around it, so they're just avoiding it.

All three of those scenarios are bad. The market needs input into this process. The costs need to be understood. Understand what's happening and get involved now.

Conway: There are success stories so far, and there are good examples of programs and projects that New York state has developed from scratch that have led to real, measurable, impactful project deployments that will put us on a path to achieve some of these goals that we've set out for ourselves.

It's worthwhile to appreciate the successes and understand that one of the key ways we're going to hit some of these targets is to continue to put projects in the ground. We have to continue with the momentum if these projects and these programs and these targets are going to be successful.

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