

**RENEWABLE ENERGY PROJECT FINANCE
AND DEVELOPMENT**

**Vermont Law School
Summer Session 2018, Term 3
July 9, 2018 - July 19, 2018
9:00 AM to 12:00 PM**

Glenn J. Berger

Syllabus and Course Information

1. **Course Overview:** This course will provide an in depth look at the legal and regulatory issues associated with the development and project financing of renewable energy projects such as wind, hydro, solar and geothermal. The course will explain the various ownership structures that are used for developing an energy project such as LLC arrangements and partnership agreements. The course will examine in depth the basic terms and conditions of the contracts that are necessary for a successful project financing such as: power purchase agreements; engineering contracts; fuel supply arrangements; and operation and maintenance agreements. The course will also cover the basic financing agreements that are part of an energy project financing such as credit agreements and equity arrangements. The course will also explain the Federal and state regulatory issues that need to be addressed during a project financing including providing an overview of the Public Utility Regulatory Policies Act, the Federal Power Act and the Energy Policy Act of 2005. In addition, the course will examine Federal and state incentives for the development of renewable power projects such as Renewable Portfolio Standards, Renewable Energy Credits, Investment Tax Credits and Production Tax Credits. The course will include a final written exam.

2. **Materials:** The required course textbook is Scott L. Hoffman, "The Law and Business of International Project Finance" (Boston: Kluwer Law International). Additional materials are available at the bookstore and some will be made available in class.

WEB SITE for Readings, Materials and Simulation Information: A LEXIS-hosted "Blackboard" site. You will need a VLS Lexis password to access this course website. Email Chenfang Yang (cyang@vermontlaw.edu) to obtain one. To access the course web site for the first time and enroll,

- go to <http://webcourses.lexisnexis.com/> and click on "Login"
- enter your LexisNexis ID and click "Login"
- click on the "Browse Course Catalog" link
- click on the "Vermont Law School" link
- locate "Renewable Energy Project Finance and Development" and click on "enroll"

After you're enrolled, you will only have to go to <http://webcourses.lexisnexis.com/>, login, and click on the course link to access the course web site. Remember, always click the "Logout" link at the top of the screen to exit the course.

3. Examination: Open book, take home, due for Vermont Law School students on July 21, 2018 at 4:00 PM. Further detailed instructions will be provided at the end of the course.

4. Instructor Contact Information:

- Office Phone: TBA
- E-mail: gberger@skadden.com
- Office Hours: In Vermont 12:00 - 1:00 p.m. Tues. and Wed. on days the class meets and by appointment
(202) 371-7920
gberger@skadden.com
Skadden, Arps, Slate, Meagher & Flom, LLP
- Home Office Contacts:
gberger@skadden.com
Skadden, Arps, Slate, Meagher & Flom, LLP

5. Course Requirements:

Class Attendance: Vermont Law School (VLS) requires that you attend class. I will circulate the roll at each class for your signature. Your signature without amendment on the roll indicates that you attended the entire class period. Anyone who is more than five minutes late for class without an excuse acceptable to Professor Berger in his sole judgment, or anyone who is more than five minutes late for two classes for any reason, will be marked absent for the class.

Preparation: So that we can have a meaningful discussion of the issues, you are expected to come to class fully prepared by reading all the required materials in advance. You will be held responsible for the contents of all non-optional reading materials on the final exam.

Simulations and Presentations: The design of this class gives you as a student a lot of opportunity to interact with the class. Accordingly, you will be required to complete any assigned simulations and oral presentations on time and according to instructions.

Final Exam: There will be a written final examination. This examination will be take home, open book. Performance on the exam will be a major determinant of your grade in the course.

Conduct/Honor Code: You are expected to conduct yourself in a professional manner throughout all aspects of the course. You are expected to abide fully by the VLS Honor Code.

Class Participation: A portion of your grade will be based on "class participation." Note that participation is not defined by the quantity but rather the quality of your participation. In fact, it is unlikely that a student who talks too much will receive the full points for class participation, as that student will be depriving others of time to share their ideas and insights. So plan to be an active but respectful member of the class!

6. Schedule:

CLASS 1

Monday, July 9, 2018

INTRODUCTION TO PROJECT FINANCE

Hoffman Chapter 1 -	An Introduction to Project Finance §1.01, 1.03, 1.06, 1.08-1.10, 1.13, 1.14
Hoffman Chapter 2 -	Project Finance Risks §2.01 - 2.04, 2.05 ¶(1)-(8), (11), 2.06, 2.07
Hoffman Chapter 5 -	Project Finance Participants and Their Roles §5.01-5.04, 5.09-5.16
Materials:	Case Studies Financial Pro Forma Power Generation Schematics Overview of Wind and Solar Energy in the U.S.

CLASS 2

Tuesday, July 10, 2018

REGULATORY OVERVIEW/RENEWABLE POWER DEVELOPMENT

Materials:	Federal Power Act ("FPA") Part I, Intro, §3 Part II, §201, 203, 204, 205, 206, 15 USCS § 79z-5a (2004) Public Utility Regulatory Policies Act of 1978 ("PURPA") §3, Title II: §210 (a), (b), (c), (d), (e), (m), (n) Energy Policy Act of 2005 – Overview Renewable Energy Portfolio Standards IRS Production Tax Credit/Investment Tax Credits Electric Transmission: The Feds Are Here to Help
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CLASS 3

Wednesday, July 11, 2018

DOCUMENTING THE DEAL: REQUEST FOR PROPOSALS (“RFPs”)
AND SECURING THE REVENUE SOURCE

Hoffman Chapter 19 - Power Sales Agreements

Materials: Model Power Purchase Agreement
Request for Proposals
Procuring Cost-Effective and Climate-Friendly
Electric Generation in the Caribbean: A Primer

CLASS 4

Thursday, July 12, 2018

DOCUMENTING THE DEAL: PROJECT CONSTRUCTION CONTRACTS
AND FUEL SUPPLY CONTRACTS

Hoffman Chapter 15 - Construction Contracts
§15.01, 15.02 ¶(1)-(5), 15.03-15.05, 15.08-15.24,
15.27-15.28 (Do not need to read Draft Provisions)

Materials: Model Turnkey EPC Contract
Gas Supply and Transportation Term Sheet

CLASS 5

Monday, July 16, 2018

DEBT FINANCING

Hoffman Chapter 13 - Representations and Warranties in Project Finance
Credit Agreements and Contracts

Hoffman Chapter 21 - Financing Sources for the Project
§21.01 – 21.05

Hoffman Chapter 23 - Project Finance Debt Commitment Letters

Hoffman Chapter 24 - Credit and Related Documentation for Project Finance
Transactions
(Do not need to read Draft Provisions for any of the above
Chapters)

Materials: Construction and Term Loan Agreement
(Only need to skim to get a general familiarity with Handout material)

Guest Lecturer: Jeffrey Christie, Retired Partner Energy & Infrastructure Group - Skadden, Arps, Slate, Meagher & Flom, LLP

CLASS 6

Tuesday, July 17, 2018

STRUCTURING AND NEGOTIATING PROJECT OWNERSHIP AGREEMENTS, DEVELOPMENT FUNDING AND EQUITY AGREEMENTS

Hoffman Chapter 7 - Selecting the Project Finance Ownership Structure
§7.01-7.05, 7.07-7.11

Hoffman Chapter 21 - Financing Sources for the Project ,
§21.01-21.02, 21.12-21.13

Hoffman Chapter 22 - The Offering Memorandum
Hoffman Chapter 27 - Governing the Project Company: Stockholder, Partnership, Joint Venture and Management Agreements

Materials: Offering Memorandum
Development Loan Term Sheet
Summary of Terms and Conditions for Limited Partnership
Model LLC Agreement
Participation and Option Agreement

CLASS 7

Wednesday, July 18, 2018

SECURITY DOCUMENTS AND ANCILLARY FINANCING DOCUMENTS

Hoffman Chapter 26 - Project Collateral

Materials: Security Agreement and Assignment
Deed of Trust
Project Entity Pledge Agreement
Disbursement Agreement
Third Party Consent and Estoppel
Borrower Opinions
UCC-1 Financing Statement
(Only need to skim to get a general familiarity with handout materials)

CLASS 8

Thursday, July 19, 2018

DEVELOPMENT AND FINANCING OF AN INDEPENDENT ELECTRIC TRANSMISSION LINE

Materials:

- Participation and Option Agreement
- Private Equity Offering Memorandum
- Equity Investment Term Sheet
- Private Placement Memorandum
- Development Loan Term Sheet
- Development Loan Agreement
- FERC Order
- Closing Index

7. Grading

Your grade in this course will be based on the following:

Final Examination:	80 percent
General Class Participation:	20 percent

8. Further Information/Updates: This course syllabus provides tentative assignments for this course. I may amend the syllabus, depending on how the class develops. Additions or modifications to assignments, as well as changes to any of the dates above or other important information, will be posted on the web site and announced in class. This is designed to be a formative, collaborative class. In other words, unless you take responsibility for your own learning, you will not get much out of this course.