

Green for Green: Financing Renewable Energy Projects

By Pat Zomer

Minnesota is a renewable energy leader. The Buffalo Ridge and other parts of southwestern Minnesota are home to some of the best wind resources in the United States.¹ The proximity to wind resources and state renewable energy policies² have resulted in over \$7 billion in wind investments.³ Overall, Minnesota is a top 10 wind producer and wind accounts for almost 20 percent of total Minnesota electricity generation.⁴

Though difficult to imagine during the dark days of winter, solar power also plays an important and growing role in Minnesota's energy mix. Minnesota was an early adopter of community solar gardens, a form of project-ownership that allows individuals and smaller businesses to own a share of a renewable energy project.⁵ Minnesota's leadership in community solar, combined with solar mandates,⁶ has resulted in robust growth of solar power in Minnesota.⁷

Renewable energy (wind, solar and hydroelectric) is now the second largest source of electricity generation in Minnesota.⁸ And that share is likely to grow with Xcel Energy's recent announcement that it intends to deliver 100 percent carbon-free electricity to customers by 2050.⁹ The continued focus on renewable energy presents unique financing opportunities for all Minnesota banks.

Unlike traditional fossil fuel generation, the size and scale of renewable energy projects can vary widely. From utility-sized projects costing hundreds of millions of dollars, to rooftop installations for individuals that could be financed with a home equity loan, banks may see a variety of customer requests regarding renewable energy. While each project will have its own unique components, there are common issues across all projects that banks should assess when considering renewable energy financing.

Banks first need to identify and categorize the collateral supporting the loan. Many renewable energy projects will involve some mix of equipment, fixtures, real estate and general intangibles. The equipment could consist of wind turbines, solar panels, wiring and other physical assets used in the process of generating electricity. Once those items are physically installed at the project site, they likely become fixtures. The real estate collateral can be owned in fee or in the form of a leasehold interest. Finally, project developers and owners will have numerous contract rights, the most important being those providing for the construction of the facility and those related to the sale of the electricity.

These collateral categories are not uncommon, nor are the means of obtaining and perfecting a bank's security interest. A renewable energy loan will likely involve some or all of the following: a security agreement; UCC-1 filing; mortgage (with or without fixture filing); and fixture filing. Depending on the situation, banks should also consider obtaining consents from construction

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vendors, purchasing utilities and landlords. But there are industry-specific considerations that may require specialized treatment.

Some renewable energy borrowers may be transmitting utilities¹⁰ or public utilities¹¹ under the Uniform Commercial Code. Assessing the status of a renewable energy borrower is important because it could impact the appropriate means of perfecting a security interest in fixtures,¹² as well as the effective period of financing statements.¹³ Banks also need to be aware that wind and solar easements obtained by borrowers are only effective upon recording in the appropriate real estate records.¹⁴ These considerations require special attention during the due diligence phase of a loan transaction.

Finally, renewable energy projects present unique lending limit concerns. In most cases, the electricity generated by a renewable energy project will be sold to a utility, which could be either a traditional public utility or an electric cooperative. Banks need to pay special attention to the ultimate utility purchaser, as OCC Interpretive Letter No. 1074 states that loans to borrowers that all sell their output to the same utility could be combined for purposes of bank lending limits.¹⁵ There is an important exception to this policy: if a project can sell its power into a spot market upon default by the utility, then the supporting loans do not necessarily have to be combined with loans for projects selling to that same utility. With the development of wholesale electricity markets (and specifically the MISO market in the Midwest), the lending limit combination issue is mitigated. Confirming access to wholesale markets can play an important role as banks expand their presence in the renewable energy space.

Minnesota is a national leader in renewable energy. A combination of corporate and state policies likely will drive additional development in the coming years. With smart planning on the front-end, Minnesota banks can play an important role in supporting these important local projects. ■

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¹ U.S. Wind Energy Technologies Office, U.S. Average Annual Wind Speed at 30 Meters, <https://windexchange.energy.gov/maps-data/325>.

² Minn. Stat. § 216B.1691, subd. 2a (requiring Minnesota electric utilities to generate or purchase enough renewable energy to meet 25% or 30% of their annual sales by 2020).

³ American Wind Energy Association, Wind Energy in Minnesota, <http://awea.files.cms-plus.com/FileDownloads/pdfs/Minnesota.pdf>.

⁴ U.S. Energy Information Administration, Minnesota State Profile and Energy Estimates: Profile Analysis, <https://www.eia.gov/state/analysis.php?sid=MN> (Last Updated March 15, 2018).

⁵ See Madeline Ostrander, Solar Power is Blooming in Minnesota, *Sierra* (Dec. 13, 2017), <https://www.sierraclub.org/sierra/solar-power-blooming-minnesota>.

⁶ Minn. Stat. § 216B.1691, subd. 2f (requiring an electric utility to generate or procure enough solar energy by the end of 2020 to serve 1.5% of the utility's retail sales).

⁷ Ron Meador, U.S. Solar Growth Dimmed a Bit in 2017, but Minnesota's Picture Stayed Brighter, *MinnPost* (Mar. 23, 2018), <https://www.minnpost.com/earth-journal/2018/03/us-solar-growth-dimmed-bit-2017-minnesotas-picture-stayed-brighter/>.

⁸ Elizabeth Dunbar, Study: Renewable Energy Now Minnesota's 2nd Largest Electricity Source, *MPR News* (Mar. 1, 2018), <https://www.mprnews.org/story/2018/03/01/study-renewable-energy-now-minnesotas-2ndlargest-electricity-source>.

⁹ Xcel Energy, Xcel Energy Aims for Zero-Carbon Electricity by 2050 (Dec. 4, 2018), https://www.xcelenergy.com/company/media_room/news_releases/xcel_energy_aims_for_zero-carbon-electricity_by_2050

¹⁰ Minn. Stat. § 336.9-102(81).

¹¹ Minn. Stat. Ch. 336B.

¹² Minn. Stat. §§ 336.9-501(b), 336B.02, subd. 1.

¹³ Minn. Stat. §§ 336.9-515(f), 336B.02, subd. 3.

¹⁴ Minn. Stat. § 500.30, subd. 2.

¹⁵ See OCC Interpretive Letter No. 1074 (Nov. 2006), <https://www.occ.gov/topics/licensing/interpretations-and-actions/2006/int1074.pdf>.

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