

## RENEWABLE ENERGY

Hodgson Russ's renewable energy practice group has deep experience in the New York market and beyond, advising a broad spectrum of clients in the large-scale and distributed solar, energy storage, clean transportation, offshore and onshore wind industries. We guide developers, lenders, land owners, permitting and development agencies, suppliers, project acquirers and investors through every aspect of project development, permitting, financing, regulatory, construction, implementation and operations. Hodgson Russ attorneys combine their deep knowledge in renewable energy and related markets with foremost expertise in regulatory, real estate, local and municipal zoning and land use, labor and employment, environmental, transactional, tax, cross-border matters and litigation.

Our firm has worked on the U.S. legal aspects of renewable energy projects from Quebec to Uruguay and from Maine to Hawaii. Hodgson Russ has been involved in renewable energy from the earliest days of hydropower, including the first successful defense of a permit denial due to excess greenhouse gas emissions.

As the state of New York implements policies aimed at an exponential buildout of renewable energy resources and reduction of greenhouse gases to pre-industrial levels, and the solar, wind and energy storage industries grow at exponential rates across the United States and beyond, Hodgson Russ provides both private and public entities an experienced, forward-thinking legal team with both strategic acumen and deep experience in all applicable areas of law.

### Strategic Planning

Hodgson Russ lawyers assist in strategic planning for projects, including the evaluation of clean energy and renewable portfolio standards, state and federal incentives, wholesale and retail electricity rate design, the impact of new or changing energy policies, interpreting utility commission requirements, the potential for sale of renewable energy credits and other financing mechanisms including tax credits and other benefits for a wide range of U.S. projects. We are part of the Public Service Commission's Interconnection Policy Working Group and advise our clients on regulatory changes, interconnection requirements and tariff issues.

### Zoning and State Permitting

We guide developers through the zoning and permitting process on local, state, and federal levels. We regularly draft local regulations for all aspects of the industry on behalf of developers and municipalities. Our renewable energy practice attorneys have experience guiding clients through the Article 10 permitting process before the New York State Siting Board, advising with respect to preparation for the new

### Contact

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### Professionals

#### Attorneys

Evan Anderson  
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Section 94-c siting process at the newly created Office of Renewable Energy Siting, as well as those projects reviewed and approved locally. We negotiate payment-in-lieu-of-taxes (PILOT) agreements, host community agreements, community benefit agreements, road use and other agreements with host communities.

William Turkovich  
Sujata Yalamanchili  
John Zak  
Henry Zomerfeld

### Environmental Review

Our attorneys assist in the environmental review process and in compliance with the National Environmental Policy Act and state environmental review acts. We assist in the drafting of environmental impact statements and findings to support project approvals. We advise on the Clean Water Act, the Endangered Species Act, the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, the National Historic Preservation Act and other federal regulations impacting the alternative energy industry. Our renewable energy practice attorneys assist with the Clean Air Act and the Clean Water Act permitting processes.

### Financing

Attorneys in our renewable energy practice assist developers and lenders in the financing of renewable energy developments, including reviewing financing documents, obtaining stimulus funds and other state and federal financial incentives and issuing required legal opinions. We have assisted numerous renewable energy projects in obtaining benefits through industrial development agencies. We work closely with other agencies, such as the New York Green Bank, Empire State Development and NYSERDA. Hodgson Russ has extensive experience in financing transactions, including a wind energy financing deal that was named North American Renewables Deal of the Year by *Project Finance* magazine, Renewables Deal of the Year by *Infrastructure Journal*, and Environmental Deal of the Year in the Americas by *Project Finance International*.

### Lease and Easement Agreements

Hodgson Russ assists developers and landowners in the drafting, execution and enforcement of lease and easement agreements necessary for acquiring transmission line routes, achieving wind-stream protection, preserving right to solar resources and complying with noise and property-line setback requirements.

### Real Estate

Hodgson Russ has experience with title insurance and survey, boundary disputes, environmental site evaluation and risk analysis and right-of-way acquisition issues in all 50 states and can, with involvement of local real estate counsel as appropriate, oversee all transactional real estate aspects of renewable energy projects across the



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United States. Our renewable energy practice attorneys have worked on some of the largest renewable projects in the country, providing assistance on projects ranging from 5 to over 14,000 acres, and including offshore infrastructure.

### Contracts and Agreements

We regularly assist in negotiating, drafting, and enforcing contracts for construction of large-scale energy-related facilities, as well as Membership Interest Purchase Agreements, REC contracts, asset purchase agreements, joint venture and joint development agreements and Power Purchase Agreements. Our lawyers also regularly evaluate licensing and technology transfer agreements, supply and logistics contracts, equipment leases, operation and maintenance agreements and equipment warranties to advise on contract terms and evaluate potential risks. We participate in the Public Service Commission.

### Taxation

Our federal and state tax practitioners advise on the full range of state and federal tax issues, including production tax credits, investment tax credit, real property tax issues and sales tax issues. We have successfully litigated disputes involving large-scale power generating sales and real property tax liabilities, and drafted numerous payment-in-lieu-of-taxes (PILOT) agreements. We also provide assistance on structuring tax-efficient and treaty-compliant cross-border transactions and operations.

### Litigation

Hodgson Russ's litigation team has handled all phases of litigation involving energy facility development, from attacks on underlying local legislation through defense of environmental reviews, permitting decisions and enforcement of construction contracts. We file petitions before the public service commissions and other regulatory authorities on behalf of our clients, and regularly participate in their proceedings.

### Insurance

Our insurance coverage team can advise on all types of policies, including those unique to the energy industry, to address risks arising during development, construction and operation, including warranty coverage. We have substantial experience resolving and, where necessary, litigating insurance coverage disputes.

### Corporate Structuring and Collaborations

We help establish corporate entities, joint ventures and partnerships as well as their governing documents, depending on the unique needs of each client's business plan. Our attorneys are well-versed in the cross-border tax aspects of such business entities. We perform transactional due diligence, including document review and regulatory and commercial risk evaluation, for all sizes of contracts and investments.

### **Hodgson Russ: Your Legal Port of Entry**

The renewable energy business is an international industry, and Hodgson Russ has the experience and knowledge necessary to counsel foreign entities participating in energy projects in the United States. We advise clients on a broad range of international legal issues, including cross-border finance transactions, CFIUS, FACTA compliance, immigration issues,

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cross-border licensing and technology transfer, protection of foreign patents, international taxation and tax treaty compliance, multinational mergers and acquisitions, United State-Mexico-Canada Agreement (USMCA) and other trade issues.

### Experience

Hodgson Russ advised the developer on all legal aspects of the permitting and IDA financing of multiple wind energy projects in Western New York providing power for more than 50,000 homes. The projects include over a hundred turbines, over 20 miles of access roads, electric collection systems, an operations and maintenance building, and a substation. Our work included guiding the environmental impact review processes, representing the company at public hearings, obtaining land use permits, defending the company in lawsuits from opposing neighbors, and negotiating road use and host community agreements. We served as local finance counsel in obtaining benefits from the IDA, and all real estate matters related to the project, including survey due diligence and acting as the title examiner for the projects.

Our firm serves as key outside counsel to a California-based energy company regarding their solar development projects. The Hodgson Russ team including Elizabeth Holden, Andrea Gervais, Betsy Mills and Jennifer Anthony provide advice, review and guidance on real-estate based development issues in a time-sensitive and consistent manner for the client's development team across four states. Dan Spitzer, Ryan Cummings, Chuck Malcomb, Mila Buckner and Jennifer Schlumberger provide permitting, PILOT Agreement, contract assistance and litigation support, including a successful Public Service Commission petition on their behalf.

Hodgson Russ attorneys represented an industrial development agency in all aspects of a financing transaction for the development of a major renewable energy facility in northern New York State. The scope of this more than \$490 million project included three wind farm projects involving more than 100 sites scattered over 5,000 acres of land. The project was named North American Renewables Deal of the Year by *Project Finance* magazine, Renewables Deal of the Year by *Infrastructure Journal*, and Environmental Deal of the Year in the Americas by *Project Finance International*.

In 2018, Hodgson Russ represented developers and industrial development agencies on over a dozen solar generating facilities, including real estate work, financial incentive negotiation and document preparation.

As the opportunity for solar energy projects has improved with reduced costs and increased incentives, Hodgson Russ has assisted local governments, school districts, and private landowners in all phases of solar projects. In one situation assisted with the creation of a new intergovernmental municipal and school district entity to procure solar power, including all aspects of forming the entity and establishing its governing structure. Hodgson Russ drafted RFPs and RFIs allowing government and private entities to obtain cost effective renewable energy. Hodgson Russ also represented a large urban school district in the procurement of systems on over district buildings. The firm also drafted and negotiated power purchase agreements, leases, Grant applications, PILOTs, and other contracts enabling projects to move forward.

Hodgson Russ has represented both municipalities and developers in the negotiation of host community agreements and payment-in-lieu-of-taxes (PILOT) agreements on more than 500 MW of wind energy facilities.

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Hodgson Russ attorneys assisted a government-sponsored finance entity with construction-to-term loan to complete six greenhouses and related infrastructure for a borrower specializing in hemp tea.

The increased use of intermittent energy sources such as wind and solar, coupled with the closure of large generating facilities, has created a growing need for energy storage facilities to ensure efficient operation of the electric grid. But communities have not enacted regulations for battery storage, complicating approvals. A Hodgson Russ team led by Daniel Spitzer recently obtained approval for one of the first standalone systems in Western New York. On behalf of the client, the team worked with the local municipality to understand the issues presented by the new technology, guided the environmental review process, obtained site plan and special use permit approval, and negotiated a payment-in-lieu-of-taxes (PILOT) agreement.

The Hodgson Russ team of Daniel Spitzer, Alicia Legland, Meredith Morgan, and David Stark acted as counsel on regulatory and zoning matters for a joint venture between two of the nation's leading energy solutions companies. The two businesses, a Mid-Atlantic owner-operator of commercial renewable energy projects and a renewable and a natural gas company in the Southwest, entered into a financing arrangement with a commercial bank supporting four energy storage projects in the City of New York. Energy storage is an essential element in the State's aggressive plan for reducing reliance on fossil fuel facilities.

### **In the News**

Dan Spitzer Named to City & State's "Trailblazers in Law" List  
*City and State*, March 18, 2024

Hodgson Russ Taps Head of New Real Estate, Enviro Practice  
*Law360*, October 20, 2023

Hodgson Adds Ex-Barclay Tax Pro to Energy Team  
*Law360*, June 9, 2023

Stravino Co-Presents UB Law's Highest Award to Judge in Washington, D.C.  
*University at Buffalo School of Law*, September 15, 2022

### **Press Releases**

Hodgson Russ LLP Adds Two Attorneys  
July 6, 2023

Amy D'Ambrogio Joins Hodgson Russ LLP  
June 6, 2023

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**Publications**

New York Public Service Commission Commences Grid of the Future Proceeding

*Hodgson Russ Renewable Energy Alert* , April 23, 2024

Appellate Court Clarifies Scope of Required CLCPA Compliance and Confirms Ripeness Under SAPA for Challenges to Agency Declaratory Rulings

*Hodgson Russ Renewable Energy Alert*, April 3, 2024

EPA Finalizes Standards Impacting Hazardous Air Pollution Emissions at Gasoline Distribution Facilities

*Hodgson Russ Environment & Energy Alert*, March 29, 2024

**Inter-Agency Fire Safety Working Group Releases Proposed Revisions to NYS Fire Code Related to Battery Energy Storage Systems**

*Hodgson Russ Renewable Energy Alert*, February 22, 2024

**Applicant's Partial Loss of Site Control Results in First ORES Denial of Section 94-c Permit Application**

*Hodgson Russ Renewable Energy Alert*, February 20, 2024

FY 2025 Executive Budget: Governor Hochul Proposes to Expedite and Consolidate Environmental Review and Permitting for Major Renewable Electric Generation and Transmission Facilities

*Hodgson Russ Renewable Energy Alert* , January 23, 2024

National Grid Petition Seeks Retroactive Cost Increases From Multiple Solar Projects, Ability to Increase Costs on Future Projects

*Hodgson Russ Renewable Energy Alert*, January 16, 2024

NYSERDA Reports on the Impacts of the Inflation Reduction Act and Submits Proposal Stretching Funding for Additional Solar Capacity

*Hodgson Russ Renewable Energy Alert*, January 11, 2024

2024 Draft Solar and Wind Valuation Model Under Real Property Tax Law § 575-b Released for Public Comment

*Hodgson Russ Renewable Energy & Municipal Alert*, January 3, 2024

The Intersection of New York's Public Utility Use Variance Standard and the Climate Leadership and Community Protection Act

*New York Law Journal*, October 26, 2023

**Presentations & Events**

Local Government Training - Case Law Updates and Ethical Standards for Planning and Zoning Boards

Erie County Fire Training Academy, 3359 Broadway, Buffalo, NY 14227, May 6, 2024

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Energy Storage Summit USA  
Austin, TX, March 19 - 20, 2024

2024 Wall Street Green Summit  
The Cornell Club, NYC, March 12 - 13, 2024

New York Energy and Electric Utility Regulation Webinar  
March 5, 2024

2024 Annual Enrichment Seminar  
Ethical Considerations for the Private and Public Engineer  
Templeton Landing, 2 Templeton Landing, Buffalo, NY 14202, January 25, 2024

New York Solar Summit  
Albany Capital Center, November 9, 2023

Environmental & Energy Law Section Oil Spill Symposium 2023  
Albany, NY, May 10, 2023

Large Scale Solar USA  
Austin, Texas, May 3, 2023

Emerging Trends in Environmental Diligence - What You Need to Know, and Why You Need to Know It  
May 17, 2022

CLE: Environmental Law Update  
Bar Association of Erie County Headquarters, April 7, 2022