Key Takeaways

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Introduction

Douglas Nordlinger, head of Skadden's global Energy and Infrastructure Projects Group, kicked off the firm's 19th annual Energy Projects Conference on May 12, 2015, with a brief history of modern energy markets. He charted the history of oil prices, including the recent slump and its fallout. As the U.S. prepares to become a net oil exporter, natural gas has begun to overtake oil as the fuel of America's future domestic energy markets, as well as many international markets. Growth of renewables is predicted by market analysts to remain high for a number of years, assuming that financing and tax credits continue to provide incentives for development. Distributed solar and storage technologies loom large as potential disrupters and may create opportunities for even more growth in the renewables space. Mr. Nordlinger noted that it now is possible to imagine oil becoming a niche fuel, with natural gas taking on a key industrial role and renewables and battery storage supplying a large portion of other energy needs.

Energy Industry Update

Todd Filsinger, senior managing director at Filsinger Energy Partners, noted that as oil prices have become more unpredictable, renewables have occupied an expanding space in the market. However, there has been some overbuild, so Mr. Filsinger expects the renewable build rate to taper off significantly. As energy efficiency has increased, some older oil and gas plants have been retired, and coal plants often cannot cycle in the way the energy markets demand today. Only natural gas and renewables can compensate for unmet demand in the cycle, and Mr. Filsinger predicts natural gas will play the central role in the foreseeable energy future.

Yieldcos and Beyond

Lance Brasher, head of Skadden's North American Energy and Infrastructure Projects Group, moderated the first panel discussion of the day on the rise of "yieldcos." Panelists included Brian Bolster of The Goldman Sachs Group, Inc., Skadden partner **Andrea Nicolás**, Sandip Sen of Citigroup Global Markets Inc., and Raymond Wood of Bank of America Merrill Lynch. Several panelists opined that yieldcos have the advantage over traditional financings of a lower cost of capital, relying on public investors to provide equity. Incentive distribution rights also motivate the creation of a yieldco. Equity in these vehicles is often cheaper than debt. Although the market is bullish on yieldcos, several panelists noted that companies need to carefully assess whether their assets are overvalued and whether they can provide the sponsor expertise and distribution growth necessary to support value over time. Other panelists cautioned that the value of a yieldco may reflect more the public confidence of the IPO, or the underlying credit of the sponsor company, than the value of the assets.

GE's Strategic Shift

David Nason, president and CEO of GE Energy Financial Services, Inc. (GE), gave the morning keynote address. Mr. Nason provided an overview of the "mega trends" in international energy markets, including the growth of gas and renewables, especially in emerging markets. GE now holds billions in renewable assets. He noted that investment opportunities in distributed generation are ripe as well, as giants like Google and Facebook join the market. Mr. Nason argued, however, that the regulatory environment around energy continues to generate uncertainty, which makes investment riskier and more difficult for a large multinational with a need for stable investment policies. Nevertheless, the trends are clear and GE continues to expand into gas and renewables while retiring from other fossil fuel investments.

Financing of International Renewable Energy Projects

Skadden partners **David Armstrong** and **Tatiana Monastyrskaya** moderated the second panel of the day, on the financing of international renewable energy projects. Panelists included Jorge Camiña of Santander Global Banking & Markets, Esaúl Ramírez of the North American Development Bank and Michael Whalen of the Export-Import Bank of the United States. Panelists discussed their experience in international renewables and a number of factors they normally consider when evaluating renewables financing in emerging markets. Among other things, they highlighted the issue of regulatory certainty around renewables and political stability, generally, as being the critical factors. Mexican regulatory reform and the challenges it presents for renewables also was discussed. Panelists discussed whether new financing mechanisms, such as yieldcos, may appear in emerging markets going forward.

Tax Update

Sean Shimamoto, a tax partner at Skadden, and Hannah Hawkins of the U.S. Department of the Treasury provided updates on relevant renewables regulations. Ms. Hawkins noted that Treasury is working to revise "pass through" provisions to accommodate concerns about partnership taxes in connection with pass-through leases to partnerships. "Safe harbor" rules governing construction of facilities have presented issues of interpretation in the past, but Treasury has helped businesses by clarifying the meaning of these rules. Treasury continues to work diligently toward resolving other issues recently raised by industry.

FERC Update

John Moot, an energy regulation and litigation partner at Skadden, and Jamie Simler of the Federal Energy Regulatory Commission (FERC) provided an overview of recent FERC policy initiatives. Both emphasized the significance of a new FERC chairman, who likely will undertake a review of the priorities of the agency over the coming months. Some of the current policy issues the panel discussed include lowering barriers to developing renewable energy projects that require the construction of long transmission lead lines, the "Order 1000" rule opening up bidding for new transmission projects, and FERC's evaluation of price formation in organized electricity markets. The panel discussed how, on several of these issues, FERC has tried to structure its policies to provide flexibility in implementation but also to respond to the changing nature of the industry.

Renewable Energy M&A

Skadden partner **Paul Kraske** led an afternoon panel on M&A in the renewable energy sector. Panelists included Rik Gadhia of SunEdison, Inc., Andrew Gilbert of J.P. Morgan Asset Management, Eric Lammers of ArcLight Capital Partners, LLC and Himanshu Saxena of Starwood Energy Group. Panelists emphasized again that yieldcos have impacted the renewables space dramatically, among other things by increasing demand for operational, contracted renewable energy assets. In terms of competitive advantage vis-a-vis traditional investors, panelists recognized that yieldcos often have a lower cost of capital than other potential asset purchasers. Panelists considered, however, whether yieldcos might be creating a "renewable energy asset bubble," and some panelists asserted that yieldcos' low cost of capital and need to demonstrate growth may be driving up asset values to unsustainable levels. With respect to international yieldcos, panelists suggested that attention to overseas assets is not so much fueled by domestic energy saturation in the U.S. as by compelling opportunities abroad. Companies, however, will need to look for local expertise when structuring yieldcos for international renewable projects.

The Impact of Renewables in the EU

Niels Holst, managing director of Fieldstone, presented on the impact of renewables in Europe. Mr. Holst reiterated the substantial growth of renewables in recent years, coinciding with the retiring of traditional fossil fuels. Renewables, however, can overproduce and cause a country to become a net energy exporter, where no guaranteed market exists to export excess capacity. Additionally, the dropping costs and efficiency gains of renewable technology are making these energy sources more appealing to businesses. With the rise of battery storage, Mr. Holst expects renewables to continue to show strong returns.

Current Trends in Distributed Generation

Skadden partner **Julia Czarniak** moderated the final panel of the conference, on current trends in distributed generation. Panelists included Robyn Beavers of NRG Energy, Bessie Clark of SunEdison, Inc. and Omer Farooq of Bank of America Merrill Lynch. Panelists noted they have been investing consistently in distributed generation (DG). Growth in rooftop solar panel projects has been very strong — up to 32 percent each year in the past few years — but scalability remains a key issue for project developers. Banks have been somewhat slow to take up DG because of the intermittent nature of the energy generation, but they have shown more interest when they can invest in DG via a diversified portfolio that hedges the intermittency risks involved in DG. Additional players are entering as contracts and technologies become more standardized and battery storage more reliable. Tax equity structures provide additional incentives to entry, though banks are cognizant of the need to understand the assets and structures before investing.