

APRIL 2016

FINANCIER
 WORLDWIDE corporatefinanceintelligence


SECTOR ANALYSIS

Policies accelerate investment shift towards renewable energy

KAREN ABBOTT, LANCE BRASHER AND SEAN SHIMAMOTO

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

A number of recent key developments illustrate that the policy momentum for renewable energy continues to grow, and that investors in the energy sector are making a significant shift from investments in fossil fuels to renewable energy. Starting with the 'Paris Agreement' on climate change signed by 195 countries at last year's COP21 summit in Paris, which is expected to result in a great boost for renewable energy worldwide, energy policies are forcing investors to rethink new investments in fossil fuels assets. It has been estimated that the fossil fuels sector could suffer a loss in revenue of approximately \$33 trillion up to 2040. This includes the oil, gas and coal sectors, with losses of \$22 trillion, \$6.1 trillion and \$5.7 trillion, respectively.

The Paris Agreement, together with the greater cost-competitiveness of renewables, has meant that a number of European utilities are taking action to reshape their companies and align their fortunes more with renewables. Oil majors too, have announced that they will be investing in renewables and have set aside substantial funds to invest in energy efficiency, smart grids, solar, wind, storage and transport in the coming years. Wall Street is also in step.


Skadden
**Skadden, Arps, Slate, Meagher & Flom LLP
& Affiliates**

Karen Abbott is an energy & infrastructure projects analyst, Lance Brasher is global head of the energy and infrastructure group, and Sean Shimamoto is a partner at Skadden, Arps, Slate, Meagher & Flom LLP. Ms Abbott can be contacted on +1 (202) 371 7483 or by email: karen.abbott@skadden.com. Mr Brasher can be contacted on +1 (202) 371 7402 or by email: lance.brasher@skadden.com. Mr Shimamoto can be contacted on +1 (650) 470 4670 or by email: sean.shimamoto@skadden.com.

Last year, Goldman Sachs extended its existing clean energy financing and investment target of \$40bn and included an additional \$110bn to be deployed by 2025. Bank of America has expressed its intention to finance and invest \$125bn in clean energy by 2025 and Citi has also expressed its intention to finance and invest \$100bn in alternative energy, also by 2025.

The momentum for expansive deployment of renewables is in place. In its annual review of clean energy investment for 2015, Bloomberg New Energy Finance (BNEF) reported that clean energy investment was greater than ever before at \$329bn, despite the oil price plunge. China was the largest clean energy investor at \$110bn, followed by the US, with \$56bn invested; this figure was buoyed by equity, tax equity and debt liquidity and solid growth in investment in new solar and wind. Europe dropped down to \$58bn; the UK was by far the strongest market. Of note were a number of 'new' markets which together committed tens of billions of dollars in clean energy investment, including Mexico and Chile, among others. There were also new highs for renewable energy generation additions, with 64 GW of wind and 57 GW of photovoltaic (PV) solar

installed, 30 percent more capacity than the previous year. It is expected that these trends will continue in light of the Paris Agreement. Greater use of competitive renewable energy procurement policies, rather than the reliance on set-asides, earmarking and advantageous tariffs, also advance the cost-effectiveness of renewable energy and thereby expand its use.

Turning to the US, there have been several major developments. Most significantly, in December last year, president Obama signed into law the Consolidated Appropriations Act, 2016 (the Act) which included five-year extensions of the investment tax credit (ITC) and the production tax credit (PTC), the main subsidies for solar and wind, respectively. The solar ITC, previously due to expire at the end of 2016, was extended until 2021. Where construction has commenced on or before 31 December 2019 and which has been placed in service before 2024, the ITC would continue to be worth 30 percent of a system's eligible cost, before dropping down to 26 percent for those that commence construction during 2020, and then 22 percent for those that commence construction during 2021. After 1 January 2022 the ITC drops down to 10 percent. The expired wind PTC was extended from

the date it last expired – 1 January 2015 – until 1 January 2020. Any wind farms that commence construction between now and the end of 2016 would be eligible for the full PTC, an inflation-linked rate, which was \$0.023/kWh in 2015, which pays out over 10 years. After that, the PTC would be cut by 20 percent for wind farms that commence construction in 2017, by 40 percent for those that commence construction in 2018 and by 60 percent for those that commence construction in 2019. Such extensions are viewed as a total game-changer for US renewables with solar and wind being built well in into the early 2020s, serving as a bridge for developers until when the Paris Agreement takes effect in 2020 and later, when implementation of the US Environmental Protection Agency's Clean Power Plan begins in 2022. With greater policy stability, it is expected there will be a much stronger interest in investing in solar and wind from Wall Street, US corporates and non-US investors. It has been estimated that the multi-year extensions of the ITC and PTC will help drive approximately \$40bn in additional solar investment (and an additional 25 GW of PV solar capacity) and approximately \$35bn in additional wind investment (and an additional 14-19 GW of wind



capacity).

In a potentially lasting development, last October, the US Environmental Protection Agency (EPA) published the final form of its Clean Power Plan for existing power plants. The Clean Power Plan, which became effective in December and is now the subject of intense litigation in the US courts, established final emission guidelines for states to follow in developing plans to reduce carbon dioxide (CO₂) emissions from existing power plants by 32 percent (from 2005 levels) by the year 2030. In addition, the final rule of the Clean Power Plan also set a goal for renewable power, aiming to have 28 percent of the nation's power generated from renewable sources by 2030. The success of the Clean Power

Plan is key to the US being able to meet its climate pledge to curb greenhouse gas emissions by 26 percent to 28 percent (from 2005 levels) by 2025 and is a central part of president Obama's climate strategy.

However, in a striking development, on 9 February 2016, the US Supreme Court, in a 5-4 ruling, stayed implementation of the Clean Power Plan pending current legal challenges in the US Court of Appeals for the District of Columbia Circuit (DC Circuit). The delay in implementation of the Clean Power Plan will last at least until the DC Circuit is expected to issue its decision by late summer or early autumn 2016 following oral arguments in June 2016. However, even if the Clean Power Plan



**Skadden, Arps, Slate, Meagher & Flom LLP
& Affiliates**

succeeds then, its opponents will almost certainly appeal to the US Supreme Court, further delaying its implementation. With the stay, the timing will most likely be pushed out for state compliance plans due in September 2016. The recent death of US Supreme Court Justice Antonin Scalia, one of the five Justices who voted to stay the Clean Power Plan, is being viewed as clearing a path for the Clean Power Plan to survive its current legal battles. Notwithstanding the fate of the Clean Power Plan, policies in the US and in many jurisdictions around the world are firmly behind the expansion of renewable energy use and the shift is on from investment in many traditional fossil fuel generation technologies to renewable energy. ■