

Interview with IEL Alternative & Renewable Energy Practice Committee Chair, Jim Barkley (Partner, Baker Botts, L.L.P.) About the Alternative and Renewable Energy Practice Committee

Interview by Becky McGee

Give us an overview of the various types and nature of work done by practitioners in the alternative and renewable energy practice --- in private practice and in-house (i.e. what do you and other Alternative & Renewable Energy Practice Committee members do?).

Barkley: Wow. What *don't* renewable energy lawyers do? In my experience, in-house practitioners do a *lot* of the work on their projects. Their work often entails working on the legal agreements for financing, constructing, operating, and selling the output of their projects. They handle personnel agreements that may be unique to their particular type of project, and even have to be versed in the ever-changing international trade law that governs the importation of important components of their chosen renewable technology. They may also find themselves assisting those at their company who are negotiating the land rights for the siting of the project, or managing outside counsel who are handling litigation related to the project. Outside counsel work on many of these same issues, but usually in situations where the particular substantive expertise of the outside lawyer (a particular form of financing or the regulatory laws of a particular venue, for example) are needed to supplement the company-specific knowledge of the in-house lawyer. Outside counsel is also engaged when the needs of a particular project demand more legal resources than a client can maintain in-house.

Generally speaking, is it common for alternative and renewable energy practitioners to concentrate in a specific area (e.g. wind, solar or others)?

Barkley: I see both. Obviously, in-house practitioners focus on the particular areas on which their employer focuses. However, some of those employers have robust businesses using more than one alternative or renewable technology. Outside counsel may tend to cover more areas (primarily to diversify their client base), but I am also aware of outside practitioners who have very focused practices and attract lots of clients because of their unusual expertise in that one area.

Based on your experience or observation, what types of in-house roles and responsibilities are common in the alternative and renewable energy companies?

Barkley: I think it is common for alternative and renewable energy companies to maintain certain types of expertise in-house. For example, many companies have in-house attorneys who focus on government relations and regulatory affairs, because they want to build in-house relationships with the lawmakers and regulators, and in-house expertise in the laws and regulations, in the specific jurisdictions in which they operate. In one client partnership that I found particularly effective, I was paired (as outside counsel) with an in-house lawyer who had an encyclopedic knowledge of the client's preferred form agreements and preferred fall-back positions. I think in-house expertise on such contracting matters is also pretty common. In other areas, in-house lawyers take on more of a managing role, making sure that outside lawyers are

handling their work properly and efficiently. I think this is especially true in the case of litigation, which is almost always farmed out to an outside firm, but can get quickly out of hand or go seriously off the rails if not effectively managed from inside the client.

What aspects of the alternative and renewable energy practice attract attorneys to this practice area? Challenges or obstacles to a career in this practice area?

Barkley: It's a fun area of law, because it is still *relatively* new and it is definitely still evolving. That is also the primary challenge of practicing in the area. The challenge of practicing in a new area, where there may not always be helpful precedent, is also the opportunity to learn a new area from the ground up and develop an expertise that many others may not have.

What are the benefits and challenges in a transition to this practice area for attorneys with a past or current practice involving oil and gas law?

Barkley: I have managed to practice in both fields without any real difficulty, although I suppose there are policy issues that could create problems for an attorney trying to serve clients in both industries. That seems to me, however, to be a fairly common problem that attorneys manage to deal with on a regular basis. On the other hand, there is much about oil and gas law that is relevant to alternative and renewable energy. A company seeking to build a wind farm on the property of others can learn much from the experience of oil and gas producers who have been doing that for nearly a century. One of the very first (and best) law school classes on wind law was taught by Professor Ernest Smith at the University of Texas, who is generally considered one of the leading oil and gas law authorities in the world.

What is your view as to the outlook for alternative and renewable energy and what do you see as likely areas of opportunity or growth areas for attorneys practicing in this area --- in private practice and in-house?

Barkley: The move toward increased reliance on alternative and renewable energy and away from oil and gas *as a source of power* is almost certain to continue (although there are many other reasons we will continue to need oil and gas), so I think the future is bright for those practicing in this area, both in-house and as outside counsel.

Of special interest to law students, please describe generally the entry level alternative and renewable energy positions/types of opportunities for recent law grads e.g. within the in-house law departments (or other in-house departments) in certain industry segments, large law firms, niche law firms, government, etc.

Barkley: My own sense is that newly graduated law students seeking to practice law immediately are more likely to find jobs with law firms or in the government than by going straight in-house (although there are always exceptions). When I have seen moves from in-house to law firm practice, it generally involves someone who started on the business side of an alternative or renewable energy company and then decided to become a lawyer. They are then valuable to law firms for their existing knowledge of the business. Moves from private practice to in-house jobs tend to occur after one has obtained legal training in the field at a law firm and

then decides to move in-house, often to one of their clients whose work they have been handling already.

What advice can you offer to law students or recent grads interested in a career in alternative and renewable energy?

Barkley: Find opportunities outside the classroom to do two things: (1) build your knowledge of the industry or industries in which you are interested and (2) build your network of contacts with people working in those industries. You can build your subject matter knowledge by reading relevant trade journals, good newspapers, and on-line resources. Many conferences offer reduced rates or scholarships for students, and you should take advantage of those to meet people who work in your chosen field.

To join this Practice Committee, email Vickie Adams at vadams@cailaw.org.

The **Alternative & Renewable Energy Practice Committee** has scheduled three presentations and networking events for 2020. These events are free of charge. The first of these events will take place April 23.

Thursday, April 23rd, 4:00-6:00 pm CT – Frank Graves from the Brattle Group will speak on decarbonization and the issues it raises for alternative and renewable energy providers and other power market participants. Frank will speak from 4-5 followed by a networking reception from 5-6. The event will be held in the Baker Botts offices in Houston.

In addition, the Practice Committee will have its quarterly calls on the following dates and times.

Q1 Call – Wednesday, March 25th, 11:30-12:30 Central

Q2 Call – Wednesday, June 24th, 11:30-12:30 Central

Q3 Call – Wednesday, September 23rd, 11:30-12:30 Central

Q4 Call – Thursday, November 12th, 11:30-12:30 Central

For each of these calls, the dial-in information will be as follows: Dial-in: (888) 822-7517;
Access Code: 405-2270#