

MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT

June 24 - 25, 2013
Hilton Charlotte University
Charlotte, NC



EUCI is authorized by IACET to offer 1.0 CEUs for the course.

MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT

June 24 - 25, 2013

Charlotte, NC

OVERVIEW

Energy development projects are fraught with potential pitfalls at every stage. But precautions taken in the early stages can significantly reduce the risk of problems and increase the likelihood of a successful project.

One of the most important ways to avoid problems is by properly and carefully drafting energy industry project development and construction contracts. Contracts that clearly define and allocate the parties' rights and responsibilities can greatly assist in clarifying the parties' roles and in preventing misunderstandings. On the other hand, unclear or inadequate project contracts can result in misunderstandings, major project setbacks, and unforeseen costs that impact project viability and may erupt into litigation. Poorly drafted contracts may even result in an unfinanceable project.

Another important aspect of dispute avoidance is pre-construction planning. The pre-construction stage is a critical point in development, and it deserves a commensurate amount of attention and planning. This seminar will address activities in the pre-construction stage that will minimize disputes throughout the remainder of a project.

Key topics include:

1. Key project and contract risks
2. Project risks and rewards and their allocation among project participants
3. Delineating responsibility to accomplish important tasks
4. Contractual rights and remedies in the event of breach and default
5. Negotiating power and transmission prices and related financial terms
6. Practical issues related to project contracts
7. Required terms for long-term financing arrangements
8. Ensuring coordinated and coherent project agreements to avoid unfulfilled downstream obligations
9. Relationship of insurance coverage to contract terms and conditions
10. Selecting the project development team
11. Assessing project risks and developing budgets and schedules
12. The importance of construction management in energy project development

This course will address common pitfalls in the contract drafting and negotiation process among project developers, project consultants, and off-take entities. It will examine specific contract measures and terms that can help reduce risk exposure and future potential conflicts, thus increasing the odds of overall project success. Most importantly, the course content will draw from specific cases and agreements that illustrate the concepts under examination. The discussion will apply to the following contracts:

- Standard power industry and renewable energy contracts
- Project development agreements, including letters of intent
- Power purchase agreements (PPA) and interconnection agreements
- Vendor and supply agreements
- Construction and EPC contracts
- Performance guaranties
- Performance bonds and security agreements
- Leases and real estate contracts
- RFPs
- O & M contracts

MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT

June 24 - 25, 2013

Charlotte, NC

WHO SHOULD ATTEND

- Energy project owners, developers, and operators
- Energy-focused construction and engineering firms
- Power purchasers, utilities and other off-take parties, including their procurement professionals
- Energy facility engineers
- Attorneys for all of the above
- Industrial operations seeking to generate and sell power
- Fuel commodity suppliers
- Industry consultants and service providers
- Manufacturers and equipment suppliers

LEARNING OUTCOMES

- Identify key areas of potential disputes in energy project development
- Discuss the importance of typical contracts required for energy project development
- Classify key terms of these contracts
- Examine how properly drafted terms can minimize the project risks
- Address practical and pricing issues in power and transmission agreements
- Illustrate typical contractual remedies upon default
- Identify critical precautions in the pre-construction stage
- Discuss how risk assessment, budgeting, and scheduling efforts can minimize disputes
- Examine the role of construction management as a risk-mitigation method

MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT

June 24 - 25, 2013

Charlotte, NC

COURSE TIMING

June 24, 2013

8:00 – 8:30 a.m. **Registration and Continental Breakfast**

8:30 a.m. – 5:00 p.m. **Course Timing**

12:00 – 1:00 p.m. **Group Luncheon**

June 25, 2013

8:00 – 8:30 a.m. **Continental Breakfast**

8:30 a.m. – 12:00 p.m. **Course Timing**

COURSE AGENDA

- **Framework of Typical Projects**
 - Typical project participants and their roles and importance
 - Project stages and milestones
 - Typical project agreements
 - Key project risks
- **Minimizing Disputes through Project Agreements**
 - Presenters will discuss the following typical project agreements:
 - Letters of intent
 - Development agreements
 - Financing-related agreements
 - Power purchase agreements
 - Transmission-related agreements
 - Vendor and supply agreements
 - Construction contracts, including engineering, procurement, and construction (EPC) contracts
 - Performance guarantees
 - Performance bonds and security agreements
 - Manufacturer agreements
 - The necessity of written, executed agreements
 - The ubiquitous problem of ambiguity
 - Problem clauses
 - Pitfalls in negotiation and drafting
 - Specific contract provisions reduce the risk of ambiguity, misunderstandings, and potential conflicts
- **Minimizing Disputes through Pre-Construction Planning**
 - Importance of the development team
 - Requisite skills, roles, and responsibilities for each member
 - Construction delivery, supervision, and management
 - Level of control over design/engineering
 - Need for control of suppliers/materials/equipment procurement
 - Policies, procedures, and systems to manage sudden increase or acceleration in work, additional subcontracts, and associated changes

AGENDA

Minimizing Disputes through Pre-Construction Planning (continued)

- Managing changes to scope, engineering, and cost
- Permitting and regulatory issues
- Project risk assessment
 - Assigning and delegating risk
 - Trade-off of delegation
- Budget
 - Definition and importance
 - Establishing a realistic budget
 - Use of and adherence to the budget
- Schedule
 - Feasibility, engineering, procurement, construction, and startup
 - Required milestone dates
 - Impact of governmental, regulatory, tax/monetary, budgetary, or other factors
 - Effect on existing facilities or operations
 - Sequencing multiple scopes of work and primes
- Construction management
 - The need for a developer's representative
 - Compare and contrast to EPCM
 - Additional delivery methodologies
 - Clearly define scope and responsibilities
 - Bonuses and penalties based adherence to budget, schedule, or other measurements
 - Reporting requirements
 - Scope of reports
 - Regulatory reporting
 - Project stakeholder reporting

INSTRUCTORS

Charles T. Autry / Attorney / Autry, Horton & Cole, LLP

Mr. Autry is an attorney in Autry, Horton & Cole, LLP's energy and cooperative practice. Since 1979, his practice has focused primarily on the representation of electric cooperatives and related entities in corporate and power supply related matters. Mr. Autry has extensive experience in the negotiation and drafting of complex power supply, natural gas and construction contracts, and in corporate and financial matters involving cooperative electric and telecommunication companies. His clients include Green Power EMC, a renewable energy cooperative in Georgia that purchases clean energy on behalf of its thirty-nine members.

David R. Cook Jr. / Attorney / Autry, Horton & Cole, LLP

Mr. Cook is an attorney in Atlanta at the energy and construction law firm of Autry, Horton & Cole, LLP. In his energy law practice, he assists energy developers and utilities with various power-related matters, such as power construction contracts, power purchase agreements, and securing governmental incentives and qualifying for tax credits and grants. Mr. Cook's prior experience as a Certified Public Accountant for utilities provides him added expertise to guide his clients through the complex regulatory terrain of the power industry. In his construction law practice, he advises public and private owners and developers on their construction, procurement, and energy efficiency initiatives, and claims avoidance, litigation, and resolution.

Neil Gaudion / Senior Managing Director / FTI Consulting

Mr. Gaudion is a senior managing director with FTI's Construction and Government Contracts practice and is a member of the practice's global operating committee. He leads the Atlanta practice, which is concentrated on assisting owners, contractors and other professionals on implementing effective project controls and in the development, analysis, and resolution of major construction and public contract disputes. Over his career, Mr. Gaudion has consulted with clients on virtually every type of major construction project worldwide. Mr. Gaudion has also provided advice on how to avoid disputes to both owners and contractors on several large "mega-projects". Should disputes arise, Mr. Gaudion has many years of experience in performing delay analysis and quantifying the effects of delay, disruption and interference and has testified in arbitration (both ICC and AAA forums), dispute review board proceedings, deposition, and mediation.

Jonathan Haag / Director / FTI Consulting

Mr. Haag is a director with FTI's Construction Solutions and Government Contracts practice. He works with owners, contractors, and other project stakeholders to implement and maintain successful project controls practices as well as contract and change management, and preventing disputes. Should the need arise, Mr. Haag also provides assistance in resolving claims and disputes and providing schedule and delay analysis. His industry experience includes mining, power generation and transmission, pipeline, government, airport, condominium, educational, and general industrial projects.

MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT

June 24 - 25, 2013

Charlotte, NC

INSTRUCTORS

Roland F. Hall / Attorney / Autry, Horton & Cole, LLP

Mr. Hall is an attorney with Autry, Horton & Cole, LLP. His practice includes representing electric cooperatives and related entities in corporate, finance and regulatory matters, as well as providing advice to developers on all aspects of renewable energy projects, including regulatory requirements, power purchase agreements, and financing. Mr. Hall is licensed to practice in the states of Georgia and Florida. He has presented seminars and written numerous articles on issues related to electric cooperatives, smart grid applications and renewable energy projects.

.....

Mark V. Hanrahan / Attorney / Autry, Horton & Cole, LLP

Mr. Hanrahan's entire law practice focuses on representing construction industry clients. He represents owners and contractors throughout the life cycle of a project, from pre-construction planning through project close-out. He has extensive experience drafting and negotiating construction contracts, including tailoring AIA, DBIA and other industry form contracts to meet the needs of specific clients and projects. Mr. Hanrahan also represents owners and contractors in mediation, arbitration and litigation. He has handled a wide range of construction disputes, including those involving defaults and terminations, change order and extra work claims, payment bond claims, mechanics' lien claims, schedule accelerations, impacts and delays, construction defects, utility relocations, site access, and differing site conditions.

.....

Thomas W. Siegrist / Vice President / EnerVision

Mr. Siegrist is a vice president of EnerVision, an independent management and technical consulting firm that provides a full range of business services to electric utilities. Mr. Siegrist leads EnerVision's transmission and system operations practices areas. Mr. Siegrist has over 35 years of diverse electric utility experience including electric system operations, system protection and control, engineering design, system planning, power contracts, and strategic planning. Before the formation of EnerVision, Mr. Siegrist served in several senior positions with Oglethorpe Power Company and also worked with Florida Power & Light Company. Mr. Siegrist is a registered Professional Engineer in the state of Georgia.

.....

MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT

June 24 - 25, 2013

Charlotte, NC

INSTRUCTIONAL METHODS

Case studies and PowerPoint presentations will be used in the program.

REQUIREMENTS FOR SUCCESSFUL COMPLETION OF PROGRAM

Participants must sign in/out each day, be in attendance for the entirety of the course, and complete the assessment with a score of 70% or higher to be eligible for continuing education credit.

IACET CREDITS



EUCI has been approved as an Authorized Provider by the International Association for Continuing Education and Training (IACET), 1760 Old Meadow Road, Suite 500, McLean, VA 22102. In obtaining this approval, EUCI has demonstrated that it complies with the ANSI/IACET Standards, which are widely recognized as standards of good practice internationally.

As a result of its Authorized Provider membership status, EUCI is authorized to offer IACET CEUs for its programs that qualify under the ANSI/IACET Standards.

EUCI is authorized by IACET to offer 1.0 CEUs for the course.

EVENT LOCATION

A room block has been reserved at the Hilton Charlotte University, 8629 JM Keynes Dr., Charlotte NC, 28262, for the nights of June 23 – 24, 2013. Room rates are \$149.95, plus applicable tax. Call 704-547-7444 for reservations and mention the EUCI course to get the group rate. The cutoff date to receive the group rate is June 2, 2013, but as there are a limited number of rooms available at this rate, the room block may close sooner. **Please make your reservations early.**

PROCEEDINGS

The proceedings of the course will be published, and one copy will be distributed to each registrant at the course.

REGISTRATION INFORMATION

EVENT LOCATION

Mail Directly To:

Electric Utility Consultants, Inc. (EUCI)
4601 DTC Blvd., Ste. 800
Denver, CO 80237

WWW.EUCI.COM
P: 303-770-8800
F: 303-741-0849

A room block has been reserved at the Hilton Charlotte University, 8629 JM Keynes Dr., Charlotte NC, 28262, for the nights of June 23 – 24, 2013. Room rates are \$149.95, plus applicable tax. Call 704-547-7444 for reservations and mention the EUCI course to get the group rate. The cutoff date to receive the group rate is June 2, 2013, but as there are a limited number of rooms available at this rate, the room block may close sooner. **Please make your reservations early.**

PLEASE REGISTER THE FOLLOWING

- MINIMIZING DISPUTES IN ENERGY PROJECT DEVELOPMENT**
JUNE 24 - 25, 2013: US \$1395
EARLY BIRD ON OR BEFORE JUNE 14, 2013: US \$1195

ENERGIZE WEEKLY

EUCI's Energize Weekly e-mail newsletter compiles and reports on the latest news and trends in the energy industry. Newsletter recipients also receive a different, complimentary conference presentation every week on a relevant industry topic. The presentations are selected from a massive library of more than 1,000 current presentations that EUCI has gathered during its 26 years organizing conferences.

- Sign me up for **Energize Weekly.**

How did you hear about this event? (direct e-mail, colleague, speaker(s), etc.)

Print Name

Job Title

Company

What name do you prefer on your name badge?

Address

City

State/Province

Zip/Postal Code

Country

Telephone

Email

List any dietary or accessibility needs here

CREDIT CARD

Name on Card

Account Number

Billing Address

Billing City

Billing State

Billing Zip Code/Postal Code

Exp. Date

Security Code (last 3 digits on the back of Visa and MC or 4 digits on front of AmEx)

OR Enclosed is a check for \$ _____ to cover _____ registrations.

All cancellations received on or before May 24, 2013, will be subject to a US \$195 processing fee. Written cancellations received after this date will create a credit of the tuition (less processing fee) good toward any other EUCI event or publication. This credit will be good for six months. In case of event cancellation, EUCI's liability is limited to refund of the event registration fee only. For more information regarding administrative policies, such as complaints and refunds, please contact our offices at 303-770-8800. EUCI reserves the right to alter this program without prior notice.



EUCI
4601 DTC Blvd., Suite 800
Denver, CO 80237

WWW.EUCI.COM
P: 303-770-8800
F: 303-741-0849