

Renewable Energy Case Law Update

UNIVERSITY OF TEXAS CONTINUING LEGAL EDUCATION
2017 RENEWABLE ENERGY LAW
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AMY HSU, TAILIM SONG LAW FIRM
(214) 528-8400
AHSU@TAILIMSONG.COM

OUTLINE OF CASES

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- Section 1603 Treasury Grants
- Nuisance/ Torts
- Cape Wind update
- Endangered Species/ Wildlife
- Challenges to State RPS
- Constitutional Challenges to state laws
- PPA

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Section 1603 Grant

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Alta Wind I Owner-Lessor C and Alta Wind Owner-Lessor-D, et al., v United States, No.13-402T, U.S. Court of Federal Claims, October 31, 2016

- Issues: How to determine the “basis” of project
- Holding: The court held that the arm’s length purchase price of the project prior to the placed-in-service date was a reasonable starting place for the value of the project. The PPA should not be treated as ineligible intangible property. Plaintiffs awarded damages of \$206M

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Section 1603 Grant

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GUSC Energy, Inc. v United States, Case No. 1:14-cv-01228, US Court of Federal Claims, November 8, 2016

- Issue: Determination of the cost basis for an open-loop biomass facility that is combined heat and power plant that produces both steam heat and electricity
- Holding: The court applied the “efficiency method,” which looks at the electricity generated by the facility relative to the electricity it would generate if it only generated electricity. The court determined that 15.24% of the cost basis of the facility was eligible, more than the 6.6% that the Treasury argued but less than 100% that Plaintiff argued.

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Nuisance

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Terra Walker et al. v Kingfisher Wind, LLC, No. Civ-14-914-D (W.D. Okla. October 13, 2016)

- Claim: Anticipatory Nuisance
- Holding: Plaintiffs failed to make the required showing that of likely harm. Specifically, Plaintiffs failed to show a triable issue that there exists a reasonable probability an injury will occur as a result of the wind farm's operation.

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Cape Wind update

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Public Employees for Environmental Responsibility, et al., v Hopper, No. 14-5301 (D.C. Cir., July 5, 2016)

- Issue: Did Bureau properly issue the lease for Cape Wind without first obtaining sufficient site-specific data on seafloor and subsurface hazards
- Holding: The Bureau violated NEPA by relying on inadequate geophysical and geotechnical surveys. The court also held that the incidental take finding did not comply with the Endangered Species Act, and remanded back to the district court for further proceedings.
- In October 2016, it withdrew its appeal of the Massachusetts Energy Facilities Siting Board denial of the extension of state and local permits

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