



firm profile

McMillan is a modern and ambitious business law firm serving public, private and not-for-profit clients across key industries in Canada, the United States and internationally. With recognized expertise and acknowledged leadership in major business sectors, we provide solutions-oriented legal advice through our offices in Vancouver, Calgary, Toronto, Ottawa, Montréal and Hong Kong. Our firm values – respect, teamwork, commitment, client service and professional excellence – are at the heart of McMillan's commitment to serve our clients, our local communities and the legal profession. For more information, please visit our website at www.mcmillan.ca.

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electricity and utilities

overview

Infrastructure for the generation, transmission and distribution of electricity is reaching the end of its useful life. Countries, governments and private enterprises responsible for delivering new or replacement resources now have to contend with the challenges presented by climate change and the opportunities offered by rapidly evolving technologies.

Players in the electricity and utilities industry require legal counsel that brings an in-depth understanding of the complex regulatory environment that underpins the sector. With expert lawyers in their corner, public and private clients can navigate the myriad of public hearings and other regulatory proceedings, while effectively structuring and executing transactions that build stakeholder value and serve their communities.

McMillan's Energy Industry Group is made up of professionals with deep experience in the regulated and unregulated sides of the power business. We have helped design electricity markets and have acted for a variety of generation and cogeneration clients across Canada and North America. We have been involved in transmission and distribution projects, as well as the corporatization and regulation of local distribution companies.

We represent a broad range of generators and developers, from several of the world's largest independent power producers to provincial utility generators to development stage proponents of small, distributed generation projects. We have advised clients operating across the entire energy spectrum including nuclear, biomass, wind, solar, natural gas, hydroelectric, storage and demand management.

Our professionals have served as counsel to both the Canadian Solar Industries Association and the Ontario Energy Association. We also helped the Ontario Power Authority develop the Renewable Energy Standard Offer Program, which was the basis for Ontario's Feed-In Tariff Program.

McMillan professionals help clients lead by:

- Advising on mergers, acquisitions and divestitures
- Assisting with establishing and licensing development projects
- Providing regulatory advice and representation before regulators and other governmental bodies
- Advising buyers and sellers of carbon credits
- Advising on financing, assignment and operational matters



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- Assisting new entrants with establishing operations in Canada
- Advising on tax matters
- Negotiating agreements with equipment suppliers, subcontractors and other third parties
- Advising First Nations and local communities

representative transactions

Wind Project Experience

- Represented private developers in Nova Scotia Power Inc. RFP for a 130MW wind power project
- 100 MW West Cape Wind Farm in Prince Edward Island (Acquisition, Financing, Sale, Assignment and Operation)
- 9 MW Norway Wind Farm in Prince Edward Island (Acquisition, Financing and Operation)
- 100 MW Caribou Wind Farm in New Brunswick (Development and Operation)
- 10 MW Mohawk Point Wind Farm in Ontario (Property Leasing on behalf of Landowners)
- 80 MW Taber Wind Farm in Alberta (REC Sales)
- 63 MW Kettles Hill Wind Farm in Alberta (REC Sales)
- 102 MW Bear Mountain Wind Farm in British Columbia (Development and Financing)
- Proposed 200 MW + wind park in Saskatchewan (Acquisition and Development)
- Proposed 100 MW + wind park in Ontario (Acquisition and Development)
- Proposed 240 MW wind park in Ontario (Development)
- Proposed 105 MW Port Dover & Nanticoke Wind Project in Ontario (Development and Sale)
- Wind Farm Option, Lease and Easement Agreements (for developers and landowners)
- EcoLogo Master License Agreements (for developers)
- Acted for a Canadian power income fund in the acquisition of several power generation facilities

Solar Project Experience

- Establishment of European solar equipment manufacturer's operations in Canada
- Corporate and commercial structuring under Ontario's FIT 1, FIT 2 and FIT4 Programs



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- 600+ Solar Rooftop Leases, Easements and Licenses (for a wide variety of developers)
- Engineering, Procurement and Construction contracts and master agreements for hundreds of rooftop and ground-mount projects
- Connection Agreements and connection disputes with various utilities
- Operation and Maintenance contracts and master agreements for hundreds of rooftop and ground-mount projects
- Metering and monitoring contracts
- Land Assembly and Broker Services Agreements (for developers) Structuring for 4 x 10 MW ground-mounted solar projects in Ontario (for developers)
- Development Services Agreements (for developers)

Natural Gas-Fired Generation Project Experience

- 110 MW West Windsor Power Co-Generation Facility in Ontario (Operation and Financing)
- 50 MW Maitland Co-Generation Facility in Ontario (Operation)

Biomass Project Experience

- Development of proposed 10 MW Kingsville Energy Co-Generation Facility in Ontario
- Represented biomass proponent in BC Clean Power Call
- Negotiated BC Hydro Integrated Power Offer for pulp & paper participant in the Green Transformation Program

Hydro-Electric Project Experience

- Purchase and expansion of hydro-electric facilities
- Represented proponent and applicant of record in proposed development of hydro-electric facilities
- Acted for municipal electric utility owner and operator of hydro electric generating facilities
- Represented multinational manufacturer in its negotiations and sales of hydroelectric turbines and generators to power authorities in Ontario, Québec, British Columbia, Alberta and Nova Scotia (including 500 MW generating station No. 5 at BC Hydro's Revelstoke Dam)

Nuclear Project Experience



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- Provided advice in relation to contracts for nuclear refurbishment project

Power Purchase Agreement Experience

- Ontario NUG Contracts (for Gas-Fired Generators)
- Ontario RES Contract (for Wind Power Proponents)
- Ontario CES Contract (for Co-Generation Proponents)
- Ontario DSM Contract (for District Energy Proponents)
- Ontario RESOP Contract (for Ontario Power Authority and Proponents)
- Ontario FIT1, FIT2, FIT3 and FIT4 Contracts (for Generators)
- Ontario micro FIT Contract (for Applicants)
- REC Purchase and Sale Agreements (for commercial and residential Purchasers and Sellers)
- Green Power Retail Contracts (for Retailers)
- NB Power PPA (for Wind Generator)
- Hydro Quebec PPA (for Wind Generator)
- NS Power PPA (for Wind Generator)
- BC Hydro Clean Power Call PPA (for Biomass Proponent)
- BC Hydro Large Project Electricity Purchase Agreement (for Wind Generator)
- BC Hydro Integrated Power Offer (for Biomass Generator)
- Standard Form Residential Power Purchase Agreements (for Retailers)
- Standard Form Commercial Power Purchase Agreements (for Retailers)
- Standard Form PPA (for Wholesaler)
- Negotiated Commercial PPAs (for Retailers and Consumer)
- Edison Electric Institute (EEI) Master Power Purchase & Sale Agreement
- ISDA Master Agreement
- Industrial Customer PPAs and Rate Hearings
- Standard Form PPAs of Coral Energy Canada Inc., EPCOR Merchant and Capital, Sempra Energy Trading, Brookfield Energy Marketing Inc., Schneider Power Inc., Sky Generation, Toronto Hydro Energy Services, BP Canada, ENCORE, ENMAX, Dynegy, Enron Direct LP, Constellation NewEnergy, OPG (for counterparties).

Gas Purchase Experience



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- Gas Purchase Agreements (Negotiation, Renegotiation and Termination)
- Arbitration regarding price escalation clauses (for Gas Purchaser)
- TCPL Gas Transportation Experience (for Generators)
- Import and Export Licensing (for Generators and Traders)
- GasEDI Base Contract for Short-Term Sale and Purchase of Natural Gas
- NAESB Base Contract for Sale and Purchase of Natural Gas (and Canadian Addendum)

Steam Sale Experience

- Steam Sale Agreements (for Co-Gen Operators)
- Site Services Agreements (for Co-Gen Operators and Steam Hosts)

CO2 Supply Experience

- CO2 Supply Agreements (for Co-Gen Operators)

Renewable Energy Credit Experience

- REC Sales Agreements (for Generators and Retailers)
- ecoLogo Master License Agreement (for Wind Developers)

Financing Experience

- \$50 million+ financing for a pool of 100+ commercial rooftop solar projects
- \$30 million+ financing for a pool of 75+ commercial rooftop solar projects
- \$100 million+ financing for a pool of 300+ commercial rooftop solar projects
- Revolving Lines of Credit for construction of hundreds of solar projects
- Financing for a 100 MW wind farm (Borrower's Counsel)
- Financing for a 9 MW wind farm (Borrower's Counsel)
- Financing for a 110 MW natural gas co-generation facility (Borrower's Counsel)
- Financing for a 102 MW wind farm (Borrower's Counsel)
- \$225 million IPO and \$530 million secondary offering of Toronto Hydro debentures
- \$1 billion medium term note program for Toronto Hydro



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- Restructuring of \$1 billion of outstanding Toronto Hydro shareholder debt
- ecoEnergy for Renewable Power Contribution Agreement (for Wind Developers)
- Contribution Agreements under the federal Green Transformation Program (for Biomass Generator)
- Synthetic lease financing of gas distribution utility assets
- \$600 million credit facility to a power generator (Lender's counsel)
- Loan to an electricity distribution utility from a municipality and the issuance by the electricity distribution utility of redeemable shares
- Advised a privately offered hedge fund that invests in issuers engaged in the global energy sector

First Nations Project Experience

- Counsel to First Nations Community proposing to develop 10 MW ground-mounted solar facility

Commodity Trading Experience

- Canadian counsel to the purchaser of a major international energy trading business
- Regularly advise US and European investment banks and energy traders on corporate, regulatory and licensing requirements with respect to launching energy trading businesses in Canada
- Import and Export Licensing

Corporatization and Regulation of Municipal Electric Utilities

- Provided regulatory, corporate and commercial advice to more than 25 Ontario municipalities and local electricity distribution companies on compliance with the Electricity Act, 1998 and the creation of affiliate energy retailers

Mergers and Acquisitions

- Provided regulatory, corporate and commercial advice on the purchase, sale and amalgamation of local distribution companies

Energy Utility Telecom

- Provided advice to a distribution utility regarding the provision of high-speed telecom service to residents through the use of fibre optic cables



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Regulatory

- Represented industry association at Ontario Energy Board generic hearing
- Represented industry association at Ontario Energy Board integrated power system plan hearing
- Represented provincial government in the National Energy Board proceedings
- Represented Local Distribution Company at Ontario Energy Board rate hearing
- Responsible for undertaking legal work relating to various codes, compliance issues and exemption applications, regulatory, rates, franchising, supply and storage and provided regulatory advice and services to a principal distributor of natural gas in the province of Québec
- Represented transmission developer in judicial review proceedings
- Represented electricity generator at Ontario Energy Board gas bypass and certificate hearing

Utility Strategy

- McMillan lawyer served on the Board of Directors of Toronto Hydro Corporation and Toronto Hydro Energy Services Inc.

Utility Financing

- Advised lead lenders/arrangers on \$1.05 billion credit facility for Hydro One
- Advised Toronto Hydro on \$225 million IPO and \$530 million secondary offering of debentures
- Advised Toronto Hydro on \$1 billion medium term note program
- Advised Toronto Hydro on restructuring of \$1 billion of outstanding shareholder debt
- Synthetic lease financing of gas distribution utility assets