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POWER-PURCHASE AGREEMENTS

Renewable developers know this lawyer's number

BY LAURA WILLIAMS-TRACY

Steve Levitas never took an environmental-law class while at Harvard Law School, but his résumé and reputation led him to the job of opening the North Carolina office of the Environmental Defense Fund in 1987.

Today, Levitas is a partner and co-leader of Kilpatrick Townsend & Stockton's energy team in Raleigh. Most of his clients are renewable-project developers who need legal advice on corporate structuring, securing land, dealing with regulatory approvals, finding financing and negotiating contracts.

Levitas is an expert in power-purchase agreements, which are the backbone of all renewable-energy projects and govern the sale of the output of a facility. The emergence of large-scale solar development in North Carolina has required successful power-purchase agreement negotiations with the state's utilities, and Levitas is considered the leading PPA lawyer in the state. He has negotiated many of the largest agreements in the Southeast on behalf of clients.

Drawing from his years with the Environmental Defense Fund, Levitas dedicates substantial pro bono

efforts to several clean-energy nonprofits.

What got you interested in energy law?

I started out thinking I might be a civil rights lawyer, but I looked at jobs doing that kind of work and they were hard to get. I spent my first few years doing general business. When the Environmental Defense Fund started recruiting to start a North Carolina office, someone gave them my name – I never found out for sure who – and one thing led to another. I ran that office for five-and-a-half years. Gov. (Jim) Hunt appointed me deputy secretary of the Department of Environment, Health and Natural Resources. I did that for four years, and then I went back into private practice.

How did you get into renewables?

Most of what I did from 1997 to 2008 was traditional environmental law and regulatory processes. With the passage of Senate Bill 3 in 2007, I realized that renewables would take off in North Carolina. And it was the silver lining during the recession of 2008 that a lot of the development activity more or less disappeared overnight, so I had the opportunity to think

about doing other things. I reoriented my focus toward renewable energy.

Why are power-purchase agreements important?

For smaller facilities under North Carolina law, there's a standard agreement, so no negotiations are needed. But for much larger solar facilities, those agreements have to be negotiated. Pricing terms are important. I also work on issues like the deadlines for completion, what happens if something goes wrong beyond the developer's control, the damages for underperformance, and to what extent a utility can suspend purchases for various reasons.

Tell me about your pro bono work.

I've been happy to do board work where I can help nonprofits. I'm a member and secretary of the board of the Southeast Energy Efficiency Alliance. I am pro bono counsel for the Southeastern Wind Coalition and the Center for Energy Education.

All of the organizations are very business-oriented. Their members are for-profit companies that are making enormous investments in our state.

Renewable energy is big



Steve Levitas

business, and it's not only about the growth and development of companies that employ people and make investments. There are a lot of additional benefits in terms of spin-off growth and technology development around it.

The a-ha moment recently was Tesla unveiling its plans to launch a new battery business for residential use.

There is so much disruptive change going on in the energy business – it is mind-blowing.

What's been the impact of Senate Bill 3?

North Carolina's strategy has been hugely successful for the state, and I would stay the course on tax credits. There will be some changes over time, but I think of this as the goose that laid the golden egg.