



Renewable energy risks: it is not only about the environment



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Title insurance industry is playing an increasingly critical role to mitigate the legal risks surrounding renewable energy projects in Europe for developers, lenders and private equity funds

Legal challenges to the investment and development of renewable energy projects are not always motivated by noble concerns about the environment.

Claimants increasingly file lawsuits to obtain “ransom” payments, whether they be disguised as environmental issues or concerns about wildlife or noise.

Insurance for wind and solar farms are already quite complex. Issues of title and permissions add to this picture.

Consequently, the title insurance industry has adapted to cover many complex issues related not just to the original site but requirements relating to the lengthy grid connections. These include multiple easements and rights-of-way, invalid leases, operating, zoning, building or planning permits. Now, a whole new set of issues are emerging where legal challenges are citing issues that would not usually be considered to be within the scope of an environmental objection. These place the project in a difficult position and can lead to prolonged legal actions.

Lack of jurisprudence

While some of these nuisance law suits tend to be dismissed, there is no consistent body of local or European jurisprudence on the subject. For example, in France, judgments often deal with aesthetics or nuisance, and a lot is still left to the subjectivity of a judge.

In Germany, the government declared new standards for turbine noise. If the developer had already obtained a permit based on the old ones, but had not yet started construction, the question of what standard applies becomes very real.

These changes can be used against the project by objecting parties – and they are. Title insurance can apply here.

In addition, the lack of European jurisprudence in the area of renewable energy can lead, increasingly, to unpredictable court rulings.

‘Right on the law’ not enough

In Europe, there are cases where judges have granted leave for cases to be heard, even though deadlines for action have apparently passed, in some cases by many months or even years. This obviously creates massive uncertainty for all involved.

Such uncertainties make banks and other lenders nervous and more eager to get title coverage for the new investments. With narrower margins, they are still willing to take on the financial risks but do not want the project to be put in jeopardy because there are issues with the permits. This would make them vulnerable to potential challenges after-the-fact.

Investments in wind farms, solar parks and geothermal drilling are predicted to grow at about 6% per year; legal risks will also continue to present challenges to investors and equity partners.

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