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The Energy Dispatch, the IEL's Young Energy Professional newsletter, contains substantive articles on trending legal issues in the energy industry, interviews, and professional development.

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Expert Interview with Tina Nguyen, Baker Botts Litigation Partner and Deputy Department Chair – Litigation

Interview by Claudia Trevino

CT: Hi Tina, thank you for taking the time to be interviewed for The Energy Dispatch. We have known each other for a while now and you have served as external counsel on several matters so I am excited to explore your career and professional insights.

First things first, what motivated you to become a lawyer?



TN: I've wanted to become a lawyer for as long as I remember and for so many reasons. It's a combination of the things I like – people, reading, writing, and challenging issues. I am the youngest of four kids, and so I am used to speaking up and making room

for myself at a crowded table. And now I get the chance to advocate for my clients.

My dream to become a lawyer became cemented in high school when my family suffered a tragedy. At one of the hardest points in my life, I had the protection of a district attorney who led my family and me through a legal process that was strange to us but familiar to him. Seeing him in his element confirmed my dream to be a lawyer.

CT: What do you consider to be your greatest professional achievements to date?

TN: I am honored to be ranked by Chambers in Nationwide Oil and Gas Litigation, alongside many distinguished attorneys. To me, this is a combination of many stars aligning—to have received the experience in oil and gas

litigation, the colleagues that pushed my name forward, and the clients who entrusted me with their important matters and are willing to spend their precious time vouching for me.

In a field where female Asian partners are a minority, I don't take lightly the honor to be a litigation partner. I now also serve as the Deputy Department Chair of the Houston Litigation practice, the largest litigation section of our firm.

CT: What are your next aspirations?

TN: More of the same. I love what I get to do and the people I get to work with.

CT: Would you please describe your legal practice, what you do on a day-to-day basis, and the matters you are currently working on?

TN: I handle a wide range of energy matters, including royalty litigation filed against oil and gas producers, pricing disputes against renewable energy clients, nuisance claims against energy developers, and ERISA class action lawsuits against energy clients. Day in, day out, we're handling temporary restraining orders, depositions, expert discovery, and trials in the array of issues impacting the energy industry.

CT: What legal area or matter in your practice excites you the most? What challenges you the most?

TN: It is incredible to see how much the energy industry has changed and will only continue to change. We moved from vertical to horizontal drilling. We've seen traditional oil and gas and now innovative fuel sources, such as converting trash to fuel. As much as there is change, I find it interesting to see how the legal structure is prepared to address and adapt to the changes, such as the adaptation of oil and gas law on vertical to horizontal drilling.

Each case I handle has challenges of its own. As lawyers, we receive the facts, and it is our job to evaluate the law and how to best position our clients based on those facts. My goal is to add value by presenting a reasoned strategy that positively changes the direction of the case.

CT: What do you like most about being Deputy Department Chair - Litigation Partner at Baker Botts?

TN: In this role, I have the pleasure of managing the largest litigation section in our department. I get to be enmeshed in the expertise of the firm in different practice areas and work with an array of talented attorneys.

CT: What area do you observe as being one of the energy industry's potential blind spots and how can energy companies improve?

TN: Forgetting to focus on and invest in innovation. Will your company be Blockbuster or Netflix? By focusing on

innovation, we can build an energy company for the next century.

CT: What area of your legal practice is changing the quickest and what is the catalyst for that change?

TN: Hands down, energy transition. Societal expectations have changed. The younger generation is driving the change. Consumers are driving change. We are at a pivotal point where we can address the energy needs of today while building a sustainable future for generations to come. We get to be a part of this.

CT: How has the mentorship, sponsorship and/or championship of others contributed to where you are today in your career?

TN: My career is built on the advice, mentorship, and support of the people around me. My husband and my kids have supported my career. My colleagues shared how to become a better attorney, how to become a partner, and how to handle the best and worst days of this job. This community is what makes the job.

CT: What do you enjoy doing in your spare time?

TN: Easy – spending time with my kids! My husband and I have two little girls (6 and 3), and they keep us laughing until we're in stitches. We love traveling, and if someone can convince my firm to send me abroad, dinner is on me.

CT: What advice do you have for young lawyers practicing energy law or for those wanting to enter into energy litigation?

TN: Do it. There is no industry that will impact the way we live, work, and play more than energy. It powers things, it lights the homes we reside in. We need more curious, passionate people to propel this industry forward. Let's shape this world together.

CT: Tina, your enthusiasm for the energy industry is certainly inspiring and contagious. Thank you again for your time and sharing your career experiences and advice with IEL readers.

MADE IN AMERICA: U.S.-Built Offshore Wind Substation and Support Vessels Start to Set Sail for Federal Waters

Valkyrie Buffa, Liskow

On June 26, 2023, the Nation's first U.S.-built offshore wind substation arrived at Rhode Island's Providence Port after departing from a Texas fabrication facility where Danish multinational energy company, Ørsted, and domestic energy provider, Eversource, partnered to build the revolutionary vessel. The Kansas-engineered substation was designed and built by Kiewit Offshore Services, Ltd.,

the largest U.S. offshore fabricator, at its Corpus Christi facility before setting sail for federal waters on the New York outer continental shelf ("OCS") on May 25th. The 1,500-ton substation was manufactured to collect power produced by turbines at the South Fork Wind Farm (one of only two active federal commercial offshore wind leases that have been approved for construction) and interconnect that electric energy to the grid. On June 22, 2023, South Fork Wind reached its monumental "steel in the water" milestone when it constructed the project's first monopile foundation, which the substation will be installed on. Notably, Ørsted and Eversource are currently 50/50 partners for several federal offshore wind projects at various stages of development, including: South Fork Wind, projected to be the first completed utility-scale offshore wind farm in federal waters with operations estimated to begin by the end of this year, as well as Revolution Wind and Sunrise Wind, both of which have yet to start construction but are estimated to be operational by the end of 2025. However, Eversource has announced it is leaving the offshore wind development business and plans to sell its 50% partnership stakes in the three projects later this summer.

The substation's maiden voyage marks a major breakthrough in the development of Jones Act compliant offshore wind vessels that are necessary to bring the large amount of federal utility-scale projects in the pipeline to fruition. Jones Act compliance has become a key component of the federal offshore wind regulatory regime since the enactment of the Garamendi Amendment to the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1331 et seq., back in 2021. The Garamendi Amendment added just four words ("including non-mineral energy") that effectively triggered the applicability of the Jones Act on all federal renewable energy development on the OCS—a longstanding area of jurisdictional ambiguity. The Jones Act requires that the transport of "merchandise" between U.S. "coastwise points" must be performed by "coastwise vessels" that are built in the U.S., documented under U.S. law, and wholly owned by a U.S. citizen. 46 U.S.C. § 55102. On April 14, 2022, in the wake of the Garamendi Amendment, the Department of Homeland Security's U.S. Customs and Border Protection issued its advisory letter HQ H300962 clarifying what vessels—including Pile, Foundation, and Wind Turbine Installation Vessels ("WTIVs")—must be Jones Act compliant and at what stages of federal project of development on the pristine OCS. In addition to creating American jobs to support the federal offshore wind industry, OCSLA's Garamendi Amendment has major impacts on how and when European entities, with approximately 30 years of experience in constructing offshore wind farms, can engage in the installation of U.S. wind projects on the OCS.

Two more Jones Act compliant offshore wind support vessels are on the way, which Ørsted will also be the first to charter. First up, Blue Ocean Energy Marine, a Dominion Energy subsidiary, is currently constructing the first-ever U.S. flagged WTIV, named Charybdis (after a fabled Greek mythological sea monster), using domestically sourced steel, at Keppel AmFELS's Brownsville, Texas shipyard. After the project's anticipated completion and sea trials by the end of this year, Charybdis will be deployed for the construction of Revolution and Sunrise Wind. The terms of Ørsted's charter should also allow Charybdis to support construction of Dominion's Coastal Virginia Offshore Wind ("CVOW") project, in state waters off the coast of Virginia Beach, which is projected to be completed in 2026. Next, the first U.S.-flagged offshore wind service operations vessel ("SOV"), named the ECO Edison, is currently being built at the Edison Chouest Offshore ("ECO") shipyard in Houma, Louisiana. The 262-foot-long SOV just reached 50% completion this April of 2023 after logging over 275,000 work hours. Once completed, ECO Edison will house 60 American wind turbine technicians as they work offshore servicing and maintaining the Revolution, Sunrise, and South Fork Wind projects. To date, the U.S. still has no Jones Act compliant Feeder Support Vessels ("FSVs") or Field Development Vessels ("FDVs"). More offshore wind support vessels are needed, and fast, with BOEM aiming to approve 15 more Construction and Operations plans for federal offshore commercial wind leases by 2025—leaving a huge void in the Nation's offshore wind industry for an infantile domestic supply chain and workforce to fill.

Distributed Electricity Tariff Reform in California: A Move Away from Solar Towards Storage

Soren Christian, NERA Economic Consulting

Introduction

In December, following about two years of intense debate, the California Public Utilities Commission (CPUC) adopted a new billing and metering regime for owners of rooftop photovoltaic solar panels (PV), which took effect in April. The so-called Net Billing Tariff (NBT) replaces 2016's Net Energy Metering (NEM) 2, which itself replaced 1996's NEM 1.

The debate surrounding the recent decision has mostly centered around balancing environmental and equitable concerns:

- Environmental and solar industry groups argue that the new regime unfairly penalizes PV installations and discourages them at a time when energy transition is a necessity;

- Utility groups and consumer rights activists argue that the old regime unfairly remunerated PV owners, themselves likely to be wealthier than the average household, at the expense of lower income households.

However, this debate is misguided. The new regime better aligns compensation with the value that PV owners now provide to the system, including the value of avoided emissions. It further encourages PV owners to invest in household battery storage, which would allow them to replace significantly more carbon-emitting generation in the evening periods.

Recent Trends in Distributed Capacity and Prices

Several trends within the California energy system are relevant to understanding the evolving contribution of distributed energy to the system:

- Before 2014, growth in rooftop PV was slow, and total capacity was small enough to not create major economic or technical distortions to the system. Since then, rooftop PV capacity has grown to roughly 20% of the system peak.
- Residential batteries did not exist until 2013, and total capacity is still less than 10% of the capacity of rooftop solar.
- Daytime energy prices have become cheaper relative to daily average prices, driven down by large amounts of cheap solar capacity available during those hours (both from rooftop and grid-scale solar). The time of most expensive energy has shifted from afternoon to evening.
- The carbon intensity of the sector has decreased during the daytime hours when solar power is most productive, and a larger proportion of carbon emissions associated with electricity generation now come in the evening period.

History of Net Energy Metering Design

NEM 1

NEM 1 was introduced in the mid-1990s and allowed residential PV owners to exactly offset their energy bill: a customer who used 1,000 kWh in their house while also producing 1,000 kWh from their rooftop PV would pay no energy bill.

This design is distortive, because the above customer still does drive costs (e.g. network costs). However, this was not much of a problem for the system as a whole given the low rollout of rooftop PV at that point. Furthermore, in this early phase, the grid was relatively carbon intensive, and so any energy displaced by rooftop PV during the day was more expensive and more carbon-intensive than at night

when demand is lower.

NEM 2

As a result of the growth in rooftop solar capacity, NEM 1 became less fit for purpose: not only were the distortions more significant to the system because they applied to more customers, the distortions themselves became more pronounced as the daytime electricity replaced by rooftop solar became cheaper and cleaner relative to evening electricity.

In 2016, the CPUC approved the successor to NEM 1, commonly referred to as NEM 2. The new regime was structurally similar to NEM 1 in that customers are compensated at retail rates for their PV output, but were required to pay a time-of-use (TOU) tariff, with a higher price in the evening, especially in the summer. For example, the TOU tariff for PG&E, California's largest utility, ranges from 40¢/kWh (October to May, 9pm-4pm) period to 53¢/kWh (June to September, 4-9pm). Since solar output is mostly in the off-peak period, a typical customer would need to produce more than they use in order to offset their consumption in the bill.

While this mechanism reduced the scale of the distortions of NEM 1, these distortions again grew as PV capacity continued to grow exponentially:

- **Equity:** The costs of some segments of the power sector, like distribution grids, are effectively fixed. That means that as less electricity is drawn from the grid, the cost per unit increases, borne by customers who do not own PV, who are poorer on average than those who do.
- **Ignores carbon intensity of grid during production:** NEM is intended as an environmental program, but it no longer achieved that objective. At the current scale of solar penetration in California, rooftop PV power displaces grid-scale PV power rather than carbon-intensive power.
- **Disincentivises installing distributed storage:** The incentive to install storage alongside rooftop solar is driven by the difference between peak and off-peak prices. However, a 10¢/kWh price differential is insufficient to cover the upfront cost of a battery.

NBT

The core differences from NEM 2 to NBT are as follows:

- Energy imports are still considered on net terms, but exports are considered separately. In other words, a customer who reduces their metered consumption due to on-site production would pay a reduced import tariff, while any excess on-site production that is exported would be subject to a separate export tariff.

- Customers who install energy storage (battery, heat pump, or in-home EV charging) are subject to a sharper TOU rate for their net imports. For PG&E, this is known as the E-ELEC tariff, with rates ranging from 29¢/kWh to 56¢/kWh.
- Net exports are remunerated based on avoided cost, forecast a year in advance by an Avoided Cost Calculator (ACC) model. This is designed to reflect, primarily: (a) avoided energy costs (including the value of greenhouse gases), (b) avoided cost of generating capacity; (c) avoided cost of transmission and distribution capacity. This varies hourly throughout the year but is mostly around 5-10¢/kWh in the winter and off-peak periods, with summer peak spikes above \$3/kWh.

Storage Incentives under NEM 2 vs NBT

Relative to NEM 2, NBT delivers stronger incentives to install on-site storage. While NEM 2 required customers to pay a TOU tariff, the time differential in these rates understates the difference in value that evening exports could provide relative to daytime exports, which is the value that storage can provide to the system.

Using a range of assumptions on output profiles and installation costs, I estimate the private value of installing PV with and without storage (tariff savings minus installation cost), as well as the societal value (avoided cost minus installation cost). By comparing these calculations across tariff regimes (NEM 2 and NBT) and household technology choices (none, PV without storage, PV with storage), we can see how each regime incentivizes different technological choices, and whether that aligns with the societal value those technologies provide.

My analysis shows the following patterns:

- In both NEM 2 and NBT, installing either technology delivers more private benefit than public benefit. This means that equity concerns persist, albeit to a lesser extent, under NBT, as other customers pay correspondingly more to make up for tariff reductions for PV owners.
- PV plus storage provides greater system benefits than PV alone, even considering the higher cost of installation (i.e. the PV installation plus the storage installation).
- Under NEM 2, customers had no reason to install storage – they would save roughly the same on their tariff but would bear the additional cost of installing a battery.
- Under NBT, customers earn more by installing PV plus storage than by installing just PV, even considering the additional cost of the battery, and have a net overall benefit from doing so.

In short, PV backed with storage provides more value to society (net of installation costs) than PV alone. NBT incentivizes customers to choose to install PV and storage together, while NEM 2 does not. Thus, this new tariff design is more consistent with system needs (including decarbonization objectives) than the previous design.

Further Improvements to Tariff Design

While NBT is an improvement on NEM 2 in terms of economic efficiency, shortcomings remain that lead to residual distortions: NBT separately treats net imports from net exports, even though storage is primarily used to make better use of PV production on-site through reduced evening imports.

Reduced import is compensated through reduced tariffs on the E-ELEC tariff, which sends a weak signal to shift storage discharge to evenings relative to the costs which could be avoided. To ensure appropriate incentives to install storage at all sizes, import reductions should be compensated also with reference to the ACC, which would require a separate meter for gross consumption and net consumption. As the ACC is generally lower than the E-ELEC tariff, an uplift could be calculated to ensure that owners are revenue neutral by such a change. However, given that a decision has very recently taken effect following years of heated debate, the political appetite for a new debate does not exist at the moment.

Young Energy Professional Highlight: Tiffany Poor

Interview by Chauntelle R. Wood, Baker Botts L.L.P.



Tiffany is a Legal Counsel and has been in-house at Shell, USA for the last five years. In this interview, Tiffany discusses her path to become an energy lawyer and provides advice to young lawyers looking to do the same.

CW: Why did you want to become a lawyer and an energy lawyer?

TP: I was unsure about being a lawyer. I had gone to UT (University of Texas) and obtained a degree in government, but I realized I wasn't really interested in politics! At the same time, I didn't want to do grad school – I was sick of school at this point. One night, I had a dream about being in law school, woke up, called my twin sister, and told her I'm going to law school. She said, "Me too!" (We did everything together!) Once in law school, I took a class in oil and gas law and really enjoyed it. From there, once I began practicing, I noticed how interesting energy was aside from traditional oil and gas.

CW: Describe your practice.

TP: At Shell, I get to work on so many aspects of energy and it keeps things interesting. For example, I work in the Projects Group where I assist with the work in the Gulf of Mexico, offshore wind farms, and solar energy. I basically support construction of these Shell assets. I am in charge of the engineering and construction type contracts – which means I handle the actual contracts, negotiating, management and any disputes before they get to litigation.

CW: Do you have any tips for young lawyers looking to get into an energy practice?

TP: In law school, the advice was always, "keep your head down and study." Now, especially with the mentor I have at Shell, it's more of "keep your head up and pay attention." You must understand that giving legal advice requires you to be aware. If you are only focused on the work you're doing, you can't effectively represent your client because you don't know what's going on around you. I learned that from my mentor. To that end, get a mentor. I've had a mentor from Shell who was assigned to me when I first joined. Now, this same mentor meets with me every other month, and has been the last five years, to help me navigate my career. It's invaluable!

CW: What are your hobbies?

TP: I enjoy yoga and Pilates. I'm a certified yoga teacher. Last year, I had a new years' resolution to learn the piano, so I've been teaching myself to play. Although at one point I was tired of school, I really enjoy learning. I also love Houston! There's just so much to do. I think Houston is an outdoor city, though most wouldn't think of it that way. I live in the Montrose area and can walk to restaurants or wine bars, like Light Years (a favorite) and walk home. I just love being outside. Finally, I love my Goldendoodle – he looks like a corduroy bear!

CW: Thank you for giving us a glimpse of your life as an energy lawyer!

Winning Work with an Antiquated, Unloved and Almost Forgotten Approach

Despina C. Kartson, Baker & Hostetler, LLP

Talk is so underrated. It's also essential. The stream of new issues facing your clients – whether it be new rules and regulations, new hires and work balance, or returning to work – can't be captured by email.

Clients' questions are multi-dimensional, making email a sub-optimal vehicle to ask these questions. Your answers also likely need to be multi-dimensional, and in turn email may be making them more difficult to appropriately convey.

Conversations with their give and take, probes, and real-time exchanges are the most powerful tool.


Here are some tips from the BTI Consulting Group on how to turn a phone call into a stronger client relationship – and maybe even some new business:

- Rainmakers call clients and know just what to ask and how to help. These client-centric partners:
 - Make a list of key risks clients are likely facing. These typically include:
 - Communication around work from home policies
 - How to manage the plethora of regulatory guidelines
 - Strategies for managing the in-house legal team
 - Risks from the client perspective
 - Develop three to five probing questions designed to get clients to share.
 - What does this look like for you?
 - This is what I am seeing at my other clients — what are you seeing?
 - What issues are of most concern?
 - How is your department holding up?
 - What is the company asking of you now?
 - Offer ideas on meeting new challenges — and listen carefully while clients respond and brainstorm about a new idea.
 - Set a time to call again — and ask about changes and progress.

Clients value these high-octane calls. They get ideas, direction, validation of their own ideas, learn new insights, and feel like there is a safety net out there for them. Most clients look forward to these calls because they not only help but provide an intellectual respite.

Make a call to a client today! You will be in an exclusive and highly differentiated club where membership is valued — and will continue to be valued long after.

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