Delaware Sustainable Energy Utility Request for Qualifications for Bond Counsel

Ballard Spahr Andrews & Ingersoll, LLP
Response to SEU RFQ

Ballard Spahr Andrews & Ingersoll, LLP ("Ballard Spahr") is pleased to submit this response to the Delaware Sustainable Energy Utility Request for Qualifications for Bond Counsel. This response sets forth our qualifications to serve as bond counsel. In addition we have included information demonstrating our capability, to assist the SEU in structuring transactions to establish public-private partnerships that can take advantage of tax credits, accelerated depreciation and other benefits not available to non-profit institutions such as the SEU but will further promote its purposes, as well as taking advantage of benefits that will be created in the pending economic stimulus bill.

» Please list any clients of your firm that are similar to the SEU in structure or purpose.

Center for Climate Strategies (and related state and regional planning processes). We have worked for the Center for Climate Strategies in connection with the development of state and regional climate change programs, having worked on projects relating to the Western Climate Initiative, the Arkansas climate plan, the Florida climate plan, the North Carolina climate plan, and the Vermont climate plan. We also prepared comments for CCS on the EPA Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gases under the Clean Air Act.

Fairmount Park Historic Preservation Trust. This 501(c)(3) corporation leases historic properties from the City of Philadelphia under a master lease and provides for their restoration and reuse through subleases and other partnerships with private parties. We have assisted with various leasing and tax exempt entity matters.

Three Rivers South Carolina. We helped structure and finance a public/private partnership to capture landfill gas for use by a major industrial customer on behalf of this nine county South Carolina solid waste authority.

Salt Lake County. We provided Salt Lake County assistance in evaluating financing options for solar power projects on County property. We partnered with Zions Bank and a financial consultant to present the costs to the County of private and public forms of ownership and financing, including incorporating tax-exempt financing, Clean Renewable Energy Bonds (CREBs), the Energy Investment Tax Credit, the New Markets Tax Credit, and various combinations of those credits. The County is now in the process of presenting our findings and seeking to move forward to develop substantial solar resources. Salt Lake is one of 25 Solar Cities designated by the U.S. DOE for technical and financial assistance in their efforts to expand solar energy.

Chester County, Pennsylvania, Climate Planning Committee. One of our partners is on the steering committee and of the climate planning committee established by the County Commissioners of Chester County, Pennsylvania and is co-chair of the Energy Subcommittee, where he developed a specific proposal to establish a county authority similar to the SEU

Montgomery County, Pennsylvania Climate Planning Committee. One of our partners was co-chair of the Committee established by the Montgomery County, Pennsylvania, Commissioners to make recommendations regarding policies to be adopted as a county climate plan from the recommendations of a report developed by a Penn State graduate student through a stakeholder process. He continues to serve on a standing advisory committee to advise the county on implementation of those recommendations.

Philadelphia Water Department. Ballard has acted as underwriter’s counsel or bond counsel for over a billion dollars in financing for this municipal utility.
University Ballard has provided advice to the University on options for modifying and managing its energy supply and demand to take advantage of co-generation, alternative energy, public-private arrangements that can use alternative energy tax credits, New Market tax benefits and other benefits, carbon credits, and renewable energy credits.

» Describe the individuals in your firm who would work with the SEU on this financing. Include their professional experience and their respective responsibilities for this transaction. Identify the person who will be responsible for the day-to-day management of your firm’s relationship with the SEU finance team.

Emilie R. Ninan is a partner in the firm’s Public Finance Department and is responsible for the public finance practice in Delaware. Ms. Ninan represents governmental, quasi-governmental, and private entities, including 501(c)(3) institutions that are eligible for tax-exempt financing. She has served as bond counsel, underwriter’s counsel, borrower’s counsel, issuer’s counsel or trustee’s counsel on a variety of municipal bond financings, including general obligation, revenue, conduit, utility system, health care, industrial development, single family and multifamily housing, and educational facility bond transactions.

She currently serves as bond counsel to various bond issuers in the State of Delaware including the Delaware Health Facilities Authority, the University of Delaware, the Counties of Kent and Sussex and in connection with bonds issued by The Delaware Economic Development Authority and other governmental issuers for the benefit of a variety of non-profit organizations.

Ms. Ninan is a frequent speaker and panelist and is also involved in numerous civic and community organizations. She is currently Chair of the Commercial Law Section of the Delaware State Bar Association (DSBA), a member of the National Association of Bond Lawyers and President of the South Asian Bar Association of Delaware.

Ms. Ninan is a graduate of Temple University (B.B.A., summa cum laude, 1991), Georgetown University School of Business (M.B.A. 1995), and Georgetown University Law Center (J.D. 1995), where she was a member of the Georgetown Journal of Legal Ethics.

Robert B. McKinstry, Jr. is a partner in the Environmental Group, which he co-founded, the Energy and Project Finance Group and the Climate Change Group. His practice spans the full range of environmental issues. He has focused his practice recently on climate change law, biodiversity, sustainability, market-based mechanisms for environmental regulation, and the environmental aspects of energy transactions but has experience in all aspects of environmental law. He was counsel of record for a group of amici scientists in the landmark climate decision Massachusetts v. EPA, has assisted states, non-profits and local governments in developing programs to reduce greenhouse gas emissions, has served on multiple climate change advisory committees and is Vice Chair of the ABA SEER Committee on Climate Change, Sustainable Development, and Ecosystems. Mr. McKinstry also serves as the partner in charge of the firm’s sustainability efforts.

Mr. McKinstry is a graduate of Swarthmore College (B.A., with honors, 1975), where he was elected to Phi Beta Kappa, the Yale School of Forestry and Environmental Studies (M.F.S. 1979), and Yale Law School (J.D. 1979). He served as law clerk to the Honorable James L. Latchum, then Chief Judge for the United States District Court for the
District of Delaware. He is admitted to practice in Pennsylvania (1979). He served as the Maurice Goddard Chair in Forestry and Environmental Resources Conservation from 2001 until 2007 at Penn State.

**C. Baird Brown** is a partner in the Business & Finance Department and a member of the Energy and Project Finance Group. His practice includes the development and financing of power plants, waste disposal and recycling facilities, and other infrastructure projects. He currently focuses on renewable energy, including wind, solar biomass, tidal, small hydro, geothermal and biofuels. He handles mergers and acquisitions of energy and environmental companies, including restructuring and workouts of troubled projects. He has counseled clients in connection with taxable and tax-exempt, rated and unrated, and registered and unregistered financings, credit enhancements, and leveraged leases. He has worked extensively on public/private partnerships and privatization of public services.

Mr. Brown is active in climate change issues, including trading renewable energy credits and carbon credits. He has represented an independent system operator on market design issues, and has assisted in the establishment of a private energy trading platform. He provides corporate advice to emerging energy technology companies, and assists with venture and private equity investments in such companies. He is working on a next generation nuclear power project.

Mr. Brown serves as an officer of two committees of the American Bar Association Section of Environment, Energy and Resources. He is Co-chair of the Renewable Energy Resources Committee, and a vice-chair of the Committee on Energy and Environmental Finance. He is also co-chair of a joint working group sponsored by those committees, ACORE and the EMA that has promulgated a Master Renewable Energy Certificate Purchase and Sale Agreement, and is working on a Verified Emissions Reduction Purchase and Sale Agreement.

Mr. Brown began his legal career in the Office of General Counsel of the Board of Governors of the Federal Reserve System. Mr. Brown is a graduate of the State University of New York at Buffalo (B.A. 1973) and the University of Pennsylvania Law School (J.D. 1978).

**Charles S. Henck** is a partner in the Tax Group, and a member of the Energy and Project Finance Group, the Public Finance Group, the Passenger Rail Infrastructure Group, and the Public-Private Partnerships Group. Prior to joining Ballard Spahr, Mr. Henck was an attorney in the Office of Chief Counsel of the Internal Revenue Service.

Mr. Henck has counseled clients on a variety of tax aspects of municipal and corporate financing for utility, industrial, and infrastructure facilities. He has served as bond counsel, underwriter’s counsel, special tax counsel, and company counsel in revenue bond, private activity bond, general obligation bond, and leveraged lease financings. He has particular experience in the issuance and restructuring of project and revenue based tax-exempt financings for solid waste disposal and resource recovery facilities. He also has been involved as counsel to the borrower and the issuer in a number of IRS audits of bonds issued to finance utility, industrial, and infrastructure facilities, and is a frequent lecturer and panelist at national conferences on federal tax matters relating to financings of these facilities.

Mr. Henck is a graduate of Emory University (B.A. 1969), Emory University School of Law (J.D., with honors, 1975), and Georgetown University Law Center (J.L.M. in Taxation, 1979).

Please see **www.ballardspahr.com** for complete attorney biographies.
Project Responsibilities

Ms. Ninan will coordinate the overall effort, advise on Delaware law issues and be principally responsible for preparation of the bond documents. Mr. McKinstry will assist with coordinating issues relating to generation and trading of carbon and renewable energy credits, climate change regulation, environmental issues, and alternative public-private financing opportunities. Mr. Brown will take the lead in developing or reviewing contracts for VERS, RECs, construction contracts, and other contracts relating to the projects that the SEU will finance or facilitate. Mr. Henck will take the lead on all tax issues.

» Describe your firm’s previous experience serving as counsel for taxable and tax-exempt obligations, both on a national level and within the State of Delaware within the past 12 months.

Ballard Spahr's public finance lawyers have served as bond counsel or underwriter's counsel in connection with every form of traditional municipal debt, including, general obligation, municipal revenue, special assessment and tax increment bonds, as well as tax, revenue, grant and bond anticipation notes, and certificates of participation in lease-purchase and installment purchase obligations. In 2008, Ballard was nationally ranked 12th as bond counsel and 7th as under writer's counsel by Thompson Financial.

We have also participated in every kind of private activity financing, including:

- University bonds
- Student loan bonds
- Student housing bonds
- Hospital and health care revenue bonds
- Utility revenue bonds
- Industrial development revenue bonds
- Sports arena revenue bonds
- Continuing care retirement community bonds
- Pollution control bonds
- Resource recovery and solid waste disposal revenue bonds
- Military housing bonds
- Airport revenue and special facilities bonds
- Port facilities bonds
- Pension bonds
- Single family mortgage bonds
- Multi-family housing bonds
In the past 12 months, Ballard Spahr was involved in 230 transactions totaling $12,103,719,885.00 throughout the United States. In the State of Delaware during the last 12 months, Ballard’s Delaware office has handled a variety of bond matters including the following bond issues:

- $5,000,000
  The Delaware Economic Development Authority
  Variable Rate Industrial Development Revenue Bonds
  (V&S Delaware Galvanizing LLC Project)
  Series 2008 (Bond Counsel)

- $75,215,000
  The City of Wilmington, Delaware
  General Obligation Bonds
  Series 2008A (Underwriter’s Counsel)

- $22,200,000
  The City of Dover, Delaware
  Electric Revenue Bonds
  Series 2008 (Bond Counsel)

- $9,000,000
  New Castle County, Delaware
  Revenue Bonds
  (St. Andrew’s School Project)
  Series 2008 (Bond Counsel)

- $80,000,000
  Delaware Health Facilities Authority
  Variable Rate Revenue Bonds
  Christiana Care Health Services
  Series 2008 (Bond Counsel)

- $12,200,000
  The Industrial Development Authority
  of the County of Pima
  Charter School Variable Rate Demand Revenue Bonds
  (Delaware Military Academy Project)
  Series 2008 (Underwriter’s Counsel)

- $13,150,000
  Kent County, Delaware
  Variable Rate Revenue Bonds
  (Providence Creek Academy Charter School, Inc. Project)
  Series 2008A and Taxable Series 2008B (Bond Counsel)

- $15,000,000
  Sussex County, Delaware
  General Obligation Bond
  (Angola Neck Sanitary Sewer District Project)
  Series 2008 SRF (Bond Counsel)

» Describe your firm’s previous experience related to alternative energy projects including renewable and energy efficiency, renewable energy credits and other environmental credits.

Renewable Energy

Ballard Spahr has over twenty years’ experience with renewable energy project development and financing, including solar, hydroelectric, wind, landfill gas, agricultural biomass, wood waste, and geothermal electric generation as well as ethanol and biodiesel facilities. Our work on projects involving agricultural, municipal and other wastes has benefited from our extensive experience with tax exempt financing, and we are adept at structuring projects to take advantage of production tax credits, investment tax credits and other incentives for renewable energy.

We have also been involved on behalf of developers, power purchasers and underwriters on numerous distributed generation and mini-grid projects serving hospitals, universities, industrial users and retirement communities. Such projects often present state regulatory issues involving avoidance of public utility status and tariff questions relating to the local utility. We understand the regulatory dimensions of developing small power plants with unusual technical capabilities.

We are experienced with Renewable Portfolio Standards legislation that has been adopted in thirty-four states and the District of Columbia. We can assist with trading of renewable energy certificates in both voluntary and state-mandated markets. We are familiar with federal requirements that establish biofuel credit trading, and we have assisted with greenhouse gas emissions reduction trading under the Kyoto protocol and voluntary markets. We are following and have been actively involved in state and regional efforts to limit greenhouse gas emissions and
establish their own biofuel requirements. We understand how to structure projects to take full advantage of these programs.

Sustainability and Climate Change

Ballard Spahr attorneys, including members of the team, have taken a leading role in the emerging law relating to sustainability and climate change.

Climate Change Regulation. Ballard Spahr attorneys have been on the leading edge of emerging state and regional efforts to reduce greenhouse gas emissions. We have assisted a number of states, the Western Climate Initiative and local government units in developing plans and programs and financing initiatives to implement projects. We have been involved in a number of transactions where sale of verified emissions reduction credits (“VERs”) or Clean Development Mechanism (“CDM”) credits have assisted in financings.

Emissions Trading and Environmental Banking -- Ballard Spahr lawyers can assist with renewable energy credit and carbon credit trading in voluntary markets and under state legislation, and NOx, SOx, and mercury trades under federal legislation and state implementation plans. We have acted as counsel in land-banking and habitat-banking transactions and brownfield recycling.

“Green” Buildings -- Buildings are green if they use renewable materials, create less waste in the building process and use less energy and water to operate. Ballard Spahr lawyers are familiar with real estate contracting practices in the green building arena including performance standards and certifications.

A chart of our alternative and renewable energy experience is attached as Appendix A.

Project Finance

Ballard Spahr assists clients in all aspects of project finance. Our broad experience with the financial markets, combined with industry specific knowledge of business and regulatory issues, allow us to structure creditworthy projects that meet lender and investor criteria as well as a sponsor’s tax and business objectives. We have a practical sense of what works.

This expertise is particularly important in the area of renewable energy where there are investment and production tax credits and other tax benefits for alternative energy and energy efficiency projects that are available to private taxpayers. In addition, Ballard has extensive experience in other tax credit transactions including new markets, housing and historic tax credits that can be applied to projects that the SEU wishes to promote.

We represent banks, underwriters, and companies in the acquisition and divestiture of stock and assets and serve as bond counsel, special tax counsel, and placement agents’ counsel for projects across the United States and abroad. In addition, we have extensive experience in restructuring and workouts of project financings.

We have structured intercreditor relationships between public and private, taxable and tax-exempt debt, bank debt and bond issuers, and structured layers of project equity coming from project participants as well as passive investors. We have addressed issues of subordination, preference and security at each level, and we have extensive experience in public/private partnerships. We have experience with all types of financing and project documentation, and we efficiently create new documents where a transaction calls for something outside the box.
In many of these financings, we have solved the challenge of structuring a project’s business framework to meet lender and investor requirements. For many years in the real estate industry, we have represented institutions such as insurance companies and financial services investors in their lending and investing programs.

Representative examples of our experience in project finance and tax credit financing are also set forth in Appendix A.

**Distributed Generation**
Ballard Lawyers have worked extensively on distributed generation projects and related regulatory issues. A list of representative engagements is set forth in Appendix A.

**Utilities**
Ballard Spahr’s Energy and Project Finance Group regularly assists utilities.

» Please provide three references from tax-exempt issuers for which you have provided legal services.

» Provide as an appendix evidence of malpractice insurance coverage for the firm and its attorneys including coverage amounts. The evidence of coverage should indicate whether securities transactions are covered. Please see Appendix B.

» List any conflicts of interest, apparent conflicts of interest and pending investigations:
  a. Describe any client relationship your firm has with any public or private entity which could be viewed as a definite or potential conflict of interest if your firm were selected.
b. Describe any relationship which could appear to be a conflict of interest if your firm were selected.

Please see the response to the previous question.

c. Indicate if your firm is under investigation or has been notified of an investigation by any federal or state regulatory agency.

d. Has any individual at your firm made public statements regarding the SEU? If so, please attach a copy of these statements.

Ballard partner Robert McKinstry has used the Delaware SEU as an example in a variety of speeches on the latest developments in climate change. Additionally, he cites the Delaware SEU as one of the few authorized energy efficiency utilities in an article that will appear in an upcoming issue of the NC Journal of International Law and Commercial Regulation. The introduction of the article and page 41 of the article which contains the reference to the SEU are included in Appendix C for your reference. A complete copy of the article is available upon request.

» Please provide a typical fee quote for the scope of services outlined above
Appendix A

Representative Renewable and Alternative Energy, Distributed Generation and Project Finance Engagements
Renewable/Alternative Energy

» Represent independent power developer in advising private investor group on development of active renewable energy portfolio within a U.S. region.

» Represented a company in 3 waste-to-ethanol projects.

» Represent a company that will produce biodiesel fuel from waste grease by a proprietary process and use the fuel to produce electricity.

» Structuring multi-state biofuels enterprise to optimize state-by-state incentives and federal/state tax incentives.

» Represented a research and development company on the siting and permitting of a pilot facility (at the former Philadelphia Naval Shipyard) for a biofuels-type technology that converts organic materials to energy and diesel grade fuel.

» Represented underwriter of debt securities to finance biomass (dairy cow manure) to commercial pipeline methane plants, with associated carbon credits.

» Represented biogas project developer working with Idaho dairy farmers to obtain municipal bond financing for on-site conversion of manure into pipeline-grade natural gas.

» Represented the United States parent of a Bolivian company in a proposed sale of CERs (carbon credits under the Kyoto Protocol) from a hydroelectric project.

» Represent an aggregator of RECs (Renewable Energy Certificates) and CERs and VERs (carbon credits in the voluntary market) with a variety of projects ranging from building efficiency improvements to methane digestion from biomass to CERs from projects in Latin America and Eastern Europe, as well as arrangements with a US-based greenhouse gas registry and a Polish energy exchange.

» Represent a fuel distributor in connection with obtaining VERs based on substitution of biofuels for petroleum based fuels.

» Advised project developer on carbon mitigation strategy for major solid fuel project.

» Represent commercial building products manufacturer on strategies for registering greenhouse gas emissions reductions in light of rapidly evolving law and policy.

» Represent a start-up company with a chemical carbon sequestration technology that captures CO2 from power plant exhaust gasses.

» Conducted climate risk analysis for Midwest Fortune 500 integrated energy company.

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» Represent forest and paper product company to develop strategies for adaptation and minimization of risks from climate change.

» Representing an energy cooperative in a financing that will use clean renewable energy bonds, a form of tax credit bonds to be issued by the National Rural Utilities Cooperative Financing Corporation, provided the Internal Revenue Service issues an “allocation” of CREB authority to KIUC.

» Represented several host facilities and energy services companies in securing financing for energy efficiency projects.

» Represented investor in private equity fund investment of fuel cell technology.

» Represented MidAmerican in a geothermal project.

» Represent U.S. Trade Association in developing international green building certification standards (ISO and ANSI).

» Represented an energy company in a run-of-river hydro project in Hawaii.

» Represent an Energy Cooperative in the relicensing of hydroelectric project.

» Represent several developers of IGCC (coal gasification) projects in PJM.

» Acting as underwriter’s counsel to an underwriter on a landfill gas project in South Carolina.

» Represented a utility in two landfill gas projects.

» Represent tax investor in preparing rooftop solar project agreements.

» Conducted due diligence for joint-venture / active-participant investor in utility-scale thermal solar power project.

» Advise commercial real estate client on tax and entity structuring implications of developing rooftop solar PV projects on existing commercial, industrial, and retail properties.

» Represent solar PV project developer focused on large-scale commercial projects.

» Represent solar installers in process of securing financing and drafting and negotiating project documents for rooftop and land-based installations of solar panels utilizing their unique ballast system technology.

» Represent a company and its affiliate, in hydroelectric and tidal energy projects. Projects involve proprietary technology that is under development.

» Represent foreign investor in acquisition financing, project financing and tax structure issues related to purchase of a wind development company in the U.S.

» Represent purchaser of wind turbines in negotiations with turbine supplier.
Appendix A

- Represent real estate investor in structuring first wind development project, negotiating agreements with project sponsor and passive investor. Wind
- Represent developer of a joint venture wind project in NY State. Wind
- Representing developer and investor/sponsor for offshore wind farm. Wind

Project Finance

Alaska Transportation Project
Ballard Spahr participated in a $100 million bond issue of the Alaska Industrial Development and Export Authority for its DeLong Mountain transportation project to finance a port and road located above the Arctic Circle. The transaction involved establishing two separate “flows of funds” to secure the bondholders in order to permit the release of state moneys once the project became self-supporting, obtaining a favorable tax ruling from the Internal Revenue Service, negotiating with the Department of the Interior for an easement through Alaskan land which was designated as a national monument, negotiating with Alaskan native associations and obtaining approvals of the Alaska State Legislature and the Governor.

Brooklyn Navy Yard
We served as special counsel to the underwriter in connection with the issuance of $307 million of tax-exempt debt by the New York City Industrial Development Authority to finance and refinance costs of Mission Energy’s Brooklyn Navy Yard Project. The project is a 220 MW gas-fired cogeneration facility supplying steam and electric energy to Consolidated Edison Company and other users.

Denver, Colorado, International Airport
Ballard Spahr has served as underwriter’s counsel since 1985 in connection with tax-exempt bond financing for the new Denver International Airport. This activity has included 19 series of bonds, aggregating over $3.2 billion. $435 million of the bonds were supported by letters of credit of Morgan Guaranty Trust Company of New York, The Bank of Tokyo, Bank of Montreal, Credit Local de France, The Sumitomo Trust and Banking Co., Ltd., Los Angeles Agency, with the balance secured by a first pledge of net revenue of the airport system available after payment of expenses of operation and maintenance.

These financings presented unique challenges involving the size and scope of the project ($3 billion on a 53-square-mile site), protests and challenges from users (Continental Airlines—in Chapter 11—and United Air Lines), national and local political pressures, and unusually intense focus by national media and market participants. The firm also serves as bond counsel to the City and County of Denver in connection with special facilities financings for the new airport, including a $261 million financing for United Air Lines.

Montgomery County, Maryland Solid Waste System
Ballard Spahr lawyers acted as underwriters counsel for the refinancing of this multifacility solid waste system. The credit structure blended disposal and collection district rate payments, tipping fees and revenues derived from private company operating agreements. The borrower for one issue of bonds was a public authority supported in part by the credit of a private operating company and another bond issue was a direct county obligation, but both issues shared a county rate covenant.

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Appendix A

Salt Lake City, Utah - International Airport
Ballard Spahr served as underwriter’s counsel in connection with the issuance by Salt Lake City of its approximately $39 million Airport Revenue Bonds and $34 million Airport Revenue Refunding Bonds. The bonds were issued to finance a portion of the approximately $118 million cost of a new runway and related improvements. The refunding bonds were issued to refund certain of the City’s outstanding Airport Revenue Bonds.

Salt Lake City, Utah - Delta Center
Ballard Spahr served as bank counsel to the Sumitomo Trust and Banking Co., Ltd., Los Angeles Agency, in connection with the Bank’s $66 million loan to the Larry H. Miller Arena Corporation to finance the Delta Center, a sports arena which is the home of the Utah Jazz NBA basketball team and Salt Lake Golden Eagles hockey team. Ballard Spahr also served as bond counsel in connection with $24 million Tax Increment Bonds issued by the Salt Lake City Redevelopment Agency to finance land acquisition and infrastructure improvements for the Delta Center.

Virgin Islands
Ballard Spahr served as underwriter’s counsel in three separate tax-exempt financings aggregating over $250 million, the proceeds of which were used to pay a portion of the costs of a capital expansion to a refinery. The refinery, which is located in the United States Virgin Islands, is a joint venture of a major United States oil company and the national oil company of Venezuela. The tax-exempt bonds are secured by senior liens on the assets and revenues of the refinery, on parity with a group of commercial banks.

Pennsylvania Turnpike
Ballard lawyers represented the Commonwealth of Pennsylvania in the proposed $12 billion privatization of the Pennsylvania Turnpike.

Pocohontas Parkway
Ballard acted as underwriter’s counsel for the $800 million public/private partnership to build a toll bridge over the James River. The financing was completed through a 501(c)(3) public benefit corporation.

I-95/395 HOT Lanes
We represented the Virginia Department of Transportation with respect to a public/private partnership to repurpose and expand existing HOV lanes in the I-95 corridor as HOT lanes subject to a congestion-based tolling arrangement.

Distributed Generation

» Representing a DG systems supplier that provides peak-shaving and load reallocation services. Involved in all aspects of business plan legal support, including service agreements, regulatory compliance, equipment purchases, and financing.

» Represented an ISO before FERC on interconnection rulemaking and related tariff changes for large and small generators

» Negotiated DG installation agreements and interconnection agreements for high-security installations.

» Negotiated interconnection agreement for independent power projects in numerous locations.

» Represented an industrial park real estate developer that planned to aggregate certain services for its tenants.

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including an independent DG backup power supply. Counseled developer on the unique regulatory challenges and on how to avoid triggering New Source Review requirements for the individual DG systems.

» Representing the developer on a project involving the installation and operation of a cogeneration facility at a retirement community to serve.

» On-peak demand and to supply emergency backup power.

» Represented a Fortune 500 company in connection with a third-party installation of generators for peak-shaving and emergency backup.

» Represented the buyer in the purchase and repowering (with landfill gas) of an electricity and steam generating facility at a sheet and tine plant and in the subsequent sales of electricity to the plant and of steam to the district heating loop that included the plant.
Appendix B

Malpractice Insurance Certificate
January 29, 2009

Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599

To Whom It May Concern:

CONFIRMATION OF INSURANCE

The Policy effective date is from January 1, 2009 to January 1, 2010.

The Policy contains no exclusions for securities transactions. Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

ATTORNEYS’ LIABILITY ASSURANCE SOCIETY, INC.,
A RISK RETENTION GROUP

By: ____________________________ Date: __/__/09
Joseph R. Suster
Assistant Director of Underwriting

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16
Appendix C
Public Statement Cite
Article Introduction:

THE NEW CLIMATE WORLD: ACHIEVING ECONOMIC EFFICIENCY IN A FEDERAL SYSTEM FOR GHG CONTROL THROUGH STATE PLANNING COMBINED WITH FEDERAL PROGRAMS

Robert B. McKinstry, Jr., Thomas D. Peterson, Adam Rose and Dan Wei

“The maximum range of anatomical possibilities arises with the first rush of diversification. Later history is a tale of restriction, as most of those early experiments succumb and life settles down to generating endless variants upon a few winning models.” 

A strong federal response to global climate change by the United States is now assured, with key elements in progress. In response to the Supreme Court’s mandate in Massachusetts v. Environmental Protection Agency,1 the new Administration’s Environmental Protection Agency (“EPA”) will make a finding that emissions of greenhouse gases (“GHGs”) cause or contribute to pollution that can reasonably be anticipated to endanger health or welfare. This will trigger requirements to regulate those emissions under many sections of the existing federal Clean Air Act,2 as outlined in EPA’s Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act (“ANPR”).3 The new Administration is committed to use the existing law and to seek new legislative authority to address the issue with a suite of both traditional regulatory tools, other sector based policy instruments, and market-based mechanisms such as cap-and-trade.

These reductions also cannot be achieved solely or most cost-effectively through the cap-and-trade or GHG tax mechanism without state planning that will facilitate such a market mechanism.4 The scale-up results presented above show that there are a significant number of measures that have significant cost savings per ton of GHG emissions reduced. More importantly, the modeling and analysis from state planning processes to date show that many emissions reduction measures that are cost-effective today are not being implemented, such that policies other than (or in addition to) market-based policies are likely required. This is evident from the fact that many measures have significant net negative costs per ton of carbon dioxide reduced. This can be explained by the fact that there are many market barriers and imperfections that require other, targeted measures that can best be identified in a state-specific planning process and have been identified in many state plans to date.5 These include the following:

• Lack of knowledge. For example, many builders will not incorporate energy saving into new construction, even where cost effective, because buyers lack information about the relationship between the additional capital costs, energy savings, and rate of return.

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2 42 U.S.C. §§ 7401-7671q.
Lack of connection between capital and operating budgets/decisions. There are many systemic problems that separate decisions on capital and operating costs, such that cost effective investments may not be made. For example, net commercial leases may make the owner responsible for capital improvements and the lessee responsible for energy costs. Lenders will often not look at operating costs from energy savings in the determination of how much to lend for a mortgage on a new or existing home. Often governments and industry alike will have different parts of the organizational structure making operating and capital decisions.

Legal authorization barriers. Sometimes states may lack authorization for mechanisms that can provide the financing for the capital requirements to improve energy efficiency or conservation. For example, local governments may face bond caps that prevent them from raising capital that will have very short pay off period and require legislation to allow energy increment financing. Only a few states have authorized energy efficiency utilities. Inability to pass through increased carbon emission costs. Each state has a separate program of utility rate regulation that often can impose limits on utilities’ ability to pay.

Delaware SEU Footnote Citation Bolded Below:

The first such utility is Efficiency Vermont, established in 1999, 30 Vt. Stat. Ann. § 209; Code Vt. Reg. § 30-000-051. Delaware has also established a Sustainable Energy Utility (“SEU”), 29 Del. Code § 8056, as has the District of Columbia, see D.C. Clean and Affordable Energy Act, D.C. Council Bill 17-492 (establishing a new Sustainable Energy Trust Fund to be administered by a third-party SEU).