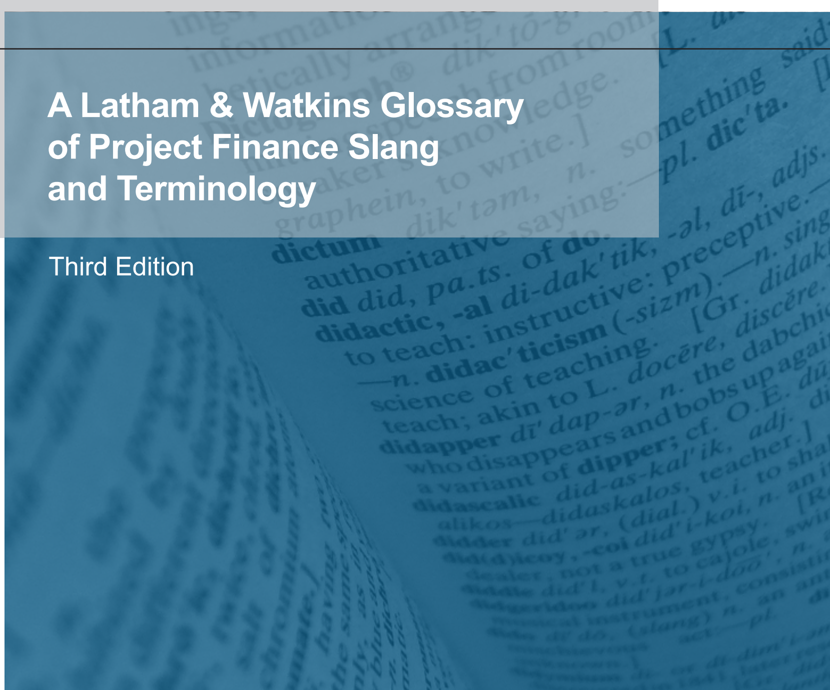
LATHAM & WATKINS LLP

The BOOK of JARGON® Project Finance



A Latham & Watkins Glossary of Project Finance Slang and Terminology

Third Edition

The Book of Jargon® – Project Finance is one in a series of practice area and industry-specific glossaries published by Latham & Watkins. The definitions provide an introduction to each term and may raise complex legal issues on which specific legal advice is required. The terms are also subject to change as applicable laws and customary practice evolve. As a general matter, this glossary was drafted from a US practice perspective. The information contained herein is not legal advice and should not be construed as such.

10b-5 Rep: short for Rule 10b-5 Representation.

122 Endorsement: an Endorsement to Title Insurance for Construction Loans, issued at the time of borrowings that occur after the Financial Closing. This Endorsement does not "date down" or otherwise modify the effective date of the Title Insurance, but rather describes any additional Encumbrances against the property; insures, for the benefit of the Lenders, that no other Encumbrances have been recorded; and insures the priority of the Lender's existing Liens and new advances over any subsequent Encumbrances. Even though this Endorsement is sometimes called a "date down," it is distinguished from a Date Down Endorsement, which changes the date of the policy to the date of the Endorsement.

363 Sale: named after a section of the US Bankruptcy Code (Section 363 if you couldn't tell) that permits sales of assets free and clear of all claims and Liens. A typical 363 Sale is an auction-like procedure for a bankrupt entity to sell assets, subject to approval by the court. Often there is a Stalking Horse Bidder that has already arranged to purchase the assets. If the Stalking Horse Bidder is outbid (which does happen), he gets a breakup fee for his trouble. Typically, the court will approve the bid protections for the Stalking Horse Bidder and auction procedures, and following an auction, the court will approve the sale to the winning bidder. Secured creditors may Credit Bid for their Collateral unless the court orders otherwise for cause.

Accelerate / Acceleration: the end of the line under an Indenture or Credit Agreement. Following an Event of Default, the bondholders (under an Indenture) or Lenders (under a Credit Agreement) have the right to Accelerate the due date of their debts. In other words, they have the right to declare their Notes or loans immediately due and payable. Bankruptcy and insolvency Events of Default usually automatically lead to Acceleration under an Indenture or a Credit Agreement; otherwise Acceleration would be prohibited under the Automatic Stay.

Access: the right to enter and exit a property from a public right of way (such as a road). Access rights often require Zoning approvals, curb cuts, Easements, or use agreements with adjoining landowners. A Title Insurance Policy may insure Access with regard to an insured property if an Access Endorsement is included. If a landowner does not have Access, she is "landlocked," and her property may be worth very little.

Accordion: a feature in a Credit Agreement that allows the Borrower to increase the maximum commitment amount under a Revolver or to incur additional Term Loan debt under circumstances specified in the Credit Agreement. The Accordion, however, is not pre-committed financing, and may involve bringing another Lender into the facility. An Accordion is essentially an advance agreement to share Collateral with additional

Lenders if the Borrower can find them on the agreed terms (aka an "incremental facility"). Accordions do not typically occur in a Project Financing absent a change in the economics that is anticipated to occur following closing, such as the change that would result from expanding the project's Capacity.

Account Control Agreement: an agreement that provides Lenders in a secured financing with Control over a Borrower's deposit accounts and securities accounts in order to Perfect their Security Interest in the accounts. The agreement is among the Borrower, the Collateral Agent, and the bank or securities intermediary where the Borrower holds its deposit account or securities account. Absent an Event of Default, the Borrower usually retains full access to the account. Upon an Event of Default, however, the Collateral Agent may require the bank or securities intermediary to transfer control over the account to the Collateral Agent by no longer accepting instructions from the Borrower. A Security Interest in a securities account is typically Perfected either by means of entering into an Account Control Agreement or by filing a Financing Statement, although a Security Interest Perfected by means of Control has priority over a Security Interest Perfected by filing a Financing Statement. A Security Interest in a deposit account, by contrast, can be Perfected only by means of entering into an Account Control Agreement or another method of Control, not by filing a Financing Statement.

Account Party: the party that requests issuance of a Letter of Credit and is responsible for repaying the Issuing Bank if the Letter of Credit is Drawn by the Beneficiary.

Additional Insured / Additional Named Insured: the Lenders, the Collateral Agent, and/or the Administrative Agent that are added to a Borrower's liability insurance policies due to the Lenders' concern that a plaintiff may sue them if the Borrower harms the plaintiff, because the banks have deep pockets. Additional Insureds have the right to be defended by the insurer, and to have any valid and covered claims paid, up to the policy limit. Additional Insured status is provided through an Endorsement issued by the Insurance Broker, which makes sure the insurer's records show all the Additional Insureds. The cost is nominal.

Administrative Agent / Admin Agent: the bank that serves as the principal Agent administering the credit facilities documented in the Credit Agreement. The Administrative Agent is responsible for processing interest payments to Lenders, posting notices delivered by the Borrower, and acting as the primary representative of the Lenders in dealings with the Borrower. The Trustee performs an analogous role in Bond land, except that the Administrative Agent is often willing to exercise more discretion over decisions relating to minor Covenants than is a Trustee.

Administrative Agent Fee: the annual fee paid to the Administrative Agent for administering a Credit Agreement. This fee typically is relatively low, and as a result, Administrative Agents focus on minimizing their discretion and risk under the Credit Agreement and related documents.

Aeroderivative Gas Turbine: a combustion gas turbine that is based on aircraft engine designs. Aeroderivative Gas Turbines are very responsive — which is why they are used in Peakers — and are compatible with Automatic Generation Control.

In contrast, see Frame Unit.

Affiliate: generally, a person or entity controlling, controlled by, or under common control with another person or entity.

Affirmative Covenant: a contractual provision in an Indenture, a Credit Agreement, or another contract that sets forth certain actions the Issuer, Borrower, or other applicable party must take to be in compliance. Think of these as "Thou Shalt" Covenants. Many Affirmative Covenants are boilerplate in nature, covering such things as promises by the Borrower to pay interest and fees, maintain insurance, pay taxes, and provide quarterly operating reports. In a secured deal, the Affirmative Covenants regarding delivery and maintenance of Collateral are more highly negotiated.

In contrast, see Negative Covenant.

African Development Bank / AfDB: a multilateral development finance institution that promotes social and economic development in Africa through the investment of capital in projects.

AGC: acronym for Automatic Generation Control.

Agency Fee: the annual fee paid to the Administrative Agent, Collateral Agent, and Depositary Bank. These fees are typically relatively low fixed fees, and as a result, Agents focus on minimizing their discretion and risk under transaction documents.

See also Administrative Agent Fee.

Agent: a generic term used to describe an Administrative Agent, a Collateral Agent, or a Depositary Bank.

Allowance for Funds Used During Construction / AFUDC: the FERC and state regulatory accounting procedure that allows interest paid on borrowed funds and a rate of return on equity funds to be added to the construction cost of a project for purposes of rate recovery (including those amounts in rates charged to Ratepayers).

ALTA: acronym for the American Land Title Association.

ALTA Survey: a Survey performed by a licensed land surveyor that meets the requirements specified by ALTA for the Title Insurance to cover Title defects that would be revealed by a Survey. The Title Company will examine the ALTA Survey to avoid issuing Title coverage that might lead to a claim — such as an Encroachment. The Title Insurance may include an Endorsement insuring that the property described therein is the same as the one shown on the ALTA Survey (*i.e.*, a "same as survey" Endorsement).

American Land Title Association / ALTA: a national trade association of the Title industry that produces Survey standards, forms of Title Insurance policies and Endorsements, and other real estate guidelines that have become an industry standard. The acronym ALTA is typically used as an adjective, as in ALTA Survey.

American Recovery and Reinvestment Act of 2009 (ARRA) / Stimulus Bill: a US federal law passed in February 2009 that included billions of dollars' worth of benefits to the Renewable Energy industry.

American Wind Energy Association / AWEA: the primary advocacy organization for the wind industry in the United States.

Ammonia Slip: ammonia used in an SCR unit that ends up as part of the exhaust gas, instead of reacting with the exhaust gas to reduce nitrogen oxides.

Amortize / Amortization: the required periodic repayment of the principal of a Term Loan or Bond prior to its final Maturity. Construction Loans, corporate Bonds, and Revolving Loans generally do not Amortize, but Bonds issued to finance an individual project typically do Amortize.

Ancillary Services: services that an electric-generating facility can provide to the Grid besides Capacity and energy, or that a customer consumes from the Grid besides energy, that are required for the electric distribution system to operate properly. For example, if a generator is on AGC and is an extremely responsive technology — such as an Aeroderivative Gas Turbine — the generator might be able to stabilize the voltage on the system by quickly changing output. As power markets have shifted away from single-source providers (utilities) and have become more sophisticated, it has become more common to charge for Ancillary Services so that price signals ensure a balanced supply and demand.

Applicable Margin: a Margin that might change depending on predetermined rules. The Applicable Margin could increase over time, or if the Borrower is downgraded or is on the weak side of performing its Financial Covenants, on the principle that higher risk should equal higher reward for the Lenders. The Applicable Margin is the Lenders' profit, which they are paid in consideration of taking on the risk of the loan.

Arbitrate / Arbitration: a means of dispute resolution often perceived as less cumbersome and more expeditious than litigation. In Arbitration, the rules of evidence are considerably more lax, and there is no risk of a "wild" jury verdict (since there is no jury per se, other than the arbitrators, who are sort of professional jurors). And because the Arbitration process is private, the parties do not have to wait on the public court system. The agreement between the parties should specify that the Arbitration is binding; otherwise, the losing party could simply relitigate in the public court system. Some perceive that arbitrators tend to "split the baby," leaving both sides somewhat unhappy instead of one side very unhappy.

ARRA: acronym for the American Recovery and Reinvestment Act of 2009.

Arrangement Fee: the fee paid to the Lead Arranger for pulling a deal together and doing most of the work by negotiating the deal terms as reflected in the Term Sheet and either Underwriting the deal or assembling a Club.

Arranger / Lead Arranger: the bank that arranges a credit facility by negotiating original terms with the Borrower and Syndicating the facility to a larger group of Lenders. The Arranger generally has no ongoing obligations under a Credit Agreement after the closing date in its capacity as Arranger, but often also serves as Administrative Agent and/or Collateral Agent.

Array: the arrangement of Wind Turbines in a Windfarm. All Windfarm sites have a direction from which the wind blows a large part of the time. The Array will be situated such that each String is perpendicular to this prevailing wind direction and far enough away from upwind Strings to minimize Wake turbulence, which pummels WTGs, increasing operating costs.

Article 9: the part of the UCC that governs the validity and Perfection of Security Interests in most personal property secured deals. In California, Article 9 is called "Division 9" — they just *have* to be special.

As-Built Survey: a type of ALTA Survey that is performed after a project is finished, showing all the Improvements constructed on the surveyed property. Projects almost never get built exactly as shown in the original drawings, so the As-Built Survey becomes a historical document showing where everything is (including underground piping) while the construction is still recent. Lenders may require an As-Built Survey as a condition to Term Conversion.

Asian Development Bank / ADB: a multilateral development finance institution that promotes social and economic development in Asia through the investment of capital in projects.

Associated Gas: natural gas that is found in association with Crude Oil, either dissolved in the oil or as a cap of free gas above the oil. As with Condensate, a market exists for Associated Gas.

Assume / Assumption: taking on and becoming bound by obligations. Under US Bankruptcy Code Section 365(a), with certain exceptions, a debtor, with approval of the US bankruptcy court, may Assume or Reject an Executory Contract or unexpired Lease. If the debtor Assumes the Executory Contract or Lease, it takes on and becomes bound by all the obligations of the Executory Contract or Lease. If the debtor previously defaulted under an Executory Contract or Lease that it wishes to Assume, then, as a condition to approval, the debtor generally must (i) Cure the Default, and (ii) provide adequate assurance of future performance of the Executory Contract or Lease.

Attainment: See National Ambient Air Quality Standards.

Attornment: See Subordination and Non-Disturbance Agreement.

Automatic Generation Control / AGC: technology that allows an Offtaker of a power plant to control basic operations of the facility, such as starting, stopping, and output level, remotely. The term also refers to the related contract right, as in "We gave the utility AGC on that Peaker."

Automatic Stay: the rule deriving from US Bankruptcy Code Section 362 that prohibits creditors from taking most actions against a bankrupt debtor or its property without permission from the US bankruptcy court. For example, Lenders may not Accelerate a loan (though the loan may Accelerate automatically if the Credit Agreement so provides), demand payment, Foreclose on Collateral, or exercise Setoff rights. The Automatic Stay does not prevent Draws on a Letter of Credit for which the bankrupt debtor is the Account Party, thanks to the Independence Principle. Generally speaking, Derivatives counterparties enjoy statutory safe harbors that allow them to liquidate Derivatives contracts without permission from the US bankruptcy court.

Auxiliary Boiler / Aux Boiler: boilers at a Cogeneration plant that produce steam independent of the gas turbine/HRSG. The capabilities and costs of running Aux Boilers is often a material issue in steam purchase agreements, as the Thermal Host does not want to rely exclusively on the availability of the power plant to support its operations.

Availability (Factor): the percentage of time a project (often a power generation facility) is ready to run at full output, even if it is not actually running. Offtakers use the Availability Factor to determine whether they are getting their money's worth when paying for Capacity. For example, a utility might pay a project owner a Capacity component under its PPA for merely having the facility ready to fire up and run at full Capacity at any time on short notice (*e.g.*, on a hot summer afternoon when everybody gets home at the same time and turns on their TV, computer, and air conditioner). Even if the utility rarely Dispatches that facility, the utility needs to know that it can do so if need be.

Availability Guarantee: a guarantee by a WTG manufacturer (or other main facility component manufacturer) that its machine will have a minimum Availability over a stated term (say, five years). Availability Guarantees are most helpful when a particular technology has had reliability issues. They are also least helpful when a particular technology has had reliability issues, because the manufacturer may not be around to honor the Availability Guarantee if paying for other Availability Guarantees has put it out of business.

Avian Mortality: the death of birds, in particular those that fly into WTGs. In some areas, Avian Mortality is a serious impediment to Windfarm development. Often, the concern centers on large birds of prey (aka raptors). Because raptors evolved with the assumption that they could fly unimpeded while focusing on the ground for prey, they often run into WTGs without knowing what hit them. To combat this issue, developers started using tubular towers (instead of Lattice Towers), which discourage perching. Many projects have been required to shut down when radar and annual migratory pattern studies reveal that birds will be passing by. Although bats are not as regal as raptors, they are also considered worth protecting from turbine strikes.

Avoidance Action: an action commenced in US bankruptcy court, via an adversary proceeding, to avoid, set aside, and recover, for the benefit of the bankruptcy estate, certain types of transfers that the debtor made, either pre-petition or post-petition. Avoidance Actions — for both Fraudulent Transfers, Preferential Transfers, and unauthorized post-petition transfers — and the limitations thereon are addressed in US Bankruptcy Code Sections 544-545 and 547-550.

Avoided Cost: the rate at which QFs that are utilizing a PURPA Put may charge utilities for energy. Under PURPA, utilities buying electric energy pursuant to a PURPA Put are required to pay power sellers at a rate equivalent to what the utilities would have paid to acquire the same amount of electric energy through traditional means, *e.g.* building a new power plant or entering into a long-term contract (the cost of which was theoretically avoided). Avoided Cost is determined by the applicable state utilities commissions, and may or may not include a Capacity Charge component.

AWEA: acronym for American Wind Energy Association.

Back Leverage: debt incurred by a project Sponsor at a holding company level to finance its equity contributions to a project, which is often structurally Subordinated, or "back-levered," to another financing. In Renewable Energy financings, it has become common for the Term Loans to be back-levered to a Tax Equity financing.

BACT: acronym for Best Available Control Technology.

Balance of Plant / BOP: the components of a power plant other than the primary energy-producing components. At a fossil-fuel-fired power production facility, the BOP is the entire facility minus the Turbine Island equipment; at a Windfarm, the BOP is the entire facility minus the WTGs; and at a Solar Farm, the BOP is the entire facility minus the Modules.

Balloon Payment: another name for Bullet (Maturity).

Bank Book: another name for CIM.

Bankruptcy Remote Vehicle: a subsidiary set up within a corporate group to reduce the risk of an insolvency of the parent company affecting the subsidiary through Substantive Consolidation. Bankruptcy Remote Vehicles, which are also known as SPEs or SPVs, are created for a limited corporate purpose, such as to acquire, develop, and operate a single project, and are often established by non-investment-grade-rated parents that want the debt issued by the Bankruptcy Remote Vehicle (to finance a particular project) to be rated investment grade.

See also Separateness, which is a necessary part of every Bankruptcy Remote Vehicle. Even with the best protections, no entity can be bankruptcy-proof.

Bareboat Charter Contract: a chartering/Lease agreement for a vessel for which no crew, administration, or technical maintenance is included as part of the agreement. Typically, the charterer is responsible for all operating expenses, including fuel, crew, port expenses, and hull insurance.

See also Charterparty Contract.

Bargain Purchase Option: a lessee's option to purchase a leased asset at a price that is less than the expected Fair Market Value such that, at the inception of the Lease, it is reasonable to assume that the lessee will definitely purchase the leased asset on the option date. Purchase options for US$1 or other nominal consideration are considered Bargain Purchase Options. In True Lease transactions, forward-looking appraisals are often used to support the position that a purchase option is not a Bargain Purchase Option.

Barrel: the unit of measurement typically used to gauge oil volume in the United States, where a standard Barrel contains 42 US gallons. Elsewhere, oil is commonly measured in cubic meters or tonnes (known in the US as a metric ton, which is 1,000 kilograms).

Barrel of Oil Equivalent / BOE: a unit of energy based on the approximate energy released by burning one Barrel of Crude Oil. A BOE is used to equate the energy content of oil, gas, natural gas liquids, and other Hydrocarbons.

Base Case Projections / Base Case Model: a financial model prepared by bankers to reflect the assumed operating and financial performance of a project. Base Case Projections are used to run sensitivity analyses to analyze downside and upside scenarios for the project and to size the debt.

Base Rate: a rate of interest that usually changes just a few times a year but theoretically can change as often as daily. The Base Rate is often determined as the greatest of a "prime rate" plus a fixed percentage, the Federal Funds Rate plus a fixed percentage, or a LIBOR rate plus a fixed percentage. The Base Rate is typically higher than the LIBOR rate, so Borrowers often prefer to borrow at the LIBOR rate when possible.

Baseball Arbitration: a method to motivate disputing parties to be reasonable in their settlement demands that is often used in contract negotiations between baseball team owners and players. Both parties present their offer to the arbitrator, who is required to choose between the two offers, rather than craft a compromise. Since extreme offers are more likely to be rejected, parties are encouraged to make more moderate offers.

Baseload: a power generation technology that by its nature you don't want to turn on and off any more than is necessary, such as nuclear and coal. Baseload plants are built to serve the minimum Load, *i.e.*, the minimum amount that is needed on that Grid, day and night, all year round. To the extent a Baseload facility has Capacity in excess of the Baseload, the facility may be used to serve Pumped Storage projects, since the excess Capacity is essentially valueless.

See also Load Stack.

Basic Rent: the regular rental payment required to be paid under a Lease by a tenant to a landlord in order to occupy a property.

Basic Term / Base Term: the term of a Lease from the closing date (or if there is an Interim Term, from the end of the Interim Term) to the scheduled end of the Lease (not including any renewals).

Basis Point / bp: a unit of measurement equal to one one-hundredth of a percentage point. For example, 50 bps (pronounced "bips") equals 0.50%. The Margin or Applicable Margin is often expressed in Basis Points.

Basket: an exception contained in a Negative Covenant that is usually expressed as a dollar amount. For example, if a Negative Covenant stipulates, "Borrower shall not issue additional debt," a Basket might add, "Except for unsecured debt in an amount not to exceed US$10 million."

BCF: acronym for Billion Cubic Feet.

BCFD: acronym for Billion Cubic Feet Per Day.

Beneficiary: someone that benefits from a contractual relationship without actually being party to the contract. In the context of issuance of a Letter of Credit, the Beneficiary is the party that receives the Letter of Credit and is entitled to Draw on it.

Best Available Control Technology / BACT: an air pollution control standard that requires new industrial facilities to use the best technology available, as determined by the applicable permitting agency (and the EPA). This requirement can also be imposed when a facility undergoes major modifications. BACT is required for a particular Criteria Pollutant when the source is located in an Attainment area.

See also LAER.

Best Efforts Syndication: Syndication for which the Arranger commits to provide less than the entire amount of the loans (or even none of them), but agrees to use its "commercially reasonable" efforts (not "best" efforts, notwithstanding the name) to find Lenders to provide the loans. Best Efforts Syndication is traditionally used for risky Borrowers, complex transactions, or Syndications in bad markets.

BI Insurance: short for Business Interruption Insurance.

Bilateral Contract: a contract between two parties. In the United States, RPS statutes encourage individually negotiated Bilateral Contracts between utilities and generators, whereas in Europe, all renewable generators receive the same compensation under a Feed-In Tariff, which does not require a contract.

Bilateral Investment Treaty / BIT: an agreement between two nations setting forth the terms and conditions that will apply to private investments made by nationals of one of the nations in the other nation. BITs are intended to encourage such investments. Significantly, BITs provide investors with a remedy against nations that Expropriate investment properties.

Billion Cubic Feet / BCF: a unit of measurement used to gauge natural gas or other gases at a standard temperature and pressure.

Billion Cubic Feet Per Day / BCFD: a unit of measurement of the rate of (or entitlement to, or obligation of) delivery of natural gas or other gases.

Binary Cycle: a technology used in geothermal power production wherein hot Brine is pumped up from underground and run through a heat exchanger, which imparts the Brine's heat to a gas that vaporizes at a temperature lower than the temperature at which water vaporizes (*e.g.*, isobutane or isopentane). That gas then turns a turbine, and on the other side of the turbine the gas is condensed and runs through the process again. Conversely, flash technology allows very hot geothermal fluid to directly turn a turbine.

Biofuel: liquid fuel derived from recently grown plants (as opposed to ancient plants that made oil in the ground).

Biomass: wood waste, rice hulls, walnut or almond shells, or anything else that has Btus whose destiny is to be consumed in a Biomass Facility rather than being landfilled, used in animal feed, or otherwise recycled.

Biomass Facility: a power production facility that burns Biomass. Biomass Facilities are particularly susceptible to shortages of Feedstock and varying quality of Feedstock, since Biomass as a fuel is not part of an organized transportation infrastructure (unlike natural gas or oil). Generally, Biomass is trucked to the Biomass Facility, and therefore the fuel source must be of sufficient proximity that the cost of labor and diesel does not exceed the fuel value.

BIT: acronym for Bilateral Investment Treaty.

Black Liquor: a black soupy liquid that is a by-product of paper production. Black Liquor is combusted in Cogeneration facilities at paper mills along with Hog Fuel to create steam and electricity that are consumed in the mill.

Black Start Capability: the ability to start up a power production facility without power from an outside source. This process is used when an entire Grid has gone down, since the vast majority of power plants need outside power to start up. Once a Black Start plant is running, the rest of the system can be restored. Black Start facilities are rarely (if ever) IPPs, since utilities do not want to have to rely on outside help in blackout situations.

Blade / Turbine Blade: a component of a WTG that captures the energy of the wind by converting lift into rotation. Basically, each Blade is like an airplane wing; when the wind rushes by, the Blade moves (lifts) in the direction of the top of the "wing." Blade sets typically contain three Blades that the manufacturer has balanced to work together on a single WTG.

See also Swept Area.

BLM: acronym for the Bureau of Land Management.

Bloomberg: a financial news and data company (whose founder went on to become the Mayor of New York City) that provides terminals that bankers use to check interest rates and other financial data. Interest rate definitions in Credit Agreements and Indentures may reference rates provided by Bloomberg.

Blowdown: the initiation of gas production from a natural gas well. Commencement of Blowdown operations is the first stage in the production process. Blowdown also refers to mineral- and chemical-laden water that is removed from an evaporative condenser system of an electric generating facility so that the recirculating water in the system maintains a proper level of dissolved solids. Because water that evaporates from the system is pure, what remains for recirculation would become more and more briny unless Blowdown were removed and replaced with new water.

BOE: acronym for Barrel of Oil Equivalent.

Boilerplate: the relatively standardized text that often appears at the end of a contract.

Bond: a debt instrument that represents a fixed principal amount of money and a fixed (or floating) interest rate. Bonds are also known as Notes or debentures, though Bonds generally refer to longer-Tenor instruments than Notes (which have a Tenor of 10 years or less). Bonds are almost always issued pursuant to an agreement known as an Indenture.

Bone Dry Ton / BDT: a ton of Biomass at zero moisture content. Once different types of Biomass are made "apples to apples" through moisture removal, their relative heating value (or Btu content) can be compared. Biomass Facilities can then compare the economics of various Feedstocks.

Bonus Depreciation: the ability to expense for tax purposes a specified percentage (historically, in the range of 50% to 100%) of the cost of an asset in the year it is Placed in Service, rather than having to recover the full cost of the asset over the applicable depreciation schedule. Accelerated recovery periods generally increase the after-tax returns on an investment. The Tax Cuts and Jobs Act made most assets eligible for 100% Bonus Depreciation (often referred to as "100% expensing").

B-O-O: acronym for Build-Own-Operate.

BOP: acronym for Balance of Plant.

Borrower: a person or entity that borrows loans or receives other extensions of credit under a Credit Agreement.

B-O-T: acronym for Build-Own-Transfer.

bp: acronym for Basis Point.

Breakage Costs: the losses, costs, and expenses incurred by a Lender as a result of a Borrower's (i) failure to borrow, convert, or continue a LIBOR loan after giving notice requesting the same; (ii) failure to make a prepayment of a LIBOR loan after giving notice thereof; or (iii) making a prepayment of a LIBOR loan on a day that is not the last day of the applicable Interest Period. The Lender then borrows money from somebody else before on-lending it to the Borrower (see Match Funding), and the Lender at that time agrees to pay *its* lender a certain rate of interest for the applicable Interest Period. When the Borrower prepays the loan prior to the end of that Interest Period, the Lender will from that point no longer earn interest from the Borrower; therefore the

Lender repays *its* lender to stop accruing interest on that side. If rates have gone down since the beginning of the Interest Period, the Lender's lender will have to redeploy the repaid funds at a lower rate, thereby losing the benefit of its bargain for the balance of the Interest Period. This loss is the basis for Breakage Costs. (If interest rates have gone up since the beginning of the Interest Period, there are no Breakage Costs, since the Lender's lender is happy to be able to reinvest the repaid funds at a higher rate.) Credit Agreements make clear that Breakage Costs are payable even if a Lender does not actually Match Fund.

Brent Crude: a blend of Crude Oils that is produced in the North Sea, whose price provides one of the primary benchmarks for the prices of other Crude Oils produced around the world. Brent Crude generally costs less to refine into gasoline due to its relatively low density and low sulfur content.

Brine: geothermal fluid that is hot but does not reach the boiling point. Brine can dissolve minerals, and thus often has a high mineral content.

British Thermal Unit / Btu: a measure of heating value equal to the amount of energy needed to heat one pound of water from 60°F to 61°F at sea level.

Broken Priority: when a developer begins construction on a property prior to recording a deed of trust or mortgage in favor of its Lender. In many jurisdictions, the priority of the Mechanic's Lien / Materialman's Lien claims relate back to the date on which work first commenced on the project (as opposed to the date when the applicable mechanic or materialman began providing labor or materials). If the date of commencement of work is prior to the date that the Lender's Lien is recorded against the property, all Mechanic's and Materialman's Liens arising at any time during the development of the project may have priority over the Lender's Lien.

Brownfield: a site undergoing construction that was previously used for potentially environmentally harmful activities, such as manufacturing (as opposed to farming or residential use).

In contrast, see Greenfield.

Btu: acronym for British Thermal Unit.

Build-out Agreement: an agreement between a project Sponsor and a project company that establishes a framework for the Sponsor to develop subsequent projects in the vicinity of the project company's project. Among other things, the Build-out Agreement may address common facilities arrangements to be entered into between the projects and compensation to be paid by any subsequent project for Upwind Array Events and increased transmission or operation and maintenance costs attributable to the subsequent project.

Build-Own-Operate / B-O-O: a type of Concession granted by a governmental entity, whereby the developer is entitled to build, own, and operate a project in the applicable jurisdiction. Under the Concession agreement, the developer will be paid to operate the project during the term. At the end of the term, the developer will retain ownership of the project.

See also B-O-T.

Build-Own-Transfer / B-O-T: a type of Concession granted by a governmental entity, whereby the developer is entitled to build, own, and operate a project in the applicable jurisdiction. At the end of the Concession term, the developer will transfer ownership of the project to the government.

See also B-O-O.

Build Transfer Contract: an agreement for a developer or contractor to build a project and transfer ownership of the project to the Sponsor or intended owner upon the completion of construction. The developer or contractor may be paid a fixed fee or its costs plus some margin for building the project.

Bullet (Maturity): when the entire principal of a Bond or Term Loan is due and payable on the Maturity Date (*i.e.*, there is little or no Amortization prior to Maturity). Bullet (Maturity) is also known as a Balloon Payment.

Bureau of Land Management / BLM: an agency within the US Department of the Interior that grants and administers site Leases and rights of way for geothermal, wind, and solar facilities. The BLM controls two-thirds of the land in Nevada and vast swaths of land in other Western states.

Business Interruption Insurance / BI Insurance: insurance that is designed to pay a project's fixed operating costs (salaries, overhead, debt service, land rent, etc.) for a period of time after a casualty, to allow the owner to make a property insurance claim, order new equipment, and restore the facility to operating condition. BI Insurance includes a deductible period that is measured in days (usually 30 or 45 days).

Business MAC: a reference to the Condition Precedent in a Commitment Letter, merger agreement, or Credit Agreement that there has been no Material Adverse Change in the operations, business, or prospects of the Borrower or target company. A Business MAC should not be confused with a Market MAC, which deals with MACs in market conditions.

Call Premium: the Bond equivalent to a Prepayment Premium in a Credit Agreement. Call Premium refers to the amount of premium payable, calculated as a percentage of the principal amount of the Bonds being redeemed, upon the redemption of such Bonds prior to their maturity.

Call Protection: a feature that requires an Issuer/Borrower to pay a Call Premium or Prepayment Premium, as applicable, under an Indenture or a Credit Agreement, as applicable. Bondholders/Lenders like this feature because it gives them potential upside if the Issuer/Borrower repays the debt and because it compensates the bondholders/Lenders for the risk associated with having to reinvest the money they have been paid back. A Non-Call Period is the strongest form of Call Protection, followed by a Hard Call and then a Soft Call.

Cap: See Ceiling.

Cap and Trade: See Emission Allowance.

Capacity: the theoretical maximum production capability of an output facility. Offtakers sometimes pay for Capacity apart from actual output (see Demand Charge). Capacity is important for facility owners because they have to pay fixed costs (mainly debt service) regardless of whether their facility is in operation. Capacity is important for Offtakers because they might be subject to rules or contractual obligations that require them to have available Capacity even if it is never used (for electric utilities, this is called Reserve Margin).

Capacity Charge: the fee that customers of a commodity delivery system, such as a pipeline or power distribution system, pay to the service provider as a function of the customer's actual level of usage.

In contrast, see Demand Charge.

Capacity Factor: a percentage equal to a facility's actual output over a period (usually a year) divided by its Capacity over that period.

Capital Lease: a Lease that meets at least one of the four criteria outlined in paragraph 7 of FAS 13 and, therefore, must be treated essentially as a loan for book accounting purposes.

The four criteria are:

- Title passes automatically at end of Lease term
- Lease contains a Bargain Purchase Option
- Lease term is greater than 75% of Estimated Useful Life of leased asset
- Present Value of Lease payments is greater than 90% of leased asset's Fair Market Value

The lessee treats a Capital Lease as both the borrowing of funds and the acquisition of an asset to be depreciated; the Lease is recorded on the lessee's balance sheet as an asset and a corresponding liability (Lease payable). Periodic lessee expenses consist of interest on the debt and depreciation of the asset.

Capped FMV Lease: a Fair Market Value Lease with a predetermined Ceiling to limit FMV exposure at the end of the Lease term.

Carbon Capture and Storage / CCS: the extraction of carbon dioxide from the exhaust stream of a power plant or other emitter and eventual deposit at a storage site, where the carbon dioxide will not enter the atmosphere (*e.g.*, underground).

Cash Collateralized Letter of Credit: a Letter of Credit secured by an amount of cash that is at least equal to the face amount of the Letter of Credit. A Letter of Credit may be Cash Collateralized in order to convince the Issuing Bank to permit the Letter of Credit to remain outstanding following the Maturity Date of the credit facility under which the Letter of Credit was issued. Additionally, a Cash Collateralized Letter of Credit may be used when none of the banks wants to front for other banks, and none of the parties desires different tranches of Letters of Credit for each of the banks.

Cash Flow Available for Debt Service / CFADS: a measure of the cash flow available to pay debt service (*i.e.*, principal, interest, and fees) after deducting operating expenses entitled to be paid with priority over debt service. CFADS is often calculated by subtracting the operating expenses paid in the applicable period from the project revenues earned in that period. CFADS is often used in Project Finance to calculate financial ratios such as a DSCR or an LLCR.

Cash Grant: cash grants provided in lieu of tax credits. Under the ARRA, Renewable Energy projects that qualified for PTCs or ITCs were eligible for cash grants equal to 30% of the tax basis of qualifying property used in the project. Cash Grants were available for qualifying projects placed into service in 2009, 2010, or 2011 (or after 2011 provided construction began in 2009, 2010, or 2011 and the project was Placed in Service by a specified date). Cash Grants are no longer available for new projects. Cash Grants for operating projects may still be subject to Recapture.

Cash Market: See Spot Market.

Cash Sweep: an application of funds that takes all or a specified percentage of Excess Cash Flow and applies it to the Mandatory Prepayment of debt. Some Cash Sweeps may apply to Excess Cash Flow only until a specified Term Loan balance has been achieved for each quarter (see Target Balance Sweep). Cash Sweeps may be part of the deal structure or may apply only when something bad has happened or is projected to happen, so as to reduce the Lenders' exposure as quickly as possible.

See also Good Times Sweep, which applies only when a project is doing particularly well.

Cash Trap: an application of funds that holds Excess Cash Flow in an account while the parties wait and see whether things improve.

Sometimes the Credit Agreement calls for this money to be "aged" for a certain period of time and then applied to the Mandatory Prepayment of debt (see Distribution Suspense Account). During a Cash Trap, the Borrower may have the option to use the trapped funds to prepay the debt, which saves the Borrower from Negative Arbitrage.

Casualty Event: another name for Event of Loss.

Casualty Value: another name for Termination Value.

CCS: acronym for Carbon Capture and Storage.

CDS: acronym for Credit Default Swap.

CEA: acronym for the Commodity Exchange Act.

Ceiling: the maximum level permissible in a financial transaction. Ceiling refers to the highest price, the maximum interest rate, or the highest or maximum amount of some other factor involved in a transaction. Ceilings are intended to keep prices, interest rates, debts, and other financial instruments under certain levels. Examples include investors that attach a price Ceiling or limit to a position order, or the amount of debt above which an entity can no longer borrow. A Ceiling is sometimes referred to as a Cap, and is the opposite of a Floor.

See also Interest Rate Cap for an explanation of Ceilings in the context of interest rate Hedging.

Cellulosic Ethanol: ethanol derived from non-food plants. Scientists view Cellulosic Ethanol as one of the most promising ethanols for the future, since the Feedstock will be inexpensive and its use will not compete with human food consumption.

CEMS: acronym for Continuous Emissions Monitoring System.

Center of Main Interest / COMI: a term used in cross-border insolvency proceedings that refers to the jurisdiction with which a person or company is most closely associated. COMI helps determine the degree to which the courts of one jurisdiction are obliged to recognize and assist insolvency proceedings commenced in a different jurisdiction.

CERCLA: acronym for the Comprehensive Environmental Response, Compensation, and Liability Act.

CFADS: acronym for Cash Flow Available for Debt Service.

CFB Boiler: acronym for Circulating Fluidized Bed Boiler.

CFTC: acronym for the Commodity Futures Trading Commission.

Change of Control: a material change in the ownership of a company or the makeup of its board of directors. In Credit Agreements, a Change of Control may result in an Event of Default, while in Indentures, it may result in a Put Right.

Change Order: an agreement during construction between the facility owner and the contractor that the contractor should do something different than was originally contemplated by the construction contract. A Change Order is typically initiated by the contractor when a circumstance or an assumption has changed, and the owner previously agreed to take the risk surrounding that change. For instance, a contractor might agree to guarantee project completion by a certain date, provided there are no more than five days of inclement weather preventing crews from working. Once the inclement weather days exceed five, the contractor will seek a day-for-day extension of the guaranteed completion date through the Change Order process.

Charterparty Contract: a contract by which a shipowner rents the ship to another person (the charterer) for the transportation of cargo (such as Crude Oil or LNG).

CIM: acronym for Confidential Information Memorandum.

Circulating Fluidized Bed Boiler / CFB Boiler: a technology used to reduce sulfur dioxide emissions resulting from the combustion of coal. The coal is fed into a giant boiler with pulverized limestone and combusted while air is blown up from the bottom of the boiler, making the whole thing look like a roiling fluid. The sulfur and limestone combine in a chemical reaction to create a powder called calcium sulfate.

CLA: acronym for Coordinating Lead Arranger.

Class (Lenders): a group of Lenders that holds a particular Tranche of loans.

Class (Wind Resource): a category of a wind resource area based on average meters per second of wind speed over the course of a year, or average Wind Power Density, measured in watts of energy per square meter, at 50 meters above ground. Higher is better, and Class 7 is the highest. Class 2B or 3 is the lowest category for which a commercially viable Windfarm can be sited. Different WTG models or Turbine Blades are specified for different class sites.

Class A Interest: the class of interest held by a Tax Equity Investor in a Partnership Flip structure.

Class B Interest: the class of interest held by the developer or Sponsor (or cash equity investor) in a Partnership Flip structure.

Class Voting: a type of voting under which one or more classes under a Credit Agreement or an Intercreditor Agreement vote separately, and the affirmative vote of a majority of each class is required for an amendment, waiver, or other action to pass. Class Voting on all matters is unusual, because it gives each class a veto right, even over matters of little legitimate interest to them. Class Voting is typical when one class of Lenders cares about a particular issue and might otherwise be outvoted by the majority. For example, if a credit facility has one class of Lenders with a short Tenor and one with a long Tenor, and the Borrower requested a waiver of a Covenant to maintain reserves for major maintenance expenditures, Class Voting may be enacted, since the long-term Lenders would be much more concerned about such an issue.

Clawback: when a bankruptcy court requires a creditor to return assets or payments that are determined to be Preferential Transfers or Fraudulent Transfers. Clawback actions are always highly fact-specific and may involve a range of potential defenses, even if the statutory elements for a *prima facie* claim are met.

Clean Air Act: the major US law governing air pollution control, both for stationary sources (*e.g.*, power plants) and mobile sources (*e.g.*, vehicles). While federal legislation was passed in the 1950s and '60s to study and address air emissions, the Clean Air Act of 1970 authorized the development of comprehensive federal and state regulations to limit emissions. The 1990 amendments substantially increased the authority and responsibility of the federal government, giving rise to certain permitting requirements for new industrial facilities. The Supreme Court ruled in *Massachusetts v. EPA* that certain Greenhouse Gases are "pollutants" under the vehicle provisions of the Clean Air Act, an interpretation that may eventually extend to the stationary source program — which means that GHG emission controls could be imposed under the Clean Air Act for new or modified sources, without the need for further legislation.

Clean Renewable Energy Bond / CREB: a type of tax credit Bond that may be issued by tax-exempt electricity producers (*e.g.*, public power providers, electric cooperatives, and state, local, and tribal governments) to finance qualified Renewable Energy facilities. CREBs accrue tax credits quarterly in lieu of interest payments. Holders must include the accrued tax credits in income as interest, and can use the credits to offset their regular and alternative minimum tax liability. The total principal amount of CREBs that may be issued is capped at US$2.4 billion, of which one-third must be allocated to qualifying projects of governmental bodies, one-third to qualifying projects of public power providers, and one-third to qualifying projects of electric cooperatives.

Cleanup: a period of time during each 12-month period (*e.g.*, five business days) when a Revolver that is intended to be used solely for working capital must be paid down to zero. Cleanups prevent the Borrower from in effect using the Revolver as a Term Loan.

Clear Market Provision: an agreement found in the text of the Commitment Letter by the Issuer/Borrower not to (and sometimes not to allow its affiliates to) issue new debt, equity, preferred stock, or other securities during Syndication. The purpose of a Clear Market Provision is to protect the Lenders from having to compete for the same pool of investors with other Issuer/Borrower financings.

Close-out Amount: See Settlement Amount.

Closing Checklist: the document that lists and allocates responsibility for every piece of paper that needs to be executed and delivered as a Closing Condition.

Closing Conditions: Conditions Precedent that are applicable at the closing of a transaction.

Closing Conditions Memo / Closing Conditions Letter / CP Memo: a memo required by some banks in connection with the closing of a credit facility. The memo is prepared by counsel to the Administrative Agent. It confirms the satisfaction of certain Closing Conditions set forth in the Credit Agreement that require delivery of specified legal documents and clarifies whether any items have been deferred for delivery after closing.

Closing Dinner: a dinner organized to celebrate the closing of a transaction. The better the deal, the better the wine.

Closing Instruction Letter: an agreement among the Title Company and the other key parties to a transaction (typically the Administrative Agent or Collateral Agent and Borrower, or the purchaser and seller) with respect to the delivery and disposition of closing documents and payments that binds the Title Company to issue the final Title Insurance Policy in the form of a Pro Forma Title Policy (which is customarily attached as an exhibit to the Closing Instruction Letter). The actual Title Insurance Policy is typically issued subsequent to the closing of the transaction and the recording of documents in the public records. A Closing Instruction Letter is sometimes referred to as a "closing escrow agreement" or "title instruction letter."

Club (Deal): a loan transaction that is in effect pre-Syndicated to a group of banks (perhaps because nobody is willing to Underwrite the transaction for fear of not being able to Syndicate it after closing). Nevertheless, sometimes a Secondary Syndication occurs, the goal of which is for the initial Club to sell down to their respective Target Holds.

Coal Seam Methane: natural gas generated from within a coal deposit.

COD: acronym for Commercial Operation(s) Date.

Cogeneration: the use of a single energy input to create both electricity and thermal output for use with something else, such as heating, an industrial process, or more electricity production.

See also Combined Cycle.

Coinsurance: a risk-sharing agreement between a Title Company and one or more other Title Companies. Some Lenders require the Title Company to obtain Coinsurance, since Title Companies are generally viewed as thinly capitalized (*i.e.*, unlikely to be able to honor a claim for the full policy amount on a large policy). Coinsurance is similar to Reinsurance.

Collateral: the assets of a Borrower, Pledgor, or Guarantor subject to a Security Interest for the benefit of the Secured Parties.

Collateral Agent: the agent in a secured debt financing to whom all Security Interests in Collateral will be granted for the benefit of all the Secured Parties.

Collection System: the electrical cables at a Windfarm that run from each WTG to the interconnection point with the utility.

Combined Cycle: an efficient fossil-fired electrical generating system. A Combined Cycle captures heat that would otherwise be exhausted to the atmosphere after fuel is combusted in a gas turbine, and uses that heat to create steam for running a steam turbine. Combined Cycle is a type of Cogeneration.

Combined Operating License / COL: a license from the US Nuclear Regulatory Commission that authorizes the construction and operation of a nuclear power plant, conditioned on the successful performance of inspections, tests, analyses, and verification of acceptance criteria.

Commercial Letter of Credit: another name for Trade Letter of Credit.

Commercial Operation(s) Date / COD: the date upon which all testing and Commissioning of a project has been completed and the facility can start producing electricity for sale into the market, or the date an Offtaker agrees a facility is ready to deliver its output and is willing to pay for the Capacity and output. Prior to COD, Offtakers will often pay for any test power that the facility generated, but at a reduced rate. COD is typically a Condition Precedent to Term Conversion.

Commissioning: the process whereby a manufacturer and others oversee and sign off on equipment being placed in commercial operation.

Commitment Fee: a fee in bank lending (in the context of Construction Loans and Revolving Loans) that is paid based on the average unused commitment and is usually payable quarterly following execution of the Credit Agreement. In acquisition finance, a Commitment Fee has a different meaning, referring to a onetime fee payable to Lenders that have agreed to Underwrite the financing at closing, based on the principal amount they have committed to the deal in the Commitment Letter.

Commitment Letter: the letter by which financial institutions commit to provide loans. In the acquisition finance context, these loans generally consist of a senior secured Term Loan facility and one or more bridge loan facilities to "bridge" any Notes offering that is expected to be part of the permanent financing — meaning that the bridge loans are committed financing that will be available if the company is unable to issue the Notes successfully in time to fund the acquisition closing. The

Commitment Letter consists of the text of the letter, along with annexes and exhibits that lay out the terms of the facilities and the Conditions Precedent to funding.

Commitment Papers: a catch-all term referring to the Commitment Letter and Fee Letter (and the related annexes and exhibits).

Commodity Exchange Act / CEA: a US federal law, as amended by, *inter alia*, the Dodd-Frank Act, that regulates the trading of commodity Futures and Swaps (Regulatory), and establishes the statutory framework under which the CFTC operates.

Commodity Futures Trading Commission / CFTC: a US agency that has regulatory authority over commodity Futures and Swaps (Regulatory), as well as general antifraud and anti-manipulation enforcement authority over commodity transactions.

Comprehensive Environmental Response, Compensation, and Liability Act / CERCLA: a US environmental statute often referred to as "Superfund." CERCLA imposes liability for the costs of responding to and Remediation of a Release of Hazardous Materials into the environment. Liability can be imposed on current owners and operators of a facility even if they did not cause the Release. CERCLA also grants the EPA authority to investigate and Remediate sites or to order the responsible parties to conduct an investigation or a Remediation. CERCLA is the leading reason that owners or operators of a facility conduct environmental diligence before becoming involved with a site.

Concentrating Photovoltaics / CPV: a system that uses large lenses or curved mirrors to focus sunlight on a small area of highly efficient Photovoltaic cells. The cost per kWh to use CPV is lower than that of using pure PV. Additionally, CPV may be used in smaller areas than those of traditional PV projects. CPV is also known as "concentrating solar."

Concession: an agreement by a host country that sets out the rules under which a foreign entity is allowed to operate and grants the foreign entity rights. For example, a host country might give a phone company a Concession to operate a cell-phone business exclusively (or with limited competition) in an area, in exchange for the company's agreement to invest a certain amount in capital equipment over time. The parties will agree on Tariffs, profit repatriation rights, tax rates, extension terms, ownership rights at end of term, etc.

Condemnation: the process by which a government body (federal, state, or subdivision of a state) or public utility takes private property for public use (*e.g.*, to build a T-Line) in exchange for just compensation. Condemnation is also known as a "taking."

See also Eminent Domain.

Condensate: Hydrocarbons that are gaseous while in a Reservoir, but condense to form a liquid as they rise to the surface, where the pressure is much lower. Condensate is separated from the primary product (Crude Oil or natural gas) and sold separately. As Condensate is a by-product, output is dictated by production of the primary product and not price for the Condensate. Condensate can also refer to high-gravity, low sulfur Crude Oil produced from shale formations.

In power generation technology that uses a steam turbine, Condensate is the water that forms when steam loses pressure and temperature. Only water can be put into a boiler, so to recycle steam after it runs through a steam turbine, it must first be reduced to Condensate, either through air cooling (those giant hourglass-shaped structures at nuclear power plants are air-cooled condensers) or water cooling.

Condition Precedent / CP: a requirement that must be met in order to close a transaction or to be entitled to Draw under a Revolver or Construction Loan facility, including delivery of documents, truth of Representations and Warranties, and possession of sufficient funds. Other events may be conditioned upon the satisfaction of CPs, such as availability of a particular Tranche of debt, Term Conversion, or the effectiveness of a Project Document.

Condition Subsequent: a requirement that must be met after the signing of a contract (such as an acquisition agreement, a Credit Agreement, or an EPC contract) but before one of the parties is required to take an action. A buyer may sign a contract to buy a '65 Mustang for US$1,000, subject to the Condition Subsequent that the seller will get her husband to sign over the pink slip before the buyer has to pay the money.

Confidential Information Memorandum / CIM: the marketing book used to Syndicate credit facilities. A CIM also refers to the marketing book used in an M&A or auction context. A CIM is also known as a Bank Book.

Confirmation (Bankruptcy): the approval of a plan by a US bankruptcy court pursuant to a Confirmation order.

Confirmation (Hedging): the document that evidences the economic terms of a trade (which is generally referred to as a "transaction" under an ISDA Master Agreement). Typically the transaction is effected over the phone (aka trading over "taped lines"), even for very large transactions, and then one party (usually the Hedge Provider) follows up with the Confirmation.

Confirming Bank: a bank that a Beneficiary may use if the Issuing Bank of a Trade Letter of Credit does not have an easily accessible branch. The Beneficiary can Draw the Letter of Credit on the Confirming Bank, which in turn seeks reimbursement from the Issuing Bank.

Consent (to Assignment): an agreement that gives Lenders the right to receive notice of a Borrower's Default under a contract between the Borrower and a third party, the right to Cure that Default within a Cure period that is usually longer than that afforded to the Borrower under the contract, and the right to consent to amendments to the contract, among other things.

Project Finance Lenders rely on the value of contracts and want to ensure that the Borrower's important contracts cannot be terminated by counterparties. Even though Consent (to Assignment) is non-descriptive, the phrase "the Consent with [insert name of Borrower's counterparty]" is commonly understood.

Sometimes, a Consent is used as a vehicle to amend the underlying contract. Often, the Borrower and its counterparty have just spent months hotly negotiating the contract. When the Lender finds a perceived defect, the last thing the contracting parties want to do is formally amend the contract — but they might allow an amendment through Consent.

Consent (to Assignment): is also known as a Direct Agreement.

Construction Loan: a loan that the Borrower borrows in periodic disbursements over a specified availability period to fund construction of a project and then pays back in a single Bullet payment at the end of the construction period or, more typically, converts into a Term Loan.

Contiguity: when two parcels of land are connected to each other, without a gap. Contiguity is critical when assembling property interests to create a project site or a route for pipelines and T-Lines. Imagine a T-Line with a foot of conductor missing somewhere — those electrons cannot be trained to jump. If needed, Title Insurance Policies can include an Endorsement insuring Contiguity.

Contingency: extra money in a construction budget that is not earmarked for any particular use at the time of closing. History has shown that almost every project needs Contingency. Depending on the stage of development and construction, the complexity of the technology, the certainty of various Project Costs, the number of contractors available to blame each other for oversights, the experience level of the contractors, and other factors, Contingency might be anywhere between 5% and 15% of the overall Project Costs. Developers do not want Contingency to be too high, since it consists of (expensive and rare) equity and debt.

Contingency can also mean planning for an outage of a facility connected to the electric Grid. The reliability of the Grid is based on single-contingency (one bad thing) or double-contingency (two bad things interacting with each other) planning.

Contingent Liability: a potential liability that may arise, depending on the outcome of future events.

Continuous Emissions Monitoring System / CEMS: a system imposed as a permit condition in most major industrial facilities. A CEMS continuously monitors emissions and generates continuous electronic (and in some cases paper) records of emissions of specific pollutants over time. The results are typically reported to the permitting agencies and are often reviewed by the project Sponsor and IE for compliance evaluation and audit purposes.

Contract for Differences: a type of Swap agreement in which the seller receives a guaranteed minimum price, or "fixed price," from the buyer and, in exchange for that revenue certainty, agrees to refund to the buyer any revenues it receives from the market for the product in excess of the fixed price. C&I PPAs with renewables projects often take the form of Contracts for Differences.

Control: in the UCC context, Control is a means of establishing Perfection over certain asset classes, such as securities accounts, deposit accounts, and securities.

In the securities and contractual context, Control has a range of definitions, factoring in ownership percentages, management roles, shareholder agreements, directorships, and the degree to which others have any of these things. One common definition is "the possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract or otherwise."

Conversion Service: a service provided by a generation owner/operator to a Toller under a Tolling Agreement to convert fuel (supplied by the Toller) into electric capacity and energy (delivered to the Toller). Conversion Service is in some sense the flip side of tolling service provided by a Toller.

Coordinating Lead Arranger / CLA: a designation for the primary or original Arranger engaged by a Borrower or Sponsor in connection with structuring a financing in a Syndicated transaction (where many Titles are handed out and there are often a number of Arrangers). The CLA is usually compensated somewhat better than the other Arrangers for its efforts.

Corporate/Commercial and Industrial / C&I: a type of PPA with a corporate or industrial power purchaser rather than a utility Offtaker. A C&I PPA enables a corporation to purchase Renewable Energy directly from a project owner.

Cost Segregation (Cost Seg) Analysis: an analysis that segregates and allocates the direct and indirect costs of acquisition and construction of a project among the various components in order to determine the initial tax basis of the different classes of property for MACRS depreciation and (if applicable) ITC purposes.

Cost-Plus: a pricing mechanism in construction contracts whereby the contractor passes through all costs to the owner and is paid a fixed percentage of those costs as its profit. Because the contractor is economically motivated to increase costs, in order to increase its own profits, Cost-Plus arrangements are typically "open book," meaning the owner is involved in deciding which subcontractors and suppliers will be used and sees their costs.

Co-Tenancy Agreement: an agreement governing the relationship among people who have an interest in real property at the same time (whether by tenancy in common, joint tenancy, or tenancy by the entirety). Parties often enter into a Co-Tenancy Agreement when multiple projects share interconnection facilities or other ancillary facilities and the property on which such facilities are located.

See also Shared Facilities Agreement.

Covenant: an agreement to do something (Affirmative Covenant), to not do something (Negative Covenant), or to maintain something (such as a financial ratio) in a certain state or better (Maintenance Covenant).

CP: acronym for Condition Precedent.

CPV: acronym for Concentrating Photovoltaics.

Crack Spread: the difference between the gross proceeds for selling refined petroleum products (such as gasoline and aviation fuel) on the Spot Market and the gross cost of Crude Oil from which such products are refined. All other costs of production must be covered by the Crack Spread if the refiner is to make any profit by Cracking the long-chain Hydrocarbon chains of Crude Oil into shorter-chain petroleum products.

Cracking: a complex process involving high pressures and temperatures in which heavy, complex Hydrocarbon molecules are broken down into smaller, lighter molecules. In an oil refinery, LPG, gasoline, diesel, and other products are produced by Cracking Crude Oil into shorter chemical chains. Cracking is also a state that junior lawyers and bankers exhibit toward the end of a deal.

CREBs: acronym for Clean Renewable Energy Bonds.

Credit Agreement: the main agreement governing the terms and conditions under which credit facilities are provided by Lenders to Borrowers, including Construction Loans, Term Loans, Revolving Loans, and Letters of Credit. Credit Agreements are sometimes called a Financing Agreement or, mainly outside the United States, a Facilities Agreement.

Credit Bid: a bid by a Secured Party up to the face amount of its debt at a Foreclosure or 363 Sale of the assets constituting Collateral for its loan or in a bankruptcy of its Borrower.

Credit Default Swap / CDS: a contract, using ISDA form documentation, whereby (i) one party (the "seller") agrees to pay the other party (the "buyer") upon the occurrence of certain events, such as bankruptcy, restructuring, or payment Default, under a debt undertaking, such as a loan, Bond, or Note (a "reference obligation"), of an obligor (a "reference entity") and (ii) the buyer makes fixed payments to the seller for the CDS protection.

Credit Enhancement: the improvement of the credit quality of a company or its securities by employing resources, financial instruments, or the credit of another entity to support such credit quality. Common methods of Credit Enhancement include Guarantees, Letters of Credit, surety bonds, reserve accounts, and cash collateral accounts.

Credit Support Annex / CSA: a preprinted form Collateral agreement published by ISDA under which parties to Derivatives transactions provide Collateral to secure their obligations in the event of an early termination under an ISDA Master Agreement. Various iterations of the CSA are available to market participants, though they can generally be divided among (i) New York law-governed CSAs and (ii) English law-governed CSAs. The New York law CSA provides for the transfer of Collateral in the form of a Security Interest. Paragraph 13 of the New York law CSA is the portion of the form used for customization, similar to how the ISDA Schedule is used to customize the ISDA Master Agreement. The CSA forms a part of the related ISDA Schedule (as opposed to being a stand-alone document).

Creeping Expropriation: an Expropriation that is implemented gradually through a series of actions that individually would not constitute an Expropriation. For example, the gradual imposition of fees and taxes on a project that, when viewed as a whole, deprives the project of substantial value, is a Creeping Expropriation. The term is used in the context of claims under PRI policies and Bilateral Investment Treaties.

Criteria Pollutants: a series of pollutants the Clean Air Act identifies as target pollutants (because they create smog, acid rain, and other problems), requiring the development of standards (or NAAQS). Criteria Pollutants include ground-level ozone, nitrogen oxides, sulfur oxides (principally sulfur dioxide), carbon monoxide, particulate matter, and lead. All air basins in the United States have NAAQS for each Criteria Pollutant, although lead is no longer a factor, since the United States now uses unleaded fuels.

Critical Path (Item): a task that must be completed on time in order to avoid delaying an entire project that multiple teams are working on (with different teams focusing on different aspects on different schedules). Once the task is completed, or when another path has experienced a schedule adjustment, a new task may become the Critical Path (Item).

Cross-Acceleration: a variation of Cross-Default whereby an Event of Default is triggered under an agreement (*e.g.*, a Credit Agreement or an ISDA Master Agreement) upon the Acceleration of a party's obligations under another agreement in respect of indebtedness (*e.g.*, a different Credit Agreement or ISDA Master Agreement) in excess of a designated threshold amount, following a Default by such party (or its credit support provider, as applicable) under such other agreement.

Cross-Default: an Event of Default under an agreement (*e.g.*, a Credit Agreement or an ISDA Master Agreement) triggered by a party's (or its credit support provider's, as applicable) Default under another agreement in respect of indebtedness (*e.g.*, a different Credit Agreement or ISDA Master Agreement) in excess of a designated threshold amount.

Crossing Permit: an authorization to cross public property (such as a road, channel, or levee) for the purpose of constructing, operating, or maintaining T-Lines or other Improvements. Railroads use the term when granting entities permission to cross over or under their tracks. A Crossing Permit is revocable, unlike other kinds of interest in real property, such as a Fee, a Leasehold, or an Easement. This revocability causes lawyers to lose sleep, but no railroad will give any authorization more solid than a Crossing Permit, so we live with it.

Crude Oil: unrefined petroleum or liquid petroleum. Found underground, Crude Oil is extracted and refined into a number of products. Crude Oil that is low in sulfur (generally less than 0.5%) is referred to as "sweet," while high-sulfur Crude Oil is "sour."

Crush Spread: the difference between the gross proceeds for a unit of Ethanol on the Spot Market and the gross cost of acquiring the corn necessary to distill and process the Ethanol, having made stated assumptions about the efficiency of the conversion technology. The Crush Spread must cover all other costs of production if the Ethanol producer is to make a profit.

See also Spark Spread and Crack Spread.

CSA: acronym for Credit Support Annex.

Culm: a by-product of coal mining that is not commercially marketable. Culm, or "high-Btu dirt," is kept in huge piles in coal-producing regions and used to backfill depleted coal mines. Culm also serves as Feedstock in Waste Coal facilities.

Cultural Resource Survey: a field assessment performed by a qualified archaeologist, who examines a particular site or linear route for evidence of cultural resource artifacts; depending on the results, project siting may be altered. Cultural resource artifacts can include Native American artifacts, burial sites, former habitations, and more recent matters of cultural significance, such as former slave quarters or pioneer artifacts and dwellings. The fieldwork is usually preceded by a literature and library search. During the fieldwork, artifacts and sites are carefully catalogued and preserved as appropriate. Various federal and state statutes govern these matters, and the survey results are typically reported to and reviewed by the relevant State Historic Preservation Officer.

Cure: coming into compliance with a Covenant or otherwise eliminating a Default or Event of Default. The Credit Agreement might provide that a certain Default becomes an Event of Default only after it has been in effect for a certain period (the Cure period, or grace period). Ideally, the Borrower will Cure within that period to prevent an Event of Default from occurring (which may allow the Lenders to exercise remedies).

In a Leveraged Lease, Cure is the right of the lessor (and any Owner Participant) to remedy lessee Defaults (when no lessor Defaults exist) to prevent the Lenders from exercising remedies under either the security agreement with the lessor or the Lease that has been assigned to the Lenders.

Currency Swap: a contract documented under an ISDA Master Agreement whereby two parties allocate the risk as to changes in the value of one currency relative to the value of another. For example, if a buyer agrees in June to buy a flat in Paris for €1 million in December, when the buyer has a certificate of deposit of US$1.25 million maturing, the buyer might enter into a Currency Swap in June whereby the buyer's counterparty (*i.e.*, the seller) agrees to deliver to the buyer in December €1 million, and the buyer agrees to concurrently deliver US$1.25 million to the counterparty.

Curtail / Curtailment: an instruction by an Offtaker to an owner to not Dispatch or to reduce the output of a facility, or a restriction on usage of a pipeline or T-Line by the operator when demand exceeds Capacity (the dropped customers are usually referred to as having Interruptible service). Curtailment can occur for physical reasons (such as transmission congestion or emergency situations on the Grid) or economic reasons (such as excess generation during low-demand periods).

Cut-In Wind Speed: the speed of wind at which point a WTG begins to produce electricity, as the speed is sufficient to overcome any inertia and internal friction inherent in the mechanics.

Cut-Out Wind Speed: the speed of wind at which point a WTG is programmed to shut itself down so as not to be damaged, as the speed is very high.

Dark Spread: same as a Spark Spread, except coal is the fuel, rather than natural gas.

Datedown Endorsement: an Endorsement to Title Insurance that brings the date of the policy forward to the date of the Endorsement. This Endorsement describes any Encumbrances or other matters affecting

Title to the property that have been recorded against the property since the date of the initial Title Insurance Policy, and insures that no additional Encumbrances since the date of the initial Title Insurance Policy take priority over the Lenders' Mortgage or Deed of Trust. A Datedown Endorsement is customarily obtained in connection with a Term Conversion or a loan modification transaction, and is typically simply an expansion of the coverage provided in a 122 Endorsement.

Deal Creep: no, a Deal Creep is not a person (though if it were, on any given deal we could all identify the person). A Deal Creep is the process whereby over the course of negotiating a transaction, a deal term imperceptibly becomes more and more burdensome on one of the parties, which finally says it would never have agreed to the term if it had been proposed at the outset. Because each evolutionary step is usually justifiable, claiming Deal Creep does not always succeed in having the term scaled back.

Debottlenecking: increasing the Capacity of existing facilities through the replacement or modification of existing equipment to remove or ameliorate throughput restrictions. Debottlenecking generally increases Capacity for a fraction of the cost of building new facilities.

Debt Service Coverage Ratio / DSCR: the ratio of cash flows from a project that remain available to pay debt service after payment of operating costs (*i.e.*, CFADS) to debt service. In Project Finance, DSCR is generally not calculated on an accrual basis, but rather on a cash basis. DSCR is calculated periodically, typically looking back one year. Occasionally, people try to use a projected DSCR as the basis for a Distribution Condition. But doing so can get messy, since the assumptions may be proved wrong if the projections are based on the closing date financial model, and trying to agree on new assumptions can be a battle.

See also Distribution Suspense Account.

Debt Service Reserve / DSR: cash Collateral held by Lenders to pay debt service in case a hiccup emerges in cash flows. DSR is almost always sized at six months' worth of debt service.

Debtor in Possession / DIP: a debtor that remains in possession of its bankruptcy estate (as opposed to, for instance, having a Chapter 11 trustee appointed to run the bankruptcy estate). In Chapter 11, a Debtor in Possession has most, if not all, of the powers that a trustee of the debtor's estate would have if the trustee were in possession of the estate. The term Debtor in Possession is also used in Chapter 12.

Deed in Lieu of Foreclosure / Deed in Lieu: an agreement by an owner to "hand the keys" to the Lender instead of making the Lender go through the hassle of Foreclosure. Deed in Lieu is a fairly common approach in downside cases, indicating that not all Acceleration scenarios are contentious between the Borrower and Lenders. Often the Sponsor has other relationships with some or all of the Lenders, which it wishes to preserve to the extent possible. Sometimes the owner is given a nominal payment (such as payment of its legal fees) to cough up the Deed in Lieu.

Deed of Trust: the document that creates a Lien on real property to secure the Borrower's debt. A Deed of Trust is like a Security Agreement, but for real property. The law of the jurisdiction where the property is located will dictate whether a Mortgage or Deed of Trust is the appropriate instrument, but they are functionally equivalent (although a Deed of Trust requires that a third party — such as a trustee — be included in the agreement as the party that is granted the property for the benefit of the Secured Party).

Default Indentures and Credit Agreements: generally have three stages of trouble: the Default, the Event of Default, and Acceleration. At stage one, the Default, the Issuer or Borrower has violated some provision of the Indenture or Credit Agreement. Left un-Cured for a specified period of time, together (in some cases) with notice from the Administrative Agent or Trustee, a Default will mature into an Event of Default.

Defaulting Lender: a Lender that fails to fund a loan pursuant to its commitment. Credit Agreements, which used to only contain terms that fretted about a Borrower's financial distress or failure to comply with Credit Agreement provisions, now also include terms governing which rights Defaulting Lenders give up.

Defeased Lease: a Lease transaction in which all of the rent and purchase option (if exercised) obligations of the lessee have been economically (and sometimes legally) defeased by the lessee or one of its affiliates depositing funds with one or more other parties that agree to make the lessee's rental and/or purchase option payments when due. The IRS has challenged a number of Lease transactions on the basis that they were defeased.

Deficiency: the difference between how much a Secured Party is owed and how much it realizes upon disposing its Collateral in Foreclosure.

Delay in Start-Up (DSU) Insurance: insurance for project owners (and, if applicable, Lenders and third-party contractors) against the financial consequences of a delay in project completion in prescribed circumstances, typically arising from an insured physical damage event.

Delay LDs: Liquidated Damages payable for late completion of contract performance, or the contractual manifestation of “time is money.” A project owner enters into a web of contracts, with many parties relying on others' timely and quality performance. Delay LDs are ideally sized to compensate the owner for any costs incurred as a result of the delay, including increased IDC, lost revenue, and LDs payable by the owner to others (but typically excluding equity return to the owner).

Delivered Ex-Ship / DES: a trade term describing a set of rules under which a seller must deliver goods to a buyer at an agreed port of arrival. The seller retains liability for the goods until they are delivered. The 2010 Incoterms rules officially replaced DES with Delivered at Place (DAP) and Delivered at Terminal (DAT), though DES is still used as a term of art.

Demand Charge: the fee that customers of a commodity delivery system, such as a pipeline or power distribution system, pay to the service provider as a function of the customers' Firm Capacity (*i.e.*, theoretical peak usage). While customers typically vary in their usage of a commodity delivery system, the system owner still has to size the system such that all Firm customers can draw their Firm Capacity at once, and Demand Charges cover the service provider's capital and maintenance costs to permit that sizing. Think of a Demand Charge as a payment to the service provider just for being there.

In contrast, see Capacity Charge.

Demand-Side Management / DSM: the concept that maintaining Reserve Margin by reducing demand can be considerably less expensive than doing so by increasing Capacity. Since historically utilities were rewarded for spending money (their regulated rate of return being calculated off invested capital), they were not incentivized to do the societally efficient thing by reducing demand. DSM includes both motivating electricity consumers to reduce demand and seeing that utilities are fairly compensated for singing from that same songbook.

Denatured Ethanol: potable Ethanol made inconsumable through the addition of a poisonous denaturant, such as unleaded gasoline. Denaturing does not incur alcohol tax.

Deposit Account Control Agreement / DACA: a type of Account Control Agreement.

Depositary Agreement: an agreement in Project Finance transactions that provides for most of a Borrower's accounts to be established as blocked accounts held by a Depositary Bank. The Depositary Agreement sets forth detailed provisions regarding which funds are to be deposited in which accounts and the conditions the Borrower must meet to access funds in the accounts. These provisions include the Waterfall and terms governing the Distribution Suspense Account. The Depositary Agreement also acts as an Account Control Agreement to Perfect the Collateral Agent's Lien over the Borrower's accounts subject to the agreement.

Depositary / Depositary Bank: a bank that agrees under a Depositary Agreement to hold a Borrower's accounts in a Project Financing and to apply funds in the accounts in accordance with instructions that comply with the terms of the Depositary Agreement.

Derivative: a financial instrument that derives its value by reference to another rate, currency, Index, group of Indices, or other financial instrument, indicator, or commodity that can be traded in financial markets in its own right. Derivatives are used for Hedging, investment, and funding purposes, and are treated as separate from the underlying reference to which they are linked. Examples of Derivatives contracts include: (i) contracts to buy or sell something for future delivery (*i.e.*, Forwards, Futures); (ii) contracts involving an option to buy or sell financial or non-financial instruments at a fixed price in the future (*i.e.*, Options); (iii) contracts to exchange one cash flow for another (*i.e.*, Swaps); and (iv) many combinations of the foregoing. Derivatives contracts are broadly classified on the basis of the underlying asset through which their value is derived (*i.e.*, interest rates, commodities, FX, equity, or credit Derivatives).

Development Finance Institution / DFI: a financial institution that typically provides credit in the form of higher-risk loans, equity positions, and risk guarantees to private sector projects in developing countries as an alternate source of financing support where conventional lending may not be available.

Development Well: a well drilled in a proven production area to extract Hydrocarbons.

DGS: acronym for Distiller Grain Solubles.

DIP Financing: financing that is arranged, pursuant to US Bankruptcy Code Section 364, for a Debtor in Possession for the period during which it is in the Chapter 11 process. Notably, claims for principal, interest, and fees under a DIP Financing are typically allowed as super-priority claims. These claims are secured by Liens on any unencumbered assets, by junior Liens on any assets subject to prior Liens, and in certain situations by priming Liens on any assets subject to prior Liens. Many other jurisdictions have looked at implementing a similar concept.

Direct Agreement: another name for Consent (to Assignment). The term Direct Agreement is commonly used outside the United States. The term name is more descriptive than "Consent," and because there can be other types of consent in a deal, less confusing.

Dirty Hedge: another name for Imperfect Hedge.

Disclosure Schedules: schedules containing detailed information (*e.g.*, a listing of material contracts) or qualifications or exceptions in connection with a Borrower's Representations and Warranties.

Disclosure Statement: a written statement that contains "adequate information" as defined in US Bankruptcy Code Section 1125(a) regarding a Chapter 11 plan. After a US bankruptcy court approves a Disclosure Statement, that statement is distributed to all creditors and equity security holders that are entitled to vote on the Chapter 11 plan, for the purpose of assisting those parties in making an informed judgment concerning the plan.

Dispatch: the ability by an Offtaker of a power plant to instruct the owner/operator to start, stop, increase, or decrease output of the plant. A Dispatch may occur through oral instructions or electronically, through Automatic Generation Control.

Dispatchability: the susceptibility of a power source to be Dispatched. For example, wind power is highly non-Dispatchable, while hydropower is highly Dispatchable.

Distiller Grain Solubles / DGS: a by-product of the use of grains (usually corn) in the production of Ethanol. DGS has a high content of protein and sugar, and is mainly used as feed. If DGS is to be shipped more than 50 miles or stored, it is typically dried to avoid spoilage.

See also DDGS.

Distributed Generation: the concept of satisfying Load by small-generation sources at or near Load centers, as opposed to having large power stations transmit over large distances on large T-Lines to large Load centers (aka cities). Residential or commercial rooftop PV installations are the best example of Distributed Generation. The jury is still out as to whether the typically high costs of Distributed Generation are too much to pay for the benefits.

Distribution Conditions: the conditions that must be satisfied before dividends (aka distributions) are permitted to be released from a Distribution Suspense Account or other account of a Borrower, subject to the terms of the Depositary Agreement, to an upstream affiliate of the Borrower (typically the Sponsor). Distribution Conditions typically include the following: (i) Term Conversion has occurred (or the project has been operating for a specific amount of time); (ii), a minimum historical DSCR test has been satisfied; (iii) no Defaults or Events of Default have occurred and are continuing; and (iv) all reserve accounts are filled.

Distribution Suspense Account: an account in which dividends (aka distributions) are held until they are permitted to be released to an upstream affiliate of the Borrower (typically the Sponsor), subject to the terms of the Depositary Agreement, including satisfaction of the Distribution Conditions. Some Credit Agreements allow these distributions only when certain financial performance conditions have been satisfied, such as a minimum historical Debt Service Coverage Ratio. If the DSCR is above 1.0x, but below the Distribution Condition level (perhaps 1.20x), amounts that would otherwise have been distributed are sometimes held in a Distribution Suspense Account to see what happens over the next few quarters (usually one or two years).

If the DSCR Distribution Condition is met during the relevant period, the funds in the Distribution Suspense Account are released. If it is not, they are often applied to prepay debt (which eventually bolsters DSCRs) or run back through the Waterfall.

DNV GL Type Certificate: a certificate that verifies the robustness of WTG designs, giving owners and Lenders some level of comfort. It is issued by Germanischer Lloyd (GL), part of the DNV GL Group. A DNV GL Type Certificate is typically not issued until a WTG model has experienced a significant level of run time.

Documentary Condition: a document that a Beneficiary must present to an Issuing Bank, in the context of a Draw of a Letter of Credit. For a Trade Letter of Credit, Documentary Conditions typically include a certificate by an officer of the Beneficiary stating that the goods that are the subject of the underlying contract have been shipped in full conformance to the contract, as well as a bill of lading from the shipping company (a document indicating the goods have been accepted for shipment). For a Standby Letter of Credit, Documentary Conditions typically include a certificate by an officer of the Beneficiary stating that the Account Party is in Default of an underlying obligation and owes money to the Beneficiary or that some other specified condition has occurred, which allows the Beneficiary to Draw on the Standby Letter of Credit.

Dodd-Frank Wall Street Reform and Consumer Protection Act / Dodd-Frank Act: a US federal law passed in the wake of the 2007-08 financial crisis that provides for federal oversight of the Derivatives market and entities that participate in the market. Title VII of the Dodd-Frank Act sets out Derivatives rulemaking. Regulatory authority under Title VII is divided among the CFTC, the SEC, and, in certain instances, prudential regulators. The CFTC generally has jurisdiction over the Swaps (Regulatory) market, while the SEC generally has jurisdiction over the Security-Based Swaps market. Title VII established a statutory framework to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (i) providing for the registration and regulation of Swap dealers, Security-Based Swap dealers, major Swap participants, and major Security-Based Swap participants; (ii) imposing Margining, clearing, and trade execution requirements on certain Derivative products; and (iii) creating record-keeping and real-time reporting regimes with respect to Swaps and Security-Based Swaps.

In change of law provisions in Credit Agreements (under which Lenders may be entitled to have their increased costs paid by the Borrower if the cost increase results from change of law, or may be excused from providing LIBOR loans if doing so becomes illegal as a result of change of law), Lenders typically will not accept change of law risk on anything to do with the Dodd-Frank Act.

DOE Loan Guarantee: a Guarantee provided by the US Department of Energy under a program first established in 2005 to support and promote innovative clean energy projects, among others. The DOE Loan Guarantee gained notoriety after solar panel manufacturer Solyndra failed.

Downstream: the refining of Crude Oil, and the marketing and distribution of refined petroleum products.

See also Upstream.

Draw: to make a claim against a Letter of Credit or a borrowing under a credit facility. Draw may also refer to the proceeds of such a claim or loan. A Beneficiary can Draw a Letter of Credit by presenting a Sight Draft, the Letter of Credit, and any Documentary Conditions.

Dried Distiller Grain With Solubles / DDGS: dried DGS that will be shipped or stored rather than sold for use near an Ethanol plant.

Dry Closing: a lending transaction in which all of the documents are executed and delivered but no money flows, pending satisfaction of one or more Conditions Subsequent, at which point the Financial Closing will occur (*i.e.*, the loans will be made).

Dry Steam Geothermal Resource: geothermal steam that can be expanded directly through a steam turbine.

DSCR: acronym for Debt Service Coverage Ratio.

DSM: acronym for Demand-Side Management.

DSR: acronym for Debt Service Reserve.

Dutch Auction: a style of auction used when the market demand will result in multiple sellers or buyers. In a situation with multiple sellers, the lowest bidder's sale offer is accepted, and each succeeding next lowest bidder's sale offer is accepted, until all buyers have what they need. The price of the last accepted offer is given to all sellers. In a situation with multiple buyers, the highest buy offer is accepted, then the next highest, etc., with all buyers ultimately paying the bid price of the last buy offer accepted. In each case, the last offer accepted is called the "market clearing price." This approach encourages the sellers to bid as low as possible and the buyers to bid as high as possible, since they know they will not be punished economically for bidding aggressively.

Early Buyout Option / EBO: an option of a lessee to purchase the leased asset and terminate the Lease prior to the end of the Basic Term of the Lease. If the Lease is intended to be a True Lease for tax purposes, an EBO should be at Fair Market Value or a price that is supported by a forward-looking appraisal. EBOs put pressure on True Lease treatment and should be reviewed by tax experts.

Early Site Permit: a permit that the US Nuclear Regulatory Commission may grant to nuclear power plant developers approving a physical site for one or more nuclear power facilities before the developers expend substantial resources in development activities that may ultimately prove unviable.

Easement: the right to use another person's property for a stated purpose, such as vehicular travel, pipeline or T-Lines, or temporarily for construction. In Windfarm developments, the developer's right to the project site itself may take the form of Easements. Easements may also restrict a property owner from using the property in specified ways — such as putting another project's WTGs on the property.

ECA: acronym for Export Credit Agency.

ECCA: acronym for Equity Capital Contribution Agreement.

ECP: acronym for Eligible Contract Participant.

EEI Master Power Purchase and Sale Agreement: a Master Agreement published by the Edison Electric Institute that parties use to buy and sell physical power. Elections are made on a cover sheet, and additional provisions can be included as "Other Changes."

EIR: acronym for Environmental Impact Report.

EIS: acronym for Environmental Impact Statement.

Eligible Contract Participant / ECP: ECPs include, among other things: (i) financial institutions, insurance companies, and investment companies; (ii) corporations with total assets in excess of US$10 million; (iii) corporations with a net worth of more than US$1 million that are using the Swap (Regulatory) in connection with their business or to Hedge commercial risk; (iv) commodity pools and employee benefit plans meeting certain criteria; (v) governmental entities; (vi) regulated broker-dealers, Futures Commission Merchants, floor brokers, and floor traders; (vii) individuals with more than US$10 million invested on a discretionary basis; and (viii) individuals with more than US$5 million invested on a discretionary basis that are using the Swap (Regulatory) to manage risk associated with their assets/liabilities. Under the CEA, it is illegal for non-ECPs to enter into a Swap (Regulatory), except on (or subject to the rules of) a CFTC-registered designated contract market. Under US Derivatives regulations, a Guarantee of a Swap (Regulatory) would itself constitute a Swap (Regulatory) subject to certain regulatory requirements; US law therefore requires that Guarantors of Swap (Regulatory) obligations also be ECPs.

Eminent Domain: the inherent power of a governmental entity to effect a Condemnation.

EMIR: acronym for the European Market Infrastructure Regulation.

Emission Allowance: a regulatory authorization to emit a specified quantity of air pollutant (*e.g.*, a ton of sulfur dioxide or nitrogen oxide) pursuant to a Cap and Trade (or emissions trading) program. Most such programs require an affected source to hold and/or surrender a number of allowances equivalent to the number of tons emitted of the regulated pollutant. The EPA's Acid Rain Program and NOx Budget Trading Program, the Regional Greenhouse Gas Initiative (a multistate program), and Greenhouse Gas credits in the EU are common examples of Cap and Trade programs. Emission Allowances can be (and often are) bought and sold on exchanges.

Emission Offset: an emission reduction required to be obtained by a new source to offset emission increases as a condition to commencing operation of a major source subject to the Clean Air Act. This requirement can be met with Emission Allowances (if available), or by creating new allowances at the new source or at other sources. Companies often get creative in generating Emission Offsets, including replacing old vehicles or converting commercial vehicles to alternative fuels. All Emission Offsets need to be approved by pertinent regulatory agencies (*e.g.*, the EPA as well as state and local air pollution control districts).

Emission Reduction Unit / ERU: a unit representing the reduction of Greenhouse Gases, particularly under the mechanisms set forth in the Kyoto Protocol to help countries with binding GHG emissions targets meet their obligations. An ERU represents the equivalent of reducing 1,000 kg of carbon dioxide emissions.

Employment Retirement Income Security Act of 1974 / ERISA: a US federal law that establishes minimum standards for pension plans in private companies. Because pension plan liabilities can be large and difficult to estimate, Project Financings (including the Negative Covenants, Representations and Warranties, and Events of Default sections of Credit Agreements) are structured so as to ensure that neither the Borrower nor any affiliates that would grouped with the Borrower for purposes of assessing liability under ERISA fall within its jurisdictional grasp.

Encroachment: when a party's Improvements are improperly located on (or hang over) an adjacent property. A typical Encroachment includes a fence built on the wrong side of the property line. A Title Company will provide insurance over Encroachments in the Title Insurance Policy, provided it has reviewed an ALTA Survey. In a construction financing, the Lender will receive this insurance at closing, though at that time Encroachment coverage is meaningless, since nothing has been built yet. In this case, Lenders may obtain a Datedown Endorsement after the Title Company has reviewed an As-Built Survey.

Encumbrance: another word for Lien that is typically used in the real estate context. Like a Lien, an Encumbrance does not have to be consensual. For example, an Easement of a utility to run power lines over a property would be considered an Encumbrance.

Endorsement: a supplement to an insurance policy agreed to by the issuer of the insurance. An Endorsement can apply to either a Title Insurance Policy or a liability, property, workers' compensation, business interruption, or other type of insurance policy. In Title Insurance, the nature, scope, cost, and negotiability of Endorsement coverage vary from jurisdiction to jurisdiction. Examples of Title Endorsements include usury, same-as-ALTA Survey, Contiguity, and Access.

End-User Exception: an exception to the mandatory clearing mandate for Swaps (Regulatory), provided by the CEA and CFTC regulations promulgated under the Dodd-Frank Act. Swaps (Regulatory) subject to mandatory clearing under the Dodd-Frank Act must be cleared through a CFTC-registered Derivatives clearing organization and executed on a CFTC-registered designated contract market or Swap execution facility, unless an exemption or exception is available. For the End-User Exception to apply, one of the counterparties must meet the following requirements: (i) it is not a "financial entity" (as defined in the CEA) or is exempt from the financial entity definition; (ii) it is using the Swap (Regulatory) to Hedge or mitigate commercial risk; (iii) it reports (or causes to be reported) certain information to a CFTC-registered Swap data repository, either through an annual filing or on a trade-by-trade basis; and (iv) if it is an SEC filer (including parties that control, are controlled by, or are under common control with an SEC filer), it complies with certain corporate governance requirements.

Energy Information Administration / EIA: an independent statistical agency within the US Department of Energy that provides data, forecasts, and analyses to promote sound policy-making, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment.

Energy Tax Credit: a type of Investment Tax Credit available for certain types of qualifying property, including solar, gas microturbine, Cogeneration, and fuel cell equipment. Owners of wind projects that qualify for PTCs generally may elect to claim the Energy Tax Credit in lieu of PTCs. Owners claiming the Energy Tax Credit must reduce their depreciable basis in the qualifying property by 50% of the credit amount.

Engineering, Procurement and Construction (Contract) / EPC: a type of contract in which the contractor performs virtually all construction-related work on a facility, while the owner only has to wait for the keys to be turned over at completion. EPCs are often fixed-price contracts. In this case, the contractor takes the risk for unknown costs, and the owner pays a premium for price certainty. In practice, contractors succeed in pushing many of the unknowns onto the owner, which are later reflected in Change Orders that affect the fixed price.

See also Turnkey Contract.

Enhanced Oil Recovery / EOR: a method of producing more oil than would otherwise be recoverable from underground formations by injecting carbon dioxide into the formation.

Environmental Assessment / EA: a short, initial evaluation of the environmental impacts of a proposed project or action to determine if preparation of a full Environmental Impact Statement is required. EAs are typically prepared under NEPA.

Environmental Attribute: an aspect, claim, characteristic, or benefit associated with the generation of a quantity of electricity by a Renewable Energy generation facility, other than the electric energy produced, that is capable of being measured, verified, or calculated. An Environmental Attribute may include one or more of the following identified with a particular MWh of generation by a Renewable Energy generation facility: (i) the use of a particular Renewable Energy source; (ii) avoided NOx, SOx, CO2, or Greenhouse Gas emissions; (iii) avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of applicable law in order to site and develop the Renewable Energy generation facility itself); (iv) or as otherwise defined under an applicable regulatory program. Environmental Attributes do not include PTCs, ITCs, or other direct third-party subsidies for generation of electricity by any specified Renewable Energy generation facility.

Environmental Consultant: an Independent Consultant engaged by the Lenders (or sometimes the Sponsor) to prepare an Environmental Site Assessment (see Phase I ESA and Phase II ESA) that identifies potential and actual environmental contamination on a project site.

Environmental Impact Report / EIR: a report similar to an Environmental Impact Statement under the California Environmental Quality Act (CEQA), a NEPA-type statute.

Environmental Impact Statement / EIS: a comprehensive document that evaluates the environmental impacts of a proposed project or action, including an evaluation of the reasonable alternatives to the project and an assessment of available methods to mitigate the project's impact. The scope of an EIS can be quite broad, extending beyond considerations of air and water pollution to include noise, visibility, and traffic as well as socioeconomic and cultural impacts. An EIS can be required under NEPA (if the project involves a "major action" by a federal agency) or under various state "baby NEPA" statutes, such as the California Environmental Quality Act (CEQA) or New York's State Environmental Quality Review Act (SEQRA).

Environmental Protection Agency / EPA: a US federal agency with the mission of protecting human health and the environment.

Environmental Site Assessment / ESA: an evaluation of the current environmental condition of a property, typically limited to the presence of contamination caused by current or historical operations. A standard Phase I ESA will not cover some environmental concerns that may be significant to particular projects, *e.g.*, asbestos, mold, endangered species, or regulatory compliance.

See also Phase II ESA.

EOR: acronym for Enhanced Oil Recovery.

EPA: acronym for the Environmental Protection Agency.

EPC: acronym for Engineering, Procurement and Construction (Contract).

Equator Principles: a set of policies voluntarily adopted by a group of financial institutions that establishes standards and practices for the evaluation of environmental and social impacts of projects in the context of Project Finance transactions. Participating financial institutions agree not to provide loans to non-complying projects. Compliance with the Equator Principles can involve, depending on the project's location, preparation of an Environmental Impact Report (called a "social and environmental assessment"), public notice and consultation, implementation of mitigation and monitoring programs, and entering into related loan covenants.

Equity: money invested in a project or financing by an owner. The term name is an abbreviation of "equity of redemption," an old doctrine that prohibited a secured Lender from effecting a strict Foreclosure on Collateral (*i.e.*, keeping it) when the Borrower had made a substantial reduction of the debt, since this would leave the Lender with both the Collateral and the debt repayment to date. The Borrower was provided the just outcome (equity) of being allowed to sell the property to pay off the debt (redemption), while keeping the difference (now called the Equity). Equity also refers to the owner of an asset, as in "the Credit Agreement allows distributions to Equity if DSCR is above 1.4x."

Equity Capital Contribution Agreement / ECCA: an agreement whereby a Tax Equity Investor invests in a Partnership Flip structure at Substantial Completion (or Mechanical Completion, depending on the structure of the deal). The choice between an ECCA and a MIPA typically is tax-driven.

Equity Free Cash: another name for Free Cash.

Equity Squeeze: the result obtained in a Leveraged Lease if a lessee Event of Default occurs under the Lease, which causes an Event of Default under the lessor's credit documents. The lessor's Lenders would be entitled to Foreclose on the lessor's interest in the Lease and leased asset, but leave the Lease in place even though the lessee precipitated the exercise of remedies, thereby squeezing out the lessor (the Equity) that did nothing "wrong." Lessors negotiate Squeeze Protection so that their investment is not lost in a situation in which the Lenders are not willing to exercise remedies against the lessee.

Exploration & Production / E&P (Company): an oil company that is only involved in the Upstream part of the business.

Erection: the sequence of installing a WTG, consisting of (i) hoisting the first Tower section; (ii) bolting the first Tower section to a foundation; (iii) hoisting subsequent Tower sections and welding them to the others; (iv) hoisting the Nacelle and attaching it to the Tower; and (v) attaching each Blade to the Hub.

ERISA: acronym for the Employment Retirement Income Security Act of 1974.

ERU: acronym for Emission Reduction Unit.

ESA: acronym for Environmental Site Assessment.

See also Phase I ESA and Phase II ESA.

Estimated Ultimate Recovery / EUR: the total expected recoverable volume of oil, gas, and natural gas liquids from a well, Lease, or field under present economic conditions and engineering practices. EUR is synonymous with total recovery, including produced reserves, Proven Reserves, and Probable Reserves. EUR figures are an important part of Lenders' due diligence to determine the amount of debt that an oil and gas project can sustain.

Estimated Useful Life: the period during which a leased asset is expected to be useful in trade or business. This concept is used for both tax purposes, to determine whether a Lease is a True Lease (and the maximum allowable term of a True Lease), and financial accounting purposes, to determine whether a Lease is a Capital Lease or an Operating Lease.

Estoppel / Estoppel Certificate: when somebody does or fails to do something, such that a court will view that person as not fairly entitled to make a claim later. For example, if Person A helps Person B hang a rope swing on Person A's tree and Person B falls off and breaks his arm, Person A can't argue that Person B was trespassing — Person A is estopped from making that argument. When a Lender lends to a lessee, the lessor is usually asked for an Estoppel Certificate, wherein the lessor acknowledges the rent amount, that the rent is current, and that the lessee is not otherwise in Default. If it turns out the lessee was in fact in Default when the Estoppel Certificate was given, the lessor is estopped from evicting the lessee. Estoppel Certificates are used in

Leasehold Loan situations. Tax Equity Investors often require Estoppels from counterparties to important Project Documents on the funding date(s) in a Tax Equity financing.

Ethanol: a type of alcohol.

See also Denatured Ethanol.

EUR: acronym for Estimated Ultimate Recovery.

Euribor: a set of reference lending rates based on the average of the interest rates that a cross-section of European banks use to lend and borrow from each other. A Lender that provides Project Financing in euros may use Euribor as a reference for calculating the interest payable on such financing, similar to LIBOR.

Eurodollar: an interest rate index determined in London based on a polling of major banks. Eurodollar also refers to the market for dollar-denominated loans outside the United States.

See also LIBOR.

Eurodollar Disaster Clause: a historically little-used provision in most sophisticated Credit Agreements that sets forth how interest rates should be calculated if the Administrative Agent cannot calculate LIBOR using the specified method or if a specified number of Lenders inform the Administrative Agent that LIBOR does not "adequately and fairly reflect the cost to such Lenders of making or maintaining such loans." During the 2007-08 financial crisis, many Lenders had difficulty borrowing funds at the publicly available LIBOR rate. Yet for many reasons (including Lender unwillingness to admit that difficulty and a plunge in the base rate that would make invoking the Eurodollar Disaster Clause even less economic), Lenders preferred to make other changes to interest rate calculations (including interest rate floors, etc.), rather than invoke the Eurodollar Disaster Clause. The term is also known as "market disruption clause."

European Bank for Reconstruction and Development / EBRD: a multilateral developmental finance institution with a strong focus on supporting development in countries that were part of the Soviet Union.

European Market Infrastructure Regulation / EMIR: the EU version of Title VII of the Dodd-Frank Act. EMIR primarily applies to financial counterparties that are "authorised" or "registered" under European law (*e.g.*, clearing houses, investment firms, credit institutions, insurance undertakings, reinsurance undertakings, Undertakings for the Collective Investment in Transferable Securities (UCITS) funds, pension funds, alternative investment funds, and central securities depositories) and other entities (non-financial counterparties) that are "established" in the EU (*e.g.*, corporates and SPVs) that enter into Derivatives. Similar to the Dodd-Frank Act, EMIR imposes obligations on Derivatives market participants, including: (i) Margining and mandatory clearing of certain over-the-counter (OTC) Derivatives; (ii) reporting requirements; and (iii) risk mitigation techniques of OTC Derivatives. EMIR affects non-EU entities (*i.e.*, third-country entities) when they face European Derivatives counterparties.

Event of Default: the stage at which point an Issuer or Borrower has failed to Cure a Default (and in some cases, the Administrative Agent or Trustee has provided a required notice) within the Cure period. As discussed in Default, Indentures and Credit Agreements basically have three stages of trouble: the Default, the Event of Default, and Acceleration. Certain Default events such as bankruptcy Defaults are automatic Events of Default.

Event of Loss: an event in leasing land that harms the leased asset in a manner sufficient to cause a termination of the Lease as to that asset and a requirement that the lessee pay the Termination Value for the asset. Insurance coverage amounts should be sized to cover the Termination Values that become due upon an Event of Loss. In other financings, the credit documents will dictate whether insurance proceeds received following an Event of Loss are applied to repair the facility or to repay debt. An Event of Loss is also known as a Casualty Event.

EWG: acronym for Exempt Wholesale Generator.

Excess Cash Flow: the amount of cash left at the "bottom of the Waterfall," *i.e.*, after paying operating costs and debt service, and funding all reserve accounts. Excess Cash Flow is either distributed as a dividend to the Sponsor (after satisfaction of the Distribution Conditions) or subjected to a Cash Sweep or Cash Trap.

Excluded Payment / Excepted Payment: in a Leveraged Lease, payment obligations of the lessee owed to the lessor or the Owner Participant that are not assigned to the Lenders as Collateral.

Executory Contract: a contract that can be Assumed or Rejected in US bankruptcy (with certain exceptions, including for financial accommodations). Although Executory Contracts are handled under US Bankruptcy Code Section 365, the term is undefined in the Bankruptcy Code. Generally, the so-called Vern Countryman definition is used for Executory Contracts, which defines them as "contracts on which performance remains due to some extent on both sides." Litigation may ensue in a bankruptcy case over whether a contract is executory.

Exempt Wholesale Generator / EWG: anyone engaged exclusively in the business of owning and operating eligible facilities and selling electric energy at wholesale. EWGs are exempt from most PUHCA regulation and are eligible for certain blanket authorizations under the Federal Power Act.

Exploration Drilling / Exploratory Drilling: drilling carried out to determine whether Hydrocarbons are present in a particular area. Exploration Drilling does not always result in the discovery of recoverable Reserves.

Exploration Phase: the phase of operations that covers the search for oil or gas via detailed geological and geophysical surveys that are followed up, where appropriate, by Exploratory Drilling.

Exploration Well: a well in an unproven (or speculative) area. Exploration Wells are sometimes referred to as Wildcat wells — in West Texas in the 1920s, wildcats were abundant, and those unlucky enough to be shot were hung from oil derricks.

Export Credit Agency / ECA: a private or governmental institution established by a nation to assist contractors and suppliers of that nation in exporting their products and services. Typically, an ECA provides financing for the development of projects in other nations so long as such projects use a prescribed amount of goods and services from contractors and suppliers located in the ECA's nation. The financing can be provided as either loans or loan Guarantees. One example of an ECA is the Export-Import Bank of the United States (Ex-Im Bank).

Expropriate / Expropriation: when a government or governmental entity unilaterally takes a project or interests in a project held by a private investor. The taking could be implemented by assuming some ownership of the project or by taking an action or issuing an order that deprives the project of certain rights, thereby diminishing its value (*e.g.*, an indefinite order prohibiting a power plant from being operated). Expropriation is one of the risks covered by Political Risk Insurance and one of the main subjects of Bilateral Investment Treaties.

Facilities Agreement: another name for Credit Agreement; this term is mainly used outside the United States.

Facilities Study: a detailed transmission study undertaken by a transmission owner or operator (in an organized market, the ISO/RTO; outside of an organized market, the transmission owner) to determine what additional facilities are needed in order to accommodate a request for transmission service or interconnection service (particularly for new interconnecting generation facilities). A Facilities Study usually follows a System Impact Study and is more detailed than a System Impact Study. The Facilities Study identifies the cost estimates of the additional facilities and determines the allocation of those costs to the customer(s) seeking such service.

Factored Fired Hours / FFH: the number of hours a gas turbine has run since its last major overhaul. More hours, of course, means more wear on the turbine. But starts and stops create more wear on a turbine than merely running it. FFH is a calculated number intended to reflect cumulative wear on a gas turbine, taking into account both fired hours and starts and stops (including the abruptness of the start or stop). FFH is used in determining when turbines should be overhauled and factors into compensation under many LTSAs.

Fair Market Value / FMV: the price for which property can be sold (or, as applicable, the rent for which it can be leased) in an "arm's length" transaction — that is, between informed, unrelated, and willing parties, each of which is acting rationally and in its own best interest.

Farm-Inan: arrangement under which one oil or gas company "buys in" or acquires an interest in a Lease or concession owned by a third party in respect to which oil or gas has been discovered or is being produced. Often, Farm-Ins are negotiated to assist the original owner with development costs and to secure for the buyer a source of Crude Oil or natural gas.

See also Farm-Out.

Farm-Out: an arrangement under which the owner or lessee of oil or gas rights assigns a Working Interest to an oil or gas company, part of the consideration for which is specified exploration and/or development activities. The owner retains an overriding Royalty or other type of economic interest in the mineral production. The arrangement from the viewpoint of the oil or gas company is termed a Farm-In.

FCM: acronym for Futures Commission Merchant.

Feather / Feathering: a method of controlling torque on a Wind Turbine Rotor by decreasing the area of Blade surface exposed to the wind.

Federal Energy Regulatory Commission / FERC: a US federal agency that has authority over wholesale sales of power and the provision of transmission service, as well as the interstate transportation of natural gas, the interstate transportation of oil, and the certification of hydroelectric facilities.

Federal Funds: overnight borrowings by financial institutions in order to maintain their respective reserves in the US Federal Reserve System. Federal Funds is also used to refer to immediately available funds (*i.e.*, a wire transfer that lands in the recipient's account on the day it is sent).

Federal Funds Rate: the interest rate at which depository institutions in the United States lend balances to each other overnight. The Federal Funds Rate is often used as one of the options for determining the Base Rate.

Federal Power Act / FPA: a US federal law that, among other things, regulates the rates, terms, and conditions pursuant to which public utilities may sell electric energy or Capacity or provide transmission service.

Fee / Fee Title: outright ownership, almost always used in reference to real property.

In contrast, see Leasehold or Option.

Fee Letter: the part of the Commitment Papers package that sets forth the fees and contains the Market Flex provisions (if any). This letter outlines certain fees to be paid in connection with the credit facilities contemplated by the Commitment Letter. The Fee Letter is separate from the Commitment Letter and, in an acquisition financing, is often not shared with the seller or target (among others).

Feed-In Tariff: a published rate that will be paid for the generation of Renewable Energy, without the need for a negotiated contract (subject to transmission and other system constraints). Many European countries, as well as other nations around the world, use Feed-In Tariffs to encourage Renewable Energy production.

Feedstock: any raw material that is a basic (or *the* basic) input in a manufacturing or production process, *e.g.*, Crude Oil to a refinery or wood waste to a Biomass Facility.

FERC: acronym for the Federal Energy Regulatory Commission.

Financial Accounting Standards No. 13 / FAS 13: a statement from the Financial Accounting Standards Board (FASB) that establishes standards for how lessees and lessors account and report for Leases, including the characterization of a Lease as an Operating Lease or a Capital Lease for the lessee's purposes. A company's assets, liabilities, and net income will differ depending on how it chooses to structure its Leases. The provisions of FAS 13 derive from the view that a Lease that transfers substantially all of the benefits and risks of ownership should be accounted for as the acquisition of an asset and the incurrence of an obligation by the lessee (a Capital Lease) and a sale or financing by the lessor. Other Leases should be accounted for as the rental of property (Operating Leases). FAS 13 is also known as ASC 840 (or topic 840 in the FASB's Accounting Standards Codification).

Financial Closing: when Lenders make (or disburse) their initial loans, after the Conditions Precedent to making the initial loans under a Credit Agreement are satisfied. Some financing transactions have the parties execute and deliver all of the documents even before the Lenders are prepared to make loans at that time (see Dry Closing), so as to get that part out of the way and stop interminable negotiations.

Financial Covenant: a Covenant contained in a Credit Agreement requiring the Borrower to meet certain tests, such as EBITDA, relative to indebtedness. Breach of the Financial Covenant leads to a Default and potentially an Event of Default, if the Default is not Cured within the Cure period (if one exists). However, Project Finance Credit Agreements typically do not contain Financial Covenants, since declaring an Event of Default based on a Financial Covenant breach would not motivate the Borrower to repay the Limited Recourse Financing. Accordingly, Project Finance Credit Agreements include other protections, like Cash Sweeps and reserve accounts.

Financial (or Finance) Lease: technically, a Lease as defined in Section 103 of Article 2A of the UCC that will achieve certain legal benefits for the lessor. Financial Lease is often used generically to mean a full-payout, Triple Net Lease transaction in which the lessor is a supplier of money and financing, rather than a supplier of the leased asset. The term generally should not be used, as its meaning is imprecise.

Financial Power Swap: an arrangement entered into by a company to Hedge its exposure to power prices. For example, imagine a generator that sells its output into the Spot Market and receives the Spot Price. If, in the Financial Power Swap, the Spot Price exceeds a fixed price per MWh, the generator pays the excess to its Swap counterparty; if the Spot Price is lower than the fixed price, the counterparty pays the generator. This Financial Power Swap effectively converts the "spot sales" into fixed price sales.

Financing Agreement: another name for Credit Agreement.

Financing Statement: a simple form document used in a secured financing that contains the name and address of the debtor and the Secured Party as well as a brief description of the Collateral. The purpose of a Financing Statement is to Perfect a Security Interest in many classes of personal property — the Financing Statement serves as public notice of the Security Interest. To be effective, Financing Statements must be completed properly (using the exact legal name of the debtor) and filed in the proper office — usually the applicable Secretary of State (or District of Columbia). Financing Statements must be filed within 10 days of the Financial Closing date in order to avoid Preferential Transfer concerns, in the event a debtor files for bankruptcy, but are typically filed on the Financial Closing date. Financing Statements are not to be confused with financial statements.

Finding of No Significant Impact / FONSI: a determination issued by a US federal agency under NEPA upon reviewing a project's Environmental Assessment that the project will not create any significant impacts on the environment, either with or without mitigation measures. A project that receives a FONSI is not required to prepare an Environmental Impact Statement.

Firm: power or pipeline system Capacity that, by contract, cannot be Curtailed by the supplier or pipeline operator regardless of the needs or demands of other customers.

In contrast, see Interruptible.

Fitch Ratings / Fitch: a Rating Agency that is a subsidiary of Fimalac, S.A.

Fixed Price Purchase Option: an option for a lessee to purchase the leased asset from the lessor on the option date for a predetermined price.

Fixture: goods that are so related to (or affixed to) real property that an interest in them arises under real property law. For example, the furnace that heats a building is a Fixture.

Fixture Filing: a filing in US county real estate records that shows the Secured Party's Lien in Fixtures. The filing can be in the form of a UCC-1, or it can be included as part of the Mortgage or Deed of Trust. There is no advantage to having a Fixture Filing separate from the Mortgage (although certain jurisdictions require separate Fixture Filings).

Flex: another name for Market Flex, which comes in different flavors such as Structure Flex and Pricing Flex.

Flip Structure: a structure that allows developers to monetize tax credits and depreciation currently by passing tax benefits to Tax Equity Investors in exchange for cash payments. The "flip" is the point when the Tax Equity Investors have earned an agreed-upon after-tax return on the investment, taking into account cash flow, tax savings from tax credits and tax losses, and the tax cost of pass-through income. Before the flip, virtually all of the tax benefits and a large part of the cash flow go to the Tax Equity Investor, while after the flip almost all cash and tax attributes go to the other owners. The IRS has published safe harbor rules for Flip Structures, which, if followed, keep Tax Equity Investors from being treated as Lenders (*i.e.*, not able to use the tax benefits) rather than owners.

Float: in the beverage world, a soft drink with ice cream, often topped by whipped cream and a cherry. In the construction world, the period of time between when a builder expects to finish a facility and the date upon which the owner has agreed with the Offtaker that it will be finished. To the extent the builder's guaranteed completion date is later than the expected completion date, the builder is said to "own the Float." The owner, of course, wants to own as much of the Float as possible (*i.e.*, set the guaranteed completion date as close as possible to the expected completion date), since any delay-based Change Orders may extend the guaranteed completion date.

Floating Storage and Regasification Unit / FSRU: a ship used for the receipt and regasification of LNG, either built to a certain specification or converted from an LNG carrier vessel. The FSRU may be located at a particular location on a semi-permanent basis as part of a country's or region's gas importation infrastructure.

Flood Certificate: a certificate issued by a firm that specializes in Flood Zone analysis that describes whether a property is located in a Flood Zone. Banks are required to obtain Flood Certificates prior to lending money secured by improved real property.

Flood Insurance: a policy that insures risks relating to flooding. If a property is located in a Flood Zone as shown by a Flood Certificate, and such property is improved (*i.e.*, contains Improvements), prior to providing a loan secured by such real property, a bank must ensure the Borrower has Flood Insurance that satisfies applicable laws.

Flood Zone: an area designated by the Federal Emergency Management Agency (FEMA) as having a significant risk of flooding.

Floor: the minimum level permissible in a financial transaction. Floor refers to the lowest price, the minimum interest rate, or the smallest of some other factor involved in a transaction. Floors are intended to keep prices, interest rates, debts, or other financial instruments above certain levels. See Interest Rate Floor for an explanation of Floors in the context of interest rate Hedging.

In contrast, see Ceiling.

Flow-Down Terms: terms that an owner enumerates in a contract with a prime contractor who will be using subcontractors, to ensure each subcontract includes certain owner-protective terms. For example, Flow-Down Terms may oblige a prime contractor to ensure that each subcontract requires the subcontractor to provide certain levels and types of insurance and to comply with the owner's drug and alcohol policy.

FMV: acronym for Fair Market Value.

FMV Lease: a Lease that includes an option for the lessee to either renew the Lease at Fair Market Value or purchase the leased asset for its FMV at the end of the Lease term. Although FMV Leases are often referred to as Tax Leases, not all FMV Leases qualify as Tax Leases.

FOB: acronym for Free on Board.

FONSI: acronym for Finding of No Significant Impact.

Force Majeure: an overpowering force that can excuse a party from performance under a contract (except, in most cases, payment obligations). Force Majeure is also known as an Act of God. Force Majeure events typically include hurricanes, war, earthquakes, terrorism, and other occurrences beyond the control of the party claiming Force Majeure. The party claiming Force Majeure must have done everything reasonably possible before and after the event to avoid its adverse effects. Unlike other Boilerplate provisions, the drafting of Force Majeure can affect the outcome of a contract dispute. In a real-life example, lightning once struck a power plant, delaying COD. The owner argued that the lightning strike was Force Majeure, which should have led to an extension of the project's completion Milestone. The utility argued that the lightning strike was not a Force Majeure because the event's effects could have been avoided had proper grounding equipment been installed.

Forced Outage: a generation, transmission, or distribution outage that results from emergency conditions or failure of facilities, in contrast to a planned outage.

Foreclose / Foreclosure: in both the real and personal property contexts, the act by a Secured Party of following certain legally prescribed procedures to realize upon its Collateral, usually by advertising that the Collateral is for sale and selling it in an auction process for cash. A Foreclosure by a senior Secured Party wipes out any junior Liens as well as, of course, the owner's interests. A Foreclosure by a junior Secured Party also wipes out the owner's interests (and those of any even more junior Secured Parties), but leaves intact any senior Security Interests. (Some of these outcomes can be altered through an Intercreditor Agreement.) Rarely does anybody other than the Secured Party bid at a Foreclosure, because the bid is for the value of the property in excess of the debt (*i.e.*, the Equity). If there were any Equity value, the owner likely would not have let the property go into Foreclosure in the first place. Bidders typically must bid cash or cash equivalents, while the foreclosing Secured Party may Credit Bid.

Foreign Account Tax Compliance Act / FATCA: a US federal law enacted to combat US tax avoidance by US taxpayers through the use of foreign accounts or intermediaries. FATCA imposes a 30% withholding tax on certain types of payments made to foreign financial institutions and certain other non-US entities, unless the foreign financial institution enters into an agreement with the US Treasury requiring, among other things, that it identify accounts held by US persons or foreign entities owned by US persons, annually report the account information to the US Treasury, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. The US has entered into various intergovernmental agreements that provide for alternative means to comply with FATCA. Other jurisdictions have enacted similar legislation aimed at preventing tax avoidance.

Foreign Corrupt Practices Act / FCPA: a US federal law that prohibits US companies from bribing foreign governmental officials in exchange for contracts, Concessions, or other benefits conferred by the foreign government. The FCPA can give rise to personal criminal liability on the part of company officers committing prohibited acts.

Foreign Exchange / FX: converting one form of currency to another.

Foreign Exchange Risk / FX Risk: the risk that the value of one currency will fluctuate relative to that of another currency. FX Risk arises when somebody earns revenue in one currency but has obligations payable in another. For example, Icelanders are paid their wages in local currency, the krona. During boom times, many Icelanders took out mortgages in euros to build new homes — but then the Foreign Exchange rate changed. On Jan. 1, 2008, 92 krona equaled 1 euro. On Jan. 1, 2009, 173 krona equaled 1 euro.

Foreign Tax Credit: the credit that a US person or entity may claim against his, her, or its US federal income tax liability as a direct result of the payment of foreign income taxes by that person or entity.

Forward: an agreement between two parties to buy or sell a commodity (*e.g.*, a physical commodity, currency, or other financial instrument) at a specified price on a future date. Unlike Futures contracts, a Forward contract: (i) is not standardized as it can be customized to any asset, amount and delivery date and (ii) does not trade on Derivatives exchanges. Settlement of Forward contracts, like Futures contracts, can occur on a cash or delivery basis.

FPA: acronym for the Federal Power Act.

Fracking: a shortened term for Hydraulic Fracturing.

Fractures / Fracture Networks / Fracturing: the characteristic of subsurface rock in geothermal fields that allows incursion of water, which is the medium for extracting the energy (in the form of Brine or steam). Fracturing is also relevant to Hydrocarbon extraction.

Frame Unit: a combustion turbine that is not an Aeroderivative Gas Turbine.

Fraudulent Transfer: a transfer made by a party (i) with actual intent to hinder, delay, or defraud that party's creditors or (ii) in which the party making the transfer received less than a reasonably equivalent value in exchange and was insolvent, had unreasonably small capital, or intended to incur debts beyond its ability to pay them. A Fraudulent Transfer is subject to Clawback from the transferee under state Fraudulent Transfer laws and — if the transferor is in bankruptcy — under the US Bankruptcy Code, provided that the statute of limitations has not expired. The statute of limitations is two years for actions under the Bankruptcy Code and typically four years under state law.

Free Cash: in a Leveraged Lease, the excess of a rent payment over the debt service scheduled to be due at the time. In the rest of the universe, there is no such thing.

Free on Board / FOB: an international trade term that indicates the point at which the costs and risks involved with the transportation of goods transfers from a seller to a buyer. FOB is typically followed by a destination or port and is fully defined by Incoterms published by the International Chamber of Commerce. FOB is more often used improperly than not. For example, "The price is US$100, FOB Wichita" supposedly means a seller will deliver merchandise to Wichita and charge the buyer US$100 for the merchandise and shipping costs. However, FOB is supposed to be used only when shipment is by water, and the seller's only responsibility is to clear any export restrictions and load the merchandise on the boat at the designated port, as in "FOB Singapore," from which point the buyer is responsible for shipping costs and risk of loss. To avoid confusion, it's best to be absolutely clear, as in: "The price is US$100. Seller will arrange export and import documentation and duties and arrange and pay for shipping to Wichita."

Front-End Engineering and Design / FEED: the minimum necessary engineering work required to determine whether a project or product is likely to be economically feasible.

Fronting Bank: a bank that issues a Letter of Credit on behalf of a Lender group. If the Letter of Credit is Drawn, the Fronting Bank is directly liable to the Beneficiary for the full Stated Amount of the Letter of Credit and will be reimbursed by the other Lenders in the syndicate on a pro rata basis.

Fronting Fee: a percentage of the average Stated Amount of a Letter of Credit periodically paid by the Account Party to the Issuing Bank in consideration of the Issuing Bank administering the Letter of Credit and taking the risk that if the Account Party does not reimburse a Draw, neither will the other banks in the syndicate that have agreed to do so. The Fronting Fee is essentially a payment for taking interbank risk. Consequently, historically, if only one bank provided the credit facility, there would be no Fronting Fee; however, this is no longer universally the case.

Full Notice to Proceed: See NTP.

Full Payout Lease: a Lease in which the total amount of the Lease payments returns to the lessor the entire cost of the leased asset, including financing, overhead, and a reasonable rate of return, with little or no dependence on a Residual Value.

Funds Flow Memorandum: the closing document that tells everybody in detail where the money is going. In more complex transactions, the memorandum is often executed or initialed by the Issuer/Borrower, particularly when the funding bank is directed to apply the funds in some manner on the Issuer's/Borrower's behalf. Unlike other Project Finance documents that take twice as long to prepare as you thought they would, this one takes four times as long, so start at least a week before Financial Closing.

Futures: an agreement between a seller and a buyer under which (i) the seller (short) will deliver to the buyer (long) at a price agreed to when the contract is first entered into and (ii) the buyer will accept and pay for the specified quantity and grade of an identified commodity or financial asset during a defined period in the future. Each Futures contract is for a set quantity of some commodity or financial asset, and can be traded only in multiples of that amount. The parties' contractual obligations under a Futures contract can be met either by (i) physical delivery (*i.e.*, making or taking delivery of the physical commodity) or (ii) cash offset or cash settlement (*i.e.*, making the opposite sale or purchase of the same number of Futures contracts bought or sold prior to the expiration date of the contract). Futures contracts — which are fungible and have standardized terms (size and delivery months) — must be listed on a Derivatives exchange, and require the posting of Initial Margin or Variation Margin (*i.e.*, Margining). Additionally, they are subject to position limits and exchange market surveillance. Market participants wishing to enter into Futures may do so through a Futures Commission Merchant.

Futures Commission Merchant / FCM: an entity that solicits or accepts orders to buy or sell Futures contracts on or subject to the rules of a Derivatives exchange, and accepts money or other assets from (or extends credit to) customers to support such orders.

Futures Margin: a good-faith deposit, or an amount of capital a party must post or deposit to control a Futures contract. Put another way, "Futures Margin posted" is a down payment on the full contract value of a Futures contract. Futures exchanges determine and set Futures Margin rates, which are based on the risk of market volatility and typically vary between 5% and 15% of the total contract value. Futures Margin is used to debit any day-to-day losses in respect of the Futures contract.

FX: acronym for Foreign Exchange.

FX Risk: acronym for Foreign Exchange Risk.

Gap (Title) Coverage: Title Insurance coverage whereby the Title Company insures the risk associated with the recording of any Encumbrance against the real property security after the closing of a transaction and prior to the date the Lender's Mortgage or Deed of Trust is recorded in the public records.

Gas-to-Liquid / GTL: technology used to convert natural gas or other gaseous Hydrocarbons into liquids such as gasoline or diesel fuel, thus making it easier to transport. The liquid is usually converted back to natural gas (a process known as "regasification") for consumption.

Gen-Tie Line: the facilities and equipment required in order to physically and electrically connect a Sponsor's generating facility to the transmission system of the applicable transmitting utility. FERC calls Gen-Tie Lines "Interconnection Customer's Interconnection Facilities."

GHG: acronym for Greenhouse Gas.

Good Standing (Certificate): the status of a statutorily created company, such as a corporation, limited liability company, or limited partnership, that has paid the annual registration fees due to its state of formation, or of any type of company (statutorily created or not) that has paid the applicable annual fees to any states in which fees must be paid for the company to do business there. For a fee, states will issue Good Standing Certificates that specify whether an entity is in Good Standing in that state. Good Standing Certificates are often included in the conditions to Financial Closing. Lack of Good Standing can affect a company's ability to enforce contracts in that state, and in some cases can have other adverse consequences.

Good Times Sweep: an application of funds that takes some Excess Cash Flow and applies it to the Mandatory Prepayment of debt when commodity prices are high. While Lenders know that commodity prices can fluctuate widely over time, they do not insist that lending be based on the most pessimistic price assumptions. In return for this concession, the parties might agree to use a Good Times Sweep, which can apply to many Merchant Facility financings. A Good Times Sweep differs from a Cash Sweep in that it only applies to a portion of the Excess Cash Flow (*e.g.*, the amount that exceeds a 2.0x DSCR).

Gray Market: the market for previously owned but not necessarily used equipment. For example, a buyer may need to sell equipment in a Gray Market because it bought too many units (under the hopes the business would grow faster than it actually did) and the manufacturer won't refund them at the full price. Depending on whether the item is an "orphan" or a common model, and how long the manufacturer's backlog is, Gray Market prices can be fairly robust.

Green Bank: a public or nonprofit finance entity with the specific focus of using a combination of public and private funds to provide financing support for the development and deployment of clean energy technologies, products, and services. Several Green Banks exist at the state and local levels, including in Connecticut; the District of Columbia; Hawaii; Michigan; Montgomery County, Maryland; Nevada; New York State; and New York City, and Rhode Island. These entities provide a range of financing support mechanisms, including direct loans, loan Guarantees, and loan loss reserves (first and second), as well as underwriting guidelines for clean energy projects. On the national level, various proposals have been introduced in Congress since 2008 to create a federal Green Bank or similar entity, which would be an independent, tax-exempt, wholly owned corporation of the United States that would provide a comprehensive range of financial support both directly and indirectly through investments in or financing support provided to state and local Green Banks. Latham lawyers have been involved in the development of a number of state and local Green Banks, including those in Connecticut; the District of Columbia; Hawaii; Montgomery County, Maryland; Nevada; and New York State, and have played an active role in the development and drafting of proposed legislation to create a federal Green Bank. Latham is also a founding supporter of the American Green Bank Consortium, which is a membership organization for state and local Green Banks, capital providers, developers, and other supporters of the development and deployment of clean energy technologies, products, and services.

Green Tag: another name for a REC; also, a type of Environmental Attribute.

Greenfield: a site undergoing construction on land that has not been used for anything that might have resulted in contamination.

In contrast, see Brownfield.

Greenhouse Gas: any of the gases (such as carbon dioxide) created or released as a result of industrial processes that cause a greenhouse effect on the earth.

Grid: the whole interlocking system of electricity delivery, from generator to customer. The three main parts of the Grid include: generation (creation of the power), transmission (high voltage), and distribution (low voltage transmission from a substation to the customers, such as the power lines in a neighborhood). Transmission and distribution are natural monopolies, but generation is not.

Grid Pricing: when the Applicable Margin changes as a function of the creditworthiness of the Borrower, as measured by a credit rating, leverage ratio, or other metric.

Ground Lease: a Lease of undeveloped or minimally developed land.

GTL: acronym for Gas-to-Liquid.

Guarantee: a promise by an entity that is not the direct obligor of the debt to be responsible for that debt. Often the parent or subsidiary entities of an Issuer/Borrower will Guarantee the obligations of that Issuer/Borrower.

See also Guarantor.

Guarantor: an entity (typically a subsidiary or parent entity) that Guarantees the obligations of another entity, such as the debt incurred by an Issuer/Borrower.

Haircut: a discount off Par in selling a loan.

Hard Call: a Prepayment Premium that has to be paid both for Voluntary Prepayments and Mandatory Prepayments. Even a Hard Call provision may include negotiated exceptions for certain Mandatory Prepayment provisions, such as the Cash Sweep.

In contrast, see Soft Call.

Hard Costs: the costs to acquire tangible assets to complete construction of a project (*e.g.*, the cost of the land, the buildings, and the equipment located therein).

Hazardous Material (HazMat) / Hazardous Substance: a broad category of substances that can potentially cause injury or damage to human health, animals, or the environment. Hazardous Materials include items that are deemed to be toxic, radioactive, flammable, or explosive, or are generally treated as a "pollutant" or "contaminant" under environmental law.

HazMat: short for Hazardous Material.

Head Lease: a Lease from the owner of an asset to another party when the other party will sublease the asset back to the owner or to a third party.

Head: the amount of water pressure available to turn a water turbine, measured in vertical distance (feet or meters). While more Head is generally good for a water turbine, not all hydroelectric facilities are designed for high Head. Some facilities (picture larger buckets on slower-turning rotors) are designed for greater volume and low Head, while those with a great vertical distance between the Penstock's intake and the generation facility are designed for lower volume and high Head.

Heat Rate: the number of Btus of a particular fuel that it takes to generate one kWh of electricity. A low Heat Rate is good, indicating a more efficient process. For example, a Combined Cycle facility is expected to have a lower Heat Rate than a Simple Cycle facility, or a Combined Cycle facility running in Simple Cycle mode (*i.e.*, without the Heat Recovery Steam Generator and Steam Turbine Generator running).

Heat Recovery Steam Generator / HRSG: the machine in a Combined Cycle power production facility or Cogeneration plant that (i) captures the waste heat from the exhaust gases coming out of a gas turbine; (ii) heats water with that waste heat and additional fuel; and (iii) sends the resulting steam along to the steam turbine (in a Combined Cycle power plant) or for other uses or processes (in a Cogeneration plant). The acronym HRSG is pronounced "hersig."

Hedge: a trading strategy that attempts to reduce the impact of market volatility, price risk, or other economic exposure by taking an offsetting position via a Derivative contract. A Hedge could take the form of, among other approaches, selling forward, selling short, buying or selling puts or calls, or entering into a Swap or Interest Rate Cap. For example, if you have Milestone payments payable in euros and you budgeted to pay them in US dollars, you might enter into an FX Hedge, which pays you if the value of the US dollar deteriorates against the euro (if the US dollar appreciates, you give up the gain).

See also Imperfect Hedge.

Hedge Bank: another name for Hedge Provider.

Hedge Provider: a counterparty willing to execute a Financial Power Swap, an Interest Rate Swap, a Currency Swap, or other type of Hedge, thereby assuming the price risk associated with the subject of the Hedge. A Hedge Provider that offers expensive quotes is called a Hedgehog (not really, but it should be). A Hedge Provider is also commonly referred to as a Hedge Bank or Swap Provider.

Heliostat: a mirror used in Solar Thermal or Concentrating Photovoltaic facilities that moves with the sun's arc in order to focus the sun's rays on a central collector.

Hell or High Water Clause: a provision in a Triple Net Lease that provides that the lessee must pay all amounts owing under the Lease and related documents regardless of any defenses the lessee may have available to it, including defenses as against the lessor, the Lender, or the manufacturer of the leased asset. Hell or High Water Clauses are critical in Leveraged Leases and Lease securitizations, since the Lenders or holders or purchasers in the Lease securitization will want a guaranteed cash flow regardless of equipment failures or other claims that a lessee might otherwise have against a lessor. Meanwhile, the lessee retains its right to pursue claims against the equipment manufacturer or other appropriate parties.

HGA: acronym for Host Government Agreement.

High Voltage Direct Current / HVDC: a power transmission technology that uses direct current rather than the more common alternating current (AC). HVDC is useful for transmitting bulk power across long distances when there are few or no taps between the end points. Line losses and cost of conductor are lower with HVDC than with AC systems.

Hog Fuel: the parts of a tree that cannot be used to make paper products or lumber, such as bark, leaves, and small limbs. Virtually all mills that use virgin timber burn Hog Fuel in an on-site Cogeneration facility, which creates steam used in mill processes, as well as electricity for the mill. The Cogeneration facility also consumes Black Liquor.

Hold: another name for Target Hold.

Horizontal Axis: with reference to WTGs, when the main drive shaft is parallel to the ground. Most WTGs are Horizontal Axis.

In contrast, see Vertical Axis.

Host Government Agreement / HGA: an agreement between foreign investors and the government of the country in which a project is located governing the relationship between the parties with respect to development, construction, and operation of the project. Typically, foreign investors will want contractual protection over their investment, particularly to mitigate against political risks, while the host government will look to gain some benefit from the contract such as monetary rewards or a steady supply of the project's product (*e.g.*, power).

HRSG: acronym for Heat Recovery Steam Generator.

Hub: the center of a Wind Turbine Rotor, where the Blades are attached to the main drive shaft.

Hydraulic Fracturing: a method of using high-pressure fluid injection to fracture rock deep in the earth and release natural gas or Crude Oil that is trapped in the rock formation.

See also Fracking.

Hydrocarbon: a molecule containing hydrogen and carbon that can exist in solid, liquid, or gaseous form. The term Hydrocarbon is often used as a catchall to refer to oil, gas, and Condensate.

ICA: acronym for the Investment Company Act of 1940.

ICC Arbitration: Arbitration conducted under the rules of the International Chamber of Commerce. Private parties in cross-border transactions might pre-agree to ICC Arbitration in their contract.

IDC: acronym for Interest During Construction.

IE: acronym for Independent Engineer.

IECA: acronym for the International Energy Credit Association.

IFC: acronym for the International Finance Corporation.

IM: acronym for Initial Margin.

Imperfect Hedge: a Hedge that would tend to result in economic benefit to offset an underlying risk sought to be Hedged, but which might not do so dollar-for-dollar. For example, Southwest Airlines continued to make money during the oil price spike of 2007-08 even though the price of aviation fuel had spiked. Southwest had not entered into long-term contracts for aviation fuel because no such contracts were available, but it had bought Futures in heating oil, whose price correlates highly with that of aviation fuel. Later, Southwest sold the Futures contracts at great profit and used the proceeds to offset the high aviation fuel costs. An Imperfect Hedge is also known as a Dirty Hedge.

Impoundment: a water storage structure or area used by a hydroelectric facility. An Impoundment allows the operator to ensure that the facility can generate at Peak times.

In contrast, see Run of the River.

Improvement: a building or other structure permanently constructed on a site. An Improvement is real property rather than personal property, so a Lien is granted by a Mortgage or Deed of Trust rather than by a Security Agreement. The term can be a misnomer, as a building qualifies as an Improvement even if it is non-functional, hazardous, or just plain ugly.

In and Out Cost: the cost of accessing and removing equipment that is under warranty. If the warranty does not cover In and Out Costs, the owner can have the benefit of the manufacturer's obligation to repair or replace the part, but be stuck with an enormous bill to access the part. In and Out Cost is also known as Open and Close Cost.

Incoterms: trade terms published by the International Chamber of Commerce that are commonly used in both international and domestic trade contracts. Incoterms, which is short for "international commercial terms," are used to make international trade easier by helping traders in different countries understand each other. In the context of transporting physical goods from seller to buyer, Incoterms are a standardized set of 11 terms and conditions that designate which party is responsible for transport, import/export procedures, insurance, etc., and at what point risk of loss for the goods passes from seller to buyer. Each term is designated by a three-letter code, such as EXW (Ex Works), CIF (Cost, Insurance, and Freight), and FOB (Free on Board).

Incumbency Certificate: a certificate issued by a company's corporate secretary stating that certain persons hold certain offices in the company. Contract counterparties look at board resolutions, which authorize certain officers to take actions on behalf of the company (like sign a Credit Agreement), to confirm that the persons who acted on the company's behalf have the titles attributed to them in the Incumbency Certificate, and that the resolutions authorize persons with such titles to perform such actions.

Incurrence Covenant: a Covenant that applies only when a Borrower takes a certain action, such as borrowing money or paying a dividend. For example, a Borrower might have a leverage Covenant that prohibits it from ever having debt that exceeds 3-times earnings. If the Covenant applies only when the Borrower incurs new debt, it is an Incurrence Covenant (and thus, in this example, would not apply if earnings dropped). If the Covenant applies at all times, it is a Maintenance Covenant.

Indenture: a contract between an Issuer and a Trustee (who acts as a sort of bondholder representative) pursuant to which Bonds are issued.

In a Leveraged Lease, an Indenture is the agreement between an Indenture trustee and the lessor pursuant to which the lessor grants to the Indenture trustee on behalf of the Lenders the assignment of the Lease and the Lien on the leased asset. The document will also set forth the other intercreditor arrangements between the lessor and the Indenture trustee.

Independence Principle: the principle whereby the Beneficiary of a Letter of Credit may effect a Draw without the Account Party being able to argue that the Draw is improper, and if the Account Party is in bankruptcy, without violating the Automatic Stay. So what's independent of what? The Letter of Credit is viewed as an obligation of the Issuing Bank to the Beneficiary, independent of the Account Party's reimbursement obligation to the Issuing Bank and independent of any underlying dispute between the Account Party and the Beneficiary.

Independent Amount: the term used in a Credit Support Annex to refer to Initial Margin.

Independent Consultant: a consultant hired by the Lenders (or sometimes the Sponsor) to review and produce reports regarding the design and technical (see Independent Engineer), environmental (see Environmental Consultant), or insurance (see Insurance Consultant) aspects of a Project Finance deal or, sometimes, to look at more specific areas of concern. For example, a Transmission Consultant might be engaged to study Curtailment or other transmission risks affecting a proposed Intermittent resource, such as a Windfarm.

Independent Director: an element of Separateness used to create a Bankruptcy Remote Vehicle. As a corporate law matter, directors have a fiduciary duty to their company, a kind of strict obligation to look out for the company. Normally, a parent company appoints its own officers to be directors of subsidiaries. But how is the parent officer/subsidiary director supposed to look out for the subsidiary if the interests of the subsidiary conflict with those of the parent? Enter the Independent Director, a person appointed to be a director of the subsidiary who is not an officer of or in any other way beholden to the parent, and is more likely to honor fiduciary duties. One of those duties is to not authorize the filing of a voluntary bankruptcy petition if the subsidiary is still viable. So in creating a Bankruptcy Remote Vehicle, the Lender to the subsidiary has the parent agree to always appoint an Independent Director and to require unanimity of directors before a bankruptcy filing can be made in the subsidiary's charter documents.

In the context of public companies, the term Independent Director refers to a director who is not a major shareholder, a person influenced by a major shareholder, or an officer of the company. In this context, Independent

Directors are thought to give companies a fresh and unbiased perspective on major business decisions and company direction.

Independent Engineer: the engineering company that works for the Lenders in a financing that calls for such expertise (which is most, if not all, financings).

Independent Power Producer / IPP: an entity that owns electric generating facilities and sells electric power but is not a governmental entity or a traditional utility. An IPP is sometimes referred to as a "non-utility generator."

Independent System Operator / ISO: a nonprofit that operates and controls, but does not own, an electric transmission system. An ISO, which is subject to FERC's jurisdiction over public utilities, provides non-discriminatory access to the transmission Grid, manages congestion, and maintains reliability. Sometimes it also operates centralized wholesale power markets, such as day-ahead and real-time markets for energy sales.

See also Regional Transmission Operator.

Index / Indices: in the context of interest rates, a reference rate such as LIBOR or Base Rate. Index may also refer to an Index of prices, such as the Consumer Price Index or the Henry Hub Spot Price for Natural Gas.

Initial Margin / IM: the percentage of the purchase price of a Derivatives contract that a Derivatives counterparty (*i.e.*, the posting party) must pay for up front by transferring Collateral to its counterparty (*i.e.*, the collecting party). As opposed to Variation Margin, the purpose of IM is to cover some or all of the credit risk the posting party poses for the collecting party. See Futures Margin for a discussion of IM in the Futures context.

Injection Well: in the gas industry, Injection Well generally refers to a well that is used to inject natural gas into an underground storage Reservoir, which is often a depleted natural gas Reservoir. In the oil industry, Injection Well can refer to a well that is used to inject gas produced from a Hydrocarbon Reservoir back into the Reservoir to increase the production of Crude Oil. In geothermal facilities, when a resource (either steam or Brine) is extracted from a Production Well, much of the heat is spent in the power production process, leaving behind cooled liquid. This liquid is pumped back into the ground through an Injection Well, ideally in a manner such that the cooler fluid does not migrate back to the production zone, but creates pressure that supports the production zone.

Insolation: the amount of solar radiation that reaches a surface (typically, the earth) over a period of time, often measured as kWh per square meter per day. Insolation is used to determine the best sites for Photovoltaic projects.

Insurance Broker: an individual or entity that arranges insurance for (and sells insurance to) another individual or entity. Examples include Arthur J. Gallagher & Co., Aon Corporation, and Marsh.

Insurance Certificate: a certificate providing proof of, and information about, an entity's various insurance coverages. Borrowers are required to provide Insurance Certificates to the Lenders at Financial Closing and, often, periodically thereafter. EPC contractors are often required to provide Insurance Certificates to a project owner (*i.e.*, the Borrower in a Project Finance deal) at Notice to Proceed and periodically thereafter as well.

Insurance Consultant: a company hired by the Lenders (or sometimes the Sponsor) to review the adequacy of a project's insurance package, as compared to similarly situated projects. Moore McNeil is a major presence in this space for US projects.

Intake Structure: the part of a Run of the River facility where water is diverted from the river into the Penstock.

Integrated Resource Plan / IRP: a projection of a utility's Load growth and how future Load will be satisfied, taking into account the types of generation technology involved and policy goals. For example, if a utility has a lot of wind power, it will have to plan for how to keep its system stable under different kinds of wind conditions. Every few years, utilities must prepare an IRP and present it to their public service commission for approval.

Interconnection Agreement: an agreement between a generator and a transmission owner or operator that provides for interconnection service (*i.e.*, the ability to inject electric energy into the transmission Grid), including the design, construction, installation, and operation of interconnection facilities.

Interconnection Point: the physical location at which a facility connects to third-party facilities for supply in or delivery out (*e.g.*, electricity, fuel, water, telephone, or steam).

Intercreditor Agent: a financial institution selected by the Lenders (in financings involving different types of Lenders, such as syndicates of banks, export credit agencies, and/or multilateral institutions) to act on their behalf as their agent to monitor the project and administer any voting required in respect of decisions to be made by the Lenders or their agents under the financing documents. The Intercreditor Agent represents the Lenders as a group, and is usually appointed via an Intercreditor Agreement.

Intercreditor Agreement: an agreement that sets forth the rules of engagement between two or more groups of Lenders with respect to shared Collateral or other intercreditor relationship matters. Think of this as a prenuptial agreement between two classes of creditors. Apart from addressing the obvious point that the first Lien Lenders get paid out first from Collateral proceeds and the second Lien Lenders get paid out second in first Lien/second Lien deals, Intercreditor Agreements also include important provisions regarding the right of each Lender group to take action with respect to the Collateral generally.

Interest During Construction / IDC: a line item in a construction budget, and one of many Project Costs. Construction financings often permit IDC to be capitalized (*i.e.*, paid with drawings of Construction Loans).

Interest Period: the period of time under a variable-rate Indenture or Credit Agreement during which a given interest rate applies (the "variable" applies between Interest Periods, not within an Interest Period). In most (but not all) Indentures, there are two Interest Periods per year. In Credit Agreements, the number of Interest Periods per year can vary widely, especially if the Borrower chooses to have LIBOR loans (which may bear interest based upon one-, three-, six-, nine-, or 12-month LIBOR).

Interest Rate Cap: an agreement by one party to pay its counterparty any amount by which the chosen Index (*e.g.*, three-month LIBOR as published by the British Bankers Association (BBA)) exceeds the negotiated Ceiling amount, multiplied by the agreed Notional Amount. For example, if a Borrower has a 4% Cap on a three-month BBA LIBOR for a US$100 million Notional Amount, each three months during the term of the Interest Rate Cap, the Hedge Provider will pay the Borrower the amount by which three-month BBA LIBOR exceeds 4%, multiplied by US$100 million. The Borrower usually pays the price of an Interest Rate Cap as a lump sum at inception.

Interest Rate Collar: an investment strategy that uses Derivatives to Hedge a Borrower's exposure to interest rate fluctuations, by which the Borrower purchases an Interest Rate Cap for a premium, which is offset by selling an Interest Rate Floor. Interest Rate Collars protect Borrowers by capping the interest rate paid at the collar's Ceiling (*i.e.*, the Interest Rate Cap), but sacrifices the profitability of interest rate drops. For example, if a Borrower enters into an Interest Rate Collar by purchasing an Interest Rate Cap with a rate of 10% and sells an Interest Rate Floor at 8%, the Borrower will receive a payment from its Hedge Provider whenever the interest rate is above 10%; however, the Borrower must make a payment to its Hedge Provider if the interest rate drops below 8%.

Interest Rate Floor: an over-the-counter Derivative instrument that protects the buyer (*e.g.*, a Hedge Provider) from losses resulting from a decrease in interest rates. The Floor's seller (*e.g.*, a Borrower) compensates the buyer with a payoff when the reference interest rate falls below the Floor's strike rate. For example, imagine a Lender (who is also the

Hedge Provider) that is extending a floating rate loan and is looking for protection against lost income that would arise if interest rates were to decline. If, as part of an Interest Rate Floor, the Lender has bought a Floor rate that is 8% and the interest rate on the Lender's floating-rate loan on a particular day is 7%, the Interest Rate Floor provides a payoff of US$10,000 (*i.e.*, the Notional Amount of US$1 million, multiplied by the 1% difference between the actual interest rate (7%) and the Floor rate (8%)).

Interest Rate Swap: an arrangement documented under an ISDA Master Agreement that is entered into by a company to Hedge its exposure when it has borrowed money at an interest rate that can fluctuate. The Borrower (often called Party B) agrees to periodically pay its counterparty (often called Party A) a fixed percentage rate (the "fixed rate") multiplied by the size of the Swap (the Notional Amount, which is equal to the amount of borrowed money or a portion thereof); and Party A agrees to pay Party B on the same periodic date an indexed interest rate (typically the same Index as was used for the borrowing, *e.g.*, three-month LIBOR) (the "floating rate") multiplied by the same Notional Amount. On the periodic payment dates, either Party A's payment or Party B's payment will be larger, so the payments are typically netted, and only the larger payment (minus the smaller payment) is made. Between payments made or received under the Interest Rate Swap and interest payments on its loans, the Borrower ends up paying all-in the aforementioned fixed rate on the Notional Amount.

Interim Rent: any rent payable for an Interim Term. Interim Rent is usually calculated on the basis of a specified interest rate applying to Lessor's Cost.

Interim Term: the period in some Leases from the closing until the commencement of the Basic Term.

Intermittent / Intermittency (Variability): the extent to which a power source by its nature stops producing or becomes unavailable. For example, every solar facility is Intermittent (and will be until someone figures out how to capture starlight).

International Energy Credit Association / IECA: a nonprofit that aims to assist professionals involved in credit risk management within the energy industry. The IECA has published amendments to the ISDA August 2012 and March 2013 DF Protocols (referred to as the "IECA Amendments"), which are used by Derivatives counterparties in the energy industry.

See also ISDA Protocols.

International Finance Corporation / IFC: the private lending arm of the World Bank.

International Swaps and Derivatives Association / ISDA: a trade organization for the Derivatives market. ISDA's members comprise a broad range of Derivatives market participants, including dealers, international and regional banks, energy and commodities firms, investment managers, corporations, government and supranational entities, and insurance companies.

ISDA has developed the ISDA Master Agreement and a wide range of related Derivatives documentation and materials. ISDA Master Agreements (including the ISDA Schedule and any Credit Support Annex thereto) are often referred to as an "ISDA" or "ISDA documentation."

Interruptible: power or pipeline Capacity that, by contract, the supplier or pipeline operator is allowed to Curtail if the needs of customers who have contracted Firm would otherwise exceed the supplier's resources or pipeline Capacity.

In-the-Money: used in the context of valuing a contract that by its nature has a value that might fluctuate at a specified moment when the contract has value in one party's favor. If the contract were terminated at such specified moment, the party would be owed a termination amount. Said otherwise, if Party A offered Party B the opportunity to substitute themselves into Party A's position under the contract, Party B would pay Party A for the privilege.

Inverter: the equipment that converts the direct current (DC) generated by Photovoltaic cells into alternating current (AC) usable in the Grid.

Investment Company Act of 1940 / ICA / '40 Act: a US federal law that regulates firms that invest in or trade regulated securities and/or offer regulated securities to the public. Lenders want to make sure (and often require an opinion from Borrower's counsel) that neither the Borrower nor any other party providing security in a Project Finance deal is an investment company, because if a company is an investment company and it hasn't complied with the ICA, any contracts it signs (including financing documents) could be voidable. Borrower's counsel must start early on the ICA opinion, because it can require a fair bit of diligence to give.

Investment Grade: a rating of Baa3 or better by Moody's, BBB- or better by S&P, or BBB- or better by Fitch.

Investment Tax Credit / ITC: a type of US federal income tax credit for certain kinds of tangible personal property and other tangible property. Typically, ITCs are determined based on a percentage of the tax basis (or cost) of the relevant qualifying property and are claimed in the tax year the qualifying property is first Placed in Service. ITCs may be subject to Recapture in the event the property is sold (or the owner disposes of its investment in the property) within a specified period of time following the placed-in-service date. In the context of Renewable Energy projects, ITC refers to the Energy Tax Credit. Like PTCs, ITCs are non-refundable, meaning they can only be used to offset tax liability. Because ITCs are often used to promote governmental policy objectives, the amount and availability of ITCs have varied and lapsed over time, and tax experts should be consulted as to the current status of these and other tax incentives.

Investor-Owned Utility / IOU: a public utility that is not owned by a governmental entity. IOUs typically own electric transmission and/or distribution facilities.

IPP: acronym for Independent Power Producer.

Ipso Facto Clause: a clause under which a contract can be terminated or placed in Default if a debtor files for bankruptcy. With some exceptions, Ipso Facto Clauses are not enforceable pursuant to US Bankruptcy Code Sections 541(c) and 365(e).

IRP: acronym for Integrated Resource Plan.

ISDA: acronym for the International Swaps and Derivatives Association.

ISDA Definitions: standard definitional booklets published by ISDA for Derivatives products. Parties typically incorporate the ISDA Definitions for a particular product into the relevant ISDA Schedule or Confirmation, thereby avoiding the need for detailed and complex definitions to be set out within the Confirmation itself. Examples of ISDA Definitions include: (i) the 2006 ISDA Definitions (for interest rate and currency Derivatives); (ii) the 1998 FX and Currency Option Definitions; and (iii) the 2005 ISDA Commodity Definitions.

ISDA Master Agreement: a standard bilateral agreement published by ISDA for parties entering into Swaps (Regulatory) and other Derivatives. ISDA created the ISDA Master Agreement as a balanced and easily administered agreement, establishing a standardized framework used in the Derivatives and physical commodities markets worldwide. The second-generation ISDA Master Agreement was published in 1992, and the third-generation one in 2002. While the 2002 form is more commonly used, the 1992 form remains predominant in the energy industry in particular.

There is no such thing as an ISDA Master Agreement without an ISDA Schedule (though counterparties may elect to forego negotiating an ISDA Schedule and instead trade on a long-form Confirmation, which may include many of the elections and bespoke provisions that appear on an ISDA Schedule, and "deem" an ISDA Master Agreement to be in place as between the parties for purposes of the transactions covered by the long-form Confirmation). For example, consider a refinery facing a bank counterparty to Hedge its exposure to Brent Crude. The parties likely have an ISDA Master Agreement (including an ISDA Schedule and potentially a Credit Support Annex) in place between them, which governs the Hedges (called "Transactions" under the ISDA Master Agreement), the specific economic terms of which are documented on a Confirmation specific to each trade. If, down the line, the refinery enters into a financing facility and wants to enter into Interest Rate Swaps with the bank or otherwise Hedge its interest rate exposure with the bank as its counterparty, the parties could trade under the same ISDA Master Agreement in place between the parties (though they would likely want to amend the ISDA Schedule to reflect the financing arrangement). By itself, the ISDA Master Agreement has no economic effect until the parties hereto enter into one or more Transactions thereunder, the Confirmations of which incorporate by reference the parties' ISDA Master Agreement. The terms of the ISDA Master Agreement apply to the parties at any given time only to the extent that there are outstanding Transactions between the parties, and the ISDA Master Agreement itself would terminate only if the parties chose to expressly terminate the framework in writing (which hardly ever happens, and then only in specific circumstances).

ISDA Protocol: a multilateral contractual amendment mechanism used to address industry-standard changes to ISDA contracts. Derivatives counterparties may "adhere" to a particular ISDA Protocol rather than take the time to negotiate bilateral amendments to each of their ISDA Master Agreements. ISDA Protocols most often address regulatory requirements applicable to a party's Derivatives transactions, but may also address other legal and market developments. Common examples of ISDA Protocols include: (i) the ISDA August 2012 and March 2013 DF Protocols (addressing certain US regulatory requirements under the Dodd-Frank Act) and (ii) the ISDA 2013 EMIR NFC Representation Protocol and ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol (addressing certain EU regulatory requirements under EMIR).

ISDA Schedule: the part of an ISDA Master Agreement that includes the specific choices or elections made by the counterparties, as well as notice information and any exceptions and addenda the parties wish to make to the preprinted form.

ISO: acronym for Independent System Operator.

Issuer: the company that is the seller of securities such as Bonds.

Issuing Bank: the financial institution that issues Letters of Credit under the Credit Agreement. Issuing Banks are also known as LC Issuers, LC Banks, or other variations.

ITC: acronym for Investment Tax Credit.

JLA: acronym for Joint Lead Arranger.

Joint Lead Arranger / JLA: a designation for all the Arrangers in a transaction in which none of them lays sufficient claim to be the Coordinating Lead Arranger. In practice, most deals have one prominent Arranger. Even if the title is shared for reasons of comity, the real lead usually receives better compensation.

Judgment Currency: an alternative currency designated in Credit Agreements with a foreign Borrower, or if one or more Tranches exist in different currencies, that is used to obtain judgment in any court. Although Credit Agreements generally provide for payments in a specified currency, Judgment Currency allows for a conversion mechanism to deal with the possibility that a judgment may be awarded in an alternative currency.

Kilowatt / kW: a unit of energy equal to 1,000 watts of electrical power.

Kilowatt-hour / kWh: a unit of energy equal to 1 kW generated per hour.

Knowledge Qualifier: an exception to what would otherwise be an absolute assertion or representation. For example: "To the Borrower's knowledge, there are no underground storage tanks under the project site." Sometimes "Borrower's knowledge" is limited to the knowledge of senior managers or a list of specific individuals (or other similar permutations).

Know Your Customer / KYC: a policy implemented by Lenders and other institutions to conform to a customer-identification program mandated under the USA Patriot Act. KYC has become increasingly important globally to prevent identity theft, fraud, money laundering, and terrorist financing.

Known Geothermal Resources Area / KGRA: defined by law as "an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men [sic — or women?] who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose" (30 U.S.C. 1001). Originally, the term KGRA was used only in BLM regulations on procedures for leasing BLM land to geothermal developers; it is now used outside the BLM context as well.

Kroll Bond Rating Agency, Inc. / Kroll: a Rating Agency.

KYC: acronym for Know Your Customer.

Land Man: the person responsible for aggregating land rights for a project that will require multiple parcels, such as some Windfarms. Land Men often rely on their affability to secure those rights from owners — before greed becomes a factor.

Landfill Gas / LFG: methane and other combustible gases created by the natural decomposition of organic matter. LFG is collected using a simple system of pumps, pipes, filters, and separators, and is often used to fuel a small gas turbine.

Large Generator Interconnection Agreement / LGIA: an Interconnection Agreement between a generator and a transmission owner and/or operator that is based on a standard, FERC pre-approved form and regulated by FERC.

Last Twelve Months / LTM: the measurement period for Financial Covenants.

See also TTM.

Lateral: an offshoot line from a main supply line that is dedicated to a particular facility. Laterals include railroads, electrical T-Lines, and pipelines.

Lattice Tower: a tower made of latticed steel used by early-generation WTGs because it was less expensive than a tubular tower. Lattice Towers provided perching for birds, resulting in higher Avian Mortality. Between that and their sheer ugliness, they are no longer used on utility-scale WTGs.

LC Fee: a fee paid periodically (usually quarterly) in arrears by an Account Party to the Lenders that participate in a Letter of Credit facility, calculated as a percentage of the average Stated Amount of the Letter of Credit during the period.

LC Loan: the conversion of the reimbursement obligation resulting from a Draw upon a Letter of Credit into a loan. Of course, a reimbursement obligation and a loan are both debt obligations of the Borrower, but the existence of a LC Loan implies that the debt need not be repaid immediately.

LDs: acronym for Liquidated Damages.

Lead Arranger: the primary or original Arranger engaged by a Borrower or Sponsor in connection with structuring the financing in a transaction with more than one Arranger. For Syndicated transactions in which many Titles are handed out, the Lead Arrangers are often the Arrangers that receive the lowest level of fees, behind the Coordinating Lead Arrangers and/or Joint Lead Arrangers.

League Table: a list that ranks banks or law firms by deal volume and deal size. League Tables are produced by institutions such as Bloomberg and Refinitiv (formerly Thomson Financial). League Table credit refers to the credit a bank or law firm receives for a specific deal for purposes of determining the rankings.

Lease / Leasehold: an agreement pursuant to which an asset is provided by one party, the lessor, to another party, the lessee, for a fixed period of time in exchange for compensation. A Leasehold is the right created by a Lease of real property.

Lease Intended as Security: a Lease that constitutes a Lease Purchase or is otherwise characterized as a secured loan. Because the lessee in a Lease Purchase is generally considered the "owner" of the leased property, the lessor's retention of title is viewed as a Security Interest, and the transaction is treated as a secured loan. Equipment financings are often documented as Leases even though the characteristics of the transaction render them Leases Intended as Security (*i.e.*, secured loans).

Lease Purchase: a Lease that often has a term equal to the Estimated Useful Life of the leased asset. Because many Lease Purchases include a Bargain Purchase Option for the lessee to purchase the leased asset for US$1 at the expiration of the Lease, Lease Purchases are often referred to as "dollar buyout" or "buck-out" Leases. Lease Purchases are generally considered to be Capital Leases from an accounting perspective and non-Tax Leases from a tax perspective due to their Bargain Purchase Option and Lease term length.

Lease Schedule: a schedule to a Master Lease describing the leased asset, rentals, and other terms applicable to the leased asset.

Leasehold Loan: a secured loan in which the Borrower leases rather than owns all or a significant portion of the property on which the revenue-generating means of repaying the loan is located. The Lender takes the Borrower's leasehold interest as security for the loan, as well as any Improvements and personal property, obtains one or more SNDAs and Estoppel Certificates, and records a Leasehold Mortgage.

Leasehold Mortgage / Leasehold Deed of Trust: a Mortgage or Deed of Trust encumbering a leasehold interest in property. Because the Leasehold Mortgage is of necessity recorded after the Lease, it is by law junior to the rights of the lessor. So if the lessee Defaults under the Lease, the lessor can terminate the Lease and wipe out the Leasehold Mortgage. This is a disastrous result for the Lender, which it can avoid by using both a Lessor's Estoppel and, when the lessor has its own Lender, a Subordination Agreement and Non-Disturbance.

Left Side / Left Lead: the placement of a bank atop the left side of the list of banks providing a financing in a CIM or other marketing materials for the transaction, signifying the role of Lead Arranger. For transactions that have Joint Lead Arrangers or Coordinating Lead Arrangers, the engagement documents usually specify which bank will be Left Lead.

Legal Entity Identifier / LEI: a 20-character alphanumeric code used to identify legally distinct entities that engage in financial transactions. LEI is essentially the Social Security number of the Derivatives market.

LEI: acronym for Legal Entity Identifier.

Lender: a bank, financial institution, or other entity that makes loans to a Borrower pursuant to a Credit Agreement.

Lender Protective Provisions: provisions within a Project Document providing for notice and Cure rights of a Secured Party to protect the Secured Party and ensure that the Secured Party's Lien in the Project Document is not extinguished or terminated in the event the Borrower Defaults under the Project Document. The Secured Party is a Third Party Beneficiary of the Lender Protective Provisions.

Lessor's Cost: the price paid by the lessor at the closing to acquire the leased asset. The Lessor's Cost usually includes some Soft Costs. When rent or Termination Values are provided in percentage form, they are usually a percentage of the Lessor's Cost.

Lessor's Estoppel: See Estoppel/Estoppel Certificate.

Lessor's Lien: a category of Liens on the leased asset for which the lessor (and any Owner Participant) is responsible and for which the lessee is not responsible. Lessors are generally required to remove Lessor's Liens, with the exception of the Lenders' Lien in a Leveraged Lease.

Letter of Credit / LC / LOC: a letter from an Issuing Bank guaranteeing that the Issuing Bank will make a payment to the recipient of the letter (the "Beneficiary") if a third party (the "Account Party") fails to satisfy certain specified obligations. Letters of Credit provide security to Beneficiaries by essentially acting as a Guarantee by the creditworthy bank that will kick in if the Account Party does not meet an obligation to the Beneficiary. Letters of Credit can be issued under a separate Letter of Credit facility, but often Revolving Facilities provide that all or a portion of the facility may be used to issue Letters of Credit. A Borrower may post a Letter of Credit in favor of a Beneficiary to assure that Beneficiary that the Borrower will pay out on an obligation if needed, or will fulfill a governmental requirement, etc. If the Beneficiary requires payment, the Issuing Bank must pay under the Letter of Credit, and when issued under a Revolver or a Letter of Credit facility with multiple Lenders, can look to the other Lenders for reimbursement as if the payout were a Revolving Loan made by all the applicable Lenders as a group. The two main types of Letters of Credit are Trade Letters of Credit (Commercial Letters of Credit) and Standby Letters of Credit.

Letter of Intent: See MOU or Term Sheet.

Leveraged Lease: a Lease transaction in which the lessor has borrowed a portion of the acquisition cost of the leased asset on a non-recourse basis and the Lender obtains an assignment of the Lease and a mortgage or Security Interest in the leased asset as Collateral for the debt. The rent under the Lease is typically sufficient to pay in full the debt service under the loan.

LGIA: acronym for Large Generator Interconnection Agreement.

LIBOR: acronym for the London Interbank Offered Rate.

Lien: a broad term that includes non-consensual Encumbrances on property, such as tax Liens or Liens in favor of warehousemen or carriers, as well as consensual Security Interests. The term Lien is often used interchangeably with Security Interest.

Lien Waiver: a document by which a subcontractor or supplier waives its rights to place a Mechanic's/Materialman's Lien on a project for any work done or materials provided prior to the date of the waiver. The Lien Waiver lets the Lender, owner, and Title Company providing a 122 Endorsement or Datedown Endorsement know that payments made to the prime contractor have actually been applied to pay any subcontractors. The subcontractor doesn't care whether the prime contractor has been paid, only whether he or she has; and the subcontractor is entitled to put a Lien on the facility if he or she has not. So if the prime contractor is paid and does not use that money to pay off his or her subcontractors, the owner can be forced to pay off the subcontractor to have the Lien released, otherwise known as paying for the same thing twice. In some jurisdictions, the subcontractors or suppliers need to use statutory forms for a Lien Waiver to be enforceable. Lien Waivers can be unconditional or conditioned upon payment.

Limitation of Liability / LOL: a Cap on the damages one party to a contract could have to pay to the other party. The Limitation of Liability can apply to Liquidated Damages or any other kind of contract breach damages, or both. Usually, the Cap is a fraction of the contract price or a fraction of the profit under the contract of the party limiting its liability.

Limited Notice to Proceed / LNTP: See Notice to Proceed.

Limited Recourse Financing: a type of financing in which the Lender has no ability to make claims against the Sponsor in excess of the value of the Collateral if such Collateral is insufficient to repay the debt (or if such ability is limited to the ability to call on a limited Guarantee or Equity contribution agreement provided by the Sponsor). Limited Recourse Financing is also known as Non-Recourse Financing because the Lender has no (or limited) recourse to the Sponsor; the Lender does, however, have recourse to the Collateral.

Limited Use Property: a term in the IRS leasing guidelines that refers to property subject to a Lease that, at the end of the Lease term, could reasonably be expected to be usable only by the lessee.

Liquefaction: a process that generates a liquid from a solid or gas. Liquefaction is most commonly used in Project Finance in connection with the condensation of natural gas into liquid (*i.e.*, LNG) by cooling natural gas prior to transportation.

Liquefied Natural Gas / LNG: natural gas in liquid form, converted into this state only temporarily so as to store or transport it more easily. The chemistry behind the liquefaction process is complex. Dust, acid gases, helium, water, and heavy Hydrocarbons are removed from the natural gas before the gas is condensed at a very high pressure and low temperature (-260ºF / -163ºC). LNG takes up much less space than natural gas in its gaseous state.

Liquefied Petroleum Gas / LPG: gas mainly composed of propane and butane that has been liquefied at a moderate pressure and low temperature. LPG is obtainable from refinery gases or after the Crude Oil Cracking process. Released to atmospheric pressure, it converts into gas and can be used industrially or domestically. LPG is also known as "bottled gas."

Liquidated Damages / LDs: a designated amount of compensation payable for a specific breach of contract. LDs are an acknowledgment by parties to a contract that, even when damages are difficult to calculate with precision, if one party doesn't meet a contractual undertaking in some specified way, the other party will suffer damages, and therefore the breaching party will pay the damaged party money pursuant to a formula. Using the formula saves a lot of effort over calculating actual damages. For LDs to be enforceable, there are two requirements: (i) actual damages must be difficult or impossible to calculate and (ii) the formula used must be a reasonable approximation of actual damages. In Project Finance, the two most common LDs are Performance LDs and Delay LDs.

LLCR: acronym for Loan Life Cover Ratio.

LNG: acronym for Liquefied Natural Gas.

LNTP: acronym for Limited Notice to Proceed.

Load: a component of an electric circuit that consumes electric power. In the context of an electric Grid, Load typically refers to the demand for power, *i.e.*, the amount of end-use customers consuming power at a given time.

Load Curve / Load Graph: the actual or projected electric Load within a utility's service territory over the course of a day. The projections are used for scheduling in the day-ahead market. The Load Curve peaks in the evening when people arrive home and turn everything on.

Load Factor: the ratio of the average Load supplied during a period to the peak or maximum Load in that period, expressed as a percentage. Utilities are generally interested in increasing Load Factors on their systems.

Load Stack: a chart that shows which electric Grid resources will be used to satisfy system Load over the course of a day. Grid operators have to figure out how to satisfy system Load in a way that is reliable, economical, and somewhat flexible. In a Load Stack, Load/Capacity appears on the vertical axis, with time of day on the horizontal axis. Baseload units are on the bottom, each in their own color, while other units are stacked on top successively. The Load Stack has to be above the projected Load Curve for each moment in the day. Near the top are the resources that would be shut off (or never turned on) if system demand were lower than projected.

Loan Certificate: the evidence of indebtedness issued by the lessor in a Leveraged Lease to the Lenders, and a synonym for a Note.

Loan Life Cover Ratio / LLCR: the ratio of a project's present value of Cash Flow Available For Debt Service (from the date on which it is measured up to the final Maturity Date of the loans) to the total amount of the project's debt on specified dates. LLCR is calculated by dividing the net present value of the project's cash flow (after deducting operating expenses and any other amounts payable in a higher priority to the debt, such as project taxes) to the total amount of debt owed by the project. The LLCR gives Lenders an estimate of the ability of the project to repay its outstanding debt.

Loan Market Association / LMA: a market-led body that develops best practice guidelines and standard documentation for different types of loans. The LMA standard documentation is commonly used as a starting point for documenting facility and Intercreditor Agreements between a Borrower and Lenders in English-law bank Syndicated financings, and is often a reference point for banks when reviewing and negotiating such documents.

Loan Participant: the Lender in a Leveraged Lease.

Loan Syndication and Trading Association / LSTA: a nonprofit dedicated to promoting the development of a fair, efficient, liquid, and professional trading market in North America for corporate loans originated by commercial banks and other similar private debt. The LSTA publishes a number of standard forms, market practice documents, and publications. The British equivalent is the LMA.

Local Distribution Company / LDC: the local natural gas utility.

LOL: acronym for Limitation of Liability.

London Interbank Offered Rate / LIBOR: the rate at which major financial institutions can (usually) borrow from each other in the London interbank market (which is not limited to London, making the synonym Eurodollar a more proper term). Most credit facilities' interest rates are set at certain Margins above LIBOR. (See Applicable Margin.) In 2017, the Chief Executive of the UK's Financial Conduct Authority indicated the potential demise of LIBOR by the end of 2021, and many Credit Agreements include provisions contemplating this possibility.

Long Term Service Agreement / LTSA: an agreement to provide long-term maintenance and service, including parts supply, refurbishment, and repair of equipment. LTSA is usually (but not always) provided by the manufacturer of the equipment that is the subject of the LTSA. It is purportedly very profitable for the manufacturers, but also provides certainty to owners as to their costs. LTSA is also known as "long-term maintenance programs" or "long-term equipment maintenance and service programs."

Loss Payee: the person or persons to whom a property insurance company writes a check for proceeds of a claim. Secured Lenders want to be named a Loss Payee because the damaged or destroyed property is the Collateral securing the Lenders' loan, so they want to ensure that any proceeds received in respect of such Collateral are used to either purchase replacement Collateral or repay debt.

Low Floater: a Variable Rate Debt Obligation, auction rate security, or other debt instrument, usually a municipal bond, that has a long Tenor but whose interest rate resets frequently (such as once a week).

Low Flow Line of Credit: a debt service reserve line of credit offered by Lenders financing Run of the River facilities to allow the owner to cover debt service in low-water years. Expanding the concept to cover wind power facilities during low-wind years, the term "Low Blow Line of Credit" was discontinued when Lenders realized being repaid was more important than offering cleverly named credit facilities.

Lowest Achievable Emission Rate / LAER: a standard of pollution control under the Clean Air Act that reflects the strictest pollution control available. LAER is required for a particular Criteria Pollutant when the source is in a Non-Attainment area. LAER differs from BACT in that it is emissions-limit-based, so no economic criteria can be used to justify an alternate, less-stringent control technology.

LPG: acronym for Liquefied Petroleum Gas.

LSTA: acronym for the Loan Syndication and Trading Association.

LTM: acronym for Last Twelve Months.

LTSA: acronym for Long Term Service Agreement.

MAC: acronym for Material Adverse Change.

MACRS: acronym for Modified Accelerated Cost Recovery System.

MACT: acronym for Maximum Achievable Control Technology.

MAE: acronym for Material Adverse Effect.

MAE Qualifier: an exception to what would otherwise be an absolute assertion or Representation and Warranty. For example: "I have not violated my permits, except to such extent as would not likely generate a Material Adverse Effect on my ability to operate the project."

See also MAC.

Maintenance Covenant: a contractual provision in a Credit Agreement that requires a Borrower to maintain a certain state of affairs, such as meeting or exceeding financial performance measures. Financial Covenants are one category of Maintenance Covenants.

Maintenance Margin: the amount of money necessary when a loss on a Futures position requires a party to allocate more funds to return the Futures Margin posted in respect of a Futures contract, to the initial level of Futures Margin. For example, if a party has deposited/posted Initial Margin of US$1,000 on a Futures contract for which the Maintenance Margin level is set at US$500, after which a series of losses on the Futures contract dropped the value of such party's account to US$400, because the value of such account fell below the Maintenance Margin, the clearing broker would make a Margin Call to the party, requesting a deposit of at least an additional US$600 to bring the party's account back up to the original Futures Margin level of US$1,000. The concept of Maintenance Margin is also relevant to other products, such as repurchase agreements (aka "repos") and securities margin accounts.

Makeup Well: a new Production Well that allows the well-field capacity to meet or exceed the power generation equipment capacity. The power generation capacity of a geothermal power facility is a function of both its equipment and its Production Wells (and also its Injection Wells, which could create a bottleneck). Production Well temperature and/or flow can degrade over time, resulting in non-optimal use of the equipment capacity, hence the need for a Makeup Well.

Make-Whole (Payment): a payment made to a Lender, Note holder, or other investor that has lent at a fixed rate of interest in connection with the prepayment of such loan or investment prior to the Maturity Date. A Make-Whole compensates the Lender for the interest foregone as a result of such early prepayment and the Lender having to reinvest the prepayment proceeds at a lower interest rate. A Make-Whole is usually calculated by discounting foregone interest payments over what would have been the remaining term at a discount rate equal to yield on a US Treasury security having a Maturity equal to the weighted remaining average life of the prepaid amount, plus 0.50%. The discount rate used in this calculation is sometimes negotiable.

Mandatory Prepayment: a provision in a Credit Agreement that requires the prepayment of Term Loans (and sometimes the prepayment and/or permanent reduction of commitments under a Revolving Facility) with certain cash of the Borrower. In Project Finance, Mandatory Prepayments generally include one or more of a Cash Sweep, prepayments with the proceeds of asset sales, insurance claims, eminent domain actions, or Performance LDs, and/or a sweep of proceeds of aged cash in a Distribution Suspense Account.

Margin (as in On the Margin): a type of technology that, at a particular point during the day, is Dispatched off the Load Stack to meet Load increases or decreases. For example, a Peaker.

Margin (as in Spread): the difference between a Lender's cost of funding (*e.g.*, issuing CDs, borrowing on the Eurodollar market, or taking savings or checking account deposits) and the interest rate it charges on a loan.

Margin Call: the demand for credit support in the form of Variation Margin from a Derivatives counterparty based on Mark-to-Market exposure. Derivatives counterparties may also make Margin Calls for additional credit support in the form of Initial Margin.

See also Margining.

Margin Stock: a stock listed on a national securities exchange, an over-the-counter security approved by the SEC for trading on the National Market System or appearing on the Board's list of over-the-counter Margin Stock, debt securities convertible into Margin Stock, warrants or rights to subscribe to or purchase Margin Stock, or securities issued by an investment company registered under Section 8 of the Investment Company Act of 1940.

Margining: demanding credit support in the form of Initial Margin or Variation Margin from a Derivatives counterparty based on Mark-to-Market exposure. If a Derivatives counterparty (Party A) is In-the-Money, a Credit Support Annex would allow Party A to demand credit support from its counterparty (Party B). MTM exposure is often calculated on a daily basis. If Party A's exposure increases, Party B (*i.e.*, the Out-of-the-Money party) may be required to post additional credit support in the form of IM and VM. If Party A's exposure decreases, it may have to return some or all of the credit support (*i.e.*, the IM and/or VM, as applicable) previously posted by Party B. Similarly, if Party A becomes Out-of-the-Money, it may have to post credit support to Party B in the form of IM and VM, and so on. See Maintenance Margin for an example of Margining in the Futures context.

Mark-to-Market / MTM: an accounting requirement to write assets down (and in some cases up) to update the value of a financial instrument to its current market price. GAAP requires MTM for certain assets in certain industries. MTM is also used as a means of determining exposure under a Derivatives transaction for purposes of exchanging Collateral (*i.e.*, Variation Margin) under a Credit Support Annex.

Market Flex: a powerful provision included in the Fee Letter portion of the Commitment Papers that allows the Arranger to change the amount, terms, conditions, pricing, and/or structure of the facilities provided in the Commitment Letter if the Arranger determines that the changes are advisable to ensure the Successful Syndication of the facilities the Arranger has agreed to provide to the Borrower. The exact terms of Market Flex are heavily negotiated and sometimes include limitations (called "closed flex"). (See Pricing Flex and Structure Flex.) Market Flex is included in the Fee Letter because potential syndicate banks do not see the Fee Letter. If everybody knew Market Flex were part of the deal, the market would demand better terms.

Market MAC: a reference to a Condition Precedent to a Lender's commitment and funding obligations that there shall not have been any disruption or adverse change to the financial, banking, or capital markets generally, or the particular market in which the applicable debt is being Syndicated.

In contrast, see Business MAC.

Market Study: See Power Market Study.

Master Agreement: an agreement structured to set forth the general terms and conditions applicable to the multiple discrete transactions of the parties, with the economics (and any transaction-specific terms) of each transaction set forth in a confirmation, purchase order, or other task order. Examples of Master Agreements include the NAESB Base Contract for Sale and Purchase of Natural Gas and the ISDA Master Agreements.

Master Lease: a continuing Lease arrangement whereby additional assets can be added from time to time merely by describing the assets in a new Lease Schedule executed by the parties. The original Lease contract terms and conditions apply to all subsequent Lease Schedules.

Match Fund / Match Funding: when a Lender does not have funds of its own to lend to a Borrower because it does not have a customer deposit base (savings accounts, checking accounts, certificates of deposit), and so borrows funds from other Lenders to on-lend. If these other Lenders are not willing to lend at a rate close to the Index used in the Credit Agreement, the Match Funding Lender will have a hard time staying in business.

Material Adverse Change / MAC: just like it sounds, this phrase refers to a "material adverse change" in something — generally either the business (see Business MAC) or the market (see Market MAC). MAC is used in two general contexts: either as a Condition Precedent (*e.g.*, a buyer would not have to close on an acquisition if there had been a MAC to the seller's business), or as a qualifier to a Representation and Warranty (*e.g.*, the environmental representation is limited to instances in which violations of the representation could — or would — lead to a MAC). However, most agreements use the term MAE when referring to a qualifier to a Representation and Warranty.

See also MAE Qualifier.

Material Adverse Effect / MAE: another way of expressing the concepts embedded in the term MAC.

Materiality Qualifier: an exception to what would otherwise be an absolute assertion or Representation and Warranty to limit that assertion or representation to only material items. For example: "I have not broken any *material* laws."

Maturity / Maturity Date: the date on which a Bond, loan, or other amounts outstanding under a credit facility must be repaid in full.

Maximum Achievable Control Technology / MACT: See National Emission Standards for Hazardous Air Pollutants.

Mechanical Completion: the point during construction of a facility at which the project has been installed and is functioning as designed, but has not yet been fine-tuned to maximize performance or tested and Commissioned, and doesn't have its Punchlist completed.

Mechanic's Lien / Materialman's Lien: a Lien that a contractor or materialman has a statutory right to place on a property that incorporates the work or materials of that contractor or materialman, in order to enforce their right to payment. Mechanic's Liens may, in certain situations, Prime a Lender's Lien.

See also Broken Priority.

Mediation: a type of dispute resolution that involves bringing the parties to agreement through discussion, and engaging a neutral mediator to help each side understand the other's view. If successful, Mediation results in an agreement by the parties (as opposed to a ruling by the mediator); if not successful, it results in a more adversarial dispute resolution approach, such as Arbitration or litigation.

Megawatt / MW: a unit of energy equal to 1,000 kW or 1 million watts. A MW is a standard measurement of electric Capacity.

Megawatt-hour / MWh: a unit of energy equal to 1,000 kWh or 1 MW generated per hour.

Membership Interest Purchase Agreement / MIPA: a type of agreement by which a Tax Equity Investor invests in a Partnership Flip structure at Substantial Completion (or Mechanical Completion, depending on the structure of the deal). The choice between an MIPA and an ECCA is usually tax-driven.

Memorandum of Understanding / MOU: a generally non-binding agreement outlining the basic terms of a transaction and a path toward achieving a definitive agreement. Drafting an MOU is often the first step in a transaction, signaling the parties' intent to move forward with a formal contract. In the United States, MOU is also known as a Letter of Intent.

Merchant Facility: a facility that does not have a contract for its output, other than perhaps a relatively short-term contract. In Project Finance, Merchant Facilities are financed on the basis of a Power Market Study showing that there would be sufficient demand in the area that proceeds from merchant (*i.e.*, short-term) sales would eventually be able to repay the debt.

Met Tower: short for Meteorological Tower.

Meteorological Tower / Met Tower: a tower placed on or near potential Windfarms that measures wind data to determine whether the site is suitable for a project. Developers and Lenders usually require two years' worth of data, preferably deriving from measurements taken at or near the Hub height of the proposed WTGs, before investing further in a Windfarm.

Milestone: a clearly distinguishable event in the course of performance of a contract that either entitles the performing party to a payment or relieves it of a penalty (such as Liquidated Damages or contract termination).

Million Tonnes Per Annum / MTA / MTPA: a unit of measurement used to measure the amount of oil or gas that a project is able to produce and sell.

Mineral Rights: the right to access and remove minerals located under real property. Mineral Rights can be severed from the Fee interest in the land, such that one party may own the Fee while another owns the right to the minerals underneath.

Mini-Perm: a type of short-term loan, typically three to five years, used by a Borrower to pay off a Construction Loan or initial acquisition financing during the period a project is being completed or becoming stabilized as an income-producing asset. Borrowers enter into Mini-Perms during this phase because long-term financing is not yet available (since the project has an insufficient operating history). Mini-Perms typically have Balloon Payments at the end of their terms that are intended to be refinanced by long-term financing.

MIPA: acronym for Membership Interest Purchase Agreement.

Modified Accelerated Cost Recovery System / MACRS: the accelerated tax depreciation regime generally applicable to all tangible property unless an alternate depreciation system applies. MACRS is typically used as a shorthand reference to the five-year accelerated depreciation schedule and 200% declining balance depreciation method for wind and solar property, which results in significant upfront tax losses for wind and solar projects.

Module an assembly of connected PV solar cells. Modules are generally organized into an Array to achieve the desired energy output.

Moody's Investors Service, Inc. / Moody's: a subsidiary of Moody's Corporation. Moody's is one of the three key Rating Agencies. S&P and Fitch round out the Big Three, although S&P and Moody's are the biggest. Kroll is another Rating Agency.

Mortgage: a document by which a Borrower grants a Lender or a group of Lenders a Lien on real property to secure the Borrower's loan obligations. The law of the jurisdiction where the real property is located will dictate whether a Mortgage or a Deed of Trust is the appropriate instrument, but they are functionally equivalent.

Mortgage Recording Tax: a tax imposed by a jurisdiction (may be both state and local) on the recording of a Mortgage, usually calculated as a percentage of the underlying debt secured by the Mortgage. Mortgage Recording Taxes can be expensive in certain jurisdictions, so careful structuring should be undertaken to eliminate or minimize them.

Mortgage-Style: an Amortization technique whereby all payments of principal and interest are equal. The earlier payments are attributable mainly to interest and the later payments mainly to principal.

Mortgagee Protective Provisions: another name for the Lender Protective Provisions found in a Lease.

MOU: acronym for Memorandum of Understanding.

MSW: acronym for Municipal Solid Waste.

MTA: acronym for Million Tonnes Per Annum.

MTM: acronym for Mark-to-Market.

MTPA: acronym for Million Tonnes Per Annum.

Multilateral: something established by, or serving, multiple countries, such as a Multilateral Investment Treaty or Multilateral Credit Agency.

See also Bilateral Investment Treaty.

Multilateral Credit Agency: an institution similar to an ECA that is supported by multiple countries. For example, Corporación Andina de Fomento (Andean Development Bank) is a Multilateral Credit Agency serving the Andean countries.

Multilateral Investment Treaty: an international agreement made between multiple countries designed to protect investments made by investors in each other's territories. For example, the North American Free Trade Agreement (NAFTA, which could be superseded by the United States-Mexico-Canada Agreement) is a Multilateral Investment Treaty.

See also Bilateral Investment Treaty.

Municipal Solid Waste / MSW: trash from residences and businesses that is used in a Trash to Cash project. MSW is turned into Refuse-Derived Fuel.

Mutatis Mutandis: borrowing all or a distinct portion of one contract for use in another contract, without repeating the words, with the knowledge that none of the substantive terms will need to be renegotiated (though some provisions of the former contract may need to be tweaked for sense in the latter contract). Mutatis Mutandis translates to "things having been changed that have to be changed." Parties rely on Mutatis Mutandis when the latter contract is not likely to be used, and is therefore not worth drafting in full. For example: "The Parties hereby incorporate by reference Article 8 of their Former Contract, *mutatis mutandis*."

MW: acronym for Megawatt.

MWh: acronym for Megawatt-hour.

NAAQS: acronym for National Ambient Air Quality Standards.

Nacelle: the box-like enclosure on top of a WTG Tower that holds the gearbox, generator, drive train, and brake assembly.

NAESB Base Contract for Sale and Purchase of Natural Gas: a Master Agreement in the form published by the North American Energy Standards Board that parties use to buy and sell physical natural gas. Elections are made on a cover sheet, and additional provisions can be added as "special provisions."

Nameplate Capacity: the Capacity of a facility or machine as stated by the manufacturer (even though "pushing" the machine in one way or another can result in greater output). Nameplate Capacity is also known as "nominal capacity."

National Ambient Air Quality Standards / NAAQS: standards set by the EPA for Criteria Pollutants. All air basins in the United States are monitored for Criteria Pollutants, and are classified as areas of Attainment or Non-Attainment for each Criteria Pollutant. For some pollutants, such as ozone, basins are further classified as areas of moderate, severe, or extreme Non-Attainment. Many air basins are in Attainment for some Criteria Pollutants and Non-Attainment for others. For new or modified pollutant sources in Non-Attainment areas, the EPA may impose technology, emission rate, and Emission Offset requirements.

See also BACT and LAER.

National Emission Standards for Hazardous Air Pollutants / NESHAP standards that the EPA is required to adopt under the Clean Air Act for designated categories of sources that emit large quantities of specified hazardous air pollutants. NESHAP compliance is typically evaluated by an Independent Engineer. These standards are also known as Maximum Achievable Control Technology standards.

National Environmental Policy Act / NEPA: a US law that requires federal agencies to conduct an assessment of the environmental impacts of a project and reflect consideration of the analysis in the agency's record of decision before approving any "major federal action." This evaluation usually takes the form of an Environmental Assessment, in which the project is initially analyzed to see if it will present significant environmental impacts. If significant impacts are not likely to occur, the agency will typically issue a FONSI, and the process is concluded. If significant impacts are likely to occur, the agency will then prepare an Environmental Impact Statement, a draft of which is circulated for public comment (and often is the subject of one or more public hearings). Once the final EIS is completed, the agency can proceed to a final decision on the project. There are particular procedures to follow when multiple federal agencies are involved. In some cases, such as in California, where a project is subject to both state and federal EIS-type requirements, the state and federal agencies will prepare what's known as a "joint document," on which all federal and state agencies rely. The adequacy of an EIS (or an EA) can be challenged in federal district court under the federal Administrative Procedure Act following agency approval.

National Pollution Discharge Elimination System / NPDES: the permit program established under the Clean Water Act to regulate pollutant discharge and stormwater runoff to streams and other bodies of water. State environmental agencies typically implement NPDES under delegations of authority from the EPA or through permit programs established by local or regional sewer authorities.

National Renewable Energy Laboratory / NREL: the primary lab of the US government conducting research on Renewable Energy and energy efficiency.

Native Load: the maximum demand for power by the customers of a utility in its service area, used in reference to how much power must be imported or can be exported to other systems.

Natural Gas Act / NGA: a US federal law under which FERC regulates the transportation of natural gas.

NDA: acronym for Non-Disclosure Agreement.

Negative Arbitrage: the difference between the interest rate on a Tranche of debt and the rate earned on any cash Collateral securing the debt.

Negative Arbitrage: is one reason why Bonds are generally not favored for construction financing — the Issuer has to take down the whole Bond issuance on day one and so starts paying interest on the whole issuance even though much of the money will not be needed for months or years. In the meantime, the Issuer suffers the Negative Arbitrage.

Negative Covenant: a contractual provision in an Indenture, Credit Agreement, or other contract that prohibits the Issuer, Borrower, or other applicable party from engaging in specified activities, such as making investments, incurring new debt or Liens, selling assets, or making acquisitions. Think of Negative Covenants as "Thou Shalt Not" Covenants. Negative Covenants are usually highly structured and customized to an Issuer's or Borrower's specific conditions.

In contrast, see Affirmative Covenant.

Negative Pledge: a Covenant not to grant a Lien on particular property to any other person (or sometimes, a Covenant not to do so without also giving an "equal and ratable" Lien on that property to the beneficiary of the Covenant).

Negawatt: a cutesy term used in Demand-Side Management discussions to denote Load that would have existed but for the DSM efforts.

NEPA: acronym for the National Environmental Policy Act.

NESHAP: acronym for the National Emission Standards for Hazardous Air Pollutants.

Net Lease: a Lease in which all of the risks and costs relating to the leased asset during the Lease term are borne by the lessee, such as risk and cost of loss, taxes, insurance, and maintenance. A Net Lease is also known as a Triple Net Lease (referring to taxes, insurance, and maintenance).

Net Metering: an electricity Tariff that allows the customer to reduce the number of kWh it pays the utility for by the number of kWh generated by the customer. If the customer generates more than it consumes, it is not entitled to a payment from the utility. Net Metering is particularly useful for solar installations for which the customer has elected Time of Use Metering, because the customer receives credit for the value of the kWh it generates under the TOU Tariff, and that value is much higher during solar production hours.

Net Payment: a payment structure used when a contract has each party owing money to the other on a particular payment date. Net Payment allows only one party (*i.e.*, the one that owes more) to pay money on that date, after setting off the amount owed to it (by the other party) from the amount it owes (to the other party).

Net Proceeds: the amount left over from the sale of an asset after subtracting the costs associated with the sale (such as taxes, marketing costs, or brokerage fees) or from the receipt of insurance proceeds or casualty or Condemnation payments after subtracting all costs of collecting such amounts. If assets sales, casualty, or Condemnation proceeds are subject to Mandatory Prepayment, Net Proceeds are the amount that needs to be prepaid.

New Source Performance Standards / NSPS: emission standards that the EPA is directed to adopt under the Clean Air Act for categories of sources that are deemed to cause or contribute significantly to air pollution. The emission standards can be applied to new or modified pollutant sources. Compliance with the NSPS typically requires permit conditions in power and other industrial projects, and an Independent Engineer usually evaluates this aspect of a facility's performance and design.

New York Convention: an agreement between contracting states to Arbitrate and to recognize and enforce Arbitration awards made in other contracting states, to which most countries in the world have signed up. The New York Convention is therefore considered a cornerstone of international Arbitration.

NGA: acronym for Natural Gas Act.

NIMBY: acronym for Not In My Backyard.

No-Build Restriction: a restriction in a recorded document (typically, in an Easement) that restricts other parties from constructing Improvements over the area encumbered by the document.

No-Hazard Determination: a determination issued by the Federal Aviation Administration for buildings and other structures based on a certain height/slope relationship to airports, reflecting a judgment that the particular structure does not pose a hazard to air navigation.

Non-Attainment: See NAAQS.

Non-Call: a term used when describing the terms of Bonds or loans that cannot be optionally redeemed (in the case of Bonds) or Voluntarily Prepaid (in the case of loans).

Non-Call Period: a period during which the Non-Call provision applies.

Non-Disclosure Agreement / NDA: a document binding those to whom confidential information is conveyed not to disclose the confidential information covered by the NDA to persons other than those closely involved with the transaction. An NDA is also known as a "confidentiality agreement."

Non-Recourse Financing: a type of financing in which the Lender has no ability to make claims against the Sponsor in excess of the value of the Collateral if such Collateral is insufficient to repay the debt. Non-Recourse Financing should really be called Limited Recourse Financing, since the Lender does have recourse to the Collateral.

Non-Severable Modification: a modification made by the lessee to the leased asset during the Lease term, to which the lessor will obtain Title upon the termination or expiration of the Lease without additional payment by the lessor. Non-Severable Modifications are usually defined as modifications that are required by law or that are not readily removable without causing material damage to the leased asset.

Not in My Backyard / NIMBY: a reference to a person who objects to locating a project in his or her area. NIMBY often implies a level of hypocrisy, such as that of a person who nominally supports wind power or recycling but won't agree to bear any of the related inconveniences.

Note: another name for a Bond (traditionally used for Bonds with a Maturity of 10 years or less).

Notice to Proceed / NTP: a notice issued when an owner is ready for a contractor to commence work under a construction contract. Often, a construction contract is signed before the owner is ready to have the contractor commence work, usually because the owner has not closed its financing and so does not have the pile of money needed for the contractor to order supplies and otherwise mobilize. When the owner is ready for such activities to begin, it will issue an NTP. A construction contract may contemplate a limited scope prior to the NTP; to start the limited scope, the owner will issue an LNTP. In such case, the NTP that is issued later is called the Full Notice to Proceed.

Notional Amount / Notional Quantity: the size of a Derivatives transaction. Consider a party that buys an Interest Rate Cap that provides that the party will be paid if 12-month LIBOR rises above 5%. If the Notional Amount of the Interest Rate Cap is US$100 million and interest rates are at 6.25% on the payment date, the party will be paid US$1.25 million (*i.e.*, the increase in LIBOR multiplied by Notional Amount ((0.0625 – 0.0500) x US$100 million)). The term is called "notional" because there is never an actual exchange under the Derivatives transaction of the Notional Amount — it is just used as a multiplier to determine the Settlement Amount.

NPDES: acronym for National Pollution Discharge Elimination System.

NREL: acronym for National Renewable Energy Laboratory.

NSPS: acronym for New Source Performance Standards.

NTP: acronym for Notice to Proceed.

O&M Agreement: See Operation & Maintenance Agreement.

OECD Guidelines: recommendations to ECAs designed to encourage fair competition among exporters based on the quality and price of their goods and services exported, rather than the terms on which an ECA can provide financing support. The OECD Guidelines outline the most favorable financial terms and conditions that should be provided by ECAs, as well as rules relating to Tied Financing and other types of trade-related aid.

OFAC: acronym for Office of Foreign Assets Control.

Off-Balance Sheet Financing: a Lease that qualifies as an Operating Lease for the lessee's financial accounting purposes. Such Leases are referred to as Off-Balance Sheet Financing due to their exclusion from the balance sheet asset and debt presentation, except for that portion of the payments that is due in the current fiscal period. Full disclosure of such transactions is typically made in the auditor's notes to the financial statements. Periodic payments are recorded as expense items on the lessee's income statement.

Office of Foreign Assets Control of the US Treasury / OFAC: a US agency that administers and enforces economic and trade Sanctions based on US foreign policy and national security goals. Lenders often seek to include Representations and Warranties and/or Covenants in a Credit Agreement regarding OFAC requirements.

Off-Peak: the point in time when Load distribution or electricity consumption is at a minimum. Off-Peak can refer to a block of time during a day or year.

In contrast, see Peak.

Offshore Wind Windfarms: constructed in bodies of water offshore, where higher wind speeds are able to generate greater electric energy. Offshore Wind utilizes either traditional fixed-bottom WTGs or deepwater floating WTGs. WTGs in lakes or other sheltered coastal areas count as "offshore," in addition to WTGs located in the ocean.

Offtake Agreement: an agreement between a project company as seller and an Offtaker as buyer for the sale and purchase of a product that is produced by the project (*e.g.*, power, Crude Oil, or LNG).

Offtaker: the purchaser under a PPA, Offtake Agreement, or other commodity contract.

One Action Rule / One Form of Action Rule: a rule of law in some jurisdictions (including California and other Western US states) that forces a Lender to bring only one court action or proceeding against a Borrower when the debt is secured by real property. The One Action Rule can be a trap for the unwary. In one California case, a bank exercised its statutory right to set off amounts in its defaulted Borrower's bank account against the debt, and *that* was ruled the one action, precluding the bank from foreclosing on the real property security.

On-Peak: another name for Peak.

OpCo: short for Operating Company.

Open Access: a principle that owners and operators of a transmission Grid must provide access (both transmission and interconnection) to unaffiliated companies on a non-discriminatory basis. Open Access does not necessarily provide access to the transmission Grid in a particular manner or time frame or at a particular cost.

Open and Close Costs: another name for In and Out Costs.

Open Season: a time period in which potential customers are given the chance to sign up for part of a new pipeline's capacity rights. Pipeline developers use Open Season to determine market interest in constructing the pipeline.

Operating Company / OpCo: an operating company in a structure that involves a business separated into two companies (an OpCo and a PropCo). Companies may divide into an OpCo and a PropCo in order to generate value (due to the higher valuations sometimes given to companies that primarily own real estate). The PropCo typically owns real property on which Improvements are located, while the OpCo enters into a Master Lease with the PropCo in order to lease and operate the Improvements located on the real property.

Operating Lease: a Lease that is treated as a True Lease (as opposed to a loan) for book accounting purposes. As defined in FAS 13, an Operating Lease must have all of the following characteristics:

- Lease term is less than 75% of estimated useful life of the leased asset;
- Present Value of Lease payments is less than 90% of the leased asset's Fair Market Value;
- Lease does not contain a Bargain Purchase Option; and
- Ownership is retained by the lessor during and after the Lease term.

An Operating Lease is accounted for by the lessee without showing an asset (for the leased asset) or a liability (for the Lease payment obligations) on its balance sheet. Periodic payments are accounted for by the lessee as operating expenses of the period.

Operation & Maintenance Agreement / O&M Agreement: an agreement between a project company and a third-party operator to operate and maintain a project. The agreement will govern the work that the operator is required to perform and the standards against which it will be measured.

OPIC: acronym for Overseas Private Investment Corporation.

Option: a Derivative instrument that represents a contract sold by one party (*i.e.*, the Option writer or seller) to another party (*i.e.*, the Option holder or buyer), by which the buyer has the right, but not the obligation, to buy (*i.e.*, "call") or sell (*i.e.*, "put") the underlying asset or instrument at an agreed-upon price (*i.e.*, the "strike price") during a certain period of time or on a specific date (*i.e.*, the "exercise date"); the seller has the corresponding obligation to fulfill the transaction if the buyer "exercises" the Option. Types of Options include puts, calls, Floors, Caps, and collars, as well as similar Options, and can be based on a rate (*e.g.*, interest rates or currency exchange rates), physical commodity, debt obligation, equity underlier (*e.g.*, single stock, basket, or Index), etc.

Org ID Number: a company's organizational identification number. Not to be confused with Taxpayer ID Number, the Org ID Number is a unique number assigned to a registered organization by its jurisdiction of organization.

Original Gas-in-Place (OGIP) / Original Oil-in-Place (OOIP): the total volume of Hydrocarbons stored in a Reservoir prior to production. Unlike Reserves, OGIP or OOIP includes oil and gas deposits that cannot be economically recovered using current technology.

Out-of-the-Money: the opposite of In-the-Money.

Overriding Royalty: the right to receive a percentage of (i) the revenues deriving from production of electricity from a geothermal power plant or (ii) production or revenues deriving from the production or sale of Hydrocarbons, in each case, without netting against those revenues any costs of development, production, or maintenance.

Overseas Private Investment Corporation / OPIC: the US government's development finance institution, which provides investors with financing and Political Risk Insurance for circumstances in which the project advances the foreign policy aims of the United States. Under the 2018 BUILD Act, OPIC is to be transformed into a new, expanded entity called the US International Development Finance Corporation.

Owner Participant: in a Lease that uses an Owner Trustee, the Beneficiary of the owner trust and the party that therefore has the beneficial ownership interest in the asset and makes the equity investment in the leased asset.

Owner Trust Agreement: an agreement between an Owner Trustee and Owner Participant creating the trust that will own the leased asset and incur any loan in a Leveraged Lease, and setting forth the relationship between the Owner Trustee and its Beneficiary.

Owner Trustee: in many Lease transactions, the entity with the economic ownership interest in the asset will arrange for that asset to be held in a trust, the trustee of which is usually a bank. This Owner Trustee will then lease the asset to the lessee and incur the loans from any Lenders. Owner Trustees are often used in larger transactions to ease handling of funds, facilitate transfers of equity interests, protect Owner Participants from third-party liability based on strict liability in tort, and/or provide some protection to the other parties upon an Owner Participant bankruptcy.

Owner's Affidavit: an affidavit provided to a Title Company by the owner of real property in order for the Title Company to issue a "clean" Title Insurance Policy to an Agent on behalf of the Lenders (*i.e.*, a Title Insurance Policy that does not include exceptions that would typically be unacceptable to the Lenders).

P99, P50, etc.: a value that refers to the probability of an outcome. The higher the "P" factor, the more likely that a certain outcome will be met or surpassed. Commonly used in wind or solar resource studies, a P factor may represent the minimum number of kWh that WTGs or Panels of a certain nameplate rating at specified places will generate, at a probability of 99% or 50%, etc. For a P99 probability, there would be only a 1% chance that WTGs placed in those locations would generate less than the stated number of kWh. Lenders and other investors use these factors for various purposes, including to determine the amount of debt a project can support. Distinguishing the time period over which a P99 or P50 case must be met is important because there do occur years in which the wind or solar resource is less than expected, and if the wind or solar consultant says there is no more than a 1% chance of actual output coming in below his/her P99 or P50 number, a "one year" P99 or P50 will be somewhat lower than a "10 year" P99 or P50.

In the oil and gas arena, P50 is used to refer to Proven and Probable Reserves, whereas P90 is used to refer to Proven Reserves.

Panels: another name for a solar Module.

Par / Par Value: the stated value or face value of a Bond. So if a US$1,000 Bond is redeemed at Par, it is redeemed for the full US$1,000 (plus accrued interest up to the redemption date). Bonds are said to be redeemed "above Par" or "below Par" if they are redeemed for more or less (as applicable) than their Par Value.

Parasitic Load: the power that a generating station consumes in the process of generation, and which therefore cannot normally be sold to the Offtaker. However, if a utility wants to maximize the number of RECs it receives from a seller, it might purchase the plant's gross output and sell the plant an amount of energy equal to the Parasitic Load.

Pari Passu: a situation in which two or more creditors or obligations are equally managed without any display of preference. The payment of principal or interest under loans or other obligations are ranked Pari Passu if the creditors have equal rights of payment or equal seniority. Pari Passu is Latin for "on equal footing."

Paris Climate Agreement / Paris Accord: an agreement among 195 UNFCCC members to determine, plan, and report the contributions each member will make to combat global warming. No mechanism exists to force a member to set a specific target by a specific date, but each member is encouraged to go beyond its previous target, if applicable.

Participation: a contract between a Lender and another financial player in which the latter is given all of the benefits and burdens of being a Lender under a particular credit facility, other than actually being a party to the Credit Agreement.

Participation Agreement: an agreement used almost universally in Leveraged Leases, and occasionally in Single Investor Leases, to which all the financing parties, their trustees, and, perhaps, Credit Enhancement parties are signatory. A Participation Agreement is the road map that sets forth the financing commitments of the financing parties, conditions to closing, representations of the parties, usually the general indemnities by the lessee, and other Covenants for the benefit of the other parties to the Lease transaction.

Partnership Flipa Tax Equity: financing structure that uses a special allocation tax partnership (which may in form be a limited liability company) to pass a disproportionate amount of the tax benefits (generally, ITCs, PTCs, and MACRS deductions) generated by a Renewable Energy project to the Tax Equity Investor. Typically, the Tax Equity Investor is allocated up to 99% of the tax benefits until a "flip point," after which the Tax Equity Investor generally reverts to a minority investor and may be bought out. Cash flow from the project often is shared in different ratios than the tax benefits. There are generally two kinds of Partnership Flip structures: (i) yield-based deals in which the flip point occurs when the Tax Equity Investor achieves an agreed-upon after-tax internal rate of return on its investment and (ii) time-based deals in which the flip point is tied to the end of the Recapture period.

Payment-in-Kind / PIK: another name for capitalized interest. Instead of paying cash interest, the Borrower increases the principal amount payable to the Lender by that amount, which in turn earns interest in subsequent periods.

Payment in Lieu of Taxes (PILOT) Agreement: an agreement whereby a sponsor of a project makes contractually negotiated payments to the local taxing authority in lieu of paying property taxes. To implement the agreement, the sponsor transfers ownership of the project to a government entity such that the project is exempt from local property taxes, and the sponsor leases the project back from the government entity.

Peak: the period of time during which Load distribution or electricity consumption is at a maximum. Peak can refer to a block of time during a day or year. Peak is also known as On-Peak.

In contrast, see Off-Peak.

Peak Demand / Peak Load: the maximum draw on a power system's resources, in MW, during a day or year. Even though yearly Peak Load may last only an hour or two (perhaps during a heat wave), the system must include sufficient generating resources to accommodate the usage.

Peak Shaving: when a business customer uses its own on-site generator during On-Peak periods to avoid being charged premium utility rates.

Peaker / Peaking Unit: a power plant with a very high Ramp Rate that is turned on only during Peak Load. Peakers typically have a relatively high Heat Rate and relatively low capital cost relative to Capacity.

Penstock: the pipe used to transport water for a hydroelectric generation facility from the Intake Structure to the turbine.

Perfect / Perfection: what a holder of a Security Interest (*i.e.*, the Secured Party) must do to make that Security Interest enforceable against third parties. A Security Interest that is valid and enforceable but has not been Perfected is enforceable against the debtor but not third parties and, most notably, not against the trustee in the debtor's bankruptcy. The five basic methods of Perfection under Article 9 of the UCC include: filing of a Financing Statement, Control, possession (either directly or through a third party), temporary Perfection, and automatic Perfection. The easiest and most common method of Perfection is the filing of a Financing Statement. Filing a Financing Statement is sufficient to Perfect a Security Interest in most UCC Collateral (notable exceptions include certificated securities, which must be Perfected by possession, and money, which must be Perfected by Control).

Perfection Certificate: a certificate signed by the authorized officers of a Borrower and each other grantor under a Security Agreement, which sets forth certain information regarding the Borrower, the other grantors, and their respective assets. A Lender can use a Perfection Certificate to find out what assets a company has and where to find them.

Performance Bond: an undertaking by a third party (called a surety) to perform the obligations of a construction contractor or EPC contractor for the benefit of the developer and sometimes the developer's lenders, if the contractor or EPC contractor does not perform those obligations. Except in public projects and public-private partnership projects, parties do not prefer to use Performance Bonds in Project Finance transactions because sureties are often reluctant to pay claims and surety bonds are often seen as illiquid.

Performance LDs: Liquidated Damages payable by an EPC contractor or equipment manufacturer if the project or equipment, as applicable, does not meet contractually guaranteed performance levels. For example, most gas turbines have a guaranteed Heat Rate and output. If the Heat Rate tests out higher than was guaranteed, the owner will perpetually have higher fuel costs than it initially assumed. Performance LDs require the EPC contractor or manufacturer, as applicable, to compensate the owner for the loss on a present-value basis. Similarly, if output is less than guaranteed, the owner has paid an amount for equipment that it has assumed would generate a certain revenue over time; and so the contractor or manufacturer, as applicable, makes up the difference.

Performance Tests: tests that measure equipment and facility performance in their "new and clean" state and compares equipment and facility performance to guaranteed performance levels.

Permit to Operate / PTO: the permit issued to a stationary source of air emissions, typically an industrial or energy facility, after construction has been completed and all emissions tests have been passed and certified to the agency. The PTO is typically valid for a fixed term, after which it is subject to renewal. Under Title V of the Clean Air Act, a Title V PTO is also issued to certain facilities.

Permitted Lien: an exception to a Negative Covenant that prohibits the Borrower from incurring or suffering any Liens in a secured loan transaction. "Lien" is defined so broadly that even normally operating companies without any outstanding consensual Liens can get tripped up by the Negative Covenant. Permitted Liens, including Easements on the Borrower's land, Mechanic's Liens while the work is still in progress, existing consensual Liens (*i.e.*, Liens to other secured creditors), and other negotiated exceptions to the Negative Covenant, usually do not bother a senior secured Lender.

Personal Property Security Act / PPSA: the Canadian equivalent of Article 9 of the UCC.

Petition Date: the date on which a US bankruptcy case is commenced, so named because a petition is filed with the US bankruptcy court to commence a bankruptcy case. Petition Date is also known as "commencement date."

Petroleum Coke / Pet Coke: a solid black obsidian-looking residue resulting from the refining process. As with many other substances in the oil and gas sphere, there is a market for Pet Coke even though it is a by-product. Pet Coke is used in a variety of industries, including as Feedstock in furnaces for the steel and aluminum industries, for heating purposes, and for the production of electrodes.

Phase I ESA: an initial Environmental Site Assessment prepared to identify the likely presence of site contamination based on a review of available documentation regarding site usage and history, interviews with knowledgeable site personnel, and a visual inspection of the property. Issues identified as material potential concerns will be noted as Recognized Environmental Conditions (RECs) or Areas of Concern (AOCs). The scope of the traditional Phase I ESA, as defined by the ASTM "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," may not cover all relevant aspects of environmental liability or compliance (*e.g.*, excluded topics include indoor air pollution, permit compliance, asbestos, and third-party disposal site liability). A Phase I ESA does not involve the collection or laboratory analysis of soil, groundwater, building materials, or other environmental media. In almost all circumstances, a Lender or purchaser will require a satisfactory Phase I ESA prior to closing a finance or purchase transaction involving US real property, dated within 180 days prior to the closing. While a Phase I ESA is not typically expensive, it can take a few weeks to complete, so this diligence item should not be left to the last minute. A Phase I ESA is also known as a "Phase I."

Phase II ESA: an Environmental Site Assessment, typically performed after completion of a Phase I ESA, that involves the collection and laboratory evaluation of samples of the site's soil, groundwater, building materials, or other environmental media, to confirm whether or not contamination above applicable regulatory criteria is present. The location and extent of sampling will depend on the nature of the site and the objective of the investigation. Depending on the results, further sampling events (sometimes referred to as a "Phase II A" or a "Phase III") may be needed to delineate the extent of contamination. At this point, there is typically a more serious environmental issue and the project will likely require the involvement of environmental professionals if they are not already involved. A Phase II ESA is also known as a "Phase II."

Photovoltaic / PV: technology that converts sunlight directly into DC electricity. It then needs an Inverter to be converted to AC electricity usable in the Grid.

Piercing the Corporate Veil / Piercing: setting aside general limitations of liability and allowing a creditor of a corporation, limited liability company, or limited partnership to reach the assets of the parent/shareholder of a subsidiary debtor in order to satisfy such subsidiary's debt. A creditor may attempt to Pierce the Corporate Veil upon finding out that the subsidiary does not have sufficient funds to pay the creditor. In order to convince a court to set aside the presumption of limited liability and hold shareholders or owners personally liable for a subsidiary's debts or actions, a creditor must demonstrate that corporate formalities have not been respected. The law of Piercing the Corporate Veil varies in each state, but generally a creditor is required to show that (i) the parent company/shareholder did not respect necessary statutory formalities (such as conducting shareholder and board meetings periodically); (ii) the subsidiary was not sufficiently capitalized in light of its expected business; and (iii) there was intermingling of assets between parent/shareholder and the subsidiary, among other somewhat squishy factors.

Pig: a cylindrical device that is inserted into a pipeline to clean the pipeline wall or monitor the internal condition of the pipeline. A Pig is also known as a "go-devil." Many rookie pipeline workers believe that Pig performance can be improved through application of lipstick, but we have heard it isn't so.

PIK: acronym for Pay-In-Kind.

PILOT Agreement: acronym for Payment in Lieu of Taxes Agreement.

Placed in Service (Date): a tax term for the moment a particular asset becomes eligible for tax benefits, such as a PTC, MACRS depreciation, etc.

Plan of Reorganization: a plan filed under Chapter 11 of the US Bankruptcy Code providing for the reorganization and continuation of the debtor and for the treatment of claims and interests.

Pledge Agreement: an agreement that creates a Security Interest in equity interests in fa or of the applicable Secured Parties. A Pledge Agreement is the mechanism by which the shares of the Borrower or its subsidiaries are taken as Collateral. If the Pledgor is also granting a Security Interest in some or all of its other assets, the pledge of equity interests is included in the Security Agreement, and a separate Pledge Agreement will not be required. "Pledge" is used to connote a possessory Security Interest. So "You can hold on to my cow till I pay you back the five guineas I borrowed" would be a pledge. But as things go electronic and become intangible (*e.g.*, ownership through the Depository Trust Company), the concept of a physical pledge is losing significance.

Pledgor: an entity that grants a Security Interest in the equity interests it owns in its subsidiaries to the applicable Secured Parties as Collateral for the payment or performance of obligations under a Credit Agreement or other debt documents.

PM10 / PM10: particulate matter (in the air) of 10 micrometers or less. PM10 is one type of Criteria Pollutant.

POD: acronym for Point of Delivery.

Point of Delivery / POD: the place where commodities or other goods change hands between seller and buyer (or shipper and transporter).

Political Risk Insurance / PRI: an insurance policy that covers a Sponsor's Equity investment in a project or a Lender's loans or other financing provided to the project against political risk. Such risk, including revolution or other political conditions, as well as Expropriation, could result in a loss to or of the project.

Polychlorinated Biphenyls / PCBs: a compound that was widely used as a dielectric fluid in transformers and other electrical equipment due to its non-flammability, chemical stability, high boiling point, and insulating properties. Although PCBs are still present in some older equipment, production of PCBs was banned in 1979 due to its adverse environmental and health impacts.

Possible Reserves: Hydrocarbon reserves that analysis of geological and engineering data suggest are less likely to be recoverable than Probable Reserves (and of course also less likely to be recoverable than Proven Reserves). Generally speaking, there is a 10% to 50% probability that Possible Reserves will be commercially extracted. Possible Reserves are also known as "P3."

Potentially Responsible Party / PRP: a person or entity that could be held liable for site contamination pursuant to CERCLA (or similar state statutes). Under CERCLA, PRPs can include the current owner or operator of a site, former owners or operators, and other parties that transported or arranged for transportation to the site. Although most state Remediation statutes impose liability on a similar group of PRPs, the exact scope of the term may vary. The term can apply to either on-site or off-site liabilities of a particular enterprise.

Power Curve: a curve provided by a WTG manufacturer showing the expected output of its WTG over the full range of wind speeds. Every specimen of a given model of WTG should be able to meet the Power Curve, wherever it is located. For this reason, Power Curve testing is often not performed at a Windfarm if the WTG model has been well tested elsewhere. When Power Curve testing is required, it may take several days or weeks (or more) to finish, since the wind gods do not deliver each required speed on demand. The manufacturer will often guarantee that output will achieve a certain percentage of the Power Curve, such as 98%.

Power Market Study: a study performed by consultants who analyze the power supply and demand in the market area for a Merchant Facility sought to be financed, projecting out at least as long as the life of the loan. A Power Market Study is supposed to help Lenders determine whether the project will generate sufficient revenue to repay their loans.

Power of Attorney: an instrument permitting an individual to serve as the attorney or authorized agent of the grantor.

Power Pool: two or more interconnection power systems planned and operated to supply power in the most reliable and economic manner. A Power Pool is used to balance the electrical Load over a larger network than a single utility and is often governed by an interchange agreement.

Power Purchase Agreement / PPA: a contract between a power generator and a party that is seeking to purchase electricity. The PPA defines all of the commercial terms for the sale of electricity between the two parties.

Power Tower: the focal point for some types of Solar Thermal plants (where Heliostats direct the sun's rays), where light is converted to heat and imparted to a fluid that is piped back down to run a steam turbine on the ground.

PPA: acronym for Power Purchase Agreement.

PPSA: acronym for the Personal Property Security Act.

Precautionary Filing: the Financing Statement filing made pursuant to Section 9-408 of the UCC. The filing Perfects the Security Interest of a lessor in a leased asset in the event the Lease is considered to create a "security interest" under the meaning of Section 1-201(35) of the UCC. Actual UCC filings should be made against the lessee in all Lease Purchases or other Leases that are not True Leases for commercial law purposes, since the lessee owns the leased equipment subject to the lessor's Security Interest. That said, Precautionary Filings should be made against the lessee in all Leases that are intended to be True Leases for commercial law purposes, in case, upon bankruptcy of the lessee or otherwise, the Lease is determined not to be a True Lease for commercial law purposes.

Precedent Agreement: an agreement between the owner of a pipeline and a party that wishes to ship quantities on that pipeline that sets forth the commercial terms under which the shipper is to purchase capacity and the amount, transportation path, and terms of the shipping service.

Preferential Transfer: pursuant to US Bankruptcy Code Section 549, a transfer made during the 90 days preceding a bankruptcy filing (or one year preceding, for transfers to insiders; in each case, the "Preference Period") (i) to a creditor; (ii) on account of an antecedent debt owed by the transferor before the transfer is made; (iii) while the transferor was insolvent; and (iv) that enables the creditor to receive more than it would have received in a Chapter 7 liquidation case under the Bankruptcy Code. Preferential Transfers are subject to Clawback, but creditors may avail themselves of certain defenses to a Clawback action such as the "ordinary course of business defense" and the "new value defense." One rationale behind Preferential Transfer rules is that they prevent creditors from making a mad grab for assets when they learn that the debtor is becoming insolvent and prevent debtors from favoring some creditors over others as bankruptcy nears.

Preliminary Title Report / PTR: a report by a Title Company identifying the owner of the property and the interests therein, including Easements, Encumbrances, and other property rights that affect the property. This document does not itself provide insurance coverage or commit the Title Company to provide coverage. A PTR is used as a tool early in the financing process to learn what title issues need to be cleaned up, *e.g.*, releasing an old mortgage that was paid off but with respect to which a release was never recorded.

Prepayment Premium: a fee paid by the Borrower for prepaying the Term Loans. The fee is expressed as a percentage of the amount of the Term Loans being prepaid. Typically, Prepayment Premiums will be set on a sliding scale, *e.g.*, 2% in year one and 1% in year two. The fee may be applied to all prepayments of Term Loans or only those made from a refinancing or at the discretion of the Borrower.

Present Value: the discounted value of a payment or stream of payments to be received in the future, taking into consideration an agreed "discount rate." If a party started with the Present Value and used the discount rate as an interest rate earned by the Present Value, the party would end up with the "payment or stream of payments" mentioned in the first sentence.

Prevention of Significant Deterioration / PSD: a program established under the Clean Air Act that imposes permitting and emission control requirements on new major sources of air pollution and major modifications at existing sources of air pollution that are located in areas that otherwise meet the applicable NAAQS. PSD permits generally call for a source to install emission control equipment that meets a BACT standard and require an evaluation of the source's impact on air quality and certain other environmental resources.

PRI: acronym for Political Risk Insurance.

Pricing Flex: a Flex provision that allows the Arranger to change the pricing of the facilities. Pricing Flex refers to the changes that the Arranger may make to the interest rates or fees if needed to facilitate the Successful Syndication of the credit facilities. Pricing Flex sometimes includes limitations, such as a stipulation that the rate may not be increased by more than 2%.

See also Market Flex and Structure Flex.

Primary Obligor: the person whose obligations are being Guaranteed.

Primavera: a computer program that tracks project tasks in a sophisticated way, including analyzing Critical Path.

Prime: to take priority over, or less frequently, an equal position with, another Lien. In the context of DIP Financing, Prime is used to describe the imposition of a new post-petition Lien on top of and with priority over, or at least equal to, pre-petition Liens that would have otherwise been first Liens without competition. Priming is done under US Bankruptcy Code Section 364(d) and requires that DIP Financing be unavailable on any other basis and that holders of any pre-petition Liens that are to be Primed receive adequate protection of their interest in the property that is subject to the priming Lien. Unless the Prime occurs consensually, it can be expected to result in heavy litigation before a US bankruptcy court.

Private Lender: See Public/Private Information Undertaking.

Privatize / Privatization: a process by which a project (*e.g.*, an airport) or an industry sector (*e.g.*, oil exploration and production) that was previously owned and/or operated by the government or a governmental entity is either sold to private investors or becomes operated by private investors pursuant to a Concession or similar agreement. The idea is that the government receives proceeds from the sale of the asset, perhaps allowing it to pay down debt, while the Privatized business runs the project more efficiently.

Pro Forma Title Policy: the negotiated Title Insurance Policy to be issued upon satisfaction of all Title Company conditions. This document does not itself provide coverage or commit a Title Company to provide such coverage, but it can serve as a basis for interim title coverage pursuant to the Closing Instruction Letter until the Title Insurance Policy is issued.

Probable Reserves: Hydrocarbon reserves that are more likely than not to be recoverable, according to analysis of geological and engineering data. Generally speaking, there is a 50% to 90% probability that Probable Reserves will be commercially extracted. Probable Reserves are also known as "P2."

Production Tax Credit / PTC: a US federal income tax credit based on per unit of production allowed to the owner of a qualifying energy facility that produces and sells energy from certain renewable resources to an unrelated person. Qualifying energy facilities include wind, geothermal, and Biomass facilities, among others, that are located in the United States or in a US possession. PTCs generally may be claimed over a 10-year period from the Placed in Service Date of the facility. There is a scale-back in PTCs for projects that receive tax-exempt financing or other governmental energy subsidies. PTCs are not refundable, meaning they can only be used to offset tax liability. The value of PTCs is declining, as PTCs are scheduled to be phased out for wind projects that begin construction after 2019.

Production Well: a well in a geothermal well field from which Brine or steam is extracted.

In contrast, see Injection Well.

Project Costs: all of the costs of a project that are allowed under the "Use of Proceeds" Covenant of the Credit Agreement. In other words, development costs, land acquisition costs, equipment costs, consultant fees, construction costs, Interest During Construction, legal fees, startup costs, initial fuel fill, initial reserves, etc.

Project Documents: all contracts to which the Borrower is a party other than those related to the financing itself (which are usually called credit, loan, or financing documents).

Project Finance / Project Financing / PF: a type of Limited Recourse Financing whereby debt is incurred by a project developer (known as the project company, which is formed by a Sponsor) and, in combination with Equity contributed by the Sponsor, is used to finance the development and construction of a capital-intensive project, such as a power plant, pipeline, or toll road, typically by means of Construction Loans that later convert to Term Loans upon completion of the project. A primary feature of Project Finance is that the Lenders advance debt on the basis of their evaluation of the projected revenue-generating capability of the project, rather than the credit quality of the project Sponsor. The Equity of the project company and the project assets, including the Project Documents and other cash flows, are pledged as Collateral for the debt.

PropCo: short for Property Company.

Property Company / PropCo: an operating company in a structure that involves a business separated into two separate companies (an OpCo and a PropCo). Companies may divide into an OpCo and a PropCo in order to generate value (due to the higher valuations sometimes given to companies that primarily own real estate). The PropCo typically owns real property on which Improvements are located and enters into a Master Lease with the OpCo in order to lease the Improvements to the OpCo so that the OpCo can operate them.

Proved Undeveloped Reserves / PUDs: Hydrocarbon reserves that exist but for which actual development has not commenced. US domestic oil and gas Lenders do not typically attribute much value to PUDs.

Proven Reserves: Hydrocarbon reserves that are known to exist and to be exploitable to a reasonable degree of certainty — from known stores, under current economic conditions and using current technology. Generally speaking, there is a 90% or greater probability that Proven Reserves will be commercially extracted. However, the exact definition of Proven Reserves varies from company to company and from country to country. Perhaps unsurprisingly, the numbers disclosed by national governments are often manipulated. Proven Reserves are also known as "proved reserves" or "P1."

See also Probable Reserves and Possible Reserves.

PRP: acronym for Potentially Responsible Party.

Prudency Review: a formal process to determine whether a utility may pass along (or Rate Base) costs to customers. In order for this to happen, the PSC has to conclude that the utility acted prudently and reasonably in incurring the costs.

Prudent Industry Practice: a standardized definition that sets forth the standard of care by a facility operator based on the standard that would be used by other similarly situated operators or owners. The idea is not to impose a higher performance standard than what is generally accepted in the industry. Sometimes a geographic region is specified, which, depending on the region, may raise or lower the bar. In the electricity industry, the term "prudent utility practice" is sometimes used, but this term can be dangerous, because some utilities might have higher operating standards than IPPs.

PSA: acronym for Purchase and Sale Agreement.

PSC: acronym for Public Service Commission.

PSD: acronym for Prevention of Significant Deterioration.

PTC: acronym for Production Tax Credit.

PTO: acronym for Permit to Operate.

PTR: acronym for Preliminary Title Report.

Public Lender: See Public/Private Information Undertaking.

Public/Private Information Undertaking: a provision in a Commitment Letter providing that a company will make two versions of the Bank Book, one for Public Lenders and one for Private Lenders. The public book will generally be the same as the private book, but will have been scrubbed of any material non-public information about the Borrower, Sponsor, or target, as applicable. Note that projections are almost always considered to be material non-public information. Note also that even deals for private companies will include Public Lenders, and therefore will require two versions of the Bank Book.

Public Service Commission / PSC: used in some states in lieu of PUC.

Public Utility Commission / PUC: a state commission that is typically responsible for authorizing regulated utility expenses and rates, and often regulates the siting of new facilities. A PUC is also known as a Public Service Commission or a department of public utilities (or service).

Public Utility Holding Company Act of 2005 / PUHCA: a US federal law that provides for federal and state access to books and records of electric and gas utility holding companies (and their affiliates). The current law replaced the Public Utility Holding Company Act of 1935.

Public Utility Regulatory Policies Act of 1978 / PURPA: a statute that is the grandfather of the Project Finance business in the United States, thanks to the PURPA Put.

PUC: acronym for Public Utility Commission.

PUD: acronym for Proved Undeveloped Reserves.

PUHCA: acronym for Public Utility Holding Company Act of 2005.

Pumped Storage: a project that moves water from a reservoir at low elevation to an Impoundment at higher elevation during Off-Peak periods (when power is inexpensive), and then back down through a Penstock and water turbine and into the reservoir during Peak periods (when power is expensive). It sounds like, and is, a great idea. Unfortunately, Pumped Storage facilities are rare due to siting impediments. Pumped Storage can also refer to air that is pumped into enormous underground caverns during Off-Peak periods and released through turbines during Peak periods.

Punchlist / Punch List: the portions of the construction work on a project that remain after Substantial Completion, consisting of tasks that are not required for the operation of the project and would not interfere with such operation as intended if they were not completed. For example, a typical Punchlist might include painting and landscaping. Often, the owner is entitled to hold back up to two times the estimated cost of completing the Punchlist from payments to the EPC contractor and release those funds only as each item is completed.

Purchase and Sale Agreement / PSA: an agreement pursuant to which a seller sells certain assets (whether real property or otherwise) to a buyer for a purchase price.

PURPA: acronym for the Public Utility Regulatory Policies Act of 1978.

PURPA Put: the mandatory purchase of power from a QF by an electric utility at its avoided cost as required under PURPA. The PURPA Put led to long-term PPAs between electric utilities and QFs and was a key factor in the development of the IPP sector in the United States during the 1980s and '90s. The Energy Policy Act of 2005 and related regulations by FERC under PURPA have largely eliminated the mandatory purchase obligation of electric utilities in regions with organized wholesale power markets, but the PURPA Put has been an important driver for the development of utility-scale renewable projects in states without organized wholesale power markets.

Put Right: the right of one party to make another party buy something the first party has for a predetermined price. In Bond land, a Put Right that allows the bondholder to have the Issuer buy back the Bond at Par Value with a modest premium might come about upon the occurrence of certain events, such as a Change of Control.

PV: acronym for Photovoltaic.

QA: acronym for Quality Assurance.

QC: acronym for Quality Control.

QECB: acronym for Qualified Energy Conservation Bonds.

QF: acronym for Qualifying Facility.

Qualified Energy Conservation Bonds / QECBs: a type of tax credit Bond that may be issued by state and local governments to finance a range of qualifying conservation purposes (*e.g.*, implementing green communities, developing Renewable Energy production, conducting qualifying energy conservation research, and creating mass commuting facilities). QECBs accrue tax credits quarterly in lieu of interest payments. Holders must include the accrued tax credits in income as interest, and can then use the credits to offset their regular and alternative minimum tax liability. The total principal amount of QECBs that may be issued is capped at US$3.2 billion, which must be allocated among states and large local governments based on population. At least 70% of the allocation of the bonds cannot be considered "private activity bonds."

Qualifying Advanced Energy Project Credits: onetime, non-refundable Investment Tax Credits that are available for tangible personal property (*e.g.*, equipment, but not buildings) for projects that re-equip, expand, or establish a manufacturing facility for the production of qualifying Renewable Energy assets such as solar property, energy storage systems for use with electric or hybrid-electric motor vehicles, energy Grids, and new qualified plug-in electric drive motor vehicles. The credit is claimed in the tax year the property is Placed in Service and is subject to Recapture (in declining amounts) in the event of a disposal within five years of the Placed in Service Date. Owners claiming the credit must reduce their depreciable basis in the property by 50% of the credit amount. The total amount of credits available for all qualifying projects is capped at US$2.3 billion.

Qualifying Facility / QF: under PURPA, an electric Cogeneration facility or small (80 MW or less) power production facility using a primary fuel source of Biomass, waste, renewable resources, or geothermal resources.

Quality Assurance (QA) / Quality Control (QC): procedures implemented by an owner before the contractor or supplier delivers products or services, to make sure the owner will receive what it has contracted for. QA means the owner is entitled to investigate "back" in the supply chain, at the supplier's factory or even earlier, to, well, assure quality. QC is implemented to check whether a finished product meets specifications.

Queue Sitter / Queue Sitting: taking up space in a generation interconnection queue without any real intent to build a new generation facility. Typically, the goal of a Queue Sitter is to be bought out by real generation projects whose spot in the queue is after that of the Queue Sitter.

Radial Line: a Transmission Line that connects generation or Load to a transmission system that is not "looped," or fully integrated with the Grid.

Ramp Rate: the speed at which a facility can reach its rated output, *i.e.*, the increase or reduction in output per minute (*e.g.*, 5 MW/minute). Ramp Rate is mainly important for facilities that are expected to be Dispatched over the course of a day. Sometimes there is a different Ramp Rate depending on the mode the equipment is in, such as "Cold" or "Warm Standby." In that case, the Offtaker might pay the owner to keep the equipment in the more-available mode.

Rate Base: the value of invested capital upon which a utility is entitled to earn its regulated rate of return. Rate Base is also used as a verb, as in "The PUC allowed that utility to Rate Base the costs of failed renewable Project X because the developer and its technology at the time of contracting seemed reliable."

Rate Case: a proceeding by a public utility before the PSC (or PUC) wherein the utility argues that the Ratepayers should be obligated to pay a particular cost incurred by the utility in the form of electricity rates (or water or other rates, depending on the type of utility).

Rated Wind Speed: wind speed at which a WTG is capable of producing its rated (nameplate) power. Power Curves will become almost flat after this speed, (*i.e.*, even higher wind will not create greater output).

Ratepayer: a utility customer.

Rating Agency: a company that assigns credit ratings to companies and sovereign states, reflecting a debtor's ability to pay back debt and therefore the likelihood of Default. The internationally recognized rating agencies most commonly seen in Project Finance transactions are S&P, Moody's, and Fitch. Kroll is another Rating Agency.

RCRA: acronym for the Resource Conservation Recovery Act.

RDF: acronym for Refuse-Derived Fuel.

Reactive Power: energy that is stored in the Load by any capacitors or inductors inside it.

Real Estate Investment Trust / REIT: an investment vehicle for owning and investing in real property that has significant tax advantages (and has numerous limitations on the activities and income of the REIT).

Real Estate Owned / REO: property that a Lender purchased at its own Foreclosure sale. The REO is then held until the market improves, or fixed up and then sold.

REC: acronym for Renewable Energy Credit/Renewable Energy Certificate.

Recapture: a sale of qualifying property or a sufficiently large sale, disposition, or dilution in the ownership of an investment in qualifying property within the five-year period requiring the owner to increase its taxes for ITCs and repay the US Treasury for Cash Grants to reflect the change in ownership. (ITCs and Cash Grants are provided to taxpayers who are expected to hold the qualifying property or their investment in the qualifying property — through an entity taxed as a partnership — for a five-year period.) The Recapture percentage begins at 100% (for transfers in the first year) and decreases in equal 20% increments over the five-year Recapture period. Notably, due to a de *minimis* rule, a Tax Equity Investor can transfer up to one-third of its Equity interest without triggering Recapture.

Receptor (Noise or Odor): the scientific term for an ear or a nose in range of a noisy or stinky facility, not counting those ears or noses paid to be there. A private residence near a composting facility might be the nearest odor Receptor for study and permitting purposes.

Refuse-Derived Fuel / RDF: fuel produced from various types of wastes, such as Municipal Solid Wastes, industrial wastes, or commercial wastes.

Regional Transmission Operator / RTO: a nonprofit that operates and controls, but does not own, a transmission system and administers centralized wholesale power markets, similar to an Independent System Operator. FERC regulates RTOs, which must have certain functions and characteristics not required of ISOs to attain RTO status. For example, unlike an ISO, an RTO must meet the FERC requirements of having adequate geographic "scope." The terms ISO and RTO are often used interchangeably in the industry and by FERC, and some regional operators that have kept "ISO" in their name, like the ISO-NE, technically have RTO status at FERC.

Reg-Out (Clause): a provision in a PPA that allows the utility Offtaker to terminate the PPA if the PUC does not permit the utility to pass through PPA costs to Ratepayers.

Regulations T, U, and X: regulations that limit the use of credit to purchase securities. Borrowers and Issuers are often required to represent to creditors that their intended use of loan or Note proceeds are compliant with these regulations. Regulations T, U, and X are also known as "federal margin regulations."

Reimbursement Agreement: an agreement between an Issuing Bank and its Account Party under which the Account Party agrees to reimburse the Issuing Bank for any Draws of outstanding Letters of Credit. An agreement is typically called a Reimbursement Agreement only if there are no other credit facilities involved; otherwise, it is typically called a Credit Agreement or Financing Agreement.

Reinsurance: a risk-sharing agreement between a Title Company and one or more other Title Companies. Some Lenders require Title Companies to obtain Reinsurance, as they are generally viewed as thinly capitalized (*i.e.*, unlikely to be able to honor a claim for the full policy amount on a large policy). Reinsurance is similar to Coinsurance.

Reject / Rejection: ceasing performance under an Executory Contract or Lease to get out from under burdensome performance obligations. Under US Bankruptcy Code Section 365(a), with certain exceptions, a debtor, with approval of the US bankruptcy court, may Assume or Reject an Executory Contract or unexpired Lease. Rejection constitutes a breach of the Executory Contract or Lease, which entitles the counterparty to assert Rejection damages. A claim for Rejection damages is treated as an unsecured claim in bankruptcy.

See also Assume/Assumption.

Release: a broadly defined term that, under CERCLA, includes the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment any Hazardous Substance, pollutant or contaminant (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance, pollutant or contaminant). In some jurisdictions, the migration of contamination through soil or groundwater is also considered a Release.

Reliable / Reliability: how certain a Grid operator can be about the future output of a power source. Somewhat counterintuitively, a Windfarm is highly Reliable because it contains multiple WTGs, and so even if a few are broken, the rest will generate, and over time the wind can be counted on to blow. However, Windfarms are also highly Intermittent.

Remarket / Remarketing: the process of finding another buyer when a Variable Rate Debt Obligation or auction rate security reaches the end of an interest period and the holder no longer wants the Bond.

Remedial Plan: a plan created by an owner when a project is behind schedule showing how the schedule will be made up sufficiently to achieve project completion and avoid [insert nasty consequence of late project completion, such as losing an Offtake Agreement or a material permit]. Remedial Plan can also refer to a strategy for addressing the removal or containment of site contamination so as to render the site safe for future use or to prevent further potential injury to human health or the environment.

Remediate / Remediation: the process by which site contamination is addressed in order to make the site safe for future use or to prevent further potential injury to human health or the environment. Remediation often includes the investigation of a site and the development of a Remedial Plan. Remediation is often preceded by several rounds of site investigation and analysis.

Removal Unit / RMU: a credit arising from emission reductions that is issued under the Kyoto Protocol. Countries generate RMUs by means of projects that reduce emissions (such as land-use change and forestry). RMUs are only traded at the country level, and can be used toward fulfilling national emission reduction obligations.

Renewable Electricity Standard / RES: a potential federal equivalent of the Renewable Portfolio Standard.

Renewable Energy: energy created by technology that takes advantage of energy renewed by nature, such as Biomass, hydroelectric (though large hydroelectric projects are not always considered to be renewable), wind, geothermal, Solar Thermal, PV, wave motion, and tidal motion.

Renewable Energy Credit / Renewable Energy Certificate (REC): a regulatory product created by US states that represents the Environmental Attributes of 1 MWh of electric energy produced by a renewable generator. An REC is distinct from the underlying renewable electric energy from which it is derived. An REC can be used or traded (purchased and sold) to meet a state's RPS. In addition, potential federal Renewable Electricity Standards (if enacted) could have significant impacts on state REC programs.

Renewable Portfolio Standard / RPS: a US state mandate placed upon utilities to acquire not less than a specified percentage of their electricity from Renewable Energy resources by a certain date. RPS laws are all over the map in terms of whether the power must come from within the state, whether having a contract is sufficient to establish compliance (even if the technology is not proven to be viable), whether there are earmarks (sub-minimums) for certain technologies, what the penalties are for non-compliance, whether existing renewable generation counts, what is considered Renewable Energy, etc. Approximately 30 states have passed an RPS.

Repatriation Risk: the risk that a foreign nation will restrict or limit the ability of investors to return the proceeds of their investment in that foreign nation to the investor's country. Repatriation Risk is rooted in exchange controls. When investors make money in the foreign currency and want to repatriate it, they must exchange it for their own currency. Some countries impose restrictions on FX if it is perceived as deflating the value of their currency.

Repower / Repowering: reusing the original site of a power plant for a new power project (whether of the same or a different technology), salvaging as much of the infrastructure as possible. Repowering often requires new or refreshed permits, but they are vastly easier to obtain than a permit for a new project, since the Repowering is invariably better for Ratepayers, NIMBYs, the job market, the tax base, birds, investors, neighbors, and puppies than the existing facility. In the wind market, developers have Repowered Windfarms by upgrading some or all of the major components of each Wind Turbine. If enough new value is added (generally, 80% new value), a Repowered Wind Turbine could qualify for an additional 10 years' worth of PTCs.

Representation and Warranty: an assertion of fact in a contract (such as a merger agreement or Credit Agreement). Representations and Warranties are the means by which one party to a contract tells the other party that something is true as of a particular date.

Repricing: an amendment post-closing to effect a reduction in the interest rate Margin that is most often seen in a Term Loan B financing. Since Repricing is a unanimous Lender decision, the Borrower, with the Arranger, must solicit consent from every affected Lender and may need to utilize Yank-a-Bank provisions to replace any non-consenting Lenders. In addition, Call Protection provisions in the Credit Agreement often explicitly include Repricings, so the Borrower should take care to avoid triggering a Prepayment Premium.

Request for Proposal / RFP: a somewhat open-ended solicitation made to a large group, asking for ideas for how to solve the requestor's problem. Unlike an "offer" to enter into a contract, an RFP cannot be "accepted" to result in a contract. If an RFP response is of interest, the requestor will invite the proposer to contract discussions.

Required Lenders: the Lenders holding more than 50% (or rarely, 66.6%) of the aggregate principal amount of outstanding loans and unfunded commitments under a Credit Agreement. Required Lender consent is usually necessary for approval of amendments and waivers under a Credit Agreement, although certain amendments require a 100% vote.

See also Class Voting and Supermajority Voting.

Requirements Contract: a contract under which a supplier agrees to sell at a set price all quantities of a product that the buyer needs over the duration of the contract, and the buyer agrees to purchase the product exclusively from that supplier.

RES: acronym for Renewable Electricity Standard.

Reserve Margin: the amount of Capacity required to be available to an electric utility beyond its peak Load, in case peak Load is underestimated or normal supplies are unavailable due to a Forced Outage.

Reserves: the estimated quantities of oil or gas that are claimed to be recoverable under existing economic and operating conditions. Reserves is a much vaguer figure than Proven Reserves, but still provides some indication of the quantity of economically recoverable oil or gas.

Reservoir: porous, permeable rock formations where oil and gas have accumulated. A Reservoir has a "cap" of less permeable rock that prevents the escape of such oil and gas.

Residual Value: the value of a leased asset at the end of a Lease. Since the leased asset reverts to the lessor at the end of the Lease term, the lessor uses Residual Value (in addition to Lessor's Cost and the lessor's desired rate of return on investment) to determine rent. The higher the assumed Residual Value, the lower the rent.

Resiliency: the ability of wind projects to withstand individual WTG failures, resulting in low impacts on power Grids.

Resource Conservation and Recovery Act / RCRA: a US federal law that regulates the handling and disposal of hazardous waste through the imposition of permit obligations for hazardous waste treatment, storage, and disposal facilities and detailed regulations on storage, labeling, and record keeping for generators of hazardous waste. Other provisions of RCRA establish standards for Underground Storage Tanks and impose Remediation requirements for hazardous waste disposal locations.

Restoration Plan: a plan developed by a project company for its Lenders in order to address restoration of its project, or a portion thereof, following an Event of Loss and application of Net Proceeds to effect such restoration. The Independent Engineer for the applicable project often is required to confirm a Restoration Plan before it becomes effective. Failure of a project company to effect a Restoration Plan usually results in such project company being required to apply Net Proceeds to prepay outstanding indebtedness. A Restoration Plan typically appears in the provisions governing the application of proceeds following an Event of Loss in a Depositary Agreement or Credit Agreement.

Retainage: a means of keeping a contractor's attention until the job is finished by withholding a percentage (usually 5% to 10%) of each progress payment under a contract until the contract is fully performed. Typically, the contractor's profit margin is not much higher than the Retainage, making it a powerful tool to incentivize project completion.

Revenue Decoupling: a rate-making mechanism that is intended to remove a utility's disincentive to promote customer efforts to reduce energy consumption or demand or install Distributed Generation. Certain disbursements to US states of certain funds that were made available under the ARRA are contingent on the states' pursuing Revenue Decoupling mechanisms.

See also Demand-Side Management.

Revolving Facility / Revolver: a credit facility structured as a line of credit that can be borrowed, repaid, and re-borrowed at any time prior to Maturity, at a Borrower's discretion. A Revolving Facility can often also be used for the issuance of Letters of Credit.

Revolving Loan: a loan under a Revolving Facility.

RFP: acronym for Request for Proposal.

Right of Way / ROW: a right to cross another person's property for a specified purpose.

Right-Way Risk: a type of risk that refers to an event that increases a counterparty's creditworthiness as its payment obligation under a contract increases. When an entity is party to a Hedge contract (Party A) and there is a strong correlation between an event that affects Party A's creditworthiness and exposure under the Hedge contract, the counterparty (Party B) must determine whether the event creates a Right-Way Risk or a Wrong-Way Risk.

For example, say Party B has contracted to buy power from Party A. The higher the cost of power, the more Party A owes Party B if Party A breaches their contract (and the more Party B is In-the-Money). If Party B took a Lien in the generating asset to secure Party A's obligations, then

Party B took a Right-Way Risk — because the more Party B is exposed to a potential Party A Default due to high energy prices, the more the value of Party B's Collateral presumably rises.

Riparian Rights: the right of owners of land located on the banks of waterways to (i) the use of the water flowing through the property; (ii) the soil under the waterway; and (iii) accretions of soil along the banks of the waterway.

RMU: acronym for Removal Unit.

Root: the base part of a turbine Blade, where it connects to the Hub.

Rotor: the part of a WTG consisting of the Hub and Blades.

ROW: acronym for Right of Way.

Royalty: income from the production of Hydrocarbons, geothermal facilities, or wind power facilities that is earned by the holder of the Royalty Interest.

Royalty Interest: ownership of a percentage of production or production revenues. The owner of this share of production does not bear any of the cost of exploration, drilling, producing, operating, marketing, or any other expense associated with drilling and producing a geothermal well or an oil and gas well. In the Windfarm context, the Royalty Interest would typically be a percentage of gross revenue, payable to the landowner.

RPS: acronym for Renewable Portfolio Standard.

RTO: acronym for Regional Transmission Operator.

Rule 10b-5 Representation / 10b-5 Rep: shorthand for a Representation and Warranty by an Issuer, target, or Borrower that the diligence information provided is complete and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. This language is based on the SEC's Rule 10b-5 issued under the Securities Exchange Act of 1934.

Run of the River: a hydroelectric facility that does not use an Impoundment of any sort. It just diverts some water from a river (never all of it) at an Intake Structure, runs it through a Penstock and then a water turbine, and finally returns it to the same river.

Runaway Turbine: a WTG that does not shut down as it is designed to do when wind speeds exceed the Cut-Out Wind Speed. Shutdown is normally accomplished through Feathering the Blade and applying a brake to the Rotor.

Running With the Land: a Covenant that passes with the transfer of land (*i.e.*, it binds on all owners, as opposed to being only enforceable against the owner that initially agreed to it).

S&P: acronym for Standard & Poor's.

Sale-Leaseback: a transaction in which a company sells an asset (usually to a financial services company) and then immediately leases back that same asset. Companies engage in Sale-Leasebacks for a variety of reasons, including to raise cash, get assets off their balance sheets, and shift the market risk on the underlying asset. Sale-Leasebacks are similar economically to secured debt, and are therefore typically restricted under Indentures and Credit Agreements.

Sanction: a unilateral or multilateral action taken by a country against others for political reasons. An economic Sanction (such as a ban on trade or the provision of services) may affect the ability of parties to participate in a Project Finance transaction.

SCADA: acronym for Supervisory Control and Data Acquisition.

SCR: acronym for Selective Catalytic Reduction.

SDN List: acronym for Specially Designated Nationals and Blocked Persons List.

SEC: acronym for the Securities and Exchange Commission.

Secondary Syndication: the further Syndication that occurs after the lead Lenders have each achieved their Target Hold.

Secured Parties: the parties that hold a given Security Interest. This group will incorporate all parties in favor of whom a grant of security over assets has been made. Secured Parties generally include the Lenders, the Administrative Agent, the Collateral Agent, the Issuing Bank, the Depositary Bank, and sometimes Hedge Providers.

Securities Account Control Agreement: See Account Control Agreement.

Securities and Exchange Commission / SEC: the US agency that has regulatory authority over securities (including Security-Based Swaps).

Security Agreement: the document by which a Borrower grants a Security Interest in personal property Collateral.

Security-Based Swap: Swaps that are subject to regulation by the SEC under the Dodd-Frank Act and generally include: (i)(a) Swaps based on a single security or loan, (b) any characteristic of a single security or loan (*e.g.*, pricing information), or (c) any interest in a single security or loan; (ii) narrow-based Indices; and (iii) Swaps based on the occurrence or non-occurrence of certain financial events relating to issuers of securities. Common examples of Security-Based Swaps include "single-name" Credit Default Swaps (*i.e.*, those based on a single issuer of debt securities (aka a "reference entity")) and total return Swaps based on a single security or loan. Equity Options and physically-settled security Forwards are generally excluded from the Security-Based Swaps definition under the Dodd-Frank Act.

Security Interest: a right held by a Secured Party to realize upon Collateral if the debtor fails to meet payment or performance obligations and an Event of Default occurs as a result. The Secured Party sells the Collateral pursuant to statutory procedures and applies the proceeds of sale against the debt. If the proceeds exceed the amount of the debt, the Secured Party must give the leftover proceeds to junior Secured Parties until they are paid, and then to the debtor.

Selective Catalytic Reduction / SCR: a technology that reduces nitrogen oxide emissions.

Separateness: the techniques and principles that are used to create Bankruptcy Remote Vehicles. Separateness may include observing all separate entity formalities, such as holding board meetings, keeping separate books and records, stationery, and bank accounts, and installing independent directors, among other things. These actions are all intended for one purpose, which is to avoid Substantive Consolidation of a Bankruptcy Remote Vehicle in its parent's bankruptcy.

Serial Defect: a manufacturing or design defect found in a high percentage of a given model or batch of machines. In the context of Wind Turbine Generators, some TSAs provide that if a defect is shown to be a Serial Defect, the manufacturer will remedy the Serial Defect on all of the project's turbines, not just the ones that have already broken. This outcome could potentially have a huge economic impact on the owner.

Setback: a statute or regulation that creates a zone where Improvements may not be built. Setbacks may include a restriction on building any Improvements within a certain number of feet from a property line or roadway, or a requirement that no WTGs may be built within a certain distance from other Improvements. For example, the BLM prohibits placement of WTGs within 1.5x the height of the turbine from the BLM's property line.

Setoff / Set-off: the statutory right of banks to take money from the account of a depositor if the depositor is also a Borrower from that bank and is in Default on a loan. Setoff can also be a contractual right agreed to by parties to allow the party that owes money to the other party under the contract to subtract anything the other party owes it before making payment. This latter usage of the term is the same as Net Payment and is often used in a commodity Hedge.

Settlement Amount: depending on the context, either (i) the amount due at the end of each specified interval under a Derivatives contract (*i.e.*, ordinary course settlement payments) or (ii) the amount determined to be due following an early termination under a Derivatives transaction (*i.e.*, Close-out Amount). With respect to the latter, the 1992 form of the ISDA Master Agreement uses the term "Settlement Amount," while the 2002 form of ISDA Master Agreement uses the term "Close-out Amount."

Severable Modification: a modification made by a lessee to the leased asset during the Lease term to which the lessee will retain title. Severable Modifications are usually defined as modifications that are not required by law and are readily removable without causing material damage to the leased asset.

SGIA: acronym for Small Generator Interconnection Agreement.

Shared Facilities Agreement: an agreement that sets forth the terms applicable to assets and properties that are shared by more than one project company. A Shared Facilities Agreement is also known as a "common facilities agreement."

See also Co-Tenancy Agreement.

Shoulder Period: the interval during which Load transitions between Peak and Off-Peak periods. A Shoulder Period might be used in a TOU Metering Tariff or in a PPA to set pricing for certain months or seasons.

Sight Draft: a written demand for immediate payment submitted by the Beneficiary of a Letter of Credit when effecting a Draw.

Simple Cycle: a combustion turbine that is designed to cycle (or start and stop) on short notice. Simple Cycle facilities have higher Heat Rates than Combined Cycle plants but are easier and faster to build and have a lower capital cost.

Single Investor Lease: a Lease that is between a lessor and a lessee.

SIP: acronym for State Implementation Plan.

Site Control: a stage in project development when the owner either has all of the land rights it will need or has options on the rights. In the interconnection process, the generator must show a transmission owner or operator that the generator has Site Control and is not merely Queue Sitting.

Skim: the difference between what a Sponsor has agreed to pay an Arranger as an Upfront Fee and what the Arranger agrees to pass along to the other Lenders during Syndication. Occasionally (but rarely), Skim applies to the interest rate payable under a credit facility. Skim is usually attributable to the Lead Arranger's having invested considerably more time and energy into a transaction than the other Lenders, or to some set of the Lenders' having provided an Underwriting.

Slug: a large quantity of gas or liquid that exits a pipeline (see Slugcatcher). Slugs exiting the pipeline can overload the gas or liquid handling capacity of a plant at the pipeline outlet, as they are often produced at a much larger volume and/or velocity than the equipment is designed for.

Slugcatcher: a unit in which Slugs at the outlet of a pipeline are collected or “caught.” Slugcatchers can be used continuously or on demand. A Slugcatcher permanently connected to the pipeline will buffer all production, including the Slugs, before the gas or liquid is sent to gas and liquid handling facilities.

Small Generator Interconnection Agreement / SGIA: an Interconnection Agreement, often based on a standard, FERC pre-approved form, between a generator and a transmission owner and/or operator. The SGIA, which FERC typically regulates, is more streamlined than the LGIA.

Smart Grid: a combination of technologies, many not yet developed, whose broad function is to make the Grid more interactive and whose broad purpose is to reduce the need to build additional power plants and to reduce electricity consumption. For example, a utility might be able to Curtail non-essential Load (such as air conditioners) by sending a signal wirelessly or through the electric distribution lines.

SNDA: acronym for Subordination and Non-Disturbance Agreement.

Soft Call: generally, a Prepayment Premium payable only in the event of a Repricing or if the Borrower repays loans with the proceeds of debt that has a lower yield than the loans being repaid. What is covered by a Soft Call varies from deal to deal.

In contrast, see Hard Call.

Soft Costs: the costs in a Lease transaction beyond the simple cost of the equipment, such as those derived from sales tax, installation or delivery charges, software, etc. Soft Costs can usually be included in the financing, up to a limit imposed by the lessor (*e.g.*, 10% to 20% of the equipment cost).

Solar Farm: a large number of Modules installed on an area of land to generate electricity. Solar Farms are also known as “utility-scale solar projects.”

Solar Thermal: technology that converts the sun’s rays to heat by concentrating them using lenses or mirrors (*e.g.*, Heliostats or reflective parabolic troughs). The heat is absorbed by a fluid, at which point relatively conventional generation technology converts that heat to electricity the same way it would geothermal Brine.

Solid Waste Disposal Facility: a facility that collects, stores, treats, processes, or disposes of “solid waste,” which is garbage, refuse, and other discarded solid materials resulting from industrial, commercial, and agricultural operations and from community activities. Solid waste is required to have no value, though a facility that disposes of solid waste by converting or otherwise recycling it into material that is not waste qualifies as a Solid Waste Disposal Facility if the solid waste constitutes at least 65% (by weight or volume) of the total materials introduced into the process. Solid Waste Disposal Facilities owned by taxpaying businesses can be financed with tax-exempt Bonds; however, there are stringent requirements (including obtaining an allocation of the applicable state volume cap).

Solvency: the assets of a person or entity outweighing the liabilities of that person or entity and the ability of a person or entity to pay its debts as they become due.

Solvency Certificate: a certificate delivered by a Borrower certifying its Solvency.

Sovereign Immunity: the immunity provided to foreign nations by the United States under the Foreign Sovereign Immunities Act and various judicial doctrines whereby foreign governments are immune from the jurisdiction of federal and state courts.

Spark Spread: the difference in cost between the gross proceeds for selling a MWh (or kWh) of power on the Spot Market and the gross cost of acquiring the natural gas fuel necessary to generate the power, having made stated assumptions about the efficiency of the conversion technology (*i.e.*, the Heat Rate). All other costs of generation must be paid from the Spark Spread if the generator is to make any profit.

SPE: acronym for Special Purpose Entity.

Special Purpose Entity (SPE) / Special Purpose Vehicle (SPV): another name for a Bankruptcy Remote Vehicle.

Specially Designated Nationals and Blocked Persons List / SDN List: the individuals, groups, and entities with whom US persons are generally prohibited from dealing. The SDN List is not country-specific, but rather person- or entity-specific.

Spinning Reserve: the difference between a generating unit's full Capacity and its current output, which is available for an almost instantaneous increase in output. Utilities are required to maintain a certain amount of Spinning Reserves to meet Load changes.

Sponsor: the ultimate owner of an SPE and the name that is important to a Lender from a control perspective. A Sponsor is also known as a "developer" in the construction context.

Spot Market: a market in which commodities are purchased and sold for cash and delivered "on the spot" or soon after the sale (*i.e.*, the "spot sale"). A company sells commodities on a "contracted" basis rather than a "spot" basis if it enters into a contract to sell the commodities over a period of time at a specified price or pursuant to a specified price-generating formula.

See also Cash Market.

Spot Price: the price paid to the seller of a commodity in a Spot Market. The Spot Price may fluctuate hourly or even on a minute-to-minute basis, depending on the structure of the Spot Market.

Spread: a synonym of Margin. Spread may also refer to the difference between an offered sale (or purchase) price and what the purchaser (or seller) is willing to pay (accept).

Spudding In: nothing to do with potatoes, this term refers to the very beginning of drilling operations of a new well.

SPV: acronym for Special Purpose Vehicle.

Squeeze Protection: a clause in a Security Agreement stating that the Lenders cannot engage in an Equity Squeeze, with the common exception that an Equity Squeeze is permitted after a "stand-still" period if remedies against the Borrower are stayed because the Borrower is in bankruptcy or the exercise of such remedies is otherwise prohibited by law.

Stabilization: a clause commonly found in HGAs designed to mitigate the political risk associated with a project by providing investors with contractual recourse against the host government for circumstances in which the government seeks to change the legal/regulatory framework that was the basis for investment.

Stalking Horse Bidder: the entity in a 363 Sale that enters into an asset purchase agreement with the bankrupt entity prior to the auction, creating the "offer to beat." Typically, a Stalking Horse Bidder will receive, in exchange for agreeing to set the floor for an auction, a breakup fee and expense reimbursement in the event it is outbid.

Standard & Poor's / S&P: a division of The McGraw-Hill Companies, Inc. S&P is one of the two most powerful Rating Agencies, along with Moody's. Fitch and Kroll are other Rating Agencies.

Standby Letter of Credit: a Letter of Credit that is not expected to be Drawn unless the Account Party fails in performance of some duty to the Beneficiary. For example, a Windfarm developer might covenant with its site lessor to restore the site upon decommissioning the Windfarm after 25 years. To "secure" that obligation, the developer will maintain a Standby Letter of Credit for the benefit of the lessor, sized to cover the expected restoration costs. The Standby Letter of Credit may be Drawn only if the developer does not perform.

Standstill: the point at which a creditor is legally and contractually entitled to exercise remedies against a Borrower due to an Event of Default, but an Intercreditor Agreement or some other arrangement prohibits it from doing so. A Standstill will often expire after a period of time (*e.g.*, 180 days). When a Standstill applies to the senior creditor, the junior creditor usually gains time to remedy the Default to keep from being wiped out in a Foreclosure by the senior creditor. When a Standstill applies to the junior creditor, it is because the senior creditor does not want the Borrower distracted from fixing a problem by the possibility of a Foreclosure or other action by the junior creditor.

Staple Financing: a financing package offered by the investment bank that is acting as the sell-side adviser in connection with the auctioning of a target company or asset. Staple Financing is so named because the financing package (the Commitment Papers) is "stapled" to the bid materials that are sent out to potential buyers. Staple Financings are a useful way for the investment bank acting as the adviser to a company that is putting itself on the auction block to also be involved in the financing of the acquisition by the buyer.

Stated Amount: the face amount of a Letter of Credit, *i.e.*, the amount that is available to the Beneficiary to Draw.

State Implementation Plan / SIP: a plan that each state is required to prepare under the Clean Air Act that sets out how the state intends to achieve compliance with the NAAQS. The EPA then approves (or disapproves) the SIP and any modifications to it, or portions of it, as the case may be. Each new air permit must be issued in compliance with the SIP. When a SIP is not approved, the EPA technically has the authority to "drop down" through unapproved parts of the SIP and exercise federal enforcement jurisdiction. As a practical matter, SIPs typically consist of the air quality regulations and rules promulgated by the relevant state air quality agency or local air districts.

Steam Host: a Thermal Host that purchases steam (as opposed to other types of thermal energy) from a generation owner.

Steam Turbine Generator / STG: a steam turbine linked to an electrical generator on the same main central shaft. All solid fuel (coal, Biomass, RDF, Waste Coal) and nuclear generation facilities use STGs as part of their Turbine Island equipment.

Step-In Rights: contractual rights granted to a party to take over performance of a project if the owner fails in some way in its contract performance. Step-In Rights are separate from rights to appoint a receiver that are often held by Secured Parties to protect their Collateral pending exercise of further remedies.

STG: acronym for Steam Turbine Generator.

Stipulated Loss Value: See Termination Value.

Stormwater Pollution Prevention Plan / SWPPP: a plan that identifies all potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharge from a project site.

Stranded Cost: a utility's incurred cost from non-competitive equipment as a result of electricity deregulation. When some US jurisdictions deregulated the electricity sector, utilities lost their monopoly status as generators. (While transmission and distribution are "natural monopolies," generation is not — this was the point of the deregulation.) The utilities had assumed they would recover all of their capital costs over time through their rates. But with deregulation, some customers could choose to purchase power from more competitive (cheaper) sources, leaving fewer rate-paying customers to pay for the non-competitive equipment. To gain utilities' and customers' political buy-in to deregulate, legislators devised ways to allocate the Stranded Costs fairly.

String: a row of WTGs, sometimes within an Array.

Structural Subordination: non-contractual Subordination created when debt is issued by a holding company or other parent entity, with no Guarantee from the operating subsidiary that is the Issuer/Borrower under senior debt. The parent debt is effectively Subordinated to the debt held closer to the operating assets, since all the operating subsidiary's debt gets paid in full in a bankruptcy before anything is dividended up to the holding company. Similarly, if the subsidiary's debt is in Default, dividends to the parent will be blocked.

Structure Flex: a Flex provision that allows an Arranger to make changes to the structure (*i.e.*, the type of debt offered, or the location of a Borrower within the credit group) of the credit facilities provided for in a Commitment Letter if needed to facilitate the Successful Syndication of the credit facilities. Structure Flex is considered to be a more draconian provision than Pricing Flex, because changing the structure may have broader ripple effects than just paying more money. However, sometimes changing the structure can avoid having to invoke Pricing Flex.

Stuffee: a bank that is not particularly discriminating in the loans it will purchase on the secondary market. Stuffee can also refer to a bank that might be discriminating but does not have its own loan origination capabilities.

Subdivision: a legally valid division of property into two or more separate parcels pursuant to locally prescribed restrictions, approvals, and procedures. In some jurisdictions, subject to certain exemptions, a party cannot transfer, lease, or finance a property unless it has been legally subdivided. The restrictions are designed to keep people from dividing up land in ways that cannot be discerned from review of the public records, so as to minimize title disputes.

Subordinate / Subordination: a negotiated set of relative rights vis-à-vis a Borrower and pool of Collateral that always involves at least two classes of creditors (senior and junior). The term "Subordinated" by itself is not sufficient to describe the junior creditor's rights, since there are many types of Subordination. The Intercreditor Agreement or an article of a Subordinated debt Indenture will set forth each creditor's rights.

Subordination and Non-Disturbance Agreement / SNDA: an agreement between a lessor's Lender and a lessee governing their rights vis-à-vis the Lease and the Lender's interest in the leased asset. When a Borrower has site access through a Leasehold, the Lease has usually been entered into and recorded against the land after the lessor has put a Mortgage on the property, and therefore the Lien of the lessor's Lender is senior to the Lease (as well as the Leasehold Mortgage). If the lessor Defaults on its loan, its Lender could Foreclose, which would cause the Lease (and the Leasehold Mortgage) to be wiped out. The SNDA has (i) the lessor's Lender agree that if it Forecloses, it will leave the Lease in place; (ii) the lessee agree that the Lease is Subordinate to the loan made to the lessor; and (iii) the lessee agree that if the lessor's Lender Forecloses, the lessee will recognize the Lender as the landlord (this is Attornment). An SNDA is also known as a Non-Disturbance Agreement and an NDSA, among other variations — some of which include the term Attornment.

Subrogate / Subrogation: the legal right of a Guarantor or an insurer to go after an entity that caused them to make a payment and recover the amount of the payment.

In the Guarantee context, the entity that caused a Guarantor to have to pay is the Primary Obligor. Guarantees often have the Guarantor waive Subrogation until the Beneficiary of the Guarantee is no longer a creditor of the Primary Obligor (since the Beneficiary doesn't want a new co-creditor).

In the insurance context, the entity that caused an insurer to have to pay is whoever broke the thing (in the case of property insurance) or injured the person (in the case of liability insurance). For instance, if Party A's dead tree falls on Party B's house, Party B's insurance company pays Party B and is then Subrogated to Party B's rights against Party A (so can sue Party A for negligence).

For contracts in which a counterparty agrees to provide and pay for property or liability insurance covering the subject of the contract, the other party wants the counterparty's insurer to waive Subrogation against them. Otherwise, what is the benefit of the insurance if the other party can be sued for allegedly causing the injury?

Substantial Completion: the step of completion of construction of a project beyond Mechanical Completion, where all performance tests have been completed, the project is commercially operational, and the only thing left is completion of the Punchlist.

Substantive Consolidation: the pooling of the assets and liabilities of separate legal entities in a bankruptcy. Creditors of substantively consolidated entities will have a claim against the single pool of assets, and Guarantee claims will be disregarded. Substantive Consolidation can be sought by motion or pursuant to the terms of a plan. The notion that a bankruptcy court can order the Substantive Consolidation of the assets and liabilities of multiple affiliate debtors dates back many years. The remedy of Substantive Consolidation is "equitable," not statutory, and is not the same thing as Piercing the Corporate Veil. Whether it will be ordered in a particular case will turn on how the court chooses among and applies standards that have developed as judge-made law, rather than through analysis of a statute. Historically, Substantive Consolidation has been reserved for cases in which (i) the financial affairs among affiliates are so entangled — whether by design or sloppy business practices — that an accurate assessment of which entity is obligated to a particular creditor or group of creditors cannot be determined or could only be determined at undue cost or (ii) creditors generally had dealt with the enterprise as a single consolidated entity (rather than separate legal entities). Courts routinely state that Substantive Consolidation is to be granted "rarely," though courts routinely permit Substantive Consolidation when it is consensual and/or does not impact creditor recoveries.

Subsurface Risk: the risk that geotechnical studies such as core sampling were not sufficiently extensive to reveal all relevant subsurface conditions prior to commencement of construction, such as an unknown UST, a giant slab of solid rock, unstable soil, or an aquifer. Subsurface Risk usually refers to the party that bears the risk; typically it is the owner, rather than the contractor.

Successful Syndication: the point during Syndication at which the Lenders have sold down to their Target Hold. Successful Syndication is not always defined in Commitment Papers, but when it is, it usually refers to the Arrangers' Target Hold. For example, if the original commitment is US$500 million, Successful Syndication may be defined as the point at which the Arranger has Syndicated commitments such that it holds only US$50 million. In Commitment Paper land, a number of things happen once the Arranger has achieved a Successful Syndication. For example, Flex rights terminate.

Supermajority Vote: a vote that requires a percentage of the Lenders under a Credit Agreement to be greater than a simple majority (usually 65% to 80%) for certain material amendments or waivers.

Supervisory Control and Data Acquisition / SCADA: the remote control and monitoring of a power plant or pipeline. SCADA is particularly useful in the context of Windfarms, which are all, in a sense, remote. Even the first- and second-generation WTGs in the late 1980s used SCADA, which allowed remote operators to measure elements such as wind speed, Rotor speed, output, gearbox, and oil temperature; clear faults; and shut down WTGs or Feather their Blades.

Supplemental Rent: all amounts owed by a lessee under a Lease transaction other than Basic Rent and Interim Rent.

Survey: a pictorial depiction of the state of facts in existence on real property including boundary lines, Improvements, Setbacks, Encumbrances, and other matters affecting the subject property. For a development project, a Survey will often include the future Improvements to be constructed on the subject property as contemplated by a development plan.

Swap: a type of Derivative in which the parties agree to exchange specified cash flows at specified intervals (*e.g.*, one party agrees with the other party that it will exchange a floating interest rate for a fixed interest rate on a specified Notional Amount of principal at the end of each quarter). See Interest Rate Swap for a detailed explanation in the context of interest rate Hedging. Swap may also refer to a broad set of Derivatives as set forth under the Dodd-Frank Act and related rulemakings promulgated thereunder. See Swap (Regulatory) for a detailed discussion of the regulatory use of the term.

Swap Provider: See Hedge Provider.

Swap (Regulatory): a Derivative that is subject to regulation by the CFTC under Title VII of the Dodd-Frank Act. Swaps (Regulatory) include (among other things and subject to certain exceptions not laid out herein) any agreement, contract, or transaction (x) that is a put, call, Cap, Floor, collar, or similar Option of any kind that is for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, Indices, quantitative measures, or other financial or economic interests or property of any kind, or (y) that provides for any purchase, sale, payment, or delivery (other than a dividend on an Equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.

Examples of Swaps (Regulatory) include, *inter alia*: (i) Interest Rate Swaps; (ii) FX or Currency Swaps and Forwards; (iii) CDS that are not Security-Based Swaps (*i.e.*, CDS on broad-based Indices); (iv) agricultural and commodity Swaps; (v) certain total return Swaps that are not Security-Based Swaps (*i.e.*, total-return Swaps on broad-based Indices); (vi) all Options based on a rate (*e.g.*, interest rate or currency exchange rate); (vii) all Options for the purchase or sale, or based on the value of, one or more commodities; (viii) metal and energy Swaps; (ix) any Guarantee of a Swap; (x) any combination of the foregoing, so long as the transaction does not qualify as a Security-Based Swap; (xi) transactions that are willfully structured to evade the Swaps (Regulatory) provisions of the Dodd-Frank Act; and (xii) a catch-all designed to capture future products.

Equity Options, commodity Futures, and physically settled Forwards are generally excluded from the Swaps (Regulatory) definition.

Swaption: an Option to enter into a Swap (*e.g.*, an Interest Rate Swap) whereby, in exchange for an Option premium, the buyer gains the right (but not the obligation) to enter into a specified Swap contract with the issuer/seller on a specified future date.

Swept Area: the area covered by rotating Turbine Blades, measured in square meters. Obviously, more Swept Area is better. The reason Blades are always failing is that manufacturers keep wanting to make them longer, since the Swept Area increases by the increased radius squared (doubling the Blade length increases the Swept Area 4x).

SWPPP: acronym for Stormwater Pollution Prevention Plan.

Synchronization: the process of ensuring that a generation source is operating harmoniously with the rest of the power Grid.

Syndicate / Syndication: the process by which the Arranger sells loans and/or commitments to a number of Lenders. Remember that the Arranger is in the distribution business and not the storage business.

Syndication Agent: a Lender that acts as agent for a group of Lenders (known as a syndicate) in a Syndication. Practically speaking, the title of Syndication Agent usually amounts to little or no more than League Table credit.

Synthetic Letter of Credit: a Letter of Credit facility where the Issuing Bank relies on cash Collateral funded in a credit-linked deposit account to secure an Account Party's reimbursement obligation. The source of the cash Collateral is loans from the Lender group, and thus the Issuing Bank does not need to worry that a Lender will not fund its Participation in the facility if the Account Party does not reimburse a Letter of Credit Draw or if the Borrower will not reimburse a Draw.

System Impact Study: a study performed by a transmission owner or operator before it will agree to interconnect a new generation source within its system, to evaluate the impact of the proposed interconnection on the reliability of the system. If the System Impact Study concludes that facilities need to be constructed to provide the service, the transmission owner or operator will conduct a more detailed Facilities Study to identify which additional facilities are needed.

Take-or-Pay Contract: a contract under which an Offtaker pays its supplier for a given volume regardless of whether the Offtaker actually accepts that volume. A Take-or-Pay Contract allows the supplier to cover its fixed costs and thereby be ready to supply in the future. It is similar to a contract under which the Offtaker makes a Capacity payment (*i.e.*, a payment designed to cover fixed costs).

Target Balance Sweep: a Cash Sweep in which all or a portion of Excess Cash Flow is applied to prepay debt each quarter until the debt reaches a specified "target balance" for that quarter. Thereafter, Excess Cash Flow may be applied to other uses, including possibly distributions.

Target Cost Contract: a hybrid between a Turnkey Contract and a Cost-Plus contract. In this arrangement, the owner and contractor exhaustively analyze the expected costs to build a project, which becomes the target cost. The contractor is in any event paid whatever the construction costs on a pass-through basis, but if actual costs exceed the target cost, some or all of the contractor's profit must be relinquished. If the target cost exceeds actual cost (*i.e.*, the project is under budget), the contractor will be paid a percentage of the "savings" as a bonus. While agreeing to a Target Cost Contract can be a worthwhile approach for both parties, such contracts contain a lot of tricky (non-obvious) structuring issues not found in other types of contracts. A Target Cost Contract is also known as a "target price contract."

Target Hold: the principal amount of a credit facility to which a Lender wants to sell down during Syndication. If all of the Lenders sell down to their Target Hold, a Successful Syndication will result.

Tariff: the terms of service used by a public utility that have been approved by the utility's regulatory oversight body. Tariff may also refer to just the rate schedule part of the terms of service.

Tax Equity: a preferred Equity investment in a Renewable Energy project, such as wind or solar. Tax Equity may also refer to a Tax Equity Investor. Tax Equity investments come in various forms, but are generally structured as Equity investments in a partnership with a developer, for which the investor's return comes primarily from tax benefits, such as the PTC or ITC.

Tax Equity Investor: an entity invested in Renewable Energy or other projects that qualify for tax benefits. The entity has tax liability from other operations that it is seeking to offset using the tax benefits. The investment is made to look like an Equity investment because the tax benefits are only available to owners, but it often includes loan-like features as well. The IRS has published a safe harbor that helps investors decide how many Equity features must be included in the investment to obtain the desired tax treatment.

Tax Lease: a term often loosely used by leasing professionals to refer to a Lease that is designed to be a True Lease for tax purposes. The correct terminology for a Tax Lease is a "True Lease for tax purposes." A Lease is a True Lease for tax purposes (or a Tax Lease) when the lessor takes the risks and benefits of ownership of the leased asset and is entitled to the tax benefits associated with the ownership of that asset.

Tax Termination: a deemed termination and reconstitution of a tax partnership as a result of the transfer of 50% or more of the interests in the tax partnership's profits and capital within a 12-month period. The Tax Cuts and Jobs Act repealed Tax Termination in 2018.

Taxpayer ID Number: a company's Federal Employer Identification Number (FEIN), as assigned by the IRS. A Lender must obtain a Taxpayer ID Number (among other things) from the Borrower in order to comply with requirements of the USA Patriot Act.

Technical Field Advisor / TFA: the person sent to a jobsite by a turbine or other heavy equipment manufacturer to oversee installation and assist in Commissioning.

Tenor: the length of time a debt instrument is outstanding through its Maturity.

Term Conversion: a set of conditions that must be satisfied by a Borrower to avoid Maturity of its Construction Loan. At Term Conversion, the Construction Loan converts into a Term Loan. Outside the United States, Term Conversion is known as "project completion."

Term Loan: a loan for a specific amount that the Borrower borrows on day one and then pays back according to a predetermined Amortization schedule (or in a single Bullet payment at the end of the term).

In contrast, see Revolver and Construction Loan.

Term Loan A: a Lender market comprising commercial and investment banks.

Term Loan B: a Lender market comprising non-bank institutional Lenders (*e.g.*, pension funds).

Term Sheet: a non-binding summary of the expected terms of a transaction.

See also Letter of Intent and MOU.

Termination Value: an amount calculated for a Lease transaction that at any point during the Lease term is sufficient to (i) pay off in full any debt (if the Lease is a Leveraged Lease); (ii) return to the lessor its outstanding investment in the transaction; (iii) pay to the lessor a yield on that investment to the date of repayment; (iv) pay to the lessor an amount in recognition of the expected Residual Value of the leased asset; and (v) pay to the lessor a gross-up amount so the lessor achieves its after-tax yield. A given Lease may have one or more schedules of Termination Values (sometimes called Stipulated Loss Values or Casualty Values), which assure to the lessor different yields from the transaction. In particular, the parties may agree that the Casualty Value due upon an Event of Loss is less than the Termination Value due upon a termination of the Lease in the event of a Default, since the occurrence of the Event of Loss is not the lessee's fault.

TFA: acronym for Technical Field Advisor.

Thermal Host: a purchaser of thermal energy. Cogeneration facilities must include a Thermal Host in order to meet FERC's QF standards. The Thermal Host must have sufficient thermal energy needs and be sufficiently near the facility that produces thermal energy. Traditionally, a Thermal Host has a long-term thermal energy purchase agreement with the generation owner.

Thin Film PV: Photovoltaic technology that converts sunlight at a substantially lower efficiency than silicon crystal (wafer) technology, but also at a much lower cost. Thin Film PV can be printed on flexible and light substances, which may lead to new applications.

Third Party Beneficiary: an entity that is entitled to the benefits of some or all of the terms of a contract without actually being a party thereto. Contracts should specify whether the parties wish to have a Third Party Beneficiary (and should specify if the parties do not want any Third Party Beneficiaries). If specified, there is an "express third party beneficiary." Third Party Beneficiaries typically prefer to be express third party beneficiaries.

Tied Financing: financing support provided by an ECA to a project on the basis that such financing is used by the project to purchase goods and/or services from the ECA's country. ECA financing not linked to procurement in this way is "untied."

Time Charter Party Contract: a chartering Lease agreement whereby a ship is hired for a specific period of time, as opposed to being hired for a specific voyage. The owner of the ship retains responsibility for managing the vessel, but the charterer determines the usage of such vessel for the duration of the contract.

In contrast, see Bareboat Charter Contract.

Time of Use (TOU) Metering: when a customer pays more for electricity during Peak hours and less for electricity during Off-Peak hours. For example, a TOU customer in California might pay 50¢ per kWh during summer Peak hours (noon to 6 p.m. Monday through Friday) and 10¢ per kWH during summer Off-Peak hours (the remainder of the week), whereas a non-TOU customer would pay 13.5¢ for all kWh. If TOU Metering were mandatory, it would result in enormous consumption savings, but at this point it is elective for residential customers.

See also Net Metering.

Tipping Fee: the per-ton fee charged by a Trash to Cash power plant as consideration for accepting Municipal Solid Waste or other combustible material. The Tipping Fee may vary depending on the usability of the material as fuel. The term is also used at landfills.

Title: one of the roles that entitles a bank to a ranking in League Tables. These include Administrative Agent, documentation agent, Lead Arranger, Syndication Agent, and book runner.

Title Company / Title Insurer: the company that provides Title Insurance.

Title Insurance / Title Insurance Policy: a policy that insures against specified losses arising due to defects in Title to real property, or invalidity of, or not having the expected priority of, mortgage Liens, and certain other coverages pursuant to the included Endorsements, subject to the enumerated exclusions and exceptions contained therein. In real property-secured deals, both the owner and Lender have Title Insurance insuring their respective interests (ownership and priority of mortgage, respectively).

Title Insurance Commitment: a commitment by a Title Company to issue Title Insurance, subject to the satisfaction of the conditions and requirements contained therein. This document does not itself provide Title Insurance coverage.

T-Line: short for Transmission Line.

Toller: an entity providing fuel to, and purchasing electric energy and Capacity from, a generation owner or operator under a Tolling Agreement.

Tolling Agreement: an agreement whereby an Offtaker provides to a project owner the fuel or other Feedstock for a facility, thereby relieving the owner of pricing and delivery risk as to that fuel or Feedstock. The owner is basically then just charging the Offtaker for the use of the facility (the "toll"). The term Tolling Agreement is used to describe this type of agreement, but the agreement is rarely actually called a "Tolling Agreement." For example, "That PPA is a Tolling Agreement."

Tonne: a metric ton, or 1,000 kilograms, the standard unit used to measure oil outside of the United States.

Tower: a component of a WTG consisting of a steel structure at the top of which is a Nacelle. Modern Towers are too tall to be shipped to a project site in one piece, so the Tower is transported in sections that are welded together on site.

Tracer Test: a test used in a geothermal field, in which a chemical is added to the injection fluid. If the chemical later shows up out of a Production Well, then injection fluid is migrating to the production zone and causing cooling.

Tracking Account: a record (not an account into which something is deposited) used to track the amount by which one party under a contract has "overpaid" the other party in some sense. For example, a PPA might have a relatively front-loaded payment structure, which allows the owner to pay debt service on high capital costs. In the early years, the Tracking Account builds up, and then over time, as Capacity is supplied and energy is produced, the Tracking Account is reduced. If the PPA is terminated before the Tracking Account is reduced to zero, the owner owes the Offtaker the balance of the Tracking Account. Another type of Tracking Account can allow a Windfarm owner to manage its cash flow under a Financial Power Swap.

Trade Letter of Credit: a Letter of Credit used in a commercial transaction that is expected to be Drawn by the Beneficiary as payment for goods provided to the Account Party. A Trade Letter of Credit is also known as a Commercial Letter of Credit.

In contrast, see Standby Letter of Credit, which is not expected to be Drawn.

Trailing Twelve Months / TTM: another name for LTM.

Train: a stand-alone set of equipment in a multi-step industrial processing facility that operates all the way from the initial step to the final step of the process to produce a slice of the entire facility output. For example, in a three-Train facility, each Train would produce one-third of the output and could operate with or without the other Trains. In the commodities business, using Train-based facilities is important because production can be ramped up or down efficiently depending on prices — a Train typically runs at full Capacity (greatest efficiency) or not at all. In an LNG plant, a Train consists of a compression area, a propane condenser area, and methane and ethane areas.

Tranche: an individual class or series of Bonds within an offering (which may have different ratings) or types of loans within the same Credit Agreement.

Transmission Consultant: an Independent Consultant engaged by or on behalf of Lenders to assess the feasibility of the transmission plan (including Curtailment risk) with respect to a project.

Transmission Line / T-Line: an electric power line located above or below ground that transmits energy to, from, or within a project.

Trash to Cash: the conversion of MSW to recyclables, a much smaller amount of noncombustible trash, electric energy, and ash, in that order. Trash to Cash facilities, while seemingly the ideal solution to landfill shortages and recycling apathy, are notoriously difficult to site. They create traffic, odor, noise, pollution, and potentially other environmental issues.

Tree: in the acquisition finance context, a bidder or financing source. In an auction, multiple bidders may be looking at the target, and each bidder may in turn be examining possible financing from a variety of banks. So if Sponsor A and Sponsor B are looking at a target, and each has two possible financing sources (drafting Commitment Papers), there will be four financing Trees.

Triple Net Lease: another name for Net Lease.

True Lease: a Lease that is a "true lease" for tax, accounting, or commercial law and bankruptcy purposes. For tax purposes, a Lease is a True Lease if the lessor takes the risk of ownership (as determined by various IRS pronouncements) as the owner of the leased equipment and is entitled to take depreciation and other tax benefits. For accounting purposes, an Operating Lease is a True Lease if the leased asset is on the lessor's books and the lessee incurs current expenses for the payment of rent.

True Sale: a transaction in which actual legal title to an asset is transferred, as opposed to the asset's being loaned or pledged as Collateral in a financing transaction. The issue of whether a transaction is a True Sale or a financing has bankruptcy implications, because if a transferor goes bankrupt, unless the asset in question is deemed to have been sold in a True Sale transaction, the bankruptcy court can determine that the asset is still owned by the transferor and can therefore be included as part of the bankruptcy assets that are distributed to creditors.

Trust Agreement: in leasing, another name for Owner Trust Agreement.

Trust Deed: another name for Deed of Trust in certain jurisdictions, though Trust Deed may also refer to the simple granting document that is used to place an asset in trust.

Trust Indenture: See Indenture.

Trustee: the Bond equivalent of a Credit Agreement Administrative Agent. The Trustee has certain assigned duties and rights under the Indenture that become particularly important following Defaults or Events of Default. Unlike an Administrative Agent, a Trustee will rarely own any of the underlying securities and will take no action absent specific direction and indemnification from the bondholders.

TSA: acronym for Turbine Supply Agreement.

Turbine Blade: another name for Blade.

Turbine Island: the part of a fossil-fired power plant consisting of gas and/or steam turbines, HRSG, and generator sets.

Turbine Supply Agreement / TSA: an agreement for the supply of WTGs or natural gas turbines.

Turnkey Contract: a contract under which the contractor provides all engineering and procurement for, and all construction, startup, and commissioning of, a project, such that the owner's main responsibilities are limited to site procurement, certain permitting obligations, and writing checks to the contractor. At the end of the commissioning of the project, the contractor provides the owner with a fully constructed and tested project that is capable of commencing commercial operation without additional work (*i.e.* the contractor "turns over the keys" to a fully functional project to the owner).

See also EPC.

Two-Meter Test: a very mobile and inexpensive way to test for geothermal prospects. Probes are inserted into the ground at a two-meter depth to measure the temperature. Over the course of a year, the test will create a temperature gradient that is highly predictive of temperatures at even greater depth.

UCC: acronym for the Uniform Commercial Code.

UCC-1: the form used to Perfect a Security Interest by filing.

UCC-3: the form used to evidence the termination or release (and in some US states, the amendment) of a Security Interest.

UCC Collateral: the portion of the Collateral of a Borrower, Pledgor, or Guarantor in which a valid Security Interest may be created under Article 9 of the UCC.

UNCITRAL: acronym for the United Nations Commission on International Trade Law.

UNCITRAL Arbitration: Arbitration conducted under UNCITRAL. Parties follow this procedure in ad hoc commercial Arbitrations for which an arbitral institution is not selected to supervise proceedings.

Underground Storage Tank / UST: a storage tank and associated piping whose volume is at least 10% or more below ground. However, a tank whose entire volume is below ground may still be considered an aboveground storage tank if it is accessible for inspection. USTs are often a source of contamination and/or Hazardous Materials, and any facility with such tanks should be carefully evaluated.

Underwrite / Underwriting: an agreement by a Lender to fund the entire amount of the debt. In an Underwriting, the Lender often sells some or all of its commitment in a Syndication process, often before the first loan is made.

UNFCCC: acronym for the United Nations Framework Convention on Climate Change.

Uniform Commercial Code / UCC: one of a number of uniform acts that have been promulgated in the United States in conjunction with efforts to harmonize the law of sales and other commercial transactions in all 50 states. The UCC deals primarily with transactions involving personal property. Each state's version of the UCC may be slightly different. Additionally, some Native American tribes have their own UCCs.

Unit Contingent: when a generator contracts to sell Capacity or energy from its plant, it might agree to sell on a Unit Contingent basis, meaning that if its own plant became unable to generate, it would not have to find replacement power for the buyer, nor would it be liable for damages.

United Nations Commission on International Trade Law / UNCITRAL: the core legal body of the United Nations in the field of international trade law. UNCITRAL's mandate is to establish a set of rules to promote the progressive harmonization and unification of international trade law.

United Nations Framework Convention on Climate Change / UNFCCC: an international environmental treaty that aims to stabilize GHG emissions around the world.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 / USA Patriot Act: a US federal law passed after the September 11, 2001, terrorist attacks that aims to strengthen national security. Credit documents may contain provisions notifying the Borrower (and potentially others) that pursuant to the USA Patriot Act, each Lender may be required to obtain, verify, and record certain information (generally referred to as Know Your Customer or KYC information) from the Borrower and certain other participants in the transaction.

Unitize / Unitization: an action whereby all owners and lessees of a resource agree on a plan as to how that resource will be developed and operated, and how the parties will share and/or allocate the costs and revenues. In geothermal development or at an oil or gas field where there are multiple owners and lessees of adjacent lands, you can imagine issues with one guy sticking his straw in the other guy's milkshake, hence the need for Unitization. In the case of BLM land, the owners will also have a unit agreement with the BLM (BLM regulations have a model form).

Upfront Fee: the fee the Lenders get paid at closing based on a percentage of the credit facilities they have committed to provide.

Upstream: the exploration and production sector of the oil and gas industry. This includes all activities up to (but not including) the "midstream" sector (pipeline and storage).

See also Downstream.

Upwind Array Event: a reduction in the energy output of a Windfarm as a result of the Erection of an upwind WTG.

USA Patriot Act: short for the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

Useful Life: the expected time a facility or piece of equipment (*e.g.*, a WTG) will remain in service before becoming prohibitively expensive to maintain, used to evaluate the proper Tenor of a Project Financing. Useful Life is less precise than Estimated Useful Life.

UST: acronym for Underground Storage Tank.

Usury / Usurious: when a Lender not in an exempt class of Lenders (*e.g.*, a bank) lends to a Borrower in a class of transaction that is not exempt, at a rate exceeding a state statutory limit. Typically, the penalty for Usury is not foregoing principal repayment, but foregoing a multiple of the Usurious interest collected.

Usury Savings Clause: the provision of a Credit Agreement stating that if an interest rate would otherwise be impermissible under a given jurisdiction's Usury laws, the rate that would instead apply is the rate that is the highest non-Usurious rate.

Variable-Pitch WTG: the ability of a WTG to rotate its Blades about their axis through a mechanism in the Hub, so as to regulate the rotational speed of the Hub and Blades and to vary the output, as well as minimize wear and tear on the machine. For example, when wind speeds are high, one can expose less of the Blade to the wind (*i.e.*, Feather it) while staying on the high end of the Power Curve, all the while minimizing wear and tear on the gearbox, Blades, etc. Not all WTGs can vary their Blade pitch.

Variable Rate Debt Obligation / VRDO: a long-term security, often a municipal Bond, with interest that resets on very short terms, usually seven, 28, or 35 days. At the end of that period, the interest rate is reset through a Dutch Auction. The holder can at the end of any Interest Period put the Bond back to the Issuer (*i.e.*, cause the Issuer to buy the Bond). The Bond is then quickly Remarketed (*i.e.*, another buyer is found). If no other buyer is found, a bank that has provided a backup facility for just that event will put up the money to buy the Bond, and Remarketing efforts continue.

Variable-Speed WTG: another name for Variable-Pitch WTG.

Variation Margin / VM: the variable collateral payment posted in respect of one or more Derivatives transactions by one party (*i.e.*, the posting party) to its counterparty (*i.e.*, the collecting party), based on the Mark-to-Market exposure faced by the collecting party at the time of the relevant Margin Call. VM is transferred on a regular basis (often daily or intraday) to reduce the fluctuation in MTM exposure faced by the parties in respect of the underlying position(s). VM is also known as "Mark-to-Market margin."

Vertical Axis: with reference to WTGs, when the main drive is perpendicular to the ground. Vertical Axis WTGs offer the advantage of never needing to turn to the wind. The most visible commercially produced example was the FloWind turbine, which was known as the "eggbeater" turbine and can still be seen in the Altamont Pass in Northern California.

VM: acronym for Variation Margin.

VOCs: acronym for Volatile Organic Compounds.

Volatile Organic Compounds / VOC: organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of temperature and pressure. VOCs generally are regulated by the federal Clean Air Act to prevent the formation of ozone, a constituent of photochemical smog. Many VOCs form ground-level ozone by "reacting" with sources of oxygen molecules (such as nitrogen oxides and carbon monoxide) in the presence of sunlight. However, only some VOCs are considered reactive enough to be of concern. Siting a new facility in an ozone Non-Attainment area typically requires procuring Emission Offsets for VOC emissions. In addition, VOCs are often discovered as part of soil and groundwater contamination. These VOCs typically include solvents, benzene and other petroleum breakdown products, and other compounds, all of which are generally part of the Hydrocarbon chemical family.

Volumetric Production Payment / VPP: a financing technique in the US oil and gas industry. An oil and gas producer will sell a specified amount of Hydrocarbons produced from a specified field or fields during a specified time period. Like a Royalty, these volumes do not bear any of the burdens of production. In most states, a VPP is considered an interest in real property, and when sold to a non-affiliate, it is specifically carved out from the estate of the seller. The VPP structure is useful in financing oil and gas producers with weaker credit.

Voluntary Prepayment: prepayments of a Term Loan made at the Borrower's option that are not required pursuant to the Amortization schedule.

In contrast, see Mandatory Prepayments.

VPP: acronym for Volumetric Production Payment.

VRDO: acronym for Variable Rate Debt Obligation.

Waiver of Subrogation: See Subrogation.

Wake: the air downwind of a spinning WTG. Turbine Blades create air turbulence in the Wake, which can have a damaging effect on downwind WTGs due to increased wear and tear (Array design can mitigate this turbulence). A Windfarm owner may wish to have an Easement on upwind lands even if he or she doesn't plan on building there, to prevent Wakes from other projects.

See also Upwind Array Event.

Warehouse Facility: a Revolving Facility extended to a Sponsor to finance the construction and/or acquisition of projects pending transfer of such projects to another Sponsor upon completion or another trigger. Warehouse Facilities have appeared in various forms alongside Yieldcos — the Warehouse Facilities are used to acquire and/or finance construction projects that are sold to the Yieldcos upon completion.

Waste Coal: another name for Culm.

Waterfall: the order of application of revenues of a project subject to a Project Financing. Think of the funds in question as water running down a flight of stairs with a bucket placed on each step — the water (money) flows to the top step first and fills that bucket before the overflow continues on to the second step and fills that bucket before proceeding to the third step, etc. The parties will "run the Waterfall" only on periodic (usually quarterly or semiannual) payment dates, since filling up a lower level in between payment dates could potentially deprive a higher Waterfall level of funds when needed. The exception is operating costs, which are paid at least monthly. The Waterfall is generally ordered: (i) operating costs; (ii) costs of administering the credit facility; (iii) interest and Interest Rate Swap payments; (iv) principal; (v) reserves; (vi) Subordinated debt or Cash Sweep to a targeted debt balance (in each case, if any); and (vii) Equity distribution (or if distribution conditions are not met, a Cash Sweep or Cash Trap, possibly with retention in a Distribution Suspense Account). A Waterfall is also known as a "cash flow Waterfall."

WDGS: acronym for Wet Distiller Grain Solubles.

Wet Distiller Grain Solubles / WDGS: Distiller Grain Solubles that have not been dried for transportation or storage.

Wheeling: the transmission of electricity by one company or utility over the system of another utility.

Wildcat: See Exploration Well.

Wind Power Density: See Class (Wind Resource).

Wind Turbine Generator / WTG / Wind Turbine: a device that uses wind to generate electrical energy, consisting primarily of a Nacelle, Blades, Hub, and a Tower. So-called "first generation" WTGs (many of which are still in commercial operation) had capacities of 100 kW or less. The second generation was in the 500 kW range. Now most WTGs are in the 1.5 MW to 2.5 MW range, with some offshore machines at up to 9.5 MW. Land-sited WTGs may not get much bigger, as the Blades and Tower sections already max out highway and road transportation constraints.

Windfarm: a power project using WTGs.

Withdrawal Certificate: a certificate delivered by a Borrower to withdraw funds from the revenue account and other accounts in accordance with the Waterfall or other provisions of the Depositary Agreement.

Working Capital: a measure of a company's short-term liquidity, calculated by subtracting current liabilities from current assets.

Working Group List / WGL: the list assembled early in every deal showing all parties and their respective roles.

Working Interest: a percentage of ownership in an oil and gas Lease, granting the owner the right to explore, drill, and produce oil and gas from a specific parcel. In general, a Working Interest for a given percentage ownership provides fewer benefits to its holder than a Royalty Interest of the same percentage. Working Interest owners are obligated to pay a corresponding percentage of the cost of leasing, drilling, producing, and operating a well or unit. After Royalties are paid, the Working Interest entitles the owner to share in production revenues with other Working Interest owners, based on the respective percentages owned.

World Bank: an international organization that provides loans and other products and offers advice to both private- and public-sector institutions in developing countries. The World Bank's mission is to eliminate poverty, while also promoting foreign investment and international trade. The key arms of the World Bank are: the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Disputes (ICSID).

World Trade Organization (WTO): an intergovernmental organization that regulates international trade between participating countries by providing a framework for negotiation of trade agreements and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements.

WTG: acronym for Wind Turbine Generator.

Wrap: a party's guarantee of the obligations of one or more primary obligors. For instance, if a project owner has contracted with five contractors to design and build different parts of a single project, the Lender will have serious finger-pointing concerns, no matter how reputable the contractors. A single Wrap by a creditworthy contractor may save the day. An EPC contract is usually a Wrap insofar as the EPC contractor is responsible to the owner for the construction of the project, notwithstanding the fact that the EPC contractor may subcontract most or all of the work.

Wrong-Way Risk: a type of risk that refers to an event that decreases a counterparty's creditworthiness as its payment obligation under a contract increases. When an entity is party to a Hedge contract (Party A) and there is a strong correlation between an event that affects

Party A's creditworthiness and exposure under the Hedge contract, the counterparty (Party B) must determine whether the event creates a Right-Way Risk or a Wrong-Way Risk.

For example, say Party A enters into a Currency Swap with IcelandCo in which it will pay IcelandCo each month if the US dollar (USD) is worth less than 125 Icelandic króna (ISK), and IcelandCo will pay Party A if the USD is not worth less than 125 ISK. In essence, a relatively strong USD-ISK ratio puts Party A In-the-Money (*i.e.*, IcelandCo owes Party A). The weaker the ISK, the more IcelandCo owes Party A. However, as the ISK weakens: (i) capital leaves Iceland; (ii) unemployment rises; (iii) Icelanders who have debt in USD Default because they are earning in ISK but paying in USD; and (iv) Icelanders cut other expenditures, which further weakens the economy. In short, while Party A bet in the right direction on the Currency Swap, it still has to collect, and now its counterparty is less creditworthy than at contract inception due to the weaker Iceland economy; accordingly, Party A has a Wrong-Way Risk position.

In contrast, see Right-Way Risk.

WTG: acronym for Wind Turbine Generator.

Yank-a-Bank: a Credit Agreement provision that allows a Borrower to throw a Lender out of a credit facility if it won't agree to an amendment or if it asks for a gross-up indemnity that not all of the Lenders are claiming. Certain Credit Agreement amendments (including Repricing amendments) cannot be achieved without the approval of all Lenders. Yank-a-Bank provisions enable a Borrower to squeeze out dissenting Lenders in a 100% vote situation so long as a majority of the Lenders have approved the amendment. The "yanked" Lender is replaced with a new Lender that will approve the amendment and is willing to purchase the outstanding loans and commitments of the yanked Lender, usually at Par. Yank-a-Bank is rarely exercised other than in connection with a Repricing.

Yaw: the rotation of a Nacelle to maintain alignment of the plane of the Blades perpendicular to wind direction.

Yieldco: a dividend growth-oriented public company that owns renewable and/or conventional long-term contracted operating assets in order to generate predictable (lower risk) cash flows, which are expected to increase over time as the portfolio of operating assets owned by the Yieldco grows.

Zoning: local statutes and regulations governing the use of real property. For example, Zoning would restrict building a power plant in Beverly Hills. Zoning addresses minimum lot size for residential construction, building height, Setback rules, noise restrictions, parking lot size, etc.

Beijing
Boston
Brussels
Century City
Chicago
Dubai
Düsseldorf
Frankfurt
Hamburg
Hong Kong
Houston
London
Los Angeles
Madrid
Milan
Moscow
Munich
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