

energy law



## The Team

The Energy team at Thirty Nine Essex Street comprises leading practitioners who are recognised for their expertise in Energy law, as well as in related fields including commercial law, construction and engineering law, environmental and planning law and public and regulatory law. Other relevant experience includes EC law, competition law, and public and private international law.

A number of the barristers in the Energy team have previous experience working in government, as industry regulators, as solicitors in city law firms and in academia. As such we are able to combine detailed knowledge of legal issues with an in depth awareness of practical, technical and commercial issues which arise in energy disputes.

The team draws on the breadth of its expertise to offer a comprehensive advisory and advocacy service across the energy sector. We are particularly well placed to deal with matters that do not fall into a single specialism and can put together teams to deal with all aspects of a complex project or dispute.

Members work with clients across all sectors of the energy industry including electricity, renewables, oil and gas and nuclear fuels. Our clients include oil exploration and refining companies, governments and regulators, the Nuclear Decommissioning

Authority and oil and gas commodity traders as well as their financiers and insurers/reinsurers.

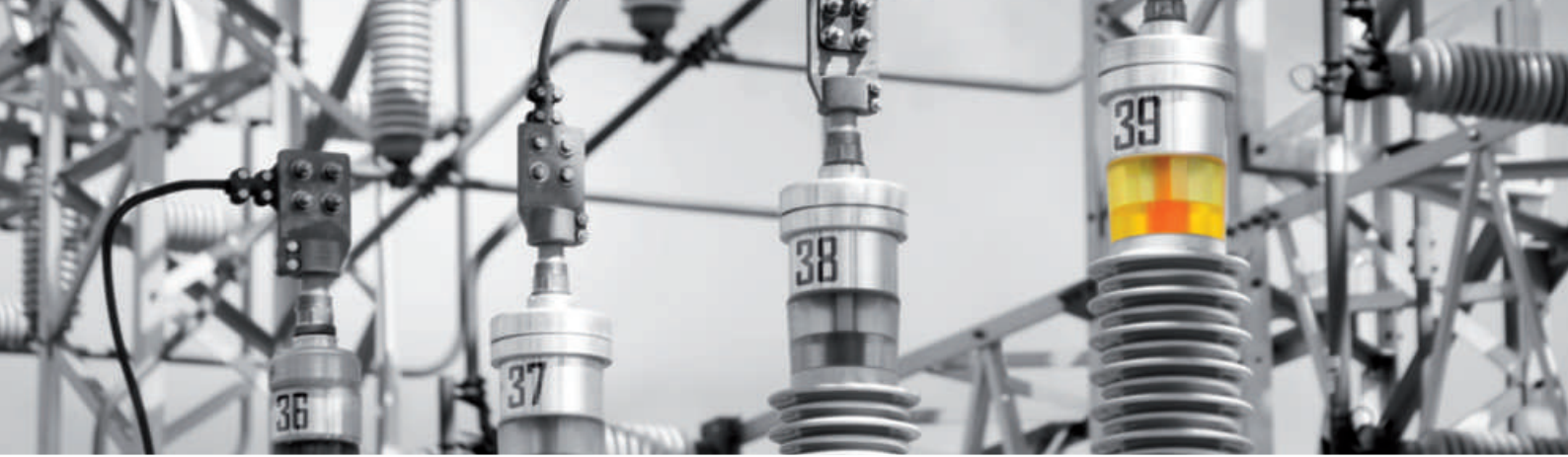
Members of Chambers have been involved in the drafting of, and dispute resolution associated with, long term commodities, infrastructure, pipeline, field development and production contracts involving the North Sea, the former Soviet Union, the USA, Australia, Africa and the Far East. Our multi-national experience also includes the associated financing and construction disputes involving oil rigs, hulls, pipelines, tenders and power stations.

Members of Thirty Nine Essex Street have substantial experience in litigation, arbitration and alternative dispute resolution within the UK and in many international jurisdictions. Members have appeared as advocates before arbitral tribunals in jurisdictions as diverse as the Middle East, the Far East, India, Southern Africa, Europe (Eastern and Central) and the Caribbean and have experience acting under all the main international arbitral rules.

Chambers has a number of experienced international arbitrators, adjudicators, dispute board members and mediators who between them have vast experience of domestic and international dispute resolution in the energy field.

*“at the forefront of the public and commercial law overlap”*

**Chambers and Partners**



## Areas of Work

### Corporate/Commercial

The Energy team has considerable experience in dealing with the corporate and commercial aspects of the industry - from M&As and corporate restructuring to insurance to financing to taxation.

Significant matters include:

- Advising and acting in a €4bn petrochemical M&A in relation to long tail environmental liabilities
- Advising and acting in relation to the insurance and re-insurance of nuclear processing and energy facilities
- Advising and acting on the PFI and insurance issues in the construction, operation and management of numerous power stations (conventional and waste to energy)
- Shell v HMRC – a £200m dispute over Shell's obligations to pay Petroleum Revenue Tax on gas recovered as a result of the Brent Field redevelopment
- Advising and acting on all aspects of the financing of energy projects – from World Bank to syndication to bond and guarantee issues

### Construction and Engineering/Energy Infrastructure Projects

The Energy team has wide experience in advising and acting domestically and internationally in relation to all aspects of energy infrastructure projects including long term infrastructure contracts, World Bank funding disputes, multi-national pipeline disputes, technical construction and engineering disputes, planning disputes, infrastructure development consents and compulsory purchase, claims for economic loss and disputes arising in relation to public liability insurance.

Members are familiar with the funding and partnering arrangements that have developed around large-scale infrastructure projects and regularly advise in relation to bonds, guarantees and indemnities as well as in relation to insurance and regulatory matters.

Significant matters include those listed under the relevant industry sectors:

- Advising numerous energy companies on matters such as Large Combustion Plant Directive, Habitats Directive, Planning Permission, Electricity Act, utilisation of ash and other waste management issues

- Advising on numerous waste to energy projects and acting in the related disputes – covering all aspects of the project from PFI through to insurance through to environmental contamination
- Advising an engineering firm on manufacture and supply issues arising in relation to large scale waste infrastructure project in the Netherlands
- Acting on behalf of the engineering contractor in arbitration proceedings arising from the construction of a waste to energy power station in Germany
- Advising an engineering firm in relation to economic loss resulting from boiler damage at a Midlands power station
- Acting on behalf of the insurer in TCC proceedings concerning public liability insurance issues arising from an explosion at a power station in Sheffield
- Advising and acting in the private international law and commercial law disputes arising from the construction and utilisation of a Trans-Caspian pipeline
- Advising and acting in financing and force majeure disputes over the construction of power stations in Pakistan

### Environmental and Planning law

The Energy team includes barristers with considerable experience in advising on contentious and non-contentious matters relating to environmental and planning law in the energy industry. Members of Chambers offer expertise in planning inquiries and litigation, in the application and interpretation of environmental legislation and in a broad range of related areas.

Significant matters include:

- Advocacy and advice on wind farms at inquiry including the Clyde Wind Farm Inquiry (152 wind turbine scheme) Guestwick (Norfolk), Greenock, Baumber, Ray and Isle of Lewis (Scotland) wind farms
- Advising Parliamentarians and drafting amendments during the passage of the Planning Act 2008 and the Localism Bill on consents for energy projects
- Acting and advising in an application before the IPC raising a range of planning issues including the use of compulsory purchase orders in relation to an energy from waste plant
- R (Greenpeace Ltd) v Secretary of State for Trade & Industry (No.1 and 2) (1997 and 1999) - Offshore Drilling and the Habitats Directive

# *“an extremely modern and knowledgeable team”*

## Chambers and Partners

Thirty Nine Essex Street Energy Law

## Public and Regulatory

The Energy team has considerable experience in advising on contentious and non-contentious public and regulatory matters across the energy industry. Members of Chambers offer expertise in disputes involving judicial review, statutory interpretation, competition law, environmental regulation and the application of EC law.

Significant matters include:

- R (Greenpeace Ltd) v Secretary of State for Trade & Industry [2007] EWHC 311 Consultation on new nuclear build
- Advising Energy Regulators and regulated companies on issues of statutory construction and enforcement including in relation to the Third Package of EC liberalisation legislation
- R (Redcar & Cleveland Borough Council) v Secretary of State for Business, Enterprise and Regulatory Reform and EDF Energy [2008] EWHC 1847 (Admin) Teesside Offshore wind farm
- Advising on the lawful conduct of the Retail Market Probe in 2008-2009
- Advising on the conduct of investigations and litigation under the Competition Act 1998 (and EC law) into potential refusals to supply, margin squeeze and other pricing strategies in the gas and electricity wholesale markets
- R (Cemex UK Cement Ltd) v Department for Environment, Food & Rural Affairs [2006] EWHC 3207 First case on application of EU Emissions Trading Scheme
- Advising and acting for oil companies in market investigation references before the European Competition Authorities

## Energy Industry Sectors

### Electricity

The Energy team has considerable experience in advising on contentious and non-contentious matters across the electricity sector, from generation, through transmission/distribution, to supply.

Significant matters include:

- Advising on a new approach to the system operator incentive mechanism
- Advising on issues arising under the smart metering roll out in the UK

- Advising on National Grid connection and tariff transactions and disputes
- Advising on the interpretation of Network Codes, including in the context of commercial litigation
- Acting for parties seeking accreditation under the Feed-in-Tariff Scheme, and regarding the treatment of Renewable Obligation Certificates under Power Purchase Agreements
- Advising on the treatment of (and obligations on the owner of) major infrastructure such as international interconnectors, or offshore wind farm transmission, under new European legislation
- Acting as dispute review board chairman of a 120 mega watt power station in Hull
- Advising on carbon capture and storage proposals
- Acting in High Court procurement proceedings on the CCS Demonstration Project
- R (Barking Power) v Secretary of State - Electricity Act consent for gas-firing at a power station

### Nuclear

Members offer expertise in relation to all aspects of nuclear law including nuclear planning, licensing, liabilities management, NDA contracts and insurance. Members of the Energy team also have experience in related fields including contaminated land, waste disposal and construction law.

Significant matters include:

- Advising the Nuclear Decommissioning Authority and Nirex on various issues
- Drafting and negotiating dispute resolution and insurance provisions in relation to the scheme for the decommissioning of the UK nuclear industry
- Advising on and acting in relation to the procurement issues in relation to the managing and decommissioning of nuclear facilities
- R (Rory Walker) v Secretary of State for Climate Change, Nuclear Industry Association [2011] (Admin court). Judicial review challenge to the Government's Justification Decisions in favour of the AP1000 and EPR nuclear reactors
- Advising on the potential liabilities (under public and private international and environmental law) arising out the international transport and handling of nuclear materials



- Advising various energy, engineering and insurance companies on nuclear law
- Advising and acting in a potential insurance/reinsurance claim triggered by radioactive leaks at and the closure of THORP
- Commission of the European Communities v UK (ECJ) (the JASON and GIBPUBSAFE cases) on non application of EURATOM Treaty and Basic Safety Standards Directive to military activities
- Advising and acting in a nuclear-related project where disputes have arisen concerning complex design matters, commissioning and meeting required design standards

## Oil & Gas

Members of the Energy team advise and act in litigation, arbitration and mediation across the oil and gas sector and offer particular expertise in matters with multi-national elements. Members of Chambers have experience in a wide range of matters both upstream and downstream including the licensing, exploitation and development of oil fields, long term Production Sharing Contracts and Farm-In Agreements, the financing, provision and leasing of field development infrastructure, the financing, insurance, construction and operation of oil platforms, refineries, pipelines and power stations, and issues arising from gas storage. We also offer specialist advocacy and advice in relation to compliance with environmental regulation, insurance, health and safety, pollution, waste disposal and public and private international law.

Members act for all sides of the industry: for engineering firms, oil and gas companies and for and against national and state governments.

Significant matters include:

- Advising and acting in the litigation arising out of the fire at Buncefield oil storage depot
- Advising and acting in the first disputes to arise out of the post-war oil and gas exploration of Iraq
- Advising and acting in disputes arising from the conversion of North Sea oil platforms
- Advising and acting in the leading cases on long term oil and gas supply contracts from the North Sea
- Advising and acting in disputes over the future exploration and development of the North Sea
- Chairing a dispute board appointed for a major international FPSO conversion project

- Acting and advising in relation to a number of significant underground gas storage inquiries including Saltfleetby and Star Energy
- Dana Petroleum v Woodside Kenya Ltd: Advising and acting in a multi-million US dollar claim over the development of oil and gas fields in East Africa
- Advising in a UNCITRAL arbitration arising out of an oil and gas joint venture agreement in Indonesia
- Acting and advising in a US\$29m UNCITRAL arbitration over the development of oil and gas fields in Egypt
- Acting and advising in an UNCITRAL arbitration over the construction of oil facilities in the Middle East
- Acting for an oil and gas company in an arbitration in Trinidad in relation to disputes over payment for changes and for delay and disruption
- Acting for an Indian petrochemical corporation in an arbitration under the UNCITRAL Rules relating to the construction of a major oil refinery in India
- Acting for a process plant manufacturer in an ICC arbitration relating to the operation and performance of a petrochemical plant
- Acting in a dispute between parties to a shareholders agreement relating to the development and expansion of an LNG plant in Europe, in relation to their joint response to delay and disruption by a contractor
- Advising an oil and gas major on the interpretation and application of exclusion and limitation of liability provisions to extensive delay and disruption to an LNG plant in North Africa
- Acting for a State petroleum corporation in an UNCITRAL arbitration arising from the failure of civil engineering works at an LNG Plant in the Gulf
- R (Maile and Hardy) v Pembrokeshire County Council (Court of Appeal) [2005] EWHC 1872 LNG Terminal and EIA
- Acting for a State petroleum corporation in a dispute arising from the dredging of deep water port facilities for an LNG plant in the Gulf
- Acting in TCC litigation for a compressor manufacturer in relation to compressor failures on an FPSO in the North Sea
- Acting for an oil corporation in relation to the proper construction of a 'Carry' agreement for investments in the UKCS
- Acting for a deep-water drilling contractor in an LCIA arbitration arising from the sale of part of its drilling barge fleet



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- Acting for a deep water drill ship owner in relation to disputes arising from the sub-charter of the ship for drilling operations off East Africa
- Acting for an oil field services provider in relation to the termination of a long term agreement following the alleged payment of bribes by a local affiliate
- Advising in relation to an UNCITRAL arbitration with its seat in India, in relation to the provision of oil field and drilling services

## Renewables

Members of Thirty Nine Essex Street offer expertise across the renewables sector. Members of Chambers regularly advise on issues arising out of offshore and onshore wind farms, including planning inquiries and proceedings for judicial review.

Significant matters include:

- R (Friends of Hethel) v South Norfolk Council and Ecotricity [2011] JPL 192 wind farm
- R (Hulme) v Secretary of State for Communities & Local Government (2008 and 2010) wind farm
- Enertrag (UK) Ltd v Secretary of State for Communities & Local Government [2009] EWHC 679 (Admin) wind farm
- R (Merricks) v Secretary of State for Trade & Industry and nPower Renewables Ltd [2006] EWHC 2698
- Clyde Wind Farm Inquiry (2006) Section 36 public inquiry into an application to build the largest onshore wind farm in Europe
- Acting and advising in an International Arbitration over funding of a wind farm in Mongolia
- Acting and advising on a dispute between the joint venture partners concerning a wind farm in China
- Advising on the termination of wind turbine manufacturing agreements and a related wind farm project in the UK
- Advising the manufacturer of solar panelling in relation to the insolvency of its principal customer and distributor in various regions

## Publications

The Team has written or contributed to a number of publications including books on:

- Construction Contracts
- International Dispute Resolution
- The Law of Nuclear Installations and Radioactive Substances
- Environmental Impact Assessment
- Contaminated Land
- Planning Law and Environmental Law

Members of the Energy Team also contribute to:

- The Butterworths Competition Law Service (Energy chapter)
- The Encyclopaedia of Environmental Law

Members also contribute to a range of legal journals including:

- International Energy Law Review
- European Competition Law Review
- Journal of Environmental Law

## Other Services

### Education and Training

Members of the Energy team frequently speak at conferences and academic institutions both in the UK and world-wide. In addition, members provide in-house training for its clients including national and international law firms, local authorities and specialist professional organisations.

*“head and shoulders above the competition”*

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## Chambers

The members of Thirty Nine Essex Street possess a wide range of expertise, both as advocates and advisers. Our diverse client base includes law firms, government departments and agencies, utilities, NGOs, insurance companies, professional indemnity insurers, local authorities, trade unions, public and private companies, educational bodies, health authorities and trusts, and individual litigants. Members also undertake pro bono work and act for public interest organisations. Instructions are accepted through direct professional access from recognised organisations and overseas lawyers.

For more information please contact

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of its transparency and  
commercial understanding”*

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