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A YEAR IN ENERGY

2008/09 AND
THE YEAR
AHEAD

RENEWABLES
AND CLEAN
TECHNOLOGY

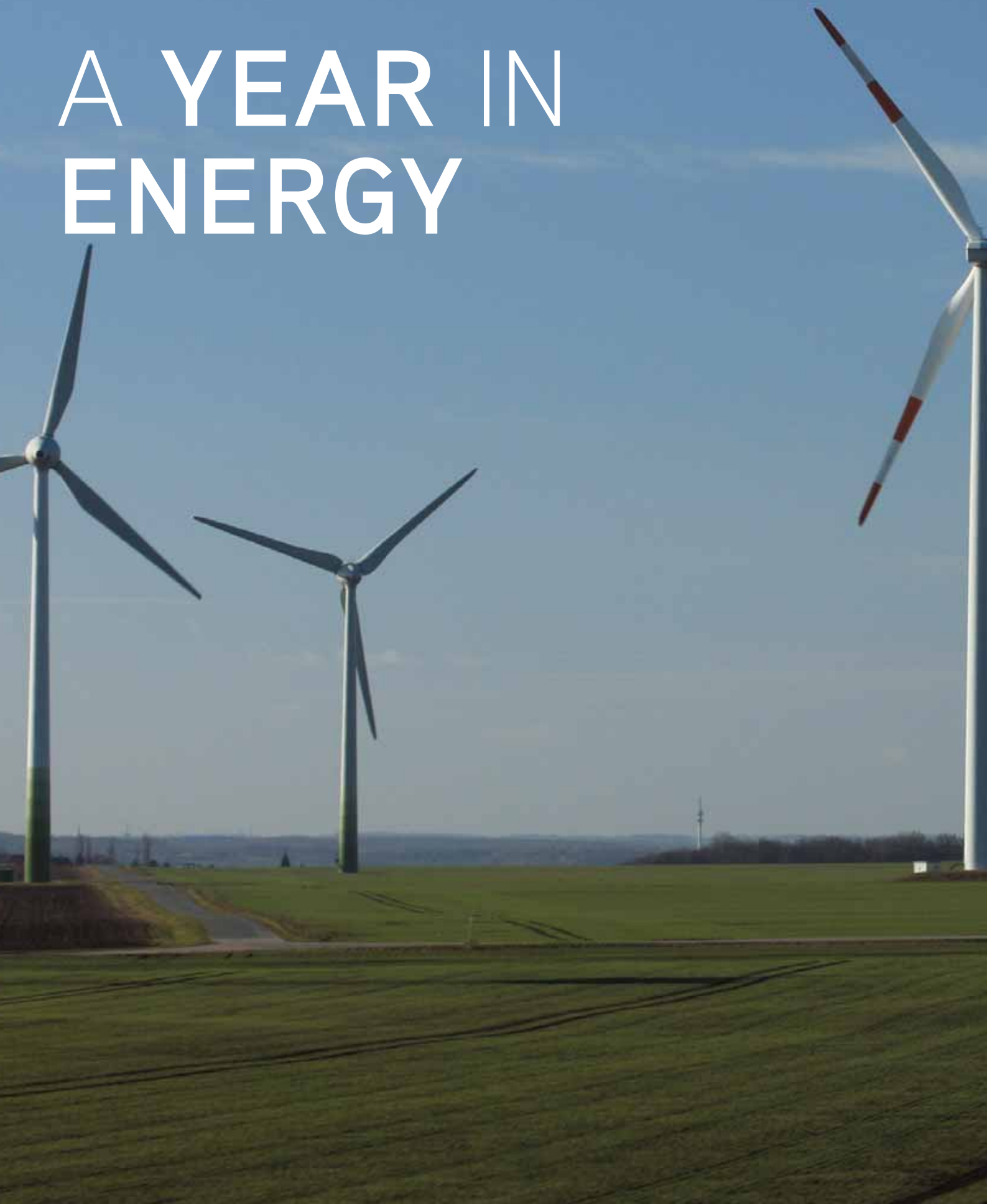
NETWORKS AND
SYSTEM
OPERATION

WHOLESALE
AND RETAIL
MARKETS

BUILDINGS AND
ENERGY
EFFICIENCY

CARBON
TRADING

A YEAR IN ENERGY







INTRODUCTION

These are testing times for all businesses, but Martineau has been fortunate in entering this recession with strong and established practices in some key industry sectors, all of which helped deliver a robust performance in 2008/09.

We launched our energy practice back in 1994, one of the first law firms outside London to do so, and since then the energy sector has become one of our principal practice areas. We have always looked to innovate, and in 2007 we launched our dedicated climate change portal, www.climatechange-forum.co.uk. This site aims to help our lawyers, as well as our clients, understand and keep track of climate change law and policy and how it impacts on business.

Our energy practice now contributes a sizeable proportion of the firm's turnover: around £1.7m in 2008/09, up 6% on the previous year.

Crucially, this strong performance in a difficult economic climate has been delivered not just by our specialist energy lawyers, but by teams from across the firm - in areas as diverse as construction, competition and procurement, corporate finance, debt recovery and real estate.

This is one of the key ingredients of the success of our sector-based strategy. Our sector specialism is based around a network of Martineau lawyers, drawn from relevant disciplines, from all areas of the firm, all sharing a common interest and understanding of our sector clients and the challenges they face. This firm-wide group of lawyers benefits from centralised sector intelligence, training and support delivered by a 'core' specialised sector team, with help from our Information Services team.

Overall, we have around 30 lawyers across the firm working regularly, in some cases exclusively, for our clients in the energy sector.



“We helped some of our larger utility clients
through a hectic year”

In 2008/09 we saw growth in three
distinct areas:

- we helped some of our larger utility clients through a hectic year, marked by market investigations, price volatility, security of supply concerns and increasing challenges on network businesses;
- we saw a step change in activity from our private equity clients, as investment fund managers showed increased enthusiasm to invest in a wide range of businesses in the renewables sector; and
- we saw an increase in business start-ups in the cleantech sector, especially in our West Midlands “home turf”, as the UK government has increasingly looked to use support for the sector as an economic development tool.

In the pages that follow, you will read some of the highlights of our “done deals” in these and other areas, and hopefully gain an appreciation of the importance we place on this sector.

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2008/09 AND THE YEAR AHEAD



It is no overstatement to say that the last 12 months or so have been an eventful year, with the onset of a global recession the like of which few of us have witnessed before. It is difficult to maintain focus on the issues of energy security and climate change when job losses, bankruptcy and bail-outs grab the headlines, but importantly in October 2008 the Government created a new Department for Energy and Climate Change headed by Ed Milliband. It started with a bang (at least from the perspective of a lawyer) as 3 key pieces of legislation entered the statute book - the Climate Change Act, the Energy Act and the Planning Act.

The first of these new Acts was groundbreaking. Essentially, it commits the UK government to a self-imposed greenhouse gas emissions reduction target of 80% by 2050 (against a 1990 baseline), the first of its kind in the world. Despite scepticism about the legal

enforceability of such a target, the Act has undoubtedly created a long term planning and investment framework for renewables and low carbon technology. Furthermore, the Budget Statement 2009, and the accompanying three “carbon budgets” required by the Act, have reset the glidepath for meeting this long term target by establishing an interim 2020 target of a 34% reduction, with restrictions on the extent to which overseas measures can count towards meeting this target.

The Energy Act also establishes frameworks; notably for the legal structures necessary for development of carbon capture and storage facilities and offshore natural gas storage, as well as nuclear decommissioning and clean-up. Crucially, it will also produce secondary legislation covering smart metering, renewable heat incentives and feed-in tariffs for microgeneration.

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Last but not least, the more controversial Planning Act establishes a new Infrastructure Planning Commission which, in conjunction with a National Policy Statement for energy, will be tasked with granting consent for a new nuclear build programme.

These Acts sit within an international framework of measures designed to create a low carbon economy and preserve security of energy supply.

At a European level, a painful political process of negotiation and compromise throughout 2008 culminated in a “climate change package” of new laws and targets from Brussels. This package includes:

- a Renewable Energy Directive, containing legally binding targets on EU nations to use renewables to “green” their energy usage (essentially electricity, heat and transport), to contribute to an overall 20% share for renewables across Europe by 2020 (the UK’s share is 15% by 2020);

- reform of the EU’s flagship climate change policy measure, the European Emissions Trading Scheme; and

- support for the development of large scale carbon capture and storage projects.

With an eye to the critical Copenhagen climate change negotiations at the end of 2009, the EU also set itself a target reduction of greenhouse gas emissions of 20% by 2020 (based on 1990 levels), rising to 30% if an international deal is reached to replace the Kyoto Protocol.

Further afield, President Obama has dedicated his new US administration to working “tirelessly to roll back the spectre of a warming planet”. His commitment is underpinned by the new American Recovery and Investment Act of 2009, which contains billions of dollars in tax cuts and spending programmes, prioritising clean energy projects, energy efficiency, transmission projects and infrastructure improvements.



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Here in the UK, the credit crunch stalled development of our emerging offshore wind industry, so critical to the UK's ability to meet its renewables target. In response, the otherwise gloomy 2009 Budget Statement offered help to developers, with an increase in subsidy for many of the stalled schemes and a route to funding from the European Investment Bank. The Budget Statement also announced plans for a new levy on consumers, designed to fund up to 4 carbon capture and storage schemes and some cash (mostly not new money) to fund R&D. The struggling Combined Heat and Power community also received some much needed support by way of extension of tax exemptions.

The Chancellor also announced his own "mini-fiscal green stimulus package", with promises of financial support for energy efficiency measures (although nowhere near the level that will be needed to get anywhere near decarbonising our new and existing building

stock) and for green manufacturing and cleantech.

The industry regulator Ofgem was also busy during 2008, and the volume of consultation papers and documents emanating from its offices shows no sign of letting up.

Indeed, 2009 will be a critical year, with publication of the UK's Renewable Energy Strategy expected during the Summer, and consultations and regulations expected on a range of initiatives ranging from offshore gas storage and transmission access to smart metering and emissions trading.

We can only hope that the remainder of 2009 and into 2010 will see the emergence of a clear strategy and framework of legislation and policy that will enable the UK to deliver on the tough targets that have been set for us, and that the risks and opportunities for business will become clearer as a result.

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RENEWABLES AND CLEAN TECHNOLOGY

As the world seeks to massively de-carbonise its power industry, the cleantech and renewable energy sector will become increasingly important, and we are seeing that significance reflected in the work we are undertaking. As our expertise in this sector gains greater recognition, it is no surprise we have seen considerable income growth in this area. In particular, as it becomes an increasingly attractive sector for investment by private equity, we are receiving an influx of new instructions from investment funds.

The rate at which funds are being established and invested demonstrates the confidence investors have in the potential to make sound returns from the investment environment created by climate change law and policy.

Finally, no mention of a low carbon power industry would be complete without reference to nuclear power, which is also set to play a pivotal role as the UK looks to meet the challenge of ensuring energy

security over the coming decade and beyond.

Renewable Developers

Warwick Energy is one of the UK's leading renewable energy developers, and over the years we have helped the company develop its offshore wind interests, notably the Barrow project in the Irish sea (now operational) and the Thanet project located to the east of Margate, Kent (due for completion in 2010). We are currently helping Warwick Energy in relation to the development of another of its offshore windfarm sites, at Dudgeon off the Norfolk Coast.

During the year, we have also been working for a number of clients, including landowners, seeking to include renewable energy such as wind and biomass into their estates, both to assist in estate management and cost cutting and also to generate income.



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Public Sector

Increasingly, our public sector clients are incorporating renewable energy into their estates. In 2008 we advised a north-west University on its plans to build a wind farm on land adjoining its main campus to generate enough power for its own use and sell the surplus into the grid.



Our involvement included investigating the availability of grant funding, addressing site set-up and dealing with legal interests of adjoining land owners, advising on issues surrounding satellite and air safety, as well as the proposed procurement method of the wind farm, and working on the documentation prepared on behalf of Partnerships for Renewables.



We are now assisting on the planning and finance issues relating to the deliverability of the scheme.

Investment Funds

During 2008 we worked for a number of private equity investment fund clients on investments into renewables and cleantech companies. Of these, we advised Foresight Group on investments involving Closed Loop London (operating the UK's first plant to recycle PET plastics into material for food packaging), O-Gen (a company generating green power from biomass) and Silvigen (a biomass fuel supplier specialising in energy crops and short rotation forestry).

“ We advised a north-west University on its plans to build a wind farm on land adjoining its main campus ”

Nuclear

We have been playing an increasing role in the preparation for the UK's new nuclear build programme, especially in and around Cumbria which is expected to be home to as many as 3 new nuclear plants. With existing clients in the area who expect to be stakeholders in the wider regeneration of the area, our involvement in the region was boosted by our part in the recent investment of £6.5m by Lloyds Development Capital in Nuclear Engineering Services Limited, a company providing decommissioning services to the Sellafield nuclear reprocessing plant. We acted for Cooperative Bank on the LDC led development capital deal.

Cleantech

Our work for cleantech companies is typified by assistance we provided to Coventry-based AdvanceSis in 2008. We helped them with investment as they seek to complete development leading to production of their innovative photovoltaic cell technology – harnessing the sun's energy for the generation of electricity.



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NETWORKS AND SYSTEM OPERATION



Transmission and distribution networks are fundamental to the operation of a power system, delivering electricity from power station to end user. As our patterns of generation and consumption change, these networks have had to adapt. The projected growth in renewable generation presents a particular challenge. Much of our existing and planned renewables capacity is sited in remote locations, far from the main centres of demand. Furthermore, because of its size, it is typically connected to distribution, rather than transmission, networks, which marks a fundamental shift from the design assumptions of our networks when they were first built, when a relatively small number of large power stations were centrally despatched and their output exported directly onto the transmission grid.

These changes are being managed by the utility companies against the backdrop of ever increasing concerns about security of supply, both in terms of a looming capacity gap as we see power station closures over the next

decade and ever increasing power demand from consumers, and also in terms of gas imports and the loss of the UK's self-sufficiency as North Sea reserves have dwindled.

Balancing Services

Since the early 1990s we have been helping National Grid in its key role as electricity system operator, developing and putting in place contracts between National Grid and industry participants for the provision of balancing services. These specialist services are fundamental to the operation of any power network, and are provided typically by generating plant in order to help National Grid balance generation and demand on the system half hour by half hour, and to maintain system voltage and frequency at required levels.

However, services are also provided to National Grid by demand users, typically large industrial plants, who can offer flexibility as to how they consume power.

“ Since the early 1990s we have been helping National Grid in its key role as electricity system operator, developing and putting in place contracts between National Grid and industry participants for the provision of balancing services ”

Over the last 12 months, our work for National Grid included devising new procurement and contracting terms for “short notice” generation and load reduction for energy balancing purposes, as well as developing new contractual terms for the trading of power across interconnectors with neighbouring power systems.

We have also been involved in some of the developments to the key industry documents, principally the Connection and Use of System Code and the Grid Code, assisting with modification work as these documents adapt to address the special requirements of new wind farms and interconnectors.

Connections

Our Construction team was appointed during the year to act for the owner of one of the country’s local distribution networks, handling a variety of issues and disputes related to the

connection of housing and industrial developments to its network and the installation of power lines.

We have also worked during the year on a variety of issues for water utility South Staffordshire Water, in connection with the laying of new infrastructure and connections to its water supply network, and the acquisition and development of a new pipeline measurement technology and supporting IT infrastructure.

Gas Storage

During 2008, we assisted Warwick Energy with the sale to Centrica of a gas storage project at the Caythorpe gas field near Bridlington in East Yorkshire.



“ We have also been involved in some of the developments to the key industry documents ”

WHOLESALE AND RETAIL ENERGY MARKETS



The operation of our wholesale and retail energy markets was under intense scrutiny during 2008, culminating in a price probe whose ramifications are still being felt. The issues are complex, but there is an irony that despite one of the most liberal energy markets in the world, retail energy in the UK is dominated by a small number of vertically integrated utilities who own their own generation capacity, and new entrants continue to find it very difficult to access wholesale power and enter the market.

There is a greater irony when comparison is made with the market structures in the water sector. In England and Wales, suppliers have always been vertically integrated, and some would argue that, as a result, competition has been painfully slow to develop. The Cave Review, published in 2009, undertook a careful examination of the issues, and advocated a degree of separation between the retail

function and the operation of the physical networks and wholesale supply. A water industry faced with calls to disaggregate its various components in order to allow competition to develop is an interesting contrast to the power industry, which was at privatisation fragmented and has largely integrated as competitive markets have evolved.

Work for Suppliers

Our litigation and disputes teams provide specialist support to two of the largest energy supply companies, Npower and British Energy. Throughout 2008, we have been handling complex disputes and contract work, often involving aspects of the industry processes and documentation underpinning competitive supply relating to issues such as change of supply points, metering and credit and security.

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We also worked during 2008 for 2 smaller suppliers, one a new entrant. Our involvement included advising on the full range of industry accreditation processes and documentation, from metering, data collection and communication systems to credit and security arrangements. We have also assisted our energy supplier clients with the drafting and negotiation of wholesale power purchase agreements, as well as the purchase of Renewable Obligation Certificates and other “green” certificates, including from sellers in continental Europe.

Power Trading

We have advised Anglo - Dutch APX Group for many years. APX is Europe’s premier provider of electricity and gas exchanges for the wholesale market. Our work for APX in 2008 included assisting in changes to its UK rule

book to facilitate power auctions and the trading of gas storage rights.

Work for Customers

The power market continued to be a difficult place for consumers during 2008, with price volatility and a recession, which has made credit risk a headline issue for suppliers. During the year, we have worked with a number of large industrial users, helping them to negotiate complex contract terms and procurement processes, and handling some high value disputes between consumers and their energy providers.



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BUILDINGS AND ENERGY EFFICIENCY



Energy efficiency, both at the household and industrial level, is a crucial part of the climate change agenda, and during 2008 it began to take centre stage. During the year, we saw the announcement of the Carbon Reduction Commitment, which from 2010 will require many businesses to measure and report their energy consumption and to participate in a mandatory permitting and trading system, as well as developments to the flagship EU Emissions Trading Scheme.

One of the ways in which the UK government hopes to drive energy efficiency is in the mandating of smart metering, as well as further moves towards decarbonising our existing and new building stock.

Metering

During 2008, we continued to work with National Grid's gas metering business on the development of its contracts and systems to

support a range of gas metering and meter reading services to gas suppliers. In particular, our work has included the development and roll out of contract terms to support new automated metering reading technology.

Facilities Management

Energy efficiency services and products are developing in scope and popularity, and during the year we advised a major US facilities management company on its contracts for innovative energy efficiency solutions for business.

“ During 2008, we continued to work with National Grid's gas metering business on the development of its contracts and systems ”

Sustainable Buildings and CHP

Our real estate and construction lawyers have worked on a variety of real estate projects during 2008 for landowners, developers and contractors, where sustainability and/or renewable energy has been a key feature.

Typical of our involvement in this area is a campus redevelopment project we have been working on over the past year, for Barnet College in London. Our real estate team helped the College with the full range of property and planning services to help deliver a project which, on completion, will see 2 BREEAM Excellent buildings for use by students and staff.

Increasingly, and driven by law and planning policy, we are seeing Combined Heat and Power (CHP) - often incorporating renewable generating plant - play a key role in

development plans. This is typified by the Longbridge town centre regeneration scheme in Birmingham - the biggest regeneration scheme in the West Midlands, which we have been working on over the last 12 months on behalf of Bournville College, one of the key stakeholders in the project.



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CARBON TRADING



We have been advising on carbon trading for several years now. We began advising on Emissions Reduction Purchase Agreements in the early days of the Kyoto flexibility mechanisms for carbon credits derived from Clean Development Mechanism (CDM) projects in countries such as India and Brazil. Subsequently, we have advised a Chinese financial institution on its procurement strategy for trading of CDM project credits.

CDM

During the last 12 months, our work has included assisting a client in the negotiation of the sale of CDM project credits in India, as well as advising on CDM projects in Africa.

We also advised a UK based consultancy business in 2008 on raising funding under the Enterprise Investment Scheme related to the development of CDM projects in developing economies. And we were delighted to sign a Co-operation Agreement with a Brazilian law firm in order to assist European companies investing in forestry and avoided de-forestation projects in Brazil.

EU Emissions Trading Scheme

Some of our larger clients continue to be actively involved in the EU Emissions Trading Scheme, and we have helped some of them put in place agreements for the trading of allowances.

“ We were delighted to sign a Co-operation Agreement with a Brazilian law firm in order to assist European companies investing in forestry and avoided de-forestation projects in Brazil ”

Carbon Reduction Commitment

As the detailed rules for the Carbon Reduction Commitment (CRC) have emerged, we have advised a range of clients on practical steps to be taking ahead of commencement of the scheme in 2010. In particular, we have been advising clients in relation to some of the more controversial aspects of the CRC, including the treatment of “green tariff” energy purchases, the impact of the group rules on private equity funds, and the way in which the CRC is likely to affect the landlord and tenant relationship.

Offsetting

We have advised a number of our corporate clients in relation to aspects of their carbon offsetting activity. An example is Thorlux Lighting, a division of FW Thorpe plc, for whom we recently purchased over 200 acres of land in Monmouthshire for the planting of native broad leaf trees. The tree planting scheme is intended to offset the group’s carbon emissions, but tree planting will also be offered to customers of the company’s lighting products who wish to minimise or offset emissions associated with their purchase.



“ We have advised a number of our corporate clients in relation to aspects of their carbon offsetting activity ”



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CONTACT US...

Martineau is one of the UK's leading independent law firms, providing a full range of commercial legal services that focus on today's key market sectors.

Based in Birmingham and London, Martineau has international capabilities through Multilaw - an independent network of law firms in 150 commercial centres globally with access to over 6,000 lawyers, and State Law Resources - a network of independent law firms based in North America and the UK with specialisms in regulated sectors such as energy.

Combining highly regarded industry expertise with an ability to adapt to the ever-changing business environment, Martineau is committed to delivering innovative, practical advice to its clients and intends to remain a high quality blue-chip firm, delivering exceptional partner-led services.