

The background of the entire image is a deep blue space filled with numerous small, bright white stars. A curved horizon line of the Earth is visible on the left side, showing the blue atmosphere and dark landmasses. The main title 'VIEWS & VISIONS' is centered horizontally. 'VIEWS' and 'VISIONS' are in a large, white, serif font. The ampersand '&' is in a smaller, red, cursive font. Above the right side of the title, the words 'Bowles Rice' are written in a smaller, white, sans-serif font.

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Embracing Reality, Embracing Renewables



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Brad Mellor is a partner in the Canonsburg, Pennsylvania office of Bowles Rice, where he serves as leader of the firm's Construction Law practice group. With over 30 years of experience, Mellor's work encompasses every phase of a construction project, from conceptual design and planning to project closeout and warranty claims. His areas of focus include industrial and utility jobs; electric power projects, including coal-fired, hydro and gas turbine; and solar energy projects, including photovoltaic. Mellor serves as an arbitrator on the American Arbitration Association's Construction Mega Project Panel.

Regardless of whether you're a climate change fanatic or a complete global warming denier, none of us can seriously argue against the fact that the earth's climate has changed over the past couple of thousand years, and that it will probably continue to change as long as it exists. Likewise, there can be no denying that the power sources required to keep humans alive and to make our efforts easier and more productive have changed dramatically over time. Ships, once largely powered by wind, are now largely powered by oil. Wheeled vehicles, originally powered by men and horses, are now powered by gasoline, diesel and even electricity. Your lawnmower and chainsaw, once exclusively powered by gasoline, are now starting to run much more quietly and probably more reliably on electric batteries. Mankind does a lot of the same types of things it used to do, but over time has learned to do

So why is there such reluctance to embrace renewable energy technology? I suspect that much of the resistance comes from the likelihood that renewable energy resources are not yet ready to take over the energy sector in its entirety. With any progress, there is a time when the older technology is still more reliable and cheaper than the new technology. Sorry, it just happens that way. However, as the new technology expands its foothold and becomes more reliable, more efficient and more useable, it overtakes and eventually replaces the old. Sometimes that replacement takes significant time, and sometimes it's more cataclysmic. But it happens regardless. The horse and buggy business was not supplanted by Ford overnight, but once it started, there was no turning back.

“Frighteningly intelligent engineers and designers are continuously improving the efficiency and reliability of not only the renewable generation of the electricity, but its marketability and use, as well as the ability to even store it for later use.”

them more efficiently and more effectively. All these examples have undeniably made human life easier, more enjoyable and probably even safer. Does anyone believe it would be better in any sense to drive a horse drawn buggy instead of a car? Anyone prefer to chop firewood to heat your home in the winter as opposed to turning up your gas or electric furnace? I thought not.

Renewable energy has been around for longer than many of us think. Windmills have been pumping water for centuries and still do a very satisfactory job of that today. Hydroelectric power has been generating energy for longer than most of us have been alive (e.g., the first power plant on the Niagara river started producing hydroelectric power in 1893). In my 33 years of practice, I've been fortunate to work on all sorts of electric



generation projects utilizing a variety of resources. Coal and natural gas are slowly and surely being challenged by alternative sources like wind, water and sunlight. Frighteningly intelligent engineers and designers are continuously improving the efficiency and reliability of not only the renewable generation of the electricity, but its marketability and use, as well as the ability to even store it for later use.

The interest and investment in renewable energy is not coming solely from private industry, though private industry is certainly on board with the potential benefits and profits to be earned in the field. Federal, state and local governments are also pushing development through a vast array of tax credits and incentives aimed at supporting the sustained growth and acceptance of renewable energy. But government support can be a two-edged sword.

The first concern is that the government support is artificial. The 26 percent credit that's out there today could simply evaporate in December 2021 and render an otherwise profitable project unprofitable. The government support could conceivably be continued until such time as the investment becomes profitable without the support, but where's the

incentive to improve if someone is going to absorb 26 percent of your development costs? And how much public/political grief will the government bodies have to endure from the people who are paying for the incentives but not seeing any hard return? Renewable energy is such a huge, world-changing issue that it is not likely to develop quickly enough to solve the public's concerns with fossil fuel and pollution in an acceptable time frame. The problem is controlling the subsidization in a way that encourages the development without encouraging waste and delay.

Not too many people will argue that a government program is the most efficient way to solve a problem. Human ingenuity and private effort generally work much better. Private efforts are not going to be without failures, and out of a hundred attempts by private interests, maybe only two will have promise, and maybe only one will work. The idea is that there will be those attempting to "leapfrog" current technology in the effort to reap the huge rewards of success, and the more entities trying to succeed, the better the chance that some actually will. The role of government can't be to dictate what must work in the end and require everyone to march to that drum.

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Renewable energy works, but the current concern is that it may not work well enough. Relax. If the government can stay out of the way and encourage innovation rather than dictating compliance, the bright minds in industry and engineering will find ways to bring renewable energy from its current subsidized state to a position as the workhorse of the world economy. Can I tell you exactly when that will happen or what technology will emerge at the forefront? Of course not. To paraphrase Dr. McCoy from Star Trek, “I’m a lawyer, not a prophet!” Nobody was able to tell you how and when the DVD player would replace the VCR either. But now, as new technologies have emerged, in less than 50 years BOTH are on the ash heap of history. But they were a valuable step. I have great confidence in the people who design, innovate, create and invent. We simply need to allow them to do just that while

providing protection for their products and a system where they can profit from their successes.

Today, we’re working on designing, permitting, constructing and operating solar energy generation facilities. How long will it be before every building, shop, home and business is powered entirely by solar collectors hidden unobtrusively in its windows and façade? How long will it be before some sort of battery technology comes up that effectively and inexpensively allows power that was generated on Tuesday to be used on Friday? It’s hard to say for sure, but one thing is certain: as the technologies develop, it will still be essential to define and protect the inventors, owners, developers and companies involved. Finance, taxation, business planning and consulting will be more and more critical. Investors, officers, employees, contractors and maybe even the public at large all need to have their interests properly defined and protected.

At Bowles Rice, we’ve got attorneys who are familiar with, work in and help innovate in all these areas and more, from construction and utility contracts to banking and investment to employment issues and even government relations. If you find yourself delving into the renewable energy space, give us a call. We can help. 