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Dispute resolution revolution for the energy transition

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Comment

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▲ Glenn R George (left) and Benjamin Sokol (right), from Bates White Economic Consulting

Photo: Bates White Economic Consulting

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The energy transition is changing the shape of the international energy business, with new renewable generation, carbon markets and climate change complexities. These changes are being matched by new methods of dispute resolution, argue Glenn R George and Benjamin Sokol, both with US-based Bates White Economic Consulting.

In recent decades, renewable energy – especially solar and wind – has been at the vanguard of the global push towards net zero. In 2024, renewables accounted for over 90% of total global electric power expansion, [according to](#) the International Renewable Energy Agency (IRENA). Meanwhile, the International Energy Agency (IEA) [expects](#) the share of renewables in global end-use energy consumption to rise from 13% in 2023 to nearly 20% by 2030. However, in certain regions, reliance on renewable power may now be reaching its limits, while projected power demand is surging. The collision of green energy supply constraints with burgeoning demand is fuelling new classes of disputes, highlighting the need for innovative dispute resolution.

This includes commercial and investor-state disputes, including what could be termed *classic disputes* (for example construction delays, cost overruns, technology performance issues and *force majeure* claims) as well as *novel disputes* (such as those pertaining to recent tax and trade law changes and supply chain disruptions).

Similarly, the resurgence of nuclear power has both revived longstanding disputes and given rise to new ones. Classic disputes include construction or restart delays; cost overruns; intellectual property conflicts tied to export

controls; permitting and regulatory hurdles; and financing issues related to tax credits, subsidies, or state aid. Other classic concerns persist, including those around safety, waste disposal, spent fuel management and how to maintain long-term plant performance.

The emergence of nuclear co-location projects, where nuclear plants are directly connected to the load they serve, is giving rise to novel disputes, including concerns about how such projects affect system-wide resource adequacy, the impact of these projects on the transmission network, and the methods used for cost allocation.

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The rise of carbon markets has also introduced new dimensions of complexity in the energy transition. As of 2023, there were 36 emissions trading schemes globally, with another 22 under development or consideration, [according to](#) the International Carbon Action partnership. These markets generated over £58bn in revenue that year. Disputes in carbon markets are likely to grow as the markets mature and proliferate, particularly in cases of contract non-performance related to future carbon credit provisions and disagreements over the authenticity of carbon reduction actions.

Looking ahead, climate change disputes are becoming increasingly prevalent, particularly in jurisdictions where legislative and regulatory approaches to addressing greenhouse gas emissions have met political opposition or have even been reversed. The application of so-called *attribution science* in such disputes to apportion damages will be particularly challenging to arbitral institutions, requiring use of robust analytical tools to ensure reliability.

Arbitration moving in

To address these evolving challenges, arbitral institutions are adapting to meet the needs of energy transition projects, carbon market disputes and global climate change. Arbitration is a non-court dispute resolution method, where arbitrators (often legal or subject matter experts on the issue in the dispute) make a binding decision. Arbitration offers key advantages such as flexibility, confidentiality and global enforceability; arbitral institutions such as the International Chamber of Commerce's (ICC) International Court of Arbitration are introducing specialised rules and procedures tailored to these new classes of energy disputes.

The ICC handles a substantial volume of energy disputes, which traditionally form a major part of its caseload. In 2024, for instance, they constituted 20.5% of all new cases registered. Reflecting this sector involvement, the ICC framework incorporates innovative procedural features which allow arbitral tribunals to leverage specific scientific and technical expertise (potentially related to renewables, nuclear power, carbon markets and climate change), grant interim measures when necessary to protect the environment when the harm falls within the subject-matter of the dispute, and exercise discretion to permit third-party participation through *amicus curiae* (friend of the court) briefs.

Other dispute resolution mechanisms such as those offered by the ICC International Centre for Amicable Dispute Resolution are increasingly being used to resolve these new types of energy disputes. For example, mediation provides confidentiality and a space where parties have control over the decision to settle and the terms of any agreement. Energy disputes made up 19% of mediation cases at the ICC in 2024. This form of resolving disputes has been advantageous, particularly in circumstances where parties have wanted to retain an ongoing relationship, ie joint ventures or long-term supply contracts.

Dispute Boards – which are permanent panels set up to accompany the performance of a contract and assist in avoiding or overcoming disagreements and disputes – are also favoured in the energy sector. They tend to be more cost-efficient and offer a speedier resolution than other forms of dispute resolution, whilst preserving the ongoing relationship between the parties. As established at the outset of a contract, they work proactively and continually to resolve disputes. By addressing potential disagreements early and maintaining consistent oversight throughout the contract lifecycle, Dispute Boards are uniquely positioned to help mitigate the evolving complexities of energy sector conflicts.

The energy transition is reshaping the global energy landscape, driving new complexities in how disputes arise and are resolved. As the scale and diversity of these conflicts grow, the need for creativity, flexibility and expertise in dispute resolution has never been greater.

The views and opinions expressed in this article are strictly those of the authors only and are not necessarily given or endorsed by or on behalf of the Energy Institute.

- Further reading: ['Climate battles reach the courtroom'](#). Can lengthy legal battles produce positive outcomes in terms of reducing CO₂ emissions?
- The traditional hydrocarbon-based energy sector faces a barrage of litigation disputes during the energy transition, from concerns about accelerating climate change to accusations of greenwashing. International law firm Bracewell gives an [insight into some of the growing trends in climate-related litigation](#).

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