Vinson&Elkins

Power Play

Disputes Rising:
Energy Arbitration and Litigation in 2026

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Introduction

The energy industry in 2025 was defined by a perfect storm of challenges, where disputes arising from policy, regulatory ambiguity, international judicial rulings, and market volatility reshaped the industry's landscape. In 2026, these pressures are set to intensify, pushing energy companies into even more contentious territory.

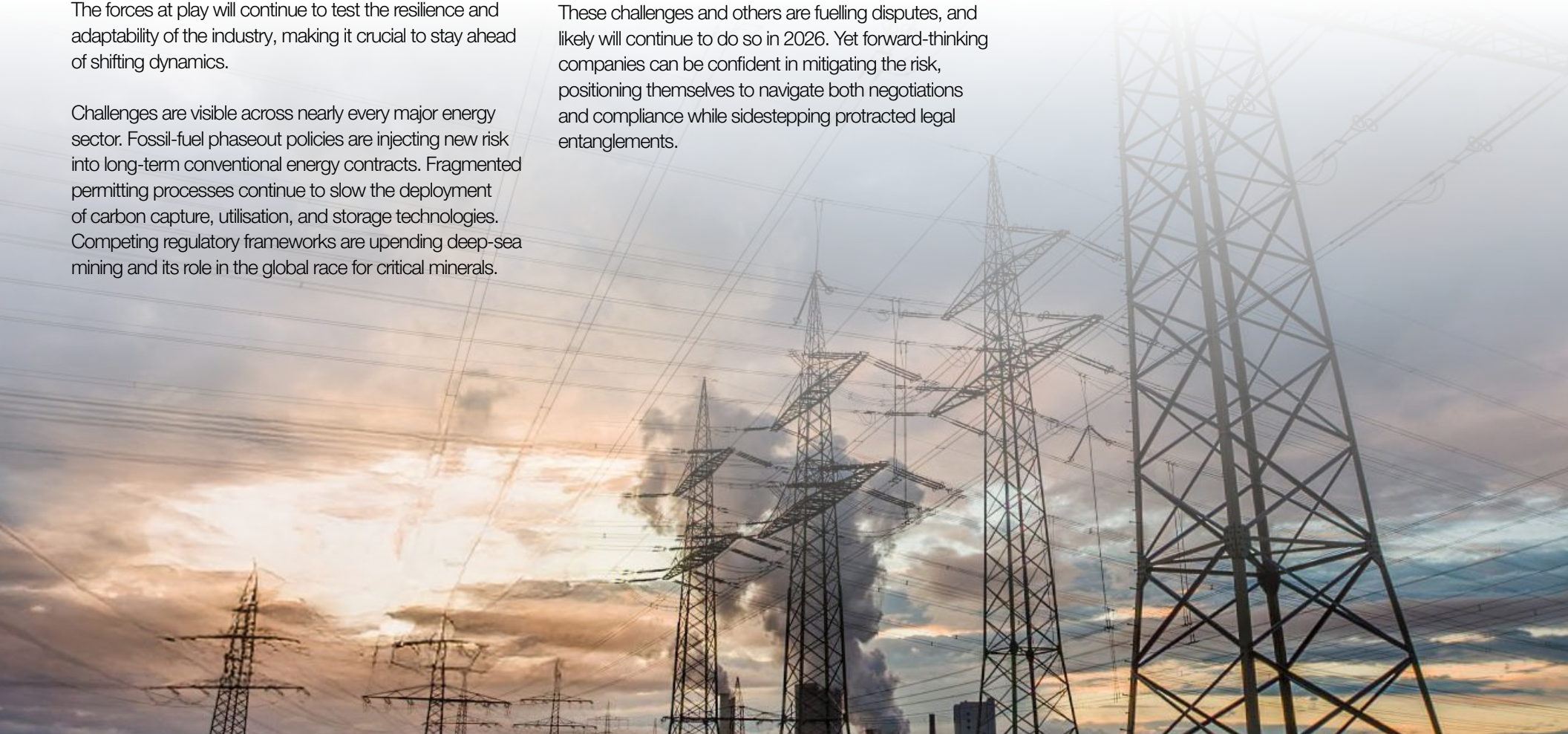
With these evolving tensions, a new wave of high-stakes disputes is on the horizon, driving the trends in arbitration. The forces at play will continue to test the resilience and adaptability of the industry, making it crucial to stay ahead of shifting dynamics.

Challenges are visible across nearly every major energy sector. Fossil-fuel phaseout policies are injecting new risk into long-term conventional energy contracts. Fragmented permitting processes continue to slow the deployment of carbon capture, utilisation, and storage technologies. Competing regulatory frameworks are upending deep-sea mining and its role in the global race for critical minerals.

Meanwhile, contrasting arbitration decisions signal a new era of negotiations for long-term LNG supply contracts, and an international court opinion looks likely to pile more pressure on States to limit carbon emissions. Soaring electricity demand is straining grids across Europe, wind and solar projects are enduring both commercial and scheduling issues, and energy price volatility is spurring renewed interest in nuclear power.

These challenges and others are fuelling disputes, and likely will continue to do so in 2026. Yet forward-thinking companies can be confident in mitigating the risk, positioning themselves to navigate both negotiations and compliance while sidestepping protracted legal entanglements.

What should companies know about the forces driving energy disputes in 2026, and how should they prepare? In this report, we examine 10 key trends, exploring where pressure is building, how that pressure could manifest in negotiations, arbitration, and litigation, and what proactive measures companies can take to stay ahead.



LNG Market Volatility and Contractual Disputes:
The Aftermath of Venture Global

The divergent outcomes in the *Shell* and *BP v. Venture Global* arbitrations underscore ongoing uncertainty in disputes under long-term liquefied natural gas (**"LNG"**) supply contracts, especially where commissioning delays collide with the pressures of responding to market volatility.

Conflicting Outcomes: The arbitrations (two of several arising out of similar issues) turned on whether Venture Global breached its obligations under long-term LNG supply contracts by selling cargoes on the spot market as opposed to selling them to customers with long-term contracts before the Calcasieu Pass plant was fully operational and still in its "commissioning phase".

- In *Shell*, the tribunal found in favour of Venture Global, focusing on the contractual terms relating to the start date and commissioning milestones. Shell has since challenged the award in the New York courts.

- In *BP*, the focus shifted to Venture Global's obligations to declare the commercial operation date (**"COD"**) for the plant in a timely manner and to operate as a "reasonable and prudent operator", resulting in a partial award against Venture Global.

Two contrasting decisions on similar issues, which highlight the tension between delayed commissioning and commercial expectations under standard terms.

Key Takeaways: We expect to see a trend towards more bespoke contract negotiations and a departure from market-standard terms to date:

- Buyers are expected to press for tighter, metric based COD definitions, independent verification of readiness and clearer rights to commissioning cargoes to avoid the pitfalls seen in *Shell v. Venture Global*. This will likely include clauses providing accelerated default pathways if milestones slip, and explicit limits on seller discretion to sell outside the contract during commissioning.

- Conversely, to avoid the risks in *BP v. Venture Global*, sellers will likely adopt broader safe harbor carve outs, longer grace periods, and define "reasonable and prudent operator" duties more precisely to reduce hindsight disputes, avoid wilful misconduct arguments and provide greater certainty on the scope of these duties.

While this new era of negotiation will attempt to minimise the risks of uncertainty for parties with long-term LNG supply contracts, the application of these newly tailored contracts will undoubtedly influence the nature of future disputes in the LNG industry.

Trends in LNG Contractual Flexibility and Renegotiation

Long term, oil-linked contracts for the sale and purchase of liquefied natural gas ("**LNG SPAs**") are increasingly giving way to shorter term, gas hub indexed agreements, which are more responsive to market volatility. This evolution reflects a broader push for greater contractual flexibility, supported by adjustment mechanisms which allow parties to reallocate risk during the lifetime of the contract, and shifts away from restrictive contract terms. For example:

Price review clauses These allow parties to revise the contract price upon the occurrence of a price review 'trigger', such as a substantial change in circumstance, or at agreed intervals throughout the lifetime of the contract.

Take-or-pay provisions The buyer is required to take a supply of LNG or pay for any LNG not taken according to annual commitments, with monthly delivery obligations. This provides certainty to the seller as to the volume of LNG that will be purchased at regular intervals but exposes the buyer to the risk of having to purchase a fixed quantity of product that it may not want or need. To address this risk, LNG SPAs typically include make-up rights that enable the buyer to lift LNG that it had paid for but not taken in an earlier period. Buyers may insist on having greater destination flexibility to enable them to sell to additional markets.

Destination clauses These designate specific terminals to which LNG can be delivered and prohibit buyers from diverting or reselling LNG cargoes outside of a designated geographical market. The share of LNG contracts with destination flexibility has grown significantly, influenced in part by determinations by some regional authorities, such as the European Commission and the Japan Fair Trade Commission, that, in certain circumstances, clauses which restrict the free flow of LNG within a geographical area violate competition law rules. This provides buyers in these markets with greater flexibility to sell on the product, where preferable.

Despite these mechanisms, disputes arise across pricing, price review mechanics, missed cargoes, volume and shortfall issues, and where title and risk in the product transfers. These clauses therefore should be carefully negotiated to avoid future issues arising as far as possible.

SMRs and the Development of Nuclear Energy

Recent volatility of energy prices has renewed global focus on energy security. Because of risks associated with weather-dependent energy solutions, there is a renewed interest in nuclear power.

SMRs: Small Modular Reactors (**"SMRs"**) are compact nuclear power plants which adopt a (comparatively) simpler reactor design than their traditional counterparts. Their size means they can be deployed more flexibly in response to demand and are well-suited for connection to larger plants to even out energy supply and generate byproducts to be used in other energy-producing processes. We expect 2026 to see further innovation, as SMRs stay at the forefront of the nuclear viability discussion.

Artificial Intelligence: The global thirst for ever-smarter AI is placing immense strain on electricity grids, with data centres consuming vast amounts of electricity. Nuclear energy is being touted as a low-carbon, reliable energy solution. We expect to see increased investment in nuclear facilities to support the expansion of AI in 2026, such as Google Cloud AI's July 2025 collaboration with Westinghouse Electric Company.

UK Updates: HALEU, SMR Tender Process, and Changes in National Policy:

- April 2025 saw the second consultation period for a new draft National Policy Statement (**"NPS"**) close. The new NPS will set out an updated legal framework for the Government's planning decisions for new nuclear projects. A final draft is expected to be put to Parliament for debate shortly. We expect to hear more on this in 2026.

- May 2025 saw Urenco select Costain to deliver the front-end engineering design for a new high-assay low enriched uranium (**"HALEU"**) production plant. We expect to see global focus on the UK's efforts in 2026, in circumstances where Russia and China are currently the only industrial producers of HALEU.

- June 2025 saw the Government select Rolls Royce SMR as its preferred bidder in its ongoing tender process for SMRs. We expect to see further information about Rolls Royce's SMR design published as it progresses through stage three of the Generic Design Assessment (**"GDA"**) process.

In this ever-evolving industry, with new projects and technologies being developed in parallel to new policy, the risk of misalignment and potential for disputes arising is high.

The ICJ's Opinion on States' Climate Change Obligations

The International Court of Justice (**"ICJ"**) issued an advisory opinion in respect of climate change on 23 July 2025 (the **"Opinion"**), which is likely to reshape the climate change-related disputes landscape.

The Opinion: In its Opinion, the ICJ held that States have binding obligations under international law to protect the climate system and prevent damages to the environment caused by greenhouse gas emissions — under both existing international treaties and customary international law. These are *erga omnes* obligations, meaning that they are owed by every State to the international community as a whole.

States in breach of those binding obligations and whose actions have caused harm to the climate system and environment can be held responsible and may be required to provide reparation to affected countries. The Opinion refers to inadequate national targets for greenhouse gas emissions, fossil fuel licensing, or lack of support for vulnerable States as examples of potential breaches of States' obligations.

Consequences of the Opinion: By characterising climate protection duties as binding and owed to the international community as a whole, the Opinion provides potential claimants with a clearer framework for alleging breach and causation and seeking reparation. As such, the Opinion is likely to be relied upon in claims relating to climate change against States or companies with high greenhouse gases emissions or those producing fossil fuels.

The Opinion may increase the pressure on States to strengthen regulations to limit carbon emissions and climate change. This may, in turn, result in an uptick in disputes and arbitration, including state to state proceedings invoking duties to prevent significant environmental harm. States may also rely on the Opinion where climate aligned regulatory reforms or permitting decisions are alleged to undermine protected investments. We may also see increased commercial arbitration arising out of change in law, force majeure or stabilization clauses as counterparties reassess the allocation of climate related risks.

Industries such as energy and construction could face more stringent rules, mandating a reduction in greenhouse gas emissions, and accelerating the transition to renewable energy sources, and should anticipate greater climate-related litigation or arbitration.

Renewable Energy Project Delays and Cancellations:
Anticipating and Avoiding Conflicts

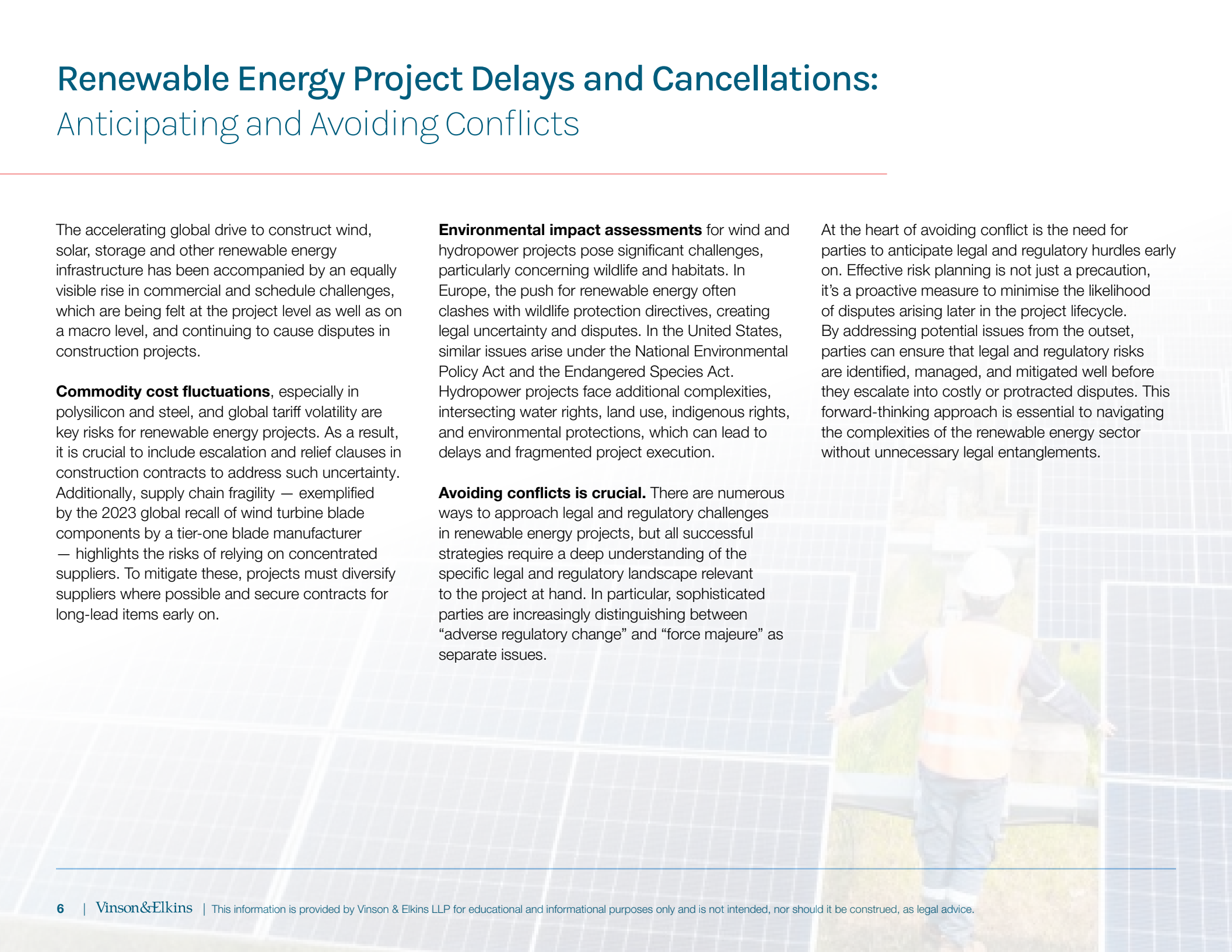
The accelerating global drive to construct wind, solar, storage and other renewable energy infrastructure has been accompanied by an equally visible rise in commercial and schedule challenges, which are being felt at the project level as well as on a macro level, and continuing to cause disputes in construction projects.

Commodity cost fluctuations, especially in polysilicon and steel, and global tariff volatility are key risks for renewable energy projects. As a result, it is crucial to include escalation and relief clauses in construction contracts to address such uncertainty. Additionally, supply chain fragility — exemplified by the 2023 global recall of wind turbine blade components by a tier-one blade manufacturer — highlights the risks of relying on concentrated suppliers. To mitigate these, projects must diversify suppliers where possible and secure contracts for long-lead items early on.

Environmental impact assessments for wind and hydropower projects pose significant challenges, particularly concerning wildlife and habitats. In Europe, the push for renewable energy often clashes with wildlife protection directives, creating legal uncertainty and disputes. In the United States, similar issues arise under the National Environmental Policy Act and the Endangered Species Act. Hydropower projects face additional complexities, intersecting water rights, land use, indigenous rights, and environmental protections, which can lead to delays and fragmented project execution.

Avoiding conflicts is crucial. There are numerous ways to approach legal and regulatory challenges in renewable energy projects, but all successful strategies require a deep understanding of the specific legal and regulatory landscape relevant to the project at hand. In particular, sophisticated parties are increasingly distinguishing between "adverse regulatory change" and "force majeure" as separate issues.

At the heart of avoiding conflict is the need for parties to anticipate legal and regulatory hurdles early on. Effective risk planning is not just a precaution, it's a proactive measure to minimise the likelihood of disputes arising later in the project lifecycle. By addressing potential issues from the outset, parties can ensure that legal and regulatory risks are identified, managed, and mitigated well before they escalate into costly or protracted disputes. This forward-thinking approach is essential to navigating the complexities of the renewable energy sector without unnecessary legal entanglements.



Modernizing the Grid:
Legal, Regulatory and Technical Barriers

In 2025, grid connectivity issues remained at the forefront of energy sector challenges. Across Europe, connection queues for renewable projects continued to swell, with around 1,700 GW of capacity reported to be awaiting grid access. This congestion, especially at bottlenecked nodes, continues to heighten the risk of outages and draws renewed attention to the fragility of aging infrastructure. We expect to see an increase of disputes arising as a result, as parties seek to manage the evolving risk landscape in grid modernisation.

UK Reforms: With nearly 40 percent of Europe's grid over four decades old, 2025 saw countries like the United Kingdom implement the TMO4+ reforms (designed to unlock capacity in the grid connection queue), shifting to a "First Ready, First Connected" model. These reforms sought to prioritise projects with permits, land, and strategic value. However, planning and permitting delays have persisted.

Technical stability: This remained a major concern throughout 2025, as constrained corridors and high-demand clusters increased the risk of disturbances in electricity supply including blackouts, and the outages on the Iberian Peninsula served as a stark warning. Contracts increasingly reflected these risks, with tighter force majeure, service level, and mitigation provisions addressing grid failures and power quality issues. One of the solutions posed by the industry was microgrids and hybrid on-site generation, offering resilience and cost stability for large loads like data centres, but this requires bespoke EPC arrangements and careful compliance with grid codes.

Cross-border grid buildout: There has been significant recent progress in cross-border grid buildout, with the UK's Clean Power 2030 plan and broader European offshore ambitions driving thousands of kilometers of new cabling and interconnectors. These multi-jurisdictional projects brought their own legal complexities, from harmonising technical standards to navigating complex dispute resolution across borders. Interface and delay claims became more common, particularly where outages originated beyond a single transmission system operator's control.

We expect continued disputes over connection reprioritisation and delivery milestones, a rise in curtailment and outage-related claims, and further growth in interface and cross-border arbitration, particularly linked to interconnector and offshore projects.

Fossil Fuel Phase Out Policies:
Disputes and Investor-State Arbitration

The general trend away from fossil fuels and towards renewable energy is continuing to reshape legal risk across jurisdictions. Numerous States have started to implement phase-out policies, whether through statutory closure schedules, tightened emissions standards, or limiting new projects. At a time where long-term contracts for more traditional forms of energy remain in place, the introduction of fossil-fuel phase-out policies brings a high likelihood of disputes continuing to arise at both national and international levels.

National courts: At the national level, disputes typically revolve around administrative law standards of due process and proportionality, arising from abrupt closures, non-renewal of production permits, and cancellation of concessions. Relatedly, permitting disputes increasingly test how downstream (Scope 3) emissions have been accounted for, adding further friction to new hydrocarbons project development.

International Disputes: Internationally, claims often arise where an investor alleges a breach of treaty tied to the loss of certain investments, often under the Energy Charter Treaty (**"ECT"**). Investors rely on fair and equitable treatment to contest abrupt regulatory changes or removal of incentives, differential treatment among technologies or operators, and indirect expropriation via forced closures or non renewals. In response, States have sought to invoke the right to regulate for environmental protection, necessity, and proportionality. Recent proceedings — including *Rockhopper v. Italy* and *RWE/Uniper v. Netherlands* — have highlighted the tension between treaty protections and decarbonisation policies.

The modernised ECT: The "*modernised*" ECT, approved on 3 December 2024, narrows protection for fossil-fuel investments, excluding certain oil-related products, while extending coverage to transition technologies (including CCUS and other low carbon hydrogen/synthetic fuels). Other modifications to the ECT include a standalone right to regulate for legitimate public policy objectives (including climate change mitigation policies); a new fair and equitable treatment provision, intended to limit the application of the provision; and a new definition for 'indirect expropriation', stating that, absent rare circumstances, non discriminatory climate measures will not constitute indirect expropriation. It is yet to be seen how these provisions will be interpreted in practice. Provisional application began on 3 September 2025 (with an opt out), while the original ECT's sunset clause means legacy exposure will remain for any withdrawing States.

CCUS Policy Incentives and Regulatory Hurdles

As decarbonisation efforts intensify, Carbon Capture, Utilization, and Storage (**"CCUS"**) has emerged as a critical technology. Understanding policy incentives and regulatory approval differences across key markets is essential to turning CCUS technology into commercially viable projects.

Policy Incentives: How Governments Support CCUS

CCUS policymaking is nascent in some jurisdictions, including parts of the Asia Pacific, where the legal and political landscape can lag project development. Other jurisdictions have more mature policy support already in place.

- The United States offers strong financial incentives, including the 45Q tax credit (Inflation Reduction Act), though cost pressures and political shifts add uncertainty to project viability. Federal grants and state programs can support development; however, careful planning is needed to qualify and optimise returns.
- The European Union Innovation Fund is a flagship program in Europe, offering substantial grants to CCUS projects. Some countries, including the United Kingdom, offer more direct long-term revenue certainty to project developers through "contracts for difference" that guarantee a price per ton of CO_2 stored.

Identifying jurisdictions with supportive policy is a key strategic decision for developers and contractors alike.

Regulatory Compliance: A Critical Path Risk

Securing permits remains a major hurdle for CCUS projects, and coordination with regulators and environmental agencies adds complexity.

- U.S. CCUS permitting may require a combination of federal, state, and local permits or authorisations. Permitting for Class VI wells under the federal Safe Drinking Water Act's Underground Injection Control ("UIC") program causes particular log-jams, with only 11 Class VI permits issued by the U.S. Environmental Protection Agency against 239 pending applications.[1] However the present push for greater state primacy in this area should ease this process.
- Europe's regulatory landscape varies by jurisdiction, although the EU's 2024 Net-Zero Industry Act established an EU-wide regulatory framework designed to boost EU industry and technology competitiveness. This includes provisions to accelerate CO's storage development and streamline permitting processes.

Despite positive steps, regulatory compliance and fragmented permitting processes continue to challenge CCUS deployment, causing delays and uncertainty for parties, with the potential to lead to disputes. Early engagement with regulators remains essential to minimise this risk.

[1] Current class VI Projects under Review at EPA. Accessible at: Current Class VI Projects under Review at EPA | US EPA

The Power Struggle:
Shaping the Future of Deep-Sea Mining

Deep-sea mining[1] was thrust onto the international stage last year, propelled by accelerating electrification, the global race for critical minerals, and an unexpected Executive Order. The industry now faces two competing regulatory frameworks, potentially setting the stage for jurisdictional conflicts, overlapping claims, as well as inconsistent regulation and permitting requirements, increasing the likelihood for disputes to arise.

The ISA regime: A mining code has been in development since 1996 by the International Seabed Authority (**"ISA"**),[2] for the exploration and exploitation of mineral deposits from the seabed and subsoil thereof beyond national jurisdiction: 31 exploration licences have been issued, with exploration regulations adopted in 2010 and 2013, and the negotiation of the exploitation regulations continuing. Some States have their own regimes for deep-sea mining, but these are either dormant (such as the U.S. Deep Seabed Hard Minerals Resources Act (the **"DSHMRA"**)[3] or designed to support the ISA's regime.

The US Regime: However, in light of the global demand for critical minerals, current supply chain issues and the geographical concentration of extraction activities and the processing and refining sectors, some States have been rethinking critical mineral strategies, with deep-sea mining as a potential alternative. The most decisive action came from President Trump's 24 April 2025 Executive Order titled 'Unleashing America's Offshore Critical Minerals and Resources' (the **"Executive Order"**). The Executive Order grants the National Oceanic and Atmospheric Administration (**"NOAA"**) the authority to issue domestic seabed mineral exploration licenses and commercial permits inside and outside of national jurisdiction through DSHMRA and the U.S. Outer Continental Shelf Lands Act.[5]

A crucial turning point: By reviving the DSHMRA regime, the U.S. is effectively creating a unilateral U.S. regulatory structure for seabed activities beyond national jurisdiction — in parallel with, and potentially in competition to, the ISA's regime. Several companies have already begun the NOAA licensing process, reflecting growing frustration with the ISA's slow progress on exploitation regulations. The outcomes of NOAA's licensing decisions will not only highlight the potential for regulatory fragmentation but will also shed light on the challenges and disputes that may arise as multiple jurisdictions contend for authority over deep-sea mining activities.

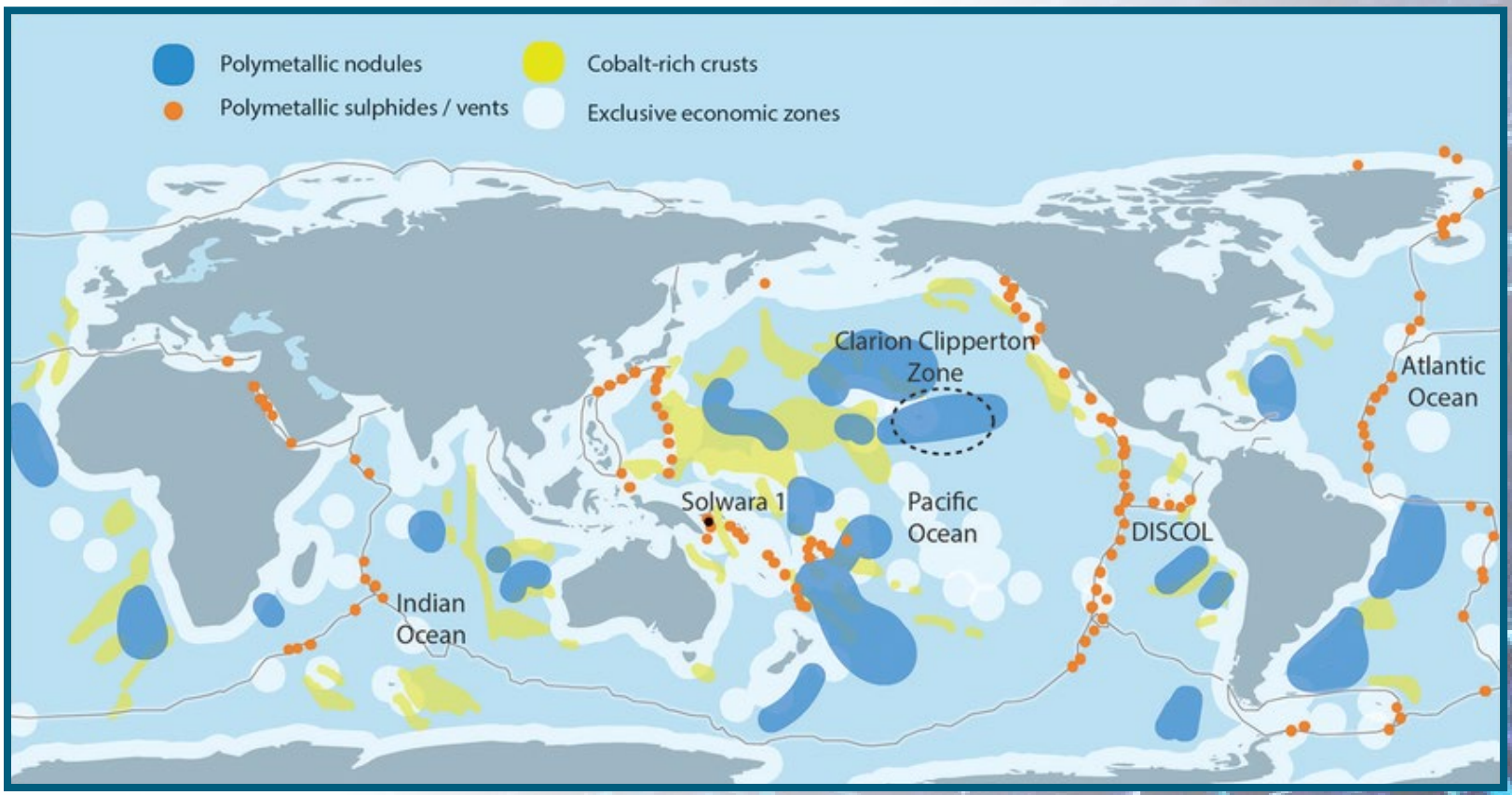
1 Deep-sea mining is the extraction of mineral deposits found on the seabed, at depths between 4 and 6 kms. There are a number of different mineral deposits, one of which is polymetallic nodules, all of which contains essential battery metals: cobalt, nickel, copper and manganese.

2 An autonomous international organisation established under UNCLOS (the 1982 United Nations Convention on the Law of the Sea).

3 30 U.S.C. § 1401 et seq.

4 For example the UK's Deep Sea Mining Act 2014.

5 43 U.S.C. § 1331 et seq.



Renewable Energy:
Power Purchase Agreements, Regulatory Hurdles, and Contract Disputes

Power Purchase Agreements (**"PPAs"**) continue to gain popularity as the energy transition accelerates. These long-term agreements are attractive to parties seeking protection from short-term market volatility and price certainty. However, even as their use increases, the ever-evolving regulatory landscape and vulnerabilities inherent to renewable energy sources continue to cause uncertainty.

Trends in the PPA Market: PPA structures are continuing to evolve:

- **Hybrid PPAs** are gaining popularity as they blend intermittent energy sources with storage (or other energy sources), providing more stable energy generation and mitigating negative pricing.

- **Virtual PPAs** are also gaining traction. Under these agreements, there is no physical delivery of energy, and the agreements are structured as a financial hedging arrangement to close the gap between the market price and a fixed strike price.

Technology giants are at the forefront of the market, and there has been an increased use of PPAs to power data centres through renewable energy, helping to meet climate commitments as well as achieving long-term pricing certainty. New proposals, such as the European Commission's package on data centre efficiency, expected early 2026, continue to encourage the use of PPAs in this energy intensive sector.

Regulatory Hurdles Persist: Whilst policymakers generally recognise the need for a stable regulatory landscape, evolving policies introduce uncertainty for both existing and prospective PPAs. The United Kingdom's Government, for example, recently published its Review of Electricity Market Arrangements, proposing reforms to improve power efficiency and including a commitment to develop the corporate PPA market. Whilst supportive of the market in the long term, initiatives such as these introduce risk for parties in the immediate term.

Challenges Set to Continue: Overall, supply-chain pressures, interconnection delays, grid capacity constraints and permitting issues are expected to remain key challenges for renewable energy generation and are likely to be the cause of many PPA disputes. As demand for renewable energy surges, these issues, coupled with regulatory change, volatile pricing and competition for land, increase the likelihood for disputes to arise. Well-structured PPAs must continue to anticipate these pressures through clear risk allocation, change-in-law clauses and dispute resolution provisions.

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