Nuclear Energy

We Know New York Nuclear
New York State boasts considerable nuclear-generation capacity, with 3.5 GW across four operating units, generating over a fifth of the state's total annual output. As a non-emitting resource, nuclear generation is a critical piece of New York's decarbonization strategy, providing around-the-clock, baseload power and displacing traditional fossil-fired generation in ways renewable generation cannot replicate.

Barclay Damon's Nuclear Energy Team is familiar with not only the federal processes governing the development and licensing of nuclear generation but the nuances and intricacies surrounding permitting and siting specifically within New York, such as the electric generation siting regime known as Article 10 under Public Service Law and the state's environmental approvals administered by the New York State Department of Environmental Conservation (NYSDEC).

We often partner with federal permitting, financing, and M&A firms as state and local permitting and development counsel. Through decades-long support of the nuclear industry and extensive state permitting work for the power industry, Barclay Damon attorneys wield considerable experience in the nuclear space at all levels of government and across many disciplines. This culminates in a deep understanding of the regulatory hurdles that advanced nuclear development faces in the state and the creative strategies needed to meet those challenges head on.

Comprehensive Experience Across Every Facet of Power Plant Development
The Barclay Damon Nuclear Energy Team is uniquely positioned to leverage its combined experience across many legal disciplines to tackle any issue that may arise during planning, development, construction, and operation of power generating facilities. Specifically, members of the Nuclear Energy Team have experience with:

- **Siting, Regulatory, Wholesale Markets, and Policy.** Simply put, we site power plants from concept through construction and operation. Our attorneys have a robust understanding of New York's siting, environmental, and permitting schemes from years of experience in securing and defending permits through regulatory and litigation proceedings for utility-scale generation and transmission projects both before state agencies, such as the New York State Board on Electric Generation Siting and the Environment (Siting Board), the Office of Renewable Energy Siting and Electric Transmission (ORES), and the New York Public Service Commission (NYSPSC), and in court. Our capabilities extend to the New York Independent System Operator (NYISO) wholesale power markets; power purchase agreements (PPAs); interconnection agreements; and New York State Energy Research and Development Authority (NYSERDA) programs, including zero emissions credit programs and the policies that govern them.
- **Real Estate, Land Use, and Zoning.** Our Real Estate Practice Area has supported nuclear plant dispositions and acquisitions and provided ongoing assistance with establishment of site control for existing and proposed nuclear projects. Our Land Use & Zoning Practice Area combines land use strategy with environmental and local zoning considerations to support nuclear facility operation and site development, including permitting New York's first independent spent fuel storage installation (ISFSI) at the Indian Point Entergy Center, on-site buildings and structures, and off-site emergency preparedness facilities.
- **Project Development and Property Tax.** Our attorneys have negotiated payment in lieu of tax (PILOT) agreements and host community agreements for more generating facilities than any other firm in New York. For nuclear plants, the stakes are high—these plants are the most significant property taxpayers in their host communities—and we are the only firm to have negotiated PILOT agreements for nuclear plant owners in New York. Our work extends to litigating assessed value when necessary and advising on legislation impacting property taxes. For example, when existing options proved too limited, our attorneys created a new path forward by drafting the statute that permits entry into long-term PILOT agreements for nuclear facilities. Our team regularly helps secure

state and local economic incentives for development projects, including many multibillion-dollar projects.

- **Environmental.** Barclay Damon has supported major New York energy projects in every aspect with respect to environmental matters at both the state and federal level, including managing programs and securing permits governed by regulations under the Clean Air Act, Clean Water Act, Migratory Bird Treaty Act, State Environmental Quality Review Act, National Environmental Policy Act, and coastal consistency program, through our longstanding practice before the NYSDEC and the Army Corps of Engineers.
- **EPC Contracts and Construction Litigation.** Our Power & Energy Construction Practice Area regularly represents clients nationwide for power and energy construction disputes, transactions, and EPC contracts. Barclay Damon's knowledge of the energy industry allows us to help clients navigate the complex intersection of law and business, leveraging our background in engineering, accounting, and other related disciplines to help manage risk and ensure successful project completion. Our team of negotiators and trial lawyers has secured billion-dollar deals and significant trial victories, including one of the largest liquidated damages awards in construction history.
- **Labor and Employment.** Nuclear plants involve significant workforces during periods of operation and outages. Our attorneys have supported nuclear plant operations and labor negotiations and trained in-house personnel regarding legal and proper employment practices. We regularly represent major employers, including power plants and industrial and manufacturing facilities, with respect to the full spectrum of labor and employment matters.
- **Contractual, Litigation, and General Support.** Our attorneys have served as outside bench support for in-house legal teams and been seconded to corporate offices in support of operations of nuclear plants, helping manage the diverse array of contractual and litigation issues that are associated with the business.

Geographic Platform

Barclay Damon's Nuclear Energy Team serves all regions of New York State, with significant, fully staffed offices across the Capital Region, Central New York, and Western New York in addition to its offices in New York City, Boston, New Haven and Washington DC. Barclay Damon's geographic footprint uniquely positions it to assist with nuclear development wherever it may next occur in New York.

Representative Experience

- Represented a nuclear power generating facility in a nine-figure property tax valuation dispute, obtaining a favorable resolution before trial.
- Prevailed as lead counsel in a well-publicized breach-of-contract dispute between two major New York public utilities over operating rights to the Nine Mile Point Nuclear Station, Unit Two.
- Obtained partial summary judgment, partial jury verdict and, ultimately, judgment as a matter of law that was affirmed on appeal to the US Court of Appeals for the Second Circuit in connection with a same-sex sexual harassment and retaliation claim brought by a former employee against a nuclear power plant operator.
- Successfully defended a nuclear-energy facility against claims of employment discrimination based on gender, race, and national origin by a former nuclear-security officer.
- Managed siting approvals and property tax matters for independent spent fuel storage installation (ISFSI) facilities on nuclear power plant sites.
- Secured multiple long-term PILOT agreements and extensions of same for six nuclear power plants with a combined generating capacity of 5,848 MW.
- Represented a nuclear-energy producer in the asset purchases of two nuclear-power facilities on Lake Ontario with generating capacities of 1,750 MW and 495 MW and purchase prices of $695 million and $401 million, respectively, from investor-owned public utilities.