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Episode 1

Underwriting energy's new risks

Welcome to the *Powered* by Marsh FINPRO podcast. Through a series of interviews with experts from across the energy and power industry, host Grace Brighter will examine key challenges and opportunities brought by the energy transition, and how to approach and manage the evolving management liability risks this transformation brings.

Sarah Baldys:

Welcome to the Marsh *Powered* by FINPRO podcast. Through a series of interviews with experts from across the energy and power industry, this podcast will examine key challenges and opportunities brought by the energy transition, and how to approach and manage the evolving management liability risks this transformation brings.

I am Sarah Baldys, US power and renewables leader at Marsh's financial and professional liability practice, and I am pleased to introduce the host of the *Powered* by Marsh FINPRO podcast, Grace Brighter.

Grace Brighter:

Hello and welcome to *Powered* by Marsh FINPRO. I am your host, Grace Brighter. For our discussion today, I am joined by Dan Sanford.

Dan is a vice president within Berkshire Hathaway Specialty insurances executive and professional liability group. Dan also heads Berkshire's executive and professional liability national energy practice, where he acts as an industry resource for executive management overseas, the national energy portfolio, and coordinates with Berkshires property and casualty divisions to provide a comprehensive partnership with customers.

In today's episode, we are discussing the underwriter's perspective as it relates to power, energy and renewable clients.

Hey Dan, thanks for joining us.

Dan Sanford:

Yeah. Wonderful. And thanks for having me. I think it's a pretty simple point for us here at Berkshire Hathaway specialty insurance in terms of renewables in clean energy as we are here to support and grow our business in almost every aspect of this energy ecosystem.

You know, when talking about this space, I do find it a little fragmented, right, with different levels of involvement, or expectations from stakeholders like the federal government, state governments, investor communities and the research communities, which makes it pretty difficult to discuss it as a monolithic segment. But I'll do my best here to do that.

You know, ultimately what we are looking to do in this space is to grow for the very long term, partner with somewhat conservatively run companies from a corporate governance and investors expectation standpoint, but across our portfolio of offerings, right: for primary DNO, up to the side A, and alongside our ancillary lines of prime employment, practice liability, and fiduciary liability insurance.

Sarah Baldys:

So when you're when you're thinking, Dan, about the energy transition and the changes that it brings for, you know, energy and power companies, what do you consider to be, you know, key D&O exposures when you're underwriting?

Dan Sanford:

So when we're looking at risks here, I think internally in how we look at it as sort of bifurcated between technology and power generation. Again, it is hard to bucket in this space, but this is our, our broadest attempt at doing so. You know, technology companies, meaning renewables, clean energy that require any level of technological advancement, development, R&D, to get to a viable commercial product and power generation, right, is any projects that today can be built out at scale to provide power. So examples would be, you know, on the technology side, small modular reactors or battery tech versus on the power generation side, biomass power generation or solar wind farms that exist now, or will exist, but with today's technology, so they can provide power on day one.

So I would then say, you know, exposure wise, specific to technology - and this is the big differentiator between technology and power generation - is the litany of disclosure risks that technology companies in this space face, both about their technology and the related milestones. Whether that's, you know, internal guidance that they're providing then out to their shareholders or customers or results of government and regulatory approvals that are needed for their product in some industries.

So when we're looking at these companies and what they're disclosing about their product, their technology right, is, is it truly as revolutionary as it's being laid out to be? Meaning is it, you know, that transformational and impressive new technology that none other competitors or peers have? And that's tough as underwriter to sort of dissect and gain comfort in.

I would say, what immediately helps us the most is if there is a finished project or an at scale project that has shown to be viable versus, just as, you know, a concept or even a small-scale prototype. This is an area though that I think underwriters could benefit a lot from a good conversation with their customers in this industry, right, and to better understand risk to risk, company to company. What level of, what level to reach in order to sort of demonstrate that commercial viability, right? Does it really need to be like I'm saying - a full-scale commercial technology that's actually operating and out there in the field and tested - or is it somewhere in between that you know, desktop prototype and the full scale version out of the field right, to where they can definitively, you know, impress upon us that that it is actually viable and tested out in this manner. So that's really a great partnership really, you know, pays off.

And then on the power generation side, this space is a lot more straightforward and similar to traditional commercial company exposure for DNO, right is things like corporate governance and event driven litigation exposures are the biggest exposures we see in this space.

Sarah Baldys:

This is such a great point, Dan. You know, many new technologies, of course, have been brought to market and insured over the years across industries, and we all appreciate, of course, that value the benefits that new technologies bring. That said, as you say, you know there are risks brought from these new technologies to directors and officers of companies now that are based on or depend upon new technologies for their success.

We've seen D&O litigation around new clean energy technologies. A recent August SEC filing against an early-stage nuclear energy company alleged misleading statements and failure to disclose material facts, including on regulatory approvals and overly optimistic timelines…just as you are, you know kind of, pointing out there.

So what can a company bringing a new technology do to manage the risk of such a D&O claim? You know, as an underwriter, I guess another way to ask it would be as an underwriter, what would you look for to ascertain that the company is doing everything they can to manage this exposure?

Dan Sanford:

Yeah, you're right to point out that disclosure risk in this space is significantly heightened compared to other industries. And I would start by saying we certainly understand that there are many business considerations outside of liability insurance when it comes to how a company is going to speak of their technology, right, whether it's to illuminate their customer base or investors on the technology or to differentiate themselves from the competitors, peers.

But we do feel like a strong disclosure committee is very helpful and thoughtfully planning for all the disclosures that are needed – or, in some cases, a lack of a disclosure - to help manage expectations in the market. You know, a concern for us are companies where they are built around a single product or technological development - that really heightens the exposure. There's not another part of the business that can offset or impart different results, but it is just the one item, the one technology being developed. And so when those are discussed from a disclosure standpoint, right, an area of concern is their customers and contracts going into that technology, right, is how are they talking about those customers and contracts? What types of contracts are out there? What percentage of your customers or contracts make up your revenues? Ultimately, you know, our concern is, it's tempting the splashy announcements of a new customer gain, or a new contract put in place with the customer, right? It's understandable why companies want to get that out there, but we have seen a lot of claim activity in this space around those splashy announcements that have subsequently fallen apart for various reasons. So it's an area that we certainly pay a lot of attention to.

Grace Brighter:

That's such a great point, Dan, and, broadly speaking, disclosure accuracy and robust oversight with respect to financial statements is important for all companies. And since clean energy investments are often based on future project completion, robust disclosure practices are that much more important.

So, from your perspective, Dan, what makes good disclosure practices?

Dan Sanford:

Yeah, you know, we don't expect every company to be like Fortune 500 with a formal standing disclosure committee with a charter in place, right, but we're looking for a good faith attempt. If you're a smaller company, private company, or even a smaller public company, right: are you getting your key executives in an active board involved in these decisions, right, are they all aligned on the sensitivity of the subject and kind of pulling in the same direction and being very thoughtful about ultimately what is disclosed or not disclosed?

You know, we do gain a lot of comfort from customers that have seasoned executive CEOs, CFOs, General counsels, right, with strong credibility and industry experience, certainly on the public company side. That's something we look for and gain comfort with. But again, I mean, the saying is, you know, no company is too small for a disclosure committee, right?

You could be on the growth phase, small operation with a great idea, right? And if you get two to three people together, right, the General Counsel, CFO, CEO, right, and you just have a thoughtful quarterly, monthly, whatever the cadence is, right, discussion and you're able to share some of that with us - again, we're not expecting it to be extremely formalized - but anything like that that can be shared with your underwriting partners helps us understand the level of thought put into the disclosures that you're making as a company.

And then I would, you know, I would say like, there's things outside of the company right that are affected by disclosures. Meaning, let's say your technology is going to require future grid development to be put in place before your product is viable, right? That's outside of your control, but something where disclosures around it can still affect your business, maybe it's future government policy support that needs to be put in place before your product is economical, right? It really does affect you even if it's something that you can't control but should still be considered in the disclosure process.

And you know another interesting specific to this space topic that requires a lot of thought on disclosures is that the realm of tax credits and government subsidies, you know, how do they factor into your business plan, right? Is your business dependent on them? If it is, are you, how do you ensure that you're going to realize? Those credits and subsidies, and how do you communicate that to your shareholders?

We've seen, you know, accounting for some of these tax credits and subsidies, carbon credits, things like that, have proven tricky at times and claims have manifested from the accounting of those, right, and the disclosures subsequent to accounting issues with those. I would say the D&O industry is still getting schooled up on this, right? It's been 10 to 15 years of a lot of dynamic change and development in the space, so another topic here where, if time is spent with your underwriting partners to sort of simplify and provide sort of a thoughtful breakdown of how these tax credits and subsidies will affect your business, will really help your underwriters gain a good understanding of an area that is a great exposure for DNO with renewables.

Sarah Baldys:

So you know, thinking about preventing claims activities when you're thinking about the tax credits and subsidies and kind of how all of that is, you know, articulated within statements etcetera, you know often third parties are engaged in the process of evaluating and quantifying these credits and subsidies. You know like law firms, engineering firms accounting firms, would having additional information surrounding those third parties be helpful in the underwriting process?

Dan Sanford:

Yeah, absolutely. That that's a great point, right? Those reports do give us some comfort, right. Third party validation from professionals opining on this risk effectively, right? But any further color or elaboration you can give to your underwriting partners is greatly appreciated because, as you can imagine, we're seeing hundreds of companies in this space in a year, they're all in different sub segments or handling things differently or, you know, are working with different state or federal credit subsidies. So further context for how these reports will apply to the sort of real-world ramifications of the business or of business making decisions is very helpful in the underwriting process.

Grace Brighter:

Dan, it's definitely evident that the clean energy industry is seeing rapid growth. There are a lot of investment dollars in the space and the coverage a company really needs changes as that company grows.

So, you've mentioned, you know, you are looking to continue to grow in this space with long term relationships. How do you really approach this at Berkshire and taking it a bit further, what are the advantages to supporting smaller companies through this growth

Dan Sanford:

Yeah, so as I started with right, we're looking to grow long term, with long term partners in this space and to do that you got to start with earlier stage companies and I think that the upside of that for both us and our customers is phenomenal, right you get to, well… I should say, you know, at the very earliest stages, there probably are off the shelf insurance solutions that work for, you know, newly formed entities, maybe a couple of employees, the founder and just getting things launched, but as soon as you become a moderately complex organization, right, and that's hard to say when, right - $100 million revenues, a large funding round, you know, then I would encourage you to look at this not as a, you know, a cost line item of insurance, but rather as a strategic partnership as you look to grow, and presumably rapidly grow. You know there are many stories of customers being surprised as they grew, just like they said they would, being surprised with large premium increases or retention increases right where the carrier just wasn't understanding or in alignment with the goals of their customer.

So, for us, if we can get in early, have the conversations, get on the same page at that moderately complex level, then we can grow together, right? So, if revenues are doubling in a given amount of time, it is a much more, it's a smoother path for the program, the insurance program, that's being put in place, year in and year out, with, you know, no surprises on either end, which I think every customer can agree is definitely a positive.

And from our perspective, you know, we get that many more years of repetition with customers, we get to see them year in and year out sort of delivering on what they said they were going to do, right, showing us the type of company they are, what sort of management they have. It allows us to gain a lot of comfort…and certainly that comes in handy when things become a lot more complex.

As said, you near the IPO phase, right, the level of complexity and the insurance product and the exposures grows tremendously and to have a partner there the whole time I think really makes that process a lot less painful. You know, it's definitely more of a strategic advantage than I think many folks realize as they enter that phase.

I also would say, you know, partnering with carriers like us that are very invested in this space, want to grow in this space and support it for the very long term? And that's equally as important as I would say on the broker side, right having brokers that are very supportive of this space, this industry, and most importantly have that industry knowledge. So there's a tremendous value to be had between the partnering of the broker, the carrier, and the customer in a long-term relationship.

Grace Brighter:

Well, thank you so much, Dan for your time and providing your expertise on the space. It's definitely valuable for us to understand what underwriters consider when evaluating these sorts of risks, and it's really helpful for our clients to prioritize the information they provide to the underwriting community in order to achieve the best results, so thank you again.

Dan Sanford:

I agree. Thank you so much for having me.

Grace Brighter:

That's all for this edition of *Powered* by Marsh FINPRO. We hope you enjoyed our discussion and thank you for listening. You can rate, review, and subscribe to *Powered* by Marsh FINPRO on Spotify, Apple Podcasts, or any other app you're using. You can also follow Marsh on LinkedIn or X.

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