

Mintz Levin Energy & Sustainability

## Energy & Sustainability Connections Newsletter

Your Law Firm Link to Industry News

SEPTEMBER 2017

### A Note from the Editors

This month's edition of *Energy & Sustainability Connections* brings the latest developments in energy investing, legal insights, company activity, and industry events straight to your inbox. September's **Leader in the News** is our client [Wayne Fueling Systems](#), which launched a host of disaster relief initiatives in Hurricane Harvey-affected areas of Texas and Louisiana. In this month's **Legal Feature**, "[Are You Managing Your Cybersecurity Risks?](#)," Marcus McInnis questions Tom Burton on cybersecurity and problems companies may encounter in the M&A context. Learn the where, when, and how of SOCAP17 and NECEC's Green Tie Gala in the **Event Highlights** section. Finally, with Congress having returned from its annual August recess on September 5, don't miss key items in energy policy news in the **Washington Update!**

For links to industry grant opportunities and stories from the business, policy, and research sectors of the energy and sustainability industry, please [see our Energy Navigator](#).

You can [subscribe to our Energy & Sustainability Matters blog here](#).

We would also like to remind our readers that you can always ask us anything at <http://mintzedge.com/ask-anything/>. We built the MintzEdge website as a resource for entrepreneurs and investors, and hope that all of you take advantage of the site and discover how it can help you.

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## Leaders in the News

### Wayne Fueling Systems Launches Disaster Relief Initiatives

This month, we are excited to feature our client [Wayne Fueling Systems](#), a global provider of fuel dispensing, payment, automation, and control technologies for retail and commercial fuel stations. We would like to recognize the company, which is based in Austin, Texas, for their extraordinary [efforts](#) in providing disaster relief in Hurricane Harvey-affected areas of Texas and Louisiana.

Founded in 1891 as the Wayne Oil Tank Company, **Wayne Fueling Systems** has been at the forefront of the fueling industry since their inaugural product won the distinction of “The Best Self Measuring Oil Pump” at the Columbian Exposition in Chicago. In the years following, the company continued to introduce industry-changing products, including the mechanical computing dispenser, the blending pump, the electronic dispenser, and the first Customer Activated Terminal.

Today, **Wayne** manufactures fuel dispensers, payment terminals, forecourt control devices, point of sale, and other measurement and control solutions for the retail and commercial fueling industry. They also offer contract, help desk, network operations center, and financing services in addition to cloud, EMV, and fuel management solutions. In December 2016, **Wayne** was acquired by Dover, which combined **Wayne** with a group of five other companies in a new business called Dover Fueling Solutions (DFS). Focused on delivery of advanced fuel dispensing equipment, electronic systems and payment, automatic tank gauging, and wetstock management solutions, DFS’s combined product portfolio represents the industry’s only global end-to-end fueling solution.

As part of its business, **Wayne** places remarkable emphasis on efforts aimed at sustainability and helping customers and stakeholders meet environmental requirements. The company holds ISO 14001 certification, facilitating measurement programs, improvement projects, and employee training to engage individuals throughout their organization in order to maintain sustainable progress. The company’s suite of products includes alternative fuels delivery, vehicle emissions reduction technology, and vapor recovery technology aimed at supporting environmental sustainability.

Earlier this month, **Wayne** launched a host of relief initiatives to aid service station owners and operators in areas stricken by Hurricane Harvey. With commercial shipping and delivery services backlogged, **Wayne** deployed staff to Houston to help accelerate delivery of parts to stations in need. Staff members will remain in the area and be on-call to deliver necessary parts and provide support. The company also announced a “Texans Helping Texans” new dispenser replacement program. **Wayne** has guaranteed a two-week delivery and special pricing and low financing options to help stations whose dispensers were damaged beyond repair by the storm. David Crouse, President of DFS, explained, “These initiatives aim to expedite the recovery of infrastructure in affected areas so citizens can regain a sense of normalcy as quickly as possible. Wayne Fueling Systems is committed to helping our Texas neighbors in need during this difficult time.”

We are proud to highlight the generous efforts of **Wayne Fueling Systems** as they aid recovery in communities affected by Hurricane Harvey.

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## Legal Feature

### Are You Managing Your Cybersecurity Risks?

*This feature was originally published by [ThreatReady](#).*

In the interview below, Marcus McInnis, former Director of Operations for Lockheed Martin’s Cybersecurity Innovation Center, speaks with our own Tom Burton on cybersecurity issues in the corporate sector. Tom provides a sense of the cybersecurity risks that companies may face and the costs they may endure in the context of M&A.

#### **McInnis**

*Tom, can cyber security problems impact companies in the M&A context?*

**Burton**

The short answer is yes. As the frequency and magnitude of cyberattacks on private enterprise have increased in recent years, more businesses are realizing the risks of inadequate cyber security and the cost burdens of data breaches. The massive data breaches Yahoo suffered have created a barrage of negative headlines for the company, and are significantly impacting its proposed acquisition by Verizon. This is just one example within a larger trend of cybersecurity issues rearing their ugly head in the context of record-setting years for M&A transactions. The Corporate Counsel's 2015 study on cybersecurity risk in the M&A context found that 83% of respondents believed a cyberincident mid-deal or the identification of past data breaches during due diligence could have an impact on the transaction.

**McInnis**

*What are the direct costs in the M&A context?*

**Burton**

One aspect of the cost burden that has received little attention is the potential erosion of company value in the private market M&A context. Reporting on the impact of security breaches has centered on high profile, public companies, such as Target, Sony, JP Morgan, and most recently Yahoo. Unlike public companies, however, private companies do not have to publicly disclose security breaches or their financial consequences. As such, little data exists to directly link data breaches and lower valuation. Nonetheless, for the reasons discussed below, attacks are value eroding, or even deal-killing, events, and therefore represent critical risks to companies.

Reductions in net income and valuation as a result of a cyberattack are the most obvious and potentially significant to a deal. If a data breach results in the theft of intellectual property that provides a company its competitive edge, the company could face long-term profit losses that seriously impact valuation. Even if a company's long-term prospects are not affected, a reduction in valuation can still result from expenses incurred when responding to cyberattacks, including consumer and securities fraud litigation costs, liability for corporate directors, fines, and the implementation of new IT systems and training programs.

Indeed, such losses can yield a lower baseline input to determine valuation, as EBITDA multiples are often a key metric. The impact has a multiplier effect on valuation reduction; for example, in a market where a sale multiple is 8-10x EBITDA, even a 2% reduction in profit can have a significant downward effect on valuation. At worst, prior data breaches can be used as a negotiation tool to drive down valuation, as Verizon is doing now in its negotiations with Yahoo.

**McInnis**

*Are there indirect costs?*

**Burton**

Yes, during deal negotiations, past breaches can adversely affect the seller's ability to secure favorable terms related to escrows, indemnities, and representations and warranties insurance. Prior cyberattacks on a company may lead a buyer to demand extra warranties regarding potential liabilities and ongoing or currently unknown costs related to the breach. As a result, the buyer may also demand a larger escrow or special escrows to shift the risk burden to the seller. Similarly, a buyer may demand special indemnities, longer survival periods, limited carve outs, and basket and caps to mitigate perceived risk. These deal complications and clawback risks lead to other indirect costs: increased uncertainty and lost time value of money with a larger percentage of the deal tied up in escrow and longer and more robust indemnity periods. These are deal proceeds that could have been sooner distributed to sponsor fund limited partners, which affects sponsor fund IRR. All of these factors can lead to longer negotiation time and increased insurance policy costs, including additional preparation time and cost for disclosure schedules.

Finally, companies that experience cyberattacks frequently incur damage to their reputation, which while difficult to quantify, can have a significant impact on profits and valuation. Brand erosion could result in reduced exit value in an M&A transaction, particularly for technology companies or those that deal with sensitive data, such as personal financial or health information.

**McInnis**

*Why should cyber security be a top priority for all companies, regardless of size or industry?*

**Burton**

As companies conduct nearly all of their business on internal software systems and online, the threat of cyberattacks will only increase. Attacks against major companies may make front-page headlines, but all companies, regardless of size or industry, face the risk of breaches. According to the NACD Cyber-Risk Oversight Handbook, "the majority of small and medium-sized businesses have been victims of cyberattacks," and a study conducted by the U.S. National Cyber Security Alliance found that "60 percent of small companies that suffer a cyberattack are out of business within six months." Increasingly hackers are using smaller companies that have customer, supplier or joint-venture relationships with large corporations to piggyback into large corporations' systems. Therefore, it is paramount that companies invest in the best prevention methods, secure appropriate insurance policies in the event that a breach does occur to minimize financial repercussions, and work with expert counsel in managing these risks in sale scenarios.

**McInnis**

*What are the elements that can contribute to cyber risk?*

**Burton**

There are three different elements within companies that can increase vulnerability: technology, policies and procedures, and people. IT protection is the most obvious vulnerability for companies. Without state of the art IT protection, companies will be more likely to suffer serious consequences from cyberattacks than those who do properly safeguard their digital information and infrastructure.

Additionally, comprehensive policies and procedures governing information and cyber security are critical to protecting sensitive data and internal infrastructure. If these are not properly implemented, companies' risk of cyberattacks can increase. Policies and procedures also need to be revised periodically to account for new technologies, software systems, and other changes to business practices that could open up new pathways for hackers to exploit. Appointing a Chief Information Security Officer to oversee the company's cybersecurity is an important part of ensuring that policies and procedures are properly enforced. Other IT personnel should also be required to attend technical trainings and obtain appropriate certifications in information security. Companies should also regularly hire a third party to conduct external penetration tests to assess how well company systems defend against possible cyberattacks and internal vulnerability tests to assess security against internal data breaches.

Finally, an often overlooked but also significant part of cyber security is the behavior of companies' employees. This threat is often thought of only in the case of a "rogue" employee. However, IBM's 2015 Cyber Security Intelligence Index found that 95% of all breaches are the result of human error. In order for companies to effectively implement cyber security policies and procedures, employees have to be properly trained to practice smart habits that will protect proprietary information and internal systems.

**McInnis**

*What challenges do companies face in understanding the risk their own employees pose to cyber security?*

**Burton**

Many companies simply lack the awareness that the greatest cyber security threat they face comes from within. Major corporations like Target and Sony had policies in place to prevent hacks, but still suffered data breaches despite believing they were protected. Indeed, AT&T's most recent Cybersecurity Insights Report confirms that this is true of most companies; it found that 90% of U.S. organizations had been affected by cyberattacks, though many had training programs in place to educate employees about cyber risk. [The Employee Cyber Readiness Survey](#) recently conducted by the University of Massachusetts alarmingly found that a majority of employees did not remember receiving training on safe procedures for using external and personal devices or working remotely. Many also did not remember how to create and maintain secure passwords.

Even once companies recognize that employees, simply through their daily activities, present the greatest challenge to maintaining cybersecurity, they also need to understand that traditional approaches to cybersecurity training are not effective, as the [University of Massachusetts's survey](#) demonstrates. Long and infrequent trainings on cybersecurity are neither memorable, nor sufficient in explaining to employees how they are part of the companies' cyber defense or the seriousness of the risk posed by their daily actions.

**McInnis**

*How can companies make their employee awareness training for cyber security more effective?*

**Burton**

For cyber security training to be effective, it must result in long-term changes to employee behavior and habits. Companies should aim to have employees not only understand why cybersecurity is important, but also their personal responsibility in helping to protect their company. Corporate culture is a key component to achieving this goal. Beginning with the Board of Directors and the highest executives, company leaders have to prioritize cyber awareness throughout their organization, not just within the IT department. If employees see that their Board and executives are actively engaged in cyber defense measures and are making sure that training programs and policies are working effectively, they will be more likely to understand the importance of cyber security.

Effective behavioral training programs for all company employees should raise awareness about the threats posed by bad habits concerning password management, personal devices used for work, other external devices, wireless security, data backups, and working remotely. Awareness of these vulnerabilities needs to extend beyond periodic training sessions so that employees learn to naturally act in ways that are smarter and safer. Qualitatively, this means training programs should be concise to keep employees actively engaged and allow companies to measure the effects of the program on employee behavior. Firms like [ThreatReady Resources](#) provide on-going behavioral training services that encompass proven learning techniques to instigate long-term behavior change and a broad scope of multimedia communications to help deliver new content on a regular basis and keep employees engaged.

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## Event Highlights

### **Cleantech Open Northeast Regional Finals**

The 2017 Cleantech Open Accelerator culminates on October 5-6 at Regional Finals in New York, where teams have the opportunity to meet with investors and take part in the competition portion of the program. Our own [Dan DeWolf](#) and [Kristin Gerber](#) will serve as judges. Mintz Levin is a proud sponsor of Cleantech Open Northeast. To learn more and to review the full agenda, [click here](#).

### **SOCAP17**

Our own [Kristin Gerber](#) hopes to see you at SOCAP17 October 10-13 in San Francisco! SOCAP is the world's leading conference on activating the power of capital markets to drive positive social and environmental impact – convening the marketplace at the intersection of money and meaning. The conference brings together impact investors, social entrepreneurs, philanthropists, business leaders, and other innovators from across the world in a unique cross-sector approach to catalyze collaboration for change. Now in its 10th year, SOCAP attracts over 3,000 people annually to accelerate the flow of capital for good, according to their website. For more information and to register, [click here](#).

### **NECEC's Green Tie Gala**

We hope to see you at NECEC's Green Tie Gala on October 26 in Boston at the Park Plaza Hotel. Known as the premiere clean energy networking event in the region, the 2017 Green Tie Gala marks the 10th anniversary of NECEC, the region's leading clean energy business organization. We are proud to sponsor this organization, which our practice chair, Tom Burton, helped launch a decade ago. To learn more about the event, [click here](#).

### **NECEC's Cleantech Navigate Northeast Investor Corporate Customer Connect**

Join NECEC's Cleantech Navigate Northeast on November 15 in NYC for their signature event: Investor Corporate Customer Connect (ICCC)! After a successful ICCC in Boston this June, they are heading to Grand Central Tech in NYC for a new edition. At the ICCC event, investors, corporates, and customers are matched with four to six clean tech start-ups located throughout the Northeast for tailored 15-minute speed-networking meetings in an intimate setting.

If you're an investor or corporate individual who is interested in participating, [click here](#). If you are a start-up, [click here](#). The deadline for start-ups to apply and investors and corporates to register is October 8.

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## Washington Update

### **CONGRESS**

Congress returned from the annual August recess on September 5, with a full agenda of items to tackle in the weeks ahead, including: Fiscal Year 2018 appropriations and budget, a debt limit increase, tax reform, the annual defense authorization bill, reauthorization of the Federal Aviation Administration and the National Flood Insurance Program, and various measures related to education, health care, and telecommunications. Details can be found in [ML Strategies' Fall Preview](#).

### **Energy and Natural Resources Act (ENRA)**

As reported previously, ENRA ([S. 1460](#)), often referred to as the "Senate bipartisan energy bill," was introduced on June 29 and immediately placed on the Senate Legislative Calendar, bypassing the committee process. The bill has eleven titles: Efficiency; Infrastructure; Supply; Accountability; Conservation; Federal Land Management; National Park System Management; Sportsmen's Access; Water Infrastructure; Natural Hazards; and Indian Energy. The competing legislative matters named above mean that floor time is scarce for the foreseeable future, but staff for Senate Energy Committee Chairman Lisa

Murkowski (R-AK) and Ranking Member Maria Cantwell (D-WA) are prepared to lead the floor debate as soon as the measure is brought up for consideration.

### **Senate Energy Committee Nominations Hearing**

On September 19 the Senate Energy Committee approved several nominations to move before the full Senate: Joseph Balash to be Assistant Secretary of the Interior for Land and Minerals Management; Richard Glick to be a member of the Federal Energy Regulatory Commission; David Jonas to be General Counsel of the Department of Energy; Kevin McIntyre to be a member of the Federal Energy Regulatory Commission; and Ryan Nelson to be Solicitor of the Department of the Interior.

### **Senators Introduce Geologic Mapping Legislation**

Sens. Lisa Murkowski (R-AK) and Angus King (I-ME) have introduced the National Geologic Mapping Act ([S. 1787](#)), which renews a national program for the geological mapping of the United States. The National Cooperative Geologic Mapping Program (NCGMP) was established through the National Geologic Mapping Act in 1992 and is administered by the U.S. Geological Survey (USGS). It was most recently reauthorized in 2009 and is set to expire in 2018. The program allows USGS and state geological surveys to map high priority federal and state areas, and to train students at universities in geologic mapping, which is used for resource exploration and extraction, natural hazards mitigation, ground and surface water management, environmental protection, and federal land management.

### **Senate Hearing on Carbon Capture Technology**

On September 13 the Senate Environment and Public Works (EPW) Committee held a hearing entitled "Expanding and Accelerating the Deployment and Use of Carbon Capture, Utilization, and Sequestration" with testimony from Matthew Fry, Policy Advisor, Office of Wyoming Governor Matt Mead; David Greeson, Vice President of Development, NRG Energy, Inc.; and Dr. S. Julio Friedmann, CEO, Carbon Wrangler, LLC. Committee Chairman John Barrasso (R-WY) stated that Carbon Capture Utilization and Sequestration (CCUS) "presents a win-win opportunity" and noted that he is a cosponsor of bipartisan legislation introduced by Sen. Heidi Heitkamp (D-MT), the Furthering Carbon Capture, Utilization, technology, Underground Storage, and Reduced Emissions (FUTURE) Act ([S. 1535](#)). A webcast of the hearing can be found [here](#).

### **House Hearing on Electricity Reliability**

On September 14 the House Energy and Commerce Committee held a hearing entitled "Powering America: Defining Reliability in a Transforming Electricity Industry," with testimony from Gerry Cauley, President and CEO, North American Electric Reliability Corporation; The Honorable Neil Chatterjee, Chairman, Federal Energy Regulatory Commission; and Patricia Hoffman, Acting Under Secretary for Science, Acting Assistant Secretary for the Office of Electricity, U.S. Department of Energy.

Witness statements and a webcast of the hearing can be found [here](#).

## **EXECUTIVE BRANCH**

### **Solar Net Metering Study**

The Department of Energy (DOE) has published in the Federal Register a [Request for Information](#) (RFI) regarding the costs and benefits of solar net metering as a part of its Grid Modernization Initiative.

### **DOE Announces SunShot Initiative Success**

On September 12 DOE released new [research](#) showing the solar industry has achieved the 2020 utility-scale solar cost target set by the SunShot Initiative, primarily due to rapid cost declines in solar photovoltaic (PV) hardware. According to DOE the average price of utility-scale solar is now 6 cents per kilowatt-hour (kWh). In response, DOE is now seeking an expanded 2030 vision for the Solar Energy Technologies Office, including early-stage research to address solar energy's challenges related to grid reliability, resilience, and storage. The agency has announced up to \$82 million in early-stage research in two areas: Concentrating Solar Power (up to \$62 million in support of advances in CSP technologies to enable on-demand solar energy); and Power Electronics (up to \$20 million for early-stage projects to advance power electronics technologies).

### **Funding for Commercialization of Promising Energy Technologies**

On September 13 DOE announced \$19.7 million in funding to help businesses move promising energy technologies from the agency's National Laboratories to the marketplace. Flowing through the Office of Technology Transition's Technology

Commercialization Fund (TCF), the funding will support 54 projects across 12 National Laboratories involving more than 30 private-sector partners. A list of selected projects can be found [here](#).

### Proposed Rule for Small-Scale Natural Gas Exports

DOE announced on September 1 a proposed rule to provide for faster approval of small-scale exports of natural gas, including liquefied natural gas (LNG), from U.S. export facilities. The proposed rule can be found [here](#).

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## Recent M&A Activity

- **September 13, 2017:** MP2 Energy was [acquired](#) by Shell Energy North America for an undisclosed amount.
- **September 12, 2017:** Align Midstream Partners reached a [definitive agreement](#) to be acquired by Enable Midstream Partners for \$300 million.
- **September 8, 2017:** Tonka Water was [acquired](#) by U.S. Water Services, a subsidiary of ALLETE Clean Energy for an undisclosed amount.
- **September 5, 2017:** MS Energy Services entered into a [definitive agreement](#) to be acquired by Patterson Uti Energy for \$215.27 million.
- **September 5, 2017:** Hague Quality Water International was [acquired](#) by A.O. Smith for \$46.5 million.
- **September 1, 2017:** The propane marketing and services business of American Midstream Partners was [acquired](#) by SHV Energy for \$170 million.
- **August 31, 2017:** Enbridge St. Lawrence Gas reached a [definitive agreement](#) to be acquired by Liberty Utilities for \$70 million.
- **August 29, 2017:** Queen Shoals Public Service District was [acquired](#) by West Virginia American Water for an undisclosed amount.
- **August 28, 2017:** Global Tubing reached a [definitive agreement](#) to be acquired by Forum Energy Technologies for \$237 million.
- **August 22, 2017:** Green States Energy reached a [definitive agreement](#) to be acquired by BlueNRGY Group for an undisclosed amount.
- **August 21, 2017:** Cryogenic Industries was [acquired](#) by Nikkiso for \$438 million.
- **August 20, 2017:** Energy Future Holdings reached a [definitive agreement](#) to be acquired by Sempra Energy for \$9.45 billion.
- **August 16, 2017:** Kingfisher Midstream reached a [definitive agreement](#) to be acquired by Alta Mesa through a reverse merger, resulting in the combined entity trading on the NASDAQ stock exchange under the ticker symbol
- **August 16, 2017:** Energy Service Company of Bowie was [acquired](#) by Ranger Energy Services for an undisclosed amount.
- **August 15, 2017:** ARCA Advanced Processing was [acquired](#) by Reclim for \$5 million.

\*Sources: Pitchbook

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## Upcoming Events

**Sustainable Food & Agriculture Innovation Forum**

September 29, 2017  
New York, NY

[More Info »](#)

**WPI Student Clean Energy Symposium 2017**

September 29, 2017  
Worcester, MA

[More Info »](#)

**3rd Annual Northeastern University Energy Conference**

September 29, 2017  
Boston, MA

[More Info »](#)

**Renewable Energy Vermont 2017 (REV2017)**

October 2-3, 2017  
Burlington, VT

[More Info »](#)

**Solar Connect, presented by Infocast**

October 2-4, 2017  
San Diego, CA

[More Info »](#)

**Renewable Energy from Waste Conference**

October 2-4, 2017  
Fort Myers, FL

[More Info »](#)

**Smart Cities & Smart Buildings: The Future of Commercial RE in the United States and across Europe**

October 3, 2017  
New York, NY

[More Info »](#)

**Massachusetts Green Careers Conference**

October 5, 2017  
Westborough, MA

[More Info »](#)

**Cleantech Open Northeast Regional Finals**

October 5-6, 2017  
New York, NY

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**TiE StartupCON 2017**

October 6, 2017  
Boston, MA

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**SOCAP17**

October 10-13, 2017  
San Francisco, CA

[More Info »](#)

**Women's Empowerment West Coast Summit, presented by SEIA**

October 11, 2017  
Portland, OR

**NECA 2017 Awards Night**

October 12, 2017  
Boston, MA

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**BuildingEnergy NYC**

October 12, 2017  
New York, NY

[More Info »](#)

**MIT Energy Night 2017**

October 13, 2017  
Cambridge, MA

[More Info »](#)

**REV Connect '17**

October 17, 2017  
New York, NY

[More Info »](#)

**DC, Massachusetts, and the Future of a Clean Energy Economy**

October 17, 2017  
Boston, MA

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**Energy Innovation Forum**

October 18, 2017  
Lowell, MA

[More Info »](#)

**Community Solar Workshop**

October 18, 2017  
Chicago, IL

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**Solar Power Midwest**

October 19-20, 2017  
Chicago, IL

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**2017 Harvard Business School Energy & Environment Club Symposium**

October 21, 2017  
Boston, MA

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**Renewable Energy Markets (REM) 2017**

October 22-24, 2017  
New York, NY

[More Info »](#)

**NECA 2017 Energy Finance 101**

October 24, 2017  
Boston, MA

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**AWEA Offshore WINDPOWER 2017**

October 24-25, 2017  
New York, NY

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### NY-BEST Energy Storage Technology Conference

October 11, 2017  
Rochester, NY

[More Info »](#)

### MAPC's Clean Energy Forum: Planning for Net Zero

October 11, 2017  
Boston, MA

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### NECEC's Clean & Resilient Energy Summit

October 25, 2017  
Andover, MA

[More Info »](#)

### NECEC's Green Tie Gala

October 26, 2017  
Boston, MA

[More Info »](#)

### Cleantech Venture Day

October 30-31, 2017  
London, UK

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