

LAW OF INDEPENDENT POWER by Steven Ferry. Clark Boardman Company, Ltd. New York, New York, 1989.

*Reviewed by Clark Evans Downs**

Law of Independent Power presents a fairly comprehensive overview of the regulatory issues which surround the development of independent power projects. The text begins with a helpful description of generation technologies often used by non-utility producers of power and proceeds to discuss the legal status of Qualifying Facilities, identify some of the issues incident to the regulation of non-QF, non-utility power producers, and present a comprehensive discussion of the environmental laws that relate to power production. The text concludes with a review of some of the issues that have arisen in connection with administrative determination of avoided cost, issues incident to third-party transmission of independently produced power and issues inherent in the development of competitive bidding schemes.

Professor Ferry's treatise is written in clear, simple declarative sentences, and for that he is to be commended (although on occasion one gets away: "If the state expects that for the succeeding five-year period the SO₂ cap will be exceeded, a program of emissions reductions began on January 1, 1989.") His experience in environmental regulation is generously shared with the energy practitioner in the chapter on Environmental Regulation of Independent Power, which contains an excellent summary of the environmental hurdles that may confront the independent power developer.

In a preface to the volume and its first overview chapter, Professor Ferris holds out clear but somewhat contradictory goals for his treatise. In his preface Professor Ferry states his purpose is "to explain the key aspects of independent power development and regulation in a way that is accessible to those not yet intimately acquainted with the field." In this, he has succeeded admirably. However, in the overview, having correctly noted that lawyers involved in independent power development must exhibit proficiency in many areas of legal practice, he speaks a far more ambitious purpose: "This treatise attempts to package and present the resources necessary to practice in this area of energy and environmental law." In this, *Law of Independent Power* falls short of the mark.

Although Professor Ferry aims to permit the reader "to review the law of independent power and electric utility law from 'soup to nuts,'" the treatise contains little discussion of the way in which independent power projects are typically financed, no discussion of the project structures which have been developed to overcome the hurdles the 1935 Act poses to non-QF projects and no discussion of the licensing and environmental issues incident to, or the technologies used by, hydroelectric small power producers. The treatise would also be far more useful to practitioners if it contained a review of typical

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contract terms for power sales agreements, design/build contracts and financing arrangements.

In fairness it must be said that the law of independent power is rapidly evolving and stretches across many practice areas in which few lawyers display total mastery. Fortunately, *Law of Independent Power* has been bound in loose-leaf fashion to permit revision and supplementation. Professor Ferry has filled a void in legal literature, and made a good start in providing those concerned with independent power development with a comprehensive working reference. Practitioners of energy law would be well served if he were to continue in his efforts with the same elucidation that marks his first edition.