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Marine Policy Seminar Abstract  
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**The Commerce Clause and Green Energy Laws:  
Economic Protectionism and the Dispute between Massachusetts and TransCanada**

As the United States prepares to embrace the offshore wind industry, many states have begun to encourage renewable development by implementing policies aimed at reducing the costs of offshore wind. States, such as Massachusetts, have created laws via policies that favor in-state generation, many of which account for the additional benefits of a new renewable sector, such as local job creation.

However, policies that favor in-state generation may run afoul of the Commerce Clause of the United States Constitution. The Commerce Clause allows Congress to regulate many aspects of commerce, or business, that involves transactions between the various states or the people of various states. The Dormant Commerce Clause is inferred from the Commerce Clause, and dictates that even if Congress has not acted and its commerce power lies dormant, state and local governments are nonetheless precluded from placing an undue burden on interstate commerce.

TransCanada, an energy development company with land-based wind turbines in Maine has recently raised a Constitutional challenge that has the potential to stymie the offshore wind industry. In mid-2010, TransCanada filed a lawsuit claiming that the Massachusetts policies were in conflict with the Commerce Clause.

In Massachusetts, legislators passed the Green Communities Act, which was a comprehensive energy reform bill. The law, which targeted Massachusetts-based projects, required utility companies to enter into long-term contracts with renewable energy to help develop clean energy technology. The TransCanada lawsuit alleged that the law was unconstitutional, because it required utilities to buy renewable power from projects in the state, and that the law unjustly charged fees to out-of-state projects.

The seminar presentation will focus on the TransCanada challenge in Massachusetts. I will present a brief history of the Commerce Clause, and will discuss the status of the TransCanada challenge. Additionally, I will discuss the considerations that states must contemplate, and offer possible policy suggestions on the state and federal levels.