The abandonment of wind and PV power has become the Achilles heel that restricts the development of renewable energy in China, which is associated with institutional defects in China’s Renewable Energy Law. As a priority area in energy development, renewable energy is not substantialized. Instead, it is undermined because the guarantee system for purchasing electricity, generated by the use of renewable energy resources, in full amount, is alienated by lower-level laws. The unestablished mandatory legal obligations and responsibilities in power grid transmission networks lead to difficulties in renewable energy power generation, transmission, and accommodation. Due to the lack of continuity and stability in the feed-in tariff and subsidy policies for renewable energy, investors cannot have reasonable expectations. China’s Renewable Energy Law must be remedied to correct these existing institutional defects, and to solve the problem of wind and PV power abandonment in order to promote the healthy development of renewable energy.

Keywords
China Renewable Energy Law, Institutional Defects, Power Grid Mandatory Investment Obligation, Legislative Adjustment

* Although the term ‘renewable energy’ in Article 2 of China’s “Renewable Energy Law” includes wind energy, solar energy, hydropower, biomass energy, geothermal energy, ocean energy, and other non-fossil forms of energy, this paper will focus on the legal issues in the development and utilization of two types of non-hydro renewable energy such as wind and solar power.

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I. Introduction

The sustainable development and utilization of renewable energy, reshaping the energy supply and consumption structure, mitigating and adapting to greenhouse gas emissions, and tackling climate change—all these have become the world’s general consensus for the concerted action necessary to achieve energy transformation. Almost all the signatories of the 2015 Paris Agreement on Climate Change set development goals for renewable energy. Since the 1980s, China has encouraged to develop and implement policies of renewable energy, as an important source of energy production and consumption. However, it was not until 1996 that the legislative process for renewable energy policy was implemented for the first time with the enactment of the Electricity Law. It was mainly based on ‘soft’ encouragement and advocacy for laws and regulations.1

The Renewable Energy Law, which was implemented in 2006, set out some mandatory legal norms.2 The revised Renewable Energy Law of 2009 further clarified and improved upon the major issues with the development goals and planning for renewable energy.3 In addition, other legislative organs in China formulated the normative documents for the implementation of support for the Renewable Energy Law, and established a complete rules system with the Renewable Energy Law as the backbone.4

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1 The PRC Electricity Law lays down such expressions as ‘encourage’ and ‘support.’ Article 5, paragraph 2 reads: “The State encourages and supports the use of renewable energy and clean energy for power generation.” Article 48 reads: “The State promotes the development of hydropower resources and the construction of small and medium-sized hydropower stations in rural areas in order to promote rural electrification. The state encourages and supports the use of solar energy, wind power, geothermal energy, biomass energy and other energy sources in rural areas to make rural power supply construction and increase the rural power supply.” See The PRC Electricity Law [中华人民共和国电力法], available at http://www.npc.gov.cn/wxzl/gongbao/2015-07/03/content_1942878.htm (last visited on Sept. 6, 2017).

2 The 2006 Renewable Energy Law covers such subject matters as the investigation of renewable resources and development plans (Section 2), the obligation of the Grids’ full purchase of renewable energy electricity (Article 14 of Section 4), tariffs on renewable energy projects, and the distribution of costs for the full purchase of renewable electricity by the Grids (Articles 19-20 of Section 5) and the corresponding liabilities due to a violation of the aforesaid obligations (Section 7).

3 The 2009 Renewable Energy Law states that the plans for developing renewable energy at both national and provincial levels should be made based on energy development strategies and technological situation, and should specify the objects to be developed, main tasks, key projects, supporting measures, etc. (Articles 8-9); the cost to the Grids incurred by the full purchase of renewable energy electricity should be managed by the development fund for renewable energy rather than being distributed among the relevant parties (Article 20).

4 Following the adoption of the 2006 Renewable Energy Law and its 2009 amendment, China’s Commission for Development and Reform, the National Energy Administration, and the Ministry of Finance enacted the following measures: Rules on the Generation Tariff of Renewable Energy and its Distribution (2006); Ordinance of Management