

An Excerpt From:
K&L Gates Global Government Solutions® 2011: Mid-Year Outlook



Will Japan Fundamentally Change Its Energy Policy?



What is the future of nuclear power in Japan? That is the question on everyone's mind following Japan's so-called "Triple Disaster" beginning with the massive earthquake and tsunami on March 11, 2011 and continuing with the ongoing crisis at the Fukushima Daiichi Nuclear Power Station.

On April 12, a month after the earthquake and tsunami, Japan's Nuclear and Industrial Safety Agency upgraded the nuclear crisis at the Fukushima plant to a level 7 event—the maximum level on the International Nuclear and Radiological Event Scale, and the same level as the Chernobyl crisis. Since then, there has been a steady trickle of information from the Tokyo Electric Power Company confirming expert opinions around the world that the event was even worse than it first appeared. Although Fukushima was no Chernobyl, the name Fukushima has now been added to the lexicon of nuclear terms and will forever be known as the place where one of the world's worst nuclear accidents occurred.

Ominously for the proponents of nuclear power, the attention of the Japanese government next focused on a nuclear plant on the southern coast of Shikoku, the smallest of Japan's main islands, more than 500 kilometers (310 miles) away from the Fukushima plant. In an apparent political move in response to the Fukushima incident, on May 6 (just two months after the earthquake), Japanese Prime Minister Naoto Kan

requested the shutdown of the Hamaoka Nuclear Power Station run by the Chubu Electric Power Co., Inc. (the electric power company covering the middle region of Japan). At first it was reported that the closure would be ordered by the government, but when it became publicly known that the Hamaoka plant was in compliance with the government's Nuclear and Industrial Safety Agency standards, Japan's prime minister was forced to reduce his order to a "request." Nevertheless, notwithstanding the lack of a legal basis for the closure and the fact that the Hamaoka plant provides nearly twice the energy output of the Fukushima plant, Chubu Electric complied and shut down the plant.

The publicly stated rationale for the closure was that the government's Earthquake Research Committee estimated that there is an 87 percent chance that an earthquake of magnitude 8 would strike the area surrounding the Hamaoka plant within the next 30 years, leading seismology experts to claim that the Hamaoka plant is the "most dangerous nuclear power plant in Japan." If this was the real reason for the

closure of a plant so integral to Japan's power grid (and there is more than a small amount of debate as to whether it was just political grandstanding by the prime minister in an effort to show strong leadership), the future of the nuclear power industry in the entire country would be cast into doubt since, according to some experts, every part of the country is at risk of experiencing a major earthquake in the next 30 years.

In closing the Hamaoka plant, however, the prime minister did cite to legitimate concerns that a nuclear crisis can bring, such as consequential damages. The Fukushima event has resulted not only in the evacuation of an ever-expanding area in proximity to the plant, but has also brought rolling blackouts across the region, bans on certain agricultural and other products, and disruptions in global supply chains—all of which have had a severe negative impact on the Japanese economy. Japanese companies such as Sony Corporation have been forced to temporarily close damaged plants. In Sony's case, this adversely affected the company's production of digital video discs, lithium batteries, optical devices, and other items that were sold throughout the world. Japanese automakers such as Toyota and Honda have been temporarily forced to shut down assembly plants in the United States,

The name Fukushima has now been added to the lexicon of nuclear terms.

due to a shortage of parts (particularly in engines and transmissions) resulting from disruptions at factories in Japan due to power shortages. Even as of this writing, continues to be a general lack of inventory for Japanese car dealerships in the United States. Overall, Morgan Stanley MUFG Co., Ltd. has forecast a short and deep recession for Japan, with the economy shrinking by 1 to 3 percent in 2011, mostly due to these knock-on effects and not to the damage caused by the quake or the tsunami itself.

Not surprisingly, the Fukushima incident is leading the government of Japan to rethink its energy policy. In a country known for consensus decision-making, it is now widely said that nuclear power is clearly not the best alternative in such an earthquake-prone country. According to the June 2010 Ministry of Economy, Trade and Industry's (METI) Strategic Energy Plan of Japan, the Japanese government was to build nine additional nuclear plants by the year 2020 and another five by the year 2030, which would increase its nuclear energy resources to 50 percent of all production. However, recent actions by the Japanese government, including the closure of the Hamaoka plant, have indicated that these plans will likely be scrapped. At an Organisation for Economic Co-operation and Development ("OECD") gathering

on May 27, 2011, Prime Minister Kan suggested that the government of Japan needs to start from scratch with its energy policy and begin focusing on increasing the use of renewable energy resources such as solar and wind power.

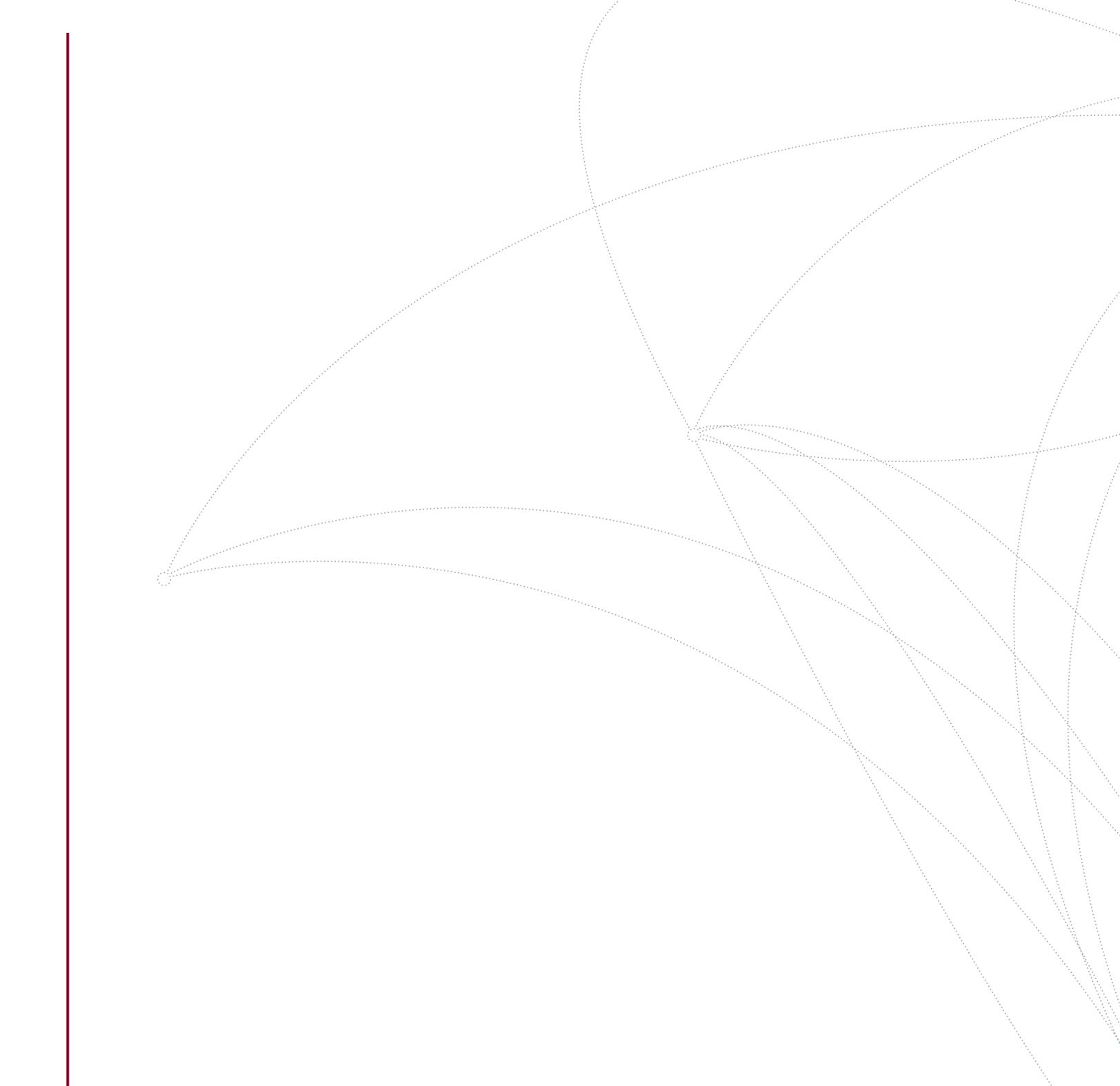
So the country is left to grapple with finding an alternative to its planned nuclear future. The well-known issues with solar and wind energy resources are their cost. According to 2010 statistics provided by METI, nuclear power costs between ¥5 and ¥6 per kilowatt hour, while wind power costs between ¥10 and ¥14 and solar costs ¥49 per kilowatt hour. Prime Minister Kan has emphasized that he would like to raise renewable energy resources to the level of a "core" energy resource and will attempt to reduce the costs of solar power to a third of current levels by 2020 and a sixth by 2030. Still, the Japanese government has much work to do, as solar and wind power currently only make up about 1 percent of Japan's total power supply, as compared to nuclear energy, which comprises 30 percent.

In the short term, a solution is likely to be found by looking to Japan's neighbor to the north, Russia, and the vast supplies of liquified natural gas to be found in the Russian Far East. However, even this alternative presents significant political, legal, and logistical hurdles.

So where does this leave Japan? There is little doubt that the Fukushima incident has provoked a healthy discussion on renewable energy resources, and that Japan's anti-nuclear movement may have garnered nationwide support. However, despite lingering questions about the reasons for the closure of the Hamaoka plant, it is unlikely that Japan's makeup of energy resources will change anytime soon.

J. Ryan Dwyer, III (Tokyo)
ryan.dwyer@klgates.com

Grant S. Tanabe (Tokyo)
grant.tanabe@klgates.com



K&L | GATES

Anchorage Austin Beijing Berlin Boston Brussels Charlotte Chicago Dallas Doha Dubai Fort Worth Frankfurt Harrisburg Hong Kong
London Los Angeles Miami Moscow Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh Research Triangle Park
San Diego San Francisco Seattle Shanghai Singapore Spokane/Coeur d'Alene Taipei Tokyo Warsaw Washington, D.C.

K&L Gates includes lawyers practicing out of 38 offices located in North America, Europe, Asia and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information about K&L Gates or its locations and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2011 K&L Gates LLP. All Rights Reserved.