Overview

We know the Federal Energy Regulatory Commission (FERC) inside and out — and our clients rely on our nationally ranked team to navigate fluctuating national energy and FERC policies and matters before FERC, other federal agencies and the U.S. Congress.

Our energy clients face complex legal issues related to national energy policies and regulations. For decades, we have serviced these clients with a strong team of attorneys focused exclusively or primarily on federal energy law. Our team’s chief goal is to resolve our clients’ issues efficiently and effectively, without compromising their business objectives.

We represent and advise utilities, power marketers and market participants on a multitude of issues related to FERC statutes, rules, regulations and orders, including representing clients in compliance, investigations and enforcement proceedings. We advise utilities, utility holding companies, nonutility generators, project developers, transmission owners, upstream investors and power marketers on regulatory matters related to mergers, acquisitions and asset transactions. We have significant experience providing legal services to transmission-related service providers, and we are a national leader in developing and prosecuting traditional cost-of-service rate cases for transmission and power.

Our FERC regulation experience includes the following areas:

- Compliance, investigations and enforcement
- Hydroelectric power
- Interconnections and facility agreements
- Market-based rate authorization and renewal
- Merger and acquisition/disposition approvals (Section 203)
- Natural gas
- Rate cases
- Reliability and CIP standards
- RTO markets
- Standards of conduct/affiliate relationships
- Transmission compliance and OATT administration
- Transmission development

Our firm has participated in the development and implementation of all aspects of federal natural gas regulatory policy over the past quarter century. This includes Order Nos. 436, 636, 637 and 712, FERC’s policy statements pertaining to pipeline certificates, and negotiated rates and FERC’s substantially broadened enforcement arena. Additional examples include various infrastructure development initiatives and many precedent-setting individual cases.

We are active in representing electric utilities in obtaining and maintaining market-based rate
authority, developing energy imbalance markets, and complying with the North American Electric Reliability Corporation (NERC) and regional entity reliability rules. Our attorneys also counsel utilities concerning a variety of topics involving investigations/audits by FERC’s Office of Enforcement and in implementing FERC’s Order No. 1000.

We are fully versed on FERC’s Order Nos. 2003 (large generator interconnections) and 2006 (small generator interconnections), along with the varying Regional Transmission Organization (RTO)/Independent System Operators (ISO) interconnection requirements.

Representative Matters

Compliance, Investigations and Enforcement

- Provided best-practices recommendations and guidance for combination electric/gas utilities
- Provided counsel and assistance to several utilities with respect to audits and investigations by FERC’s Office of Enforcement. Work was in connection with compliance with standards of conduct, affiliate restrictions, Open Access Same-time Information Systems (OASIS) regulations and the utilities’ open access transmission tariffs
- Created and provided compliance training for utilities regarding FERC’s rules and regulations, including standards of conduct, affiliate restrictions and Open Access Transmission Tariff (OATT) compliance
- Assisted in audit preparation and response to a FERC financial audit
- Represented and counseled companies and individuals in FERC Office of Enforcement investigations into electricity-trading activities
- Represented clients in self-reporting and other FERC Office of Enforcement investigation matters

Interconnection

- Counseled utilities regarding generator, load and transmission interconnection agreements
- Filed multiple interconnection queue reform proposals with FERC
- Reviewed and negotiated interconnection agreements and transmission-to-transmission interconnection agreements for several investor-owned utilities
- Advised clients on the treatment of generator tie lines
- Filed and litigated a case involving delays in an RTO large-generator interconnection process, which resulted in the overhaul of the RTO interconnection process
- Provided advice and counsel to investor-owned utilities on generator and transmission interconnections, including the following:
  - Analyzing appropriate application of first-come, first-served policy
  - Negotiating, drafting and filing interconnection agreements (load, generation and wires-to-wires)
  - Modifying and filing executed interconnection agreements

Market-Based Rates

- Represented a large, vertically integrated utility in FERC administrative litigation over market-
Represented vertically integrated utilities, nonutility generators and power marketers in change-
in-status filings, triennial updates and applications for market-based rate authority (including
submittal of delivered price test analyses of generation market power)

Represented power marketers in obtaining initial market-based rate authority

Represented renewable developers in obtaining initial market-based rate authority

Counseled utilities on mitigation strategies related to market-based rate authority

Filed and defended market-based rate mitigation applications at FERC

**Energy M&A Regulatory Approval** Represented two large, vertically integrated utilities in their
acquisition by an international utility holding company

- Represented a utility holding company in its divestiture of a merchant generating business
- Represented a utility holding company and its subsidiary in the divestiture of gas-fired
  generating assets
- Represented a transmission owner in its acquisition of various transmission facilities
- Represented a utility holding company in an intra-corporate reorganization resulting in the
  merger of three affiliated utilities
- Represented several utilities in purchases and sales of power plants
- Represented a power marketer in a transaction resulting in an upstream change in control of
  the marketer
- Represented a vertically integrated utility in its acquisition of several high-voltage transmission
  lines
- Represented a utility holding company in a sale to a private investor

**Rate Cases**

- **Stated Transmission Rates** — In the past several years, our attorneys have prepared and
defended full cost-of-service transmission-rate cases for several utilities adopting fixed, or
  stated, transmission rates.

- **Formula Transmission Rates** — Many transmission owners now use formula rates for
  transmission service. While still based on cost-of-service principles and inputs, formula rates
  present different opportunities and challenges for recovering a transmission-revenue
  requirement over time. Our attorneys have considerable experience with formula rates and their
  implementation protocols.

- **Production-Side Rates** — Many power sales or bundled-requirements sales are still made on
  a cost-of-service basis. Our attorneys have prepared and filed rate cases for requirements
  service in recent years and have considerable experience in this area.

**Reliability and Critical Infrastructure Protection (CIP) Standards**

- Represented a vertically integrated utility in RFC “693 Standards” and Critical Infrastructure
  Protection (CIP) compliance audits

- Provided counsel and advice to electric utilities regarding the establishment and enforcement of
  mandatory NERC reliability standards associated with the Energy Policy Act of 2005

- Provided counsel and assistance with numerous utility audits and investigations by NERC,
  regional entities and FERC’s Office of Enforcement regarding compliance with NERC reliability
standards, including those related to CIP

- Advised on the development of a compliance program implementing mandatory NERC national and regional reliability standards

RTO Markets

- Represented a variety of stakeholders on numerous issues concerning the RTO market design and implementation.
- Counseled western transmission-owning utilities in issues related to the development of a Western Energy Imbalance Market.
- Obtained precedent-setting FERC approval of an investor-owned utility's plan to withdraw from an RTO and utilize third-party tariff administration. Duties included drafting contracts with third-party administrators and negotiating withdrawal from the RTO and handling related issues with transmission customers.
- Advised a midwestern utility with regard to the Midcontinent ISO tariff filings and stakeholder proposals on resource adequacy. Represented a transmission-owning member of PJM in a FERC proceeding on capacity market design. Also represented a generation owner in the NYISO in a FERC proceeding on capacity market implementation issues.
- Counseled merchant generators in FERC proceedings involving design and operation of bid-based competitive markets in New England. Our work included the development of market rules governing congestion management, reliability services, market power monitoring and mitigation, and new generator interconnections.
- Provided advice and counsel to investor-owned utilities on generator and transmission interconnections. Our work included analyzing appropriate application of first-come, first-served policy, negotiating, drafting and filing interconnection agreements, and modifying and filing executed interconnection agreements.
- Represented a midwestern utility in proceedings related to Midcontinent ISO’s transmission cost-allocation methodology.
- Defended participating transmission owners in a complaint against prudency of formula rate costs.
- Represented a Midwest utility regarding implementation and conversion from a stated rate to a formula-transmission rate and qualification for transmission-rate incentives.
- Counseled independent generation developers on issues related to participation of renewable resources in the RTO markets.
- Represented a demand-response aggregator in seeking support and guidance relating to accounting issues associated with revenues from the PJM programs.
- Represented a New York transmission owner in a case regarding its allocation of transmission congestion contracts in the New York ISO market.
- Represented the California ISO regarding a FERC proposal for long-term transmission rights.
- Provided counsel and assistance with numerous utility audits and investigations by FERC’s Office of Enforcement regarding compliance with FERC’s Standards of Conduct, Code of Conduct, and OASIS regulations and compliance with the utilities’ open-access transmission tariffs.
- Provided guidance and strategic advice for meetings with Office of Enforcement senior staff.
Assisted clients in preparing market-based rate applications and evaluating issues related to RTO markets as part of a market analysis.

Standards of Conduct/Affiliate Relationships

- Counseled multiple transmission owners regarding day-to-day compliance with Standards of Conduct issues, including protection of non-public transmission function information.
- Counseled utility holding companies on pricing rules for affiliate transactions of non-power goods and services.
- Counseled members of utility holding companies on FERC regulations regarding affiliate power sales.
- Counseled multiple utilities on cross-subsidization, ring-fencing and other affiliate issues related to mergers, acquisitions, and other corporate transactions.

Transmission Compliance and OATT Administration

- Represented a coalition of interconnection and transmission customers in a complaint and petition for order under Section 211A of the Federal Power Act against a federal power marketing agency alleging unduly discriminatory curtailment practices and interconnection agreement and OATT violations.
- Represented an investor-owned electric utility in the successful withdrawal from an RTO.
- Served as counsel to utility in successful declaratory action to protect grandfathered transmission rights.
- Represented a major wind developer before FERC and BPA on issues related to the development and integration of wind and other variable energy resources, including generation imbalance, wind integration charges and self-supply of wind balancing services.
- Represented a utility in the review of transmission transactions and compliance with OATT and FERC regulations. Counseled utilities regarding interpretation and implementation of the utilities’ open access transmission tariffs.
- Counseled utilities on the proper use of network and point-to-point service.

Transmission Development

- Advised a competitive transmission developer regarding the RTO developer qualification process in connection with the post-Order No. 1000 and the Midcontinent Independent Transmission System Operator (MISO) qualification processes.
- Defended a MISO transmission owner against a complaint alleging that the client did not in fact have the right to develop a new 765 kV multi-value project (MVP). FERC summarily ruled in favor of our client.
- Brought a complaint against a transmission owner who refused to properly share development rights in connection with an MVP.
- Obtained transmission-rate incentives for a MISO transmission owner seeking to develop two new MVPs.
- Represented the off-taker of transmission capacity for a cross-border merchant DC transmission line.
- Served as lead counsel in the creation of International Transmission Company (ITC) from DTE Energy, and the sale of that company to private equity investors, including Kohlberg Kravis & Roberts. Our client, the seller of ITC, received a record price for the asset (approximately $1.8 billion).
times book value).

- Represented Wisconsin Energy in the transfer of its transmission assets to American Transmission Company.
- Represented a foreign transmission EPC company in identifying and securing transmission project opportunities in the United States.
- Represented a Midwestern investor-owned utility in the purchase of Illinois Power’s transmission and distribution assets.
- Represented the lead underwriter regarding a proposed transmission company IPO.
- Negotiated a 138 kV transmission line undergrounding and river-crossing replacement agreement with a condominium tower developer and customer-built line extension agreements for main-grid transmission facilities and distribution facilities on behalf of an investor-owned electric utility.
- Negotiated numerous asset dispositions involving sales of transformers, substations, pole lines, and associated rights-of-way to customers and public power entities on behalf of investor-owned electric utilities.
- Led a group of eight utilities in obtaining regulatory approvals to restructure a $3 billion electric market in New York state. The result was FERC approval of a comprehensive restructuring of the wholesale electricity market, including the formation of a nonprofit independent system operator, implementation of a congestion management pricing system, and the establishment of auctions for financial hedges. We also prepared all related transmission tariffs and agreements.

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Related Practices and Industries

Energy
Hydropower
Natural Gas
Nuclear

Related Insights

**Washington Energy Report** 07.25.19
FERC Revises Data Submission Requirements for Market-Based Rate Sellers

**Washington Energy Report** 07.24.19
FERC Addresses Complaints Regarding Market Manipulation in MISO 2015/16 Capacity Auction

**Washington Energy Report** 07.24.19
FERC Eliminates Obligation to Submit Indicative Screens to Obtain Market-Based Rate Authority in Certain Wholesale Markets

**Washington Energy Report** 07.24.19
FERC Grants Partial Clarification of Final Rule on Interlocking Directorates

**Articles & Publications** 07.23.19
Summary of FERC Order Nos. 860 and 861: Reforms to FERC’s Market-Based Rate Program

**Washington Energy Report** 07.18.19
Federal District Court Denies Interlocutory Appeal Regarding the Statute of Limitations for FERC Enforcement Actions