



## Electric

### COMPLIANCE, AUDITS & ENFORCEMENT

#### *Overview*

Van Ness Feldman has over 90 attorneys and policy professionals, and is known as one of the premier energy law and policy firms in the U.S. Our professionals include former senior officials and staff from the Federal Energy Regulatory Commission (FERC), the Department of Energy (DOE), the White House and other Executive agencies, as well as former senior staff from energy-related Congressional committees.

#### *FERC Electric Regulatory Practice*

The firm's electricity practice group represents a wide range of clients, including investor-owned and municipal utilities, cooperatives, independent power producers, and power marketers. These representations encompass all electric industry issues – regulatory, legislative, and transactional – and include representations before the FERC, other Executive Branch agencies, courts, and Congress.

Van Ness Feldman's representations span the full array of FERC electric regulatory issues – including rate proceedings, corporate applications, complaints, audits, investigations, and rulemakings – and we follow closely all ongoing FERC policy initiatives.

#### *Compliance Areas*

Over the past decade, there has been increasing attention paid to compliance with FERC regulatory issues, including:

- **Standards of Conduct (Order Nos. 717 and 690)** – governing the relationship between a utility's transmission function employees and its marketing function employees.
- **Open Access Transmission Tariff (Order No. 890)** – requiring a utility owning or controlling transmission facilities to file an open access transmission tariff with FERC and to treat itself comparably under that tariff.
- **OASIS Requirements (18 CFR Part 37)** – requiring a transmission provider to make certain information publicly available on an electronic database.
- **Market Behavior Rules (18 CFR § 35.37)** – addressing issues involving unit operation, communications and price reporting.

- **Market Manipulation Rules (Order No. 670)** – prohibiting the use of “any manipulative or deceptive device or contrivance” in connection with the purchase or sale of electricity or transmission services subject to FERC’s jurisdiction.
- **EQR Reporting (Order No. 2001)** – requiring quarterly reports to be filed at FERC on sales contracts and transactions.
- **Interlocking Directorate Reports (18 CFR Part 46)** – mandating that each officer or director of a public utility who holds certain interlocking positions file with FERC a statement concerning such interlocks.
- **NERC Reliability Standards (Order Nos. 672, 693, and 705)** – requiring all users, owners and operators of the bulk electric system to comply with the mandatory reliability standards developed by the North American Electric Reliability Corporation (NERC) and adopted by FERC.
- **Reciprocal Dealing and Affiliate Transactions (Order No. 707)** – codifying the general prohibition on sales to any affiliate, without first receiving FERC authorization under a separate rate schedule. Additional affiliate restrictions are in place governing communications, sales of non-power goods or services, and brokering of power between the marketer and the public utility.
- **Reports of Changes in Status and Updated Market Analyses (Order Nos. 652 and 697)** – directing that sellers at market-based rates notify FERC within 30 days of any change in the facts and circumstances on which FERC relied in granting market-based rate authority.
- **Disposition of Jurisdictional Facilities, Mergers, and Acquisitions** – requiring prior authorization for sale, disposition, merger or consolidation by a public utility of facilities used for the wholesale sale of electricity or the transmission of electricity in interstate commerce.

### *Compliance Services*

A core part of our FERC practice is assisting clients with compliance requirements, and keeping clients up-to-date on new and changing requirements as the FERC’s rules and policies evolve. Compliance projects we have conducted for a number of electric utilities include:

- **Regulatory Compliance Reviews.** We review companies’ internal policies, practices, and structures to help companies assess their level of compliance and to identify potential problem areas. We also conduct independent audits, resulting in written recommendations for improving compliance strategies.
- **Compliance Programs and Procedures.** We help companies formulate compliance strategies and develop specific programs and procedures to implement those strategies. We also assist clients in developing compliance programs and procedures required by FERC (*e.g.*, compliance procedures required by Order No. 717; compliance plans and procedures required by company-specific FERC audits and investigations).
- **Implementation and Training.** We prepare informational materials and employee training programs, coordinate among business units, and assist with all other issues that arise in putting a compliance program into effect.
- **Audit Committee Counsel.** We serve as retained federal energy regulatory counsel to companies’ audit committees.

- **Leadership Seminars.** We present seminars to management and directors relating to corporate integrity and compliance programs needed to protect that integrity.
- **Audit/Investigation Response Counsel.** We serve as retained counsel to provide an experienced response to FERC and/or NERC audits and investigations. In this regard, our expertise allows us to help clients develop audit/ investigation defense strategies that will achieve the most favorable end result.
- **Other “Maintenance” Services.** We work with clients to ensure that a company’s compliance program remains current — even as regulatory requirements and interpretations change — by:
  - Developing compliance “checklists.”
  - Providing refresher training to employees.
  - Reviewing and updating reference materials.
  - Assessing levels of compliance (whether through a formal audit process or an informal spot-check).
  - Answering day-to-day compliance questions.

### *Our Approach*

Van Ness Feldman uses a team approach in its client representations. While we provide the benefit of access to any of the firm’s professionals for all engagements, we deploy the particular talents and expertise of our professionals on an as-needed basis to ensure the most effective and efficient representation for each of our clients.

In addition to understanding the substantive compliance requirements and FERC procedures, we also are intimately familiar with “how things are done” at the Commission, based in large part on our collective experience with the Commission staff. Thus, in addition to having a strong basis for helping to craft messages that will find a receptive audience at the FERC, we can provide well-informed tactical advice about how, when, and to whom messages can be most effectively delivered.

If we can provide you with additional information, please contact us at [electric@vnf.com](mailto:electric@vnf.com).