



Electricity

Comprehensive Services to the Electricity Industry

For over 30 years, Van Ness Feldman's nationally recognized Electricity Practice has helped clients effectively navigate the complex legal and regulatory issues that define the electric power industry. We work with clients to determine the potential effect of various policy initiatives and proceedings on their operations and business plans, and counsel clients on strategic options to respond. We also help clients take electricity generation and transmission projects from concept to operation, providing counsel on project development, permitting, financing and ownership.

We represent electric utilities on a wide range of regulatory matters. Our practice encompasses all FERC-related issues, including strategic advice on emerging issues in organized markets. Over the past three decades, we have counseled clients on rates, tariff administration, rate design, cost allocation, power sales and marketing, capacity markets, market power, and regional transmission organizations, among other initiatives. We have participated in virtually every major rulemaking conducted at FERC, helping clients develop corporate positions, draft effective comments, participate in public conferences and meetings, meet with FERC Commissioners and staff, and build industry coalitions.

Our Services

The firm's representations span the full array of electric regulatory issues such as:

- Power sales and transmission issues;
- Rate proceedings;
- Investigations and enforcement actions;
- Administrative litigation matters;
- Cost-based and market-based generation tariff development;
- Transmission access and pricing disputes;
- Commercial agreements;
- Mergers and acquisitions;
- Reliability and liability matters;
- Regional transmission organization development;
- Qualifying facility and exempt wholesale generator proceedings;
- Regulatory compliance;
- Jurisdictional and franchise disputes;
- Environmental compliance and integrated resource planning

Our Clients

The firm's clients include:

- Investor-owned utilities
- Renewable Energy Projects
- Energy Marketers
- Independent power producers
- Government-owned Electric Utilities
- Energy Efficiency Industries

Representative Matters

Project Development

- Directing and completing comprehensive transaction due diligence on behalf of Southern California power utilities for several wind and hydro development projects in the Northwest worth approximately \$2 billion with a production capacity of over 700 MW.
- Since 2003, advising on the development of over 1600 MW of wind energy, including the following projects, among others:
 - A 45-turbine, 74.25 MW capacity wind farm in Oklahoma
 - An 84-turbine, 151 MW capacity wind farm in Oklahoma
 - A 185-turbine, 231 MW capacity wind farm in New York
 - A 55-turbine, 90.75 MW capacity wind farm in New York
 - A 100 MW capacity wind farm in Minnesota
 - A 120-turbine, 198 MW capacity wind farm in Illinois
 - A 7-turbine, 11.5 MW capacity wind farm in New York
 - A 100-turbine, 200 MW capacity wind farm in Texas
 - A 120-turbine, 200 MW capacity wind farm in Illinois
 - A 105 MW capacity wind farm in Oregon
 - A 250 MW wind farm in Kansas
 - Two wind farms (230 MW and 150 MW, respectively) owned by a Washington utility.

- **Interstate transmission projects.** The firm provides federal energy regulatory and environmental counsel to a number of interstate transmission projects, many of which are utility sponsored. Some of these developers are constructing new, participant-funded, transmission facilities designed to relieve congestion and bring new generation resources, including renewables, to market. As part of these representations, the firm advises on issues including anchor tenant status, transmission reservation strategies, tariff design, permitting reform, and siting issues related to National Interest Electric Transmission Corridors.
- Representing a client in the acquisition of greenfield power project development rights and transactional due diligence on project agreements for an advanced waste heat recovery electric generation facility in New York City.
- Advising clients in the development of a new pumped storage hydroelectric projects, including off-river closed-loop projects.
- **FutureGen.** The firm is counsel to the FutureGen Industrial Alliance, Inc. The FutureGen project is a US \$1 billion public-private partnership to design, build, and operate the world's first coal-fueled, near-zero emissions power plant. The firm acts as project counsel on a variety of project development, financing, and related issues.
- Representing Missouri River Energy Services (MRES), the largest participant in a jointly-owned, 630 MW coal-fired power project in South Dakota. We have also negotiated a partial capacity generation swap agreement on behalf of MRES with another utility, and advised MRES on a contract for the purchase of gas turbines and related security and escrow arrangements.

Transactions

- Established transmission service terms and rules for energy and ancillary service markets under ISO/RTO operations.
- Negotiated capacity use agreements for merchant transmission projects, joint venture agreements for construction of electric generation facilities, and assisting in asset sales of such generation and transmission facilities.
- Assisting in a series of transactions between two leading renewable energy project developers whereby an affiliate of one of the developers acquired interests in 18 geothermal, wind and solar renewable power generation projects with an installed capacity of 824 megawatts from our client. The firm continues to represent the new owner with respect to the purchased projects.
- Representing the power marketing and energy management affiliate of a large U.S. energy company with respect to the purchase by a European investment bank of a 51 percent interest in the affiliate.
- Assisting with FERC filings required for the purchase by an energy trading firm of the power trading book of an investor-owned electric utility.
- Negotiating power purchase and related agreements for a 53 MW waste-fueled electric power generating station in southeastern Pennsylvania, including construction of dedicated transmission interconnection line.
- Negotiating power purchase, fuel supply, and related agreements for a wood waste-fueled electric power generating station in New York City, and negotiation of site relocation to New Jersey and renegotiation of the power purchase agreement.

- Representing an international waste disposal company in development and regulatory compliance for multiple waste-to-energy projects in the United States, including municipal solid waste-fueled projects.
- Handling FERC issues and filings in connection with acquisition of passive beneficial ownership interest in a 38 MW biomass generation facility and ownership interest in the jurisdictional operator of the facility.

Litigation, Administrative Proceedings and Appellate Matters

- **California Refund Litigation.** The firm has represented a number of clients (including investor-owned and municipally-owned utilities and marketers) in ongoing administrative and judicial litigation concerning refund liability arising out of the California electricity crisis of 2000 and 2001.
- **Transmission Owner Lost Revenue Recovery Claims.** The firm represented Wisconsin Electric Power Company in the extremely contentious lost revenue recovery proceedings involving the integration of numerous transmission owners in the Midwest and Mid-Atlantic regions into FERC-approved Regional Transmission Organizations. The firm successfully negotiated and filed the first comprehensive bilateral settlement agreement accepted by the FERC, which served as the model settlement agreement for numerous other bilateral settlements.
- **Renewable Energy Credit Litigation.** The firm has substantial experience in advising clients on cutting-edge regulatory issues regarding the ownership and conveyance of renewable energy credits (RECs). The firm successfully represented a coalition of renewable generators in obtaining a declaratory order from the Federal Energy Regulatory Commission on the ownership of RECs under PURPA contracts. The firm also represents renewable generators in litigation before federal courts regarding REC ownership. Represented clients in interconnection and transmission access proceedings under FPA Sections 210, 211, and 212.
- Successfully argued for termination, without refunds, of a case, related to the litigation regarding refunds for sales in western markets, concerning sales in the Pacific Northwest.

Compliance Services

A core part of our practice is assisting clients with FERC and NERC regulatory compliance requirements, and keeping clients up-to-date on new and changing requirements as these rules and policies evolve. FERC's latest Strategic Plan highlights enforcement and compliance as areas of increased focus, and we have been counseling clients on the appropriate strategic and practical responses. 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).
- **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 represent clients in FERC and NERC audits and investigations, and subsequent civil penalty proceedings, along with performing strategic assessments and preparatory sessions for NERC and FERC audits.