

**Steptoe & Johnson LLP**

China Central Place, 29th Floor,  
Tower 2  
79 Jianguo Road, Chaoyang  
District  
Beijing, 100025  
Tel: +86 10 5834 1000  
Fax: +86 10 5969 6099

Avenue Louise 489  
3rd Floor  
B-1050 Brussels  
Belgium  
Tel: +32 2 626 0500  
Fax: +32 2 626 0510

115 South LaSalle Street  
Suite 3100  
Chicago, IL 60603  
Tel: 312.577.1300  
Fax: 312.577.1370

2121 Avenue of the Stars  
Suite 2800  
Los Angeles, CA 90067  
Tel: 310.734.3200  
Fax: 310.734.3300

633 West Fifth Street  
Suite 700  
Los Angeles, CA 90071  
Tel: 213.439.9400  
Fax: 213.439.9599

1114 Avenue of the Americas  
New York, NY 10036  
Tel: 212.506.3900  
Fax: 212.506.3950

201 E. Washington Street  
Suite 1600  
Phoenix, AZ 85004  
Tel: 602.257.5200  
Fax: 602.257.5299

1330 Connecticut Avenue, NW  
Washington, DC 20036  
Tel: 202.429.3000  
Fax: 202.429.3902

**Steptoe & Johnson**

99 Gresham Street  
London, EC2V 7NG  
England  
Tel: +44 20 7367 8000  
Fax: +44 20 7367 8001

## Pipeline

For more than three decades, Steptoe has been one of the nation's leading firms in the field of pipeline regulation. *Chambers USA 2011* notes that the "firm's outstanding capabilities in oil pipeline regulation put the firm at the forefront of the industry."

We have represented many of the largest crude oil and refined petroleum products pipeline systems in the United States and Canada, and have handled a number of ground-breaking proceedings in this highly technical area of law.

Our team includes two members (Steve Brose and Steve Reed) who are recognized as leading oil pipeline practitioners by *Chambers USA 2011*. Together, they co-wrote the chapter on oil pipelines in *Energy Law and Transactions*, a leading energy law treatise, and between them they have more than 50 years of experience in the pipeline field. In addition, the other members of the pipeline team lend breadth and depth to the practice.

Our extensive regulatory experience translates into an ability to help clients structure complex transactions to good advantage, including:

- sales and purchases of pipeline assets,
- joint ventures,
- pipeline leases,
- throughput agreements,
- joint tariff agreements, and
- other arrangements specific to the pipeline industry.

In addition, we have substantial experience with operational issues—pipeline safety, right-of-way, and others—affecting pipelines.

A sampling of the services we offer includes:

- Litigation Services
- Transactional Services
- Regulatory Counseling
- Offshore Pipelines
- Natural Gas and Other Pipelines

## Pipeline

- International

### **Litigation Services**

We have handled a broad array of regulatory litigation before the Federal Energy Regulatory Commission (FERC) and various state regulatory agencies, as well as appeals and other litigation in federal and state courts across the country, including the US Supreme Court.

We have experience not only with standard litigation procedures, but also with various forms of alternative dispute resolution (ADR) and with negotiating and implementing complex regulatory settlements (including securing approval from federal and state regulators for such settlements and defending them in court).

We have been involved in almost every phase of the enormous volume of litigation surrounding the development and operation of the Trans Alaska Pipeline System (TAPS). Starting with the environmental suits over TAPS' routing and design and continuing to the present, we have represented companies that share ownership of this important national asset in a variety of contexts.

We are currently involved in a FERC proceeding involving broad challenges to the rates for interstate movements through TAPS in 2005 and 2006. In recent years, we have also actively participated in the complex regulatory proceedings regarding rates for transporting crude oil to in-state refiners in Alaska, as well as related proceedings concerning connections to the pipeline and capacity allocation. We are currently counsel in the Alaska Supreme Court appeal from an adverse decision of the Regulatory Commission of Alaska on the TAPS intrastate rates.

In the lower 48 states, we are counsel to the nation's largest transporter of refined petroleum products in an application regarding a proposed \$1 billion expansion of the pipeline's assets. We are also representing a major petroleum products system in an application for market-based rates in which challenges by two shippers were recently settled and the matter is pending before the FERC. In another matter, we are counsel for a major natural gas liquids pipeline system with regard to challenges to proposed rate increases brought by several shippers.

### **Transactional Services**

Pipeline transactions present unique, complex challenges that frequently require a broad array of legal specialties. We provide counsel on mergers, acquisitions, and joint ventures; help negotiate contracts between pipelines and shippers; and create innovative rate structures and tariff approaches.

## Pipeline

In addition to the usual commercial and contractual issues, US pipeline deals often involve the following:

- economic and access regulation by FERC and state agencies,
- antitrust review by the Federal Trade Commission (FTC),
- pipeline safety regulation administered by the Department of Transportation (DOT), and
- tax issues specifically applicable to the various forms of pipeline entities.

International pipeline transactions raise a host of additional issues, and place an even greater premium on the breadth of experience and depth of knowledge possessed by our attorneys.

Our integrated attorney team has direct experience in each area and works together to efficiently guide our clients through the most complex and challenging pipeline transaction.

Our comprehensive approach allows our clients to spend less time managing a number of outside law firms, and more time focused on the business issues that drive the transaction.

### **Regulatory Counseling**

Our pipeline attorneys are regularly called upon to advise companies with respect to a broad array of regulatory issues. These include questions of jurisdiction under the Interstate Commerce Act (ICA), compliance with the non-discrimination and anti-rebate provisions of the ICA, interpretation and application of FERC regulations, rate issues, tariff filing issues, pipeline safety issues and a multitude of other questions related to the management and operation of common carrier pipelines.

We also frequently counsel clients on pipeline regulatory issues in connection with various proposed transactions, including mergers and acquisitions of regulated pipelines, pipeline capacity leases, throughput and deficiency agreements, joint tariff agreements and pipeline open seasons.

### **Offshore Pipelines**

Our attorneys have extensive knowledge of the specific legal issues facing offshore pipelines. For example, we served as lead counsel in FERC litigation regarding rates for a new deepwater pipeline in the Gulf of Mexico. We have also been at the forefront of litigation regarding the extent of FERC jurisdiction over pipelines on the Outer Continental Shelf (OCS).

## Pipeline

### Natural Gas & Other Pipelines

We have significant experience with natural gas and other pipeline transactions and litigation. Our experience in this area includes the following:

- representing major pipeline companies in FERC rulemaking proceedings,
- providing advice on the federal approval process for gas pipeline projects,
- assisting companies with FERC standards of conduct compliance,
- representing natural gas processors, and
- serving as counsel for primary customers of gas pipeline companies in rate cases before the FERC.

We also represented one of the leading anhydrous ammonia pipelines in the United States, and successfully defended a polymer grade propylene pipeline's cancellation of its FERC tariff on the grounds that FERC lacks jurisdiction over such movements.

### International Experience

Our attorneys are frequently called upon for representation and advice regarding pipeline projects and issues throughout North America and around the world. The practice has been consistently ranked in *Chambers Global* since 2009 in the category of Energy: Oil & Gas (US).

### Representative Matters

#### Litigation Services

- *Frontier Pipeline Co., et al. v. FERC*, No. 04-1343 (D.C. Cir., decided May 26, 2006). We prevailed in an appeal on behalf of an oil pipeline that was ordered by the FERC to pay millions of dollars in reparations on the basis of a single component of a joint rate in which the pipeline participated. On appeal, the DC Circuit vacated the FERC's order, affirming the historic rule that joint rates can only be evaluated as a whole. The court also upheld the FERC's ruling that third-party purchasers are not entitled to reparations for alleged pipeline overcharges.

## Pipeline

- *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004). Since 1992, we have represented SFPP, L.P. in FERC proceedings involving various shipper challenges to the pipeline's rates and practices. In *BP West Coast*, we successfully defended against the first-ever challenge to rates that were "grandfathered" as just and reasonable under the Energy Policy Act of 1992. On remand, the FERC also held in favor of SFPP that pipelines structured as master limited partnerships are entitled to a full income tax allowance to the extent their owners are actually or potentially liable for income taxes, reversing an earlier FERC decision limiting the scope of the tax allowance. *SFPP, L.P.*, 111 FERC ¶ 61,334 (2005). In another portion of the case, we recently achieved the first-ever settlement of a rate matter involving SFPP (settlement currently pending before FERC).
- *Enbridge Energy, Limited Partnership*, 114 FERC ¶ 61,264 (2006). We successfully secured FERC approval of a settlement between Enbridge Energy and the Canadian Association of Petroleum Producers on the terms of a rate surcharge for a 400,000 barrel-per-day expansion of Enbridge Energy's crude oil pipeline system between the Chicago area and Superior, Wisconsin.
- *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 (2005). We successfully obtained a declaratory order from the FERC approving the proposed rate structure for the Spearhead Pipeline project, which involved reversing an existing oil pipeline to run from Chicago to the oil trading hub at Cushing, Oklahoma.
- *Enterprise Lou-Tex Propylene Pipeline L.P.*, 111 FERC ¶ 61,028 (2005) and *Sabine Propylene Pipeline L.P.*, 109 FERC ¶ 61,025 (2004). We represented a chemical grade propylene pipeline (Enterprise Lou-Tex) and a polymer grade propylene pipeline (Sabine) in the proposed cancellation of their respective FERC tariffs, successfully arguing that the FERC lacks jurisdiction over their movements.
- *Forest Oil Corp. v. Cook Inlet Pipe Line Co.*, Order No. P-04-11(10) (March 31, 2005). We represented an Alaska crude oil pipeline (Cook Inlet) in a dispute with shippers regarding the terms of the Cook Inlet gravity bank; the case was settled on favorable terms and the settlement was approved by the Regulatory Commission of Alaska.

## Pipeline

- *Alpine Transportation Co.*, 97 FERC ¶ 61,087 (2001). We represented an Alaska North Slope oil pipeline in FERC litigation regarding the initial tariff rate for the company's pipeline connecting a new frontier oil field with a feeder pipeline leading into TAPS. The pipeline's initial tariff filing was challenged by the State of Alaska. Following a lengthy settlement judge procedure, parallel long-term settlements were reached before the FERC and the Regulatory Commission of Alaska. We helped formulate and draft these settlements, and obtain approval from both agencies.

## Offshore Pipelines

- *ExxonMobil Pipeline Co.*, 98 FERC ¶ 61,197 (2002). We represented the owner of the Hoover Offshore Oil Pipeline System (HOOPS), a deepwater oil pipeline extending from the Hoover and Diana fields in the Gulf of Mexico to onshore destinations in Texas, in litigation involving its initial rates. We successfully negotiated and secured FERC approval for an innovative settlement agreement.
- *Amberjack Pipeline Co.*, 97 FERC ¶ 61,381 (2001). We represented an offshore oil pipeline in a dispute involving FERC jurisdiction over offshore lines in the Gulf of Mexico. The pipeline cancelled a tariff governing movements solely on the Outer Continental Shelf. Over the objections of two shippers, FERC upheld the cancellation, effectively accepting its lack of Interstate Commerce Act jurisdiction over the pipeline in question.

## International Experience

- assisting Canadian pipeline companies with US regulation and various cross-border issues;
- representing the Ecuador Ministry of Energy and Mines in structuring and negotiating an oil pipeline agreement with a consortium of North American and European oil companies;
- serving as counsel to the Overseas Private Investment Corporation (OPIC) in connection with its guarantee of financing for expanding an existing oil and gas project in southern Colombia and developing a crude oil-gathering system and outgoing pipeline; and
- assisting the World Bank and the State Department's Agency for International Development with pipeline projects in the Former Soviet Union.

## Pipeline

### Recent Case Highlights

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- *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004). Since 1992, we have represented SFPP, L.P. in FERC proceedings involving various shipper challenges to the pipeline's rates and practices. In *BP West Coast*, we successfully defended against the first-ever challenge to rates that were "grandfathered" as just and reasonable under the Energy Policy Act of 1992. On remand, the FERC also held in favor of SFPP that pipelines structured as master limited partnerships are entitled to a full income tax allowance to the extent their owners are actually or potentially liable for income taxes, reversing an earlier FERC decision limiting the scope of the tax allowance. *SFPP, L.P.*, 111 FERC ¶ 61,334 (2005). In another portion of the case, we recently achieved the first-ever settlement of a rate matter involving SFPP (settlement currently pending before FERC).
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- *Mid-America Pipeline Co.*, 104 FERC ¶ 61,263 (2003): We assisted a Midwestern propane pipeline in developing the means of providing continuous on-demand service, thereby avoiding the severe propane market dislocations that had affected the upper Midwest the previous winter. Despite shipper challenge, we were able to obtain expedited Commission approval, which allowed the pipeline to implement its new program in time for the beginning of the heating season in the Midwest market.
- *ExxonMobil Pipeline Co.*, 98 FERC ¶ 61,197 (2002): We represented a major oil pipeline company in FERC litigation regarding the Hoover Offshore Oil Pipeline System (HOOPS), a deepwater oil pipeline extending from the Hoover and Diana fields in the Gulf of Mexico to onshore destinations in Texas. When the pipeline began to operate, the initial tariff rate for transporting oil to shore was challenged. The case was assigned to a FERC settlement judge under the Commission's ADR rules. During the lengthy and complex negotiations, the Department of Energy's Office of Strategic Petroleum Reserve joined the case. We helped frame and negotiate an innovative settlement agreement, as well as secure FERC approval.
- *Amberjack Pipeline Co.*, 97 FERC ¶ 61,381 (2001): We represented an offshore oil pipeline in a dispute involving FERC jurisdiction over offshore lines in the Gulf of Mexico. The pipeline cancelled a tariff governing movements solely on the Outer Continental Shelf. Over the objections of two shippers, FERC upheld the cancellation, effectively accepting its lack of Interstate Commerce Act jurisdiction over the pipeline in question.

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## Noteworthy

- Ranked, *Chambers Global 2009, 2010, and 2011*; Energy: Oil & Gas (US)
- Received a #1 Ranking in *Chambers USA 2010 & 2011: America's Leading Business Lawyers*; Energy: Oil & Gas (Nationwide)