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Electric Power

Steptoe & Johnson LLP's electric power lawyers represent a number of major electric utility companies in a wide range of subject areas, and also assist the owners and financiers of non-utility generators of electricity. The firm represents its clients in all aspects of practice before the Federal Energy Regulatory Commission (FERC), including transmission, power contract, and rate matters and merger approvals, and is involved in rate and other regulatory matters before state regulatory commissions. Attorneys in the firm's electric power group have served as FERC and antitrust counsel to the applicant (i.e., acquiring) utilities in several contested merger hearings before the FERC. The firm's electric power lawyers assist clients in the negotiation and approval of contracts for large wholesale power and transmission service sales and in the preparation of the contractual documents that serve as the basis for development and financing of joint generation and transmission ventures.

The firm provides antitrust advice and representation to firms in the electric power, natural gas, and nuclear energy industries, including participation in antitrust litigation in the federal courts and in matters, including merger clearances under the Hart-Scott-Rodino Act, before the Federal Trade Commission and the Antitrust Division of the US Department of Justice. This includes assistance with merger and acquisition and diversification issues, as well as transmission and wholesale power issues. Senior lawyers in the group also have assisted clients in commercial negotiations and disputes, and assumed the lead role in complex commercial litigation.

Steptoe assists utilities, non-utility generators, and financiers of electric power projects in regulatory and contract matters arising out of non-utility generation projects. These include regulatory matters under the Public Utilities Regulatory Policies Act and the National Energy Policy Act.

- Electric Power Transactions
- Electric Rates
- Hydroelectric
- Municipalizations
- Nuclear Litigation
- Power Pools and Projects
- PURPA
- Transmission Access and Pricing

Electric Power

Electric Power Transactions

Step toe & Johnson LLP has assisted clients in the formation and negotiation of virtually every kind of wholesale power and energy transaction, representing buyers, sellers and marketers. We have drafted tariffs, standard form contracts, and transaction-specific agreements of all levels of complexity for these various transactions. In addition, we have experience in the electric markets in different areas of the country, and are therefore familiar with contracting practices that may be unique to these regions.

Electric Rates

Step toe & Johnson LLP has represented electric utilities in virtually every aspect of rate litigation before the FERC. We have extensive experience in traditional embedded cost of service ratemaking and related accounting issues. In addition, we have represented utilities in numerous non-traditional ratemaking cases, such as cases involving incremental cost rates and market-based rates. Our familiarity with FERC policies and ratemaking principles enables us to work closely with our clients' management and rate experts in developing a rate case strategy and in putting together the company's presentation for the case. We also advise our clients on the cost recovery implications of proposed resolutions for other issues. Every attorney in the electric practice group has experience in electric rate issues, and several have experience in gas and oil rates.

We have participated in state regulatory proceedings involving qualifying facility charges, incentive rates, and retail transmission rates. We have also advised our clients on a broad range of other retail rate issues, including retail sale embedded cost of service issues.

Hydroelectric

Step toe & Johnson LLP represents clients before the FERC and the courts in connection with the licensing and regulation of hydroelectric projects.

Our representations include:

- Assisting clients in preparing applications for licenses and other approvals required for project development and operation under the Federal Power Act
- Evaluating legal and policy issues which arise in contested proceedings, such as compliance with the National Environmental Policy Act and the Endangered Species Act, and assisting clients in developing appropriate strategies for the successful resolution of the case

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- Negotiating settlement agreements with Federal and State agencies and Indian Tribes concerning measures to protect, mitigate and enhance natural resources, such as anadromous fish and wildlife, which have been affected by the construction or operation of hydro projects
- Representing licensees in proceedings before the court of appeals to review licensing orders issued by the FERC
- Advising clients in connection with litigation and claims for damages to property rights affected by project development or operations
- Assisting licensees with the development of plans and measures, which are often required under the license articles to address the protection, mitigation and enhancement of fish, wildlife, recreation and cultural resources affected by the project
- Representing licensees in proceedings to enforce compliance with the license and to determine civil penalties for any violations which may be established

Municipalizations

Lawyers in Steptoe's electric practice are on the cutting edge in dealing with emerging issues regarding municipalizations and so-called "sham" transactions. Traditionally, cities that municipalized provided electric service to all of their residents over retail distribution systems that they acquired or built. Recently, several cities have attempted or contemplated numerous new forms of municipalization (e.g., "muni-lite", "muni-smart", spot, and phased-in municipalization). These are efforts to become wholesale power purchasers and retail power distributors for all or a select group of their constituents, while avoiding the costs of acquiring a distribution system. The firm counsels utilities on these issues, and is currently representing utilities in virtually every pending FERC proceeding in which the Commission is considering whether these various new forms of municipalization constitute "sham" transactions under the Federal Power Act (*i.e.*, transactions that are not eligible for wholesale transmission service).

Nuclear Litigation

Steptoe & Johnson LLP represents electric utility companies across the nation in major, complex commercial litigations involving nuclear power plants. This litigation often includes highly technical issues. Our experience is varied and deep.

Power Pools & Projects

Steptoe & Johnson LLP represents clients that are members of most of the large

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power pools in the United States. We have represented the largest member of NEPOOL on pool-related matters at the FERC for a number of years. In this capacity, we were involved in the attempts to negotiate a regional transmission agreement as part of the resolution of competition issues in a major utility merger proceeding. More recently, we have been representing the utility in connection with NEPOOL restructuring issues, including the development of NEPOOL-wide transmission arrangements to satisfy FERC Order No. 888.

The firm also represents several utility members of the PJM Power Pool. We have represented clients in connection with the negotiation of revisions to the PJM Agreement and in disputes among the members of the Pool arising under that Agreement. Recently, the firm was retained to represent the Pool's members in a dispute with the Duquesne Light Company over transmission access and pricing issues. We have also been involved in the negotiation and drafting of contracts to restructure the PJM Pool and are advising two Pool members on restructuring issues.

Power Projects

Successful development of electric power plant projects requires both a full understanding of applicable statutory and regulatory requirements, and a practical knowledge of the electric power market and the requirements of the principal parties involved in any project—the project developer, the purchasing electric utility and the lenders providing the necessary financing. Our attorneys have the requisite legal and practical experience to handle all aspects of developing and implementing an electric power project. Our experience, which includes representing both project developers and purchasing electric utilities, enables us to quickly fashion effective and innovative solutions to the issues that inevitably arise in putting a project together.

We draft and negotiate power purchase agreements, financing agreements, and the other contractual arrangements necessary to implement projects. We provide advice concerning implementation of executed power purchase agreements and, where appropriate, termination of such agreements. We counsel clients with respect to applicable state and federal statutory and regulatory requirements. We represent clients in applying for necessary regulatory authorizations and defend clients from challenges to their activities in regulatory proceedings. We draft and negotiate agreements to organize partnerships or other ownership structures entered into by multiple parties to jointly develop a project. We also provide advice to electric utilities on the selection from competing proposals of projects with which to enter into negotiations.

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The firm has advised members of the Western Systems Power Pool on issues related to bulk power transactions and transmission services. We also represent one of New York's major utilities in connection with New York Power Pool issues and the restructuring of the electric power industry in that state.

Qualifying Facilities, PURPA

The firm represents clients in connection with the development and operation of qualifying cogeneration and small power production facilities (QFs) pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). Our attorneys have participated in many proceedings to implement PURPA before the FERC, various State Public Utility Commissions (State PUCs) and the courts.

Transmission Access & Pricing

Lawyers in Steptoe & Johnson LLP's electric practice represent clients in a wide variety of issues involving the rates and terms under which transmission-owning utilities must offer service. We have participated actively in numerous proceedings before the FERC in which the FERC has devised pricing policies and access rules as part of its implementation of the Energy Policy Act.

The firm is nationally recognized as being on the cutting edge of numerous transmission pricing and access issues. For example, we have represented clients in the very proceedings in which the FERC has adopted its policies on such matters as opportunity cost pricing, generic point-to-point and network service tariffs, and ancillary services. We are currently participating in proceedings in which the FERC will develop its policies on such issues as the standards for restructured power pools, independent system operators, and retail wheeling. With the issuance of Order No. 890, lawyers in our electric practice will continue to advise various participants in the industry on issues relating to how the FERC's transmission pricing policies fit into its overall industry restructuring efforts.

Representative Matters

Electric Power Transactions

- A leading West Coast utility in connection with wholesale contracting issues for several years. We are very familiar with the operation of the wholesale market in the western US, including the Western Systems Power Pool.

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- A major Southeastern utility in connection with its wholesale electric market activities for many years. In connection with this work, we have participated in the creation and development of the spot energy market in Florida and the Southeast and have helped the utility draft and negotiate both standard and transaction-specific contracts for purchases and sales of capacity and energy.
- A major electric utility in New England in connection with its wholesale electric marketing activities. The utility has an aggressive marketing division, which markets large amounts of power throughout the Northeast. We have assisted the company in developing and obtaining approval of tariffs and contracts that facilitate its participation in these markets.
- Two of the utilities in the PJM Power Pool that are active participants in the energy markets in the Mid-Atlantic region. We have assisted these companies in developing tariffs and standard contracts for the purchase and sale of power, and have provided business advice in connection with their efforts to expand their wholesale marketing activities as buyers and/or sellers.
- Several clients regarding the regulatory requirements associated with obtaining FERC authority to act as a wholesale broker and marketer and have prepared applications for this status.
- Several utilities in transforming traditional requirements-type relationships into customer-specific contractual arrangements for the supply of power. We are familiar with the issues that may arise when an electric customer seeks to purchase power and related services in the market for the first time.

Electric Rates

- Filings implementing the California Public Utilities Commission restructuring requirements for a major West Coast utility
- Unbundled retail transmission rates for a New England utility
- Revisions to the interchange, transmission, and wholesale requirements rates for a major Southeastern utility
- Several utilities' open access transmission tariff rates
- Many other rate matters for these and other utilities

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Hydroelectric

- Representing the applicant in FERC and court proceedings involving the issuance of a new 40-year license for the 622 Megawatt Rock Island Project on the Columbia River
- Representing the applicant in evidentiary hearings on an application for a license to construct a 144 Megawatt project on the Kootenai River in Montana
- Negotiating settlement agreements with resource agencies and Indian Tribes to resolve various anadromous fish protection issues
- Representing the licensee in obtaining FERC approval of development of extensive recreational facilities along the Columbia River
- Representing the licensees in FERC proceedings for the protection of fish resources affected by a large pumped storage project on Lake Michigan
- Advising project operators in litigation with Indian Tribes seeking money damages for injury to Treaty fishing rights
- Assisting the licensee for the Walters Project in obtaining FERC approval of plans and facilities required under the new license
- Representing licensees in the court of appeals to review licensing and exemption orders issued by the FERC
- Representing the licensee of the 1236 Megawatt Rocky Reach Project in the FERC proceeding to determine additional measures for the protection of anadromous fish resources
- Representing the licensee in proceedings for an amendment to authorize an increase in the reservoir elevation of the Rocky Reach Project
- Representing the licensee in FERC and district court proceedings to resolve compensation and trespass issues related to the flooding of Indian lands
- Representing an applicant for an initial license for an existing project on the Nisqually River

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- Advising the licensee in judicial proceedings to review the Secretary of Agriculture's authority to impose conditions under the Federal Power Act, in connection with the issuance of a new license for the Bishop Creek Project

Nuclear Litigation

- A utility in litigation with Brown & Root, Inc. and the Halliburton Company over the design and construction of the South Texas Nuclear Project
- Major California utilities against Westinghouse Electric Corporation in litigation arising out of intergranular corrosion of nuclear steam generators
- A major utility in its breach of contract and tort suit over the shutdown of the Peach Bottom nuclear power plant. The case was settled in 1992, after an alternative dispute resolution mini-trial
- A major Mid-Atlantic utility in defending a breach of contract and tort suit by the co-owners of the Salem nuclear power station. The firm is also advising a major utility with respect to the outage at the Millstone nuclear power station

Step toe also advises and assists clients with internal investigations of alleged employee and corporate misconduct under the federal and state regulatory laws affecting nuclear power plants:

- Steptoe lawyers have represented a Western utility in more than a dozen matters relating to claims by employees that they were discriminated against because of having raised safety concerns. We have also advised the utility in investigations conducted by the NRC Office of Inspector General and the Department of Labor.
- Steptoe's experience includes investigations alleging intentional misconduct involving communications by corporate utilities to the NRC and state regulators.
- The firm has assisted a leading electric utility in evaluating the adequacy of its compliance with NRC reporting requirements.

Power Pools and Projects

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- Drafting and negotiating power purchase agreements between a utility and two (50- and 230-megawatt) PURPA qualifying facilities and a 315-megawatt independent power project
- Negotiating financing agreements for private power projects
- Negotiating consents between lenders providing financing for a project and the utility purchasing power from the project
- Providing advice on the buyout of an uneconomic power purchase agreement by a utility
- Negotiating settlements of claims arising from termination of power purchase agreements

PURPA Representations

- Advising electric utility affiliates on how to structure their investments in QFs to comply with the utility ownership criteria
- Representing applicants in FERC proceedings to certify cogeneration and small power production facilities as QFs under PURPA
- Advising clients on how to comply with the QF operating and efficiency standards and assisting operators in obtaining temporary waivers of such FERC requirements
- Advising developers on how to structure the ownership and operation of transmission facilities by QFs to satisfy FERC regulations
- Negotiating contracts for the purchase of QF power by electric utilities and representing clients in State PUC proceedings to review such contracts
- Representing electric utilities in State PUC proceedings to investigate transactions with affiliated QFs
- Drafting transactional documents and assisting investors with due diligence matters, including the adequacy of contractual arrangements, and preparing opinions to support project financing of QFs
- Participating in State PUC proceedings to determine the avoided cost of electric utilities for purposes of purchasing QF power

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- Participating in State PUC proceedings to establish competitive bidding procedures for the purchase of QF and alternate sources of power
- Advising utilities in connection with their obligations to interconnect with and provide transmission service to QFs

Specific representations include:

- Representing the owner participants in the lease financing of the 1370 Megawatt Midland Cogeneration Project
- Representing an electric utility affiliate in structuring its investments in over 20 QFs in compliance with the utility ownership criteria
- Advising an electric utility in California PUC proceedings to review the prudence of power purchase contracts with affiliated QFs
- Representing an electric utility in New Jersey PUC proceedings to investigate contracts with affiliated QFs
- Negotiating several power purchase contracts with cogenerators and small power producers on behalf of electric utilities
- Representing an electric utility in litigation before the FERC and the court of appeals to delineate its PURPA obligations
- Obtaining temporary waivers of the operating and efficiency standard for cogeneration facilities
- Representing an electric utility in proceedings before the FERC to revoke the QF status of a cogeneration facility
- Representing QFs which are subject to the Federal Power Act in proceedings before the FERC involving rates and other regulatory approvals

Noteworthy

- Ranked, *Chambers Global 2009, 2010, and 2011: America's Leading Lawyers; Energy: Electricity (US)*
- Ranked, *Chambers USA 2008-2011: America's Leading Lawyers; Energy: Electricity - Regulatory & Litigation (Nationwide)*