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Energy Transactions

Steptoe & Johnson LLP has assisted energy clients in the formation and negotiation of virtually every kind of wholesale power and energy transaction. We draft tariffs, standard form contracts, and transaction-specific agreements of all levels of complexity for these various transactions. We also assist clients with pipeline financing, asset sales and purchases, joint ventures, leases, and other forms of agreement. We have extensive experience in energy markets in different areas of the country and are familiar with contracting practices that may be unique to these regions. Our transactional energy clients include major energy producers, suppliers, foreign governments, domestic and international pipelines, holding companies, and Overseas Private Investment Corporation.

Electric Power Transactions

Transmission and Power Contracts

A significant portion of our electric utility practice focuses on transactions involving power sales, joint ownership or use of facilities, transmission, power coordination agreements, asset restructuring, and mergers. We represent buyers, sellers, and marketers in wholesale power and energy transactions involving financing, sales and purchases, marketing of power and facilities, generation and transmission projects, and regulatory and antitrust matters. Steptoe attorneys counsel clients on how to negotiate and structure complex bulk power and transmission service transactions and joint projects to construct transmission lines and generating facilities. We draft contracts, negotiate various settlements, and help clients terminate project agreements. We have particular depth of experience with contract practices in California, Texas, New York, Massachusetts, New Jersey, and Tennessee.

We also represent major business lenders, equity investors and other participants in corporate electric power finance transactions, such as spinning off, selling and purchasing transmission assets. We routinely advise clients on regulatory and commercial aspects of transactions involving sale and delivery of electric power. This includes arranging joint ventures, and drafting and negotiating agreements related to transfer cost recovery plans, control of transmission facilities, and the long-term purchase of power. We facilitate the purchase and sale of capacity and energy, and work on the entire process for doing business in restructured markets, including designing initial markets, negotiating commercial contracts and representing clients in regulatory competition matters. Our electric utility lawyers provide advice on efforts to expand wholesaling marketing activities as buyers and/or sellers and prepare applications once utilities have obtained FERC authority to act as wholesale brokers/marketers.

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Electric Power Plant Development

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. We have approached these transactions from all different perspectives: counsel to project developers, to purchasing electric utilities, to key suppliers, to lenders, and to equity participants. This broad experience enables us quickly to fashion effective and innovative solutions to the issues that inevitably arise in putting a project together.

We draft and negotiate power purchase agreements, operation and maintenance agreements, EPC agreements, financing agreements, and the other contractual arrangements necessary to implement projects, including projects in emerging economies. We provide advice concerning implementation of executed power purchase agreements and, where appropriate, termination of such agreements. We represent clients in applying for necessary regulatory authorizations and defend clients from challenges to their activities in regulatory proceedings. Our lawyers draft and negotiate agreements to organize partnerships, limited liability companies, and other ownership structures entered into by multiple parties to develop a project jointly. We also provide advice to electric utilities on the selection from competing proposals of projects with which to enter into negotiations.

Mergers & Acquisitions

Step toe has represented a number of major electric utilities in connection with regulatory approvals and antitrust aspects of mergers and acquisitions. The firm has a strong record of success in handling contested mergers and acquisitions before federal regulators and in expediting the regulatory approval process. Clients include both domestic and non-US firms.

Step toe's practice in the mergers and acquisitions area also involves obtaining antitrust clearance under the Hart-Scott-Rodino pre-merger review procedures, obtaining approvals and exemptions under Public Utilities Holding Company Act, particularly where competitive issues are raised, and advising utility clients with respect to the full range of federal and state regulatory and antitrust considerations that affect the analysis of a contemplated merger.

Step toe also assists electric power clients in the transactional aspects of asset transactions, as well as in analyzing the regulatory and antitrust considerations that affect decisions to divest or acquire generation assets; in developing the

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structural and contractual arrangements that are associated with asset restructuring, including arrangements to address "must-run" generation issues, transmission arrangements, and separation of facilities. In this area, we have helped clients in creating new structures for wholesale and retail electricity markets, and in obtaining the necessary regulatory approvals for all aspects of these transactions. Steptoe has also provided both transactional representation and regulatory advice to bidders for generation being divested by various utilities.

Pipeline Transactions

Our extensive experience with a variety of kinds of pipeline transactions and our ability to field a multi-disciplinary team to cover the full gamut of commercial and regulatory issues that arise in such transactions set us apart.

Pipeline transactions face unique and complex challenges that bring to bear an unusually broad array of legal specialties. In addition to the usual commercial and contractual issues that arise in virtually any transaction, pipeline deals in the United States often involve such distinct practice areas as the following:

- Common carrier regulation by the US Federal Energy Regulatory Commission (FERC)
- Economic regulation by state agencies in multiple states
- Antitrust review by the US Federal Trade Commission (FTC)
- Pipeline safety regulation administered by the US Department of Transportation (DOT)
- Right-of-way issues governed by state and federal laws, including those administered by the US Department of the Interior (DOI)
- Tax issues specifically applicable to the various kinds of pipeline entities

International pipeline transactions raise a host of additional issues, and place an even greater premium on experience and in-depth knowledge.

Our integrated teams work together to assure that your transaction is handled efficiently and thoroughly. This comprehensive and highly responsive approach allows your company to spend less time managing a number of outside law firms and more time on the business issues that drive the planned transaction. Our experience also enables us to find creative solutions to complex commercial problems, including developing innovative rate and tariff structures and securing regulatory approval for novel approaches to industry challenges.

Energy Transactions

Representative Matters

Transmission & Power Transactional Representations

- 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.
- A major Southeast 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 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 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 utilities in transforming traditional requirements-type relationships into customer-specific contractual arrangements for the supply of power. We are therefore 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 Power Plant Development Transactions

- Counsel to the government and the utility in connection with the joint financing of two hydroelectric generating plants in South America. The existing 1,075 MW plant will be transferred to a joint venture that will construct a second 186 MW plant and operate both in an integrated fashion.

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- Counsel to the lenders' syndicate in the \$900 million defeased leveraged sale-leaseback of two generating facilities of an electric company in Western Kentucky. The defeased leveraged lease financing technique permits a transfer of the tax benefits of ownership, without a transfer of title to the property, reducing financing costs.
- Counsel to a multilateral lender in its \$100 million guaranteed-loan facility, provided as a participant in a multi-lender syndicate (including US Ex-Im Bank and several Indian commercial banks). The syndicate loaned about \$1 billion for the construction of Phase I of the Dabhol plant near Bombay, India. The Dabhol project had three co-sponsors: Enron, GE Capital, and Bechtel.
- Counsel to a partner in a joint venture with a South American utility to develop a gas turbine diesel generating facility in Guyaquil, Ecuador.
- Counsel to a power plant turbine manufacturer in connection with its multi-billion dollar contracts with National Energy Group Inc. the unregulated subsidiary of PGE Corporation, to supply turbines to a series of electric generation projects throughout California.
- Counsel to two private equity investment funds in connection with their combined \$200 million equity investments in Sithe Asia. Sithe Asia, a subsidiary of Sithe Energies, is an independent power developer active in about 15 Asian countries.

Mergers & Acquisitions Transactions

- Served as US regulatory counsel for a major European utility in connection with its acquisition of another utility, which has included the acquisition of that company's US utility subsidiary, LGE Energy. This work included assistance in obtaining regulatory authorizations under the Federal Power Act and Public Utility Holding Company Act (2000-2001).
- In connection with the proposed merger of two major utilities in the Northeast, served as counsel before the FERC, in State regulatory proceedings, before the SEC on PUHCA issues, and in connection with the Justice Department's HSR review of the proposed merger transaction between these Companies (1999-2000).
- Principal FERC counsel on behalf of a major Midwestern utility in the FERC proceeding to obtain approval of the acquisition of Central and Southwest Corporation (1999-2000).

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- Served as regulatory counsel to a utility in connection with FERC and SEC (PUHCA) review and approval of AES Corp's acquisition of the utility (1999).
- Served as federal regulatory and antitrust counsel to a midwest utility in connection with its merger with CalEnergy (1998).
- Represented two Mid-Atlantic utilities in connection with federal regulatory and antitrust approvals for their proposed merger (1997).

Representative Oil Pipeline Transactions

- Served as counsel to a South American government in the \$1.2 billion project financing of a proposed 450,000 barrel per day crude oil pipeline running across the Andes to a port on the Pacific Coast.
- Represented a US pipeline company in structuring the open season for service on a new Midwest oil pipeline, including preparing transportation service agreements and securing FERC regulatory approval for the proposed tariff structure.
- Represented a US joint venture pipeline in its acquisition from a US oil company of more than 400 miles of pipelines and related assets used in the transportation of crude oil, refined products, and natural gas liquids in Michigan. Our role in this transaction, which involved multiple parties and a series of complex, interlocking agreements, included advising the client on applicable FERC and right-of-way issues and managing the response to the FTC's Hart-Scott-Rodino Act review of the transaction.
- Advised a US pipeline company on development of a new cross-border pipeline to transport a specialized commodity, including drafting open season documents, transportation service agreements, guaranties, and other related agreements.
- Acted as corporate counsel for a Canadian holding company in its purchase of a minority interest in the stock of a US pipeline company, including managing the Hart-Scott-Rodino clearance process.
- Represented a US pipeline company in connection with its lease from another company of space in an existing pipeline for use in a project to bring crude oil to a new Midwest market.

Energy Transactions

- Served as counsel to a multilateral lender in connection with its guarantee of financing for the expansion of an existing oil and gas project in Southern Colombia, including development of a crude oil gathering system and an outgoing pipeline.