

Our Energy Regulatory Group is consistently ranked among the leading practices by *Chambers USA* and *Legal 500*. The group has been described in *Chambers USA* as a “top-notch firm with an extremely deep bench” that “excel[s] at integrating the knowledge of their various experts into clear and practical advice.” Additionally, Skadden has repeatedly been named among *Law360*’s Energy Groups of the Year (including in 2021), as well as recognized as *The American Lawyer*’s 2018 White Collar/Regulatory Litigation Department of the Year and a finalist in the general litigation category of the *New York Law Journal*’s 2019 and 2020 Litigation Department of the Year competitions. Our leading role is due to the depth and breadth of our group’s experience in this area and the prominence of its practitioners, including former high-ranking government officials.

The group offers clients creative and effective solutions to complex legal problems in the following areas, among others:

## **Mergers and Acquisitions**

Skadden is a recognized leader in handling regulatory approvals for complex M&A transactions, including, most recently, Federal Energy Regulatory Commission (FERC) and federal antitrust approval process for numerous transactions, including Exelon Corporation/Pepco Holdings, Inc.; Wisconsin Energy Corp./Integrus Energy Group, Inc.; Hawaiian Electric Industries, Inc./NextEra Energy, Inc.; SunEdison, Inc. and TerraForm Power, Inc./First Wind Holdings, Inc.; Dynegy Inc./Vistra Energy Corp.; Dynegy Inc./Energy Capital Partners; and Enel Green Power S.p.A./GE Energy Financial Services. The volume of deals we handle gives us keen insights on how to manage the interaction of the multiple agency approvals needed for many utility M&A transactions, including FERC, DOJ/FTC and state approvals. This extensive experience also gives our attorneys familiarity with the business realities driving potential transactions, and we regularly advise the boards and senior management of our clients throughout the M&A process.

## **Complex Litigation**

Skadden’s Energy Regulatory Group, in conjunction with the firm’s litigation practice, has the breadth and depth to handle virtually all

forms of complex energy litigation. We have represented companies in high-profile enforcement cases in federal district court and before FERC and the CFTC. We have advised clients in federal preemption disputes in federal district court and the federal courts of appeals. Our attorneys have handled complex administrative trials before FERC on a range of issues, including breach of contract cases, rate cases, manipulation cases and the California refund litigation. We also have one of the leading energy appellate practices, representing companies seeking to overturn or defend FERC orders in the federal courts of appeals. Our group also has handled complex energy litigation, including merger approvals and stranded cost claims, before state regulatory bodies.

## **Enforcement**

We combine our litigation skill and depth, our broad knowledge of the relevant legal standards, and our intimate understanding of agency priorities to help public utilities, traders and others navigate some of their most difficult enforcement cases investigated and prosecuted by the enforcement staff of FERC. Given the increasingly common multi-agency and potential judicial nature of such cases, our team comprises members of our white collar defense and investigations practice who also routinely handle enforcement actions brought by other agencies as well as the Department of Justice; we work closely with our civil litigation attorneys. Recently, for example, we have represented a large public utility in parallel inquiries by the CFTC,

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FERC and the SEC that also involved both securities class action and derivative suits.

Our attorneys have defended a large number of FERC enforcement cases involving market manipulation allegations that have become public, including for Barclays Bank PLC (the first such case to go to federal district court); JP Morgan Ventures Energy Corp.; DB Energy Trading, LLC; Rumford Paper Company; Dr. Alan Chen; and Energy Transfer Partners. We also defended H.Q. (United States) in the first complaint case claiming market manipulation. Additionally, we defended Footprint Power LLC in the first and only enforcement matter that FERC has terminated without penalties after reaching the show cause order stage.

We also have represented companies in some of the most significant reliability enforcement matters to date, including investigations into significant outages and major electrical disturbances. We counseled companies involved in the southwestern and San Diego outages in 2011, and we advised the Edison Electric Institute in its successful bid to reform FERC's Penalty Guidelines with respect to reliability enforcement.

We have further represented companies in a wide array of other enforcement matters involving financial transmission rights, virtual trading, capacity markets, power and natural gas markets, natural gas project certificates, power plant development and operations, accounting issues, and alleged violations of tariffs and FERC's duty of candor, among other areas.

Our representations in this field give us deep knowledge into effective strategies for dealing with regulatory agencies in this area that has enabled us to achieve creative and favorable results for our clients. We also employ state-of-the-art data retrieval and web-based litigation support systems to accommodate the needs of specific clients and matters. This sort of "knowledge bank," the product of extensive and practical experience in a complex area, is a significant source of value for our clients.

## Market Design

We have played a leading role in FERC and appellate proceedings regarding the design of organized power markets throughout the nation, including ISO New England, PJM, California ISO, Midwest ISO, New York ISO and other markets. Our attorneys have helped develop some of these market rules and have defended them against challenges in a variety of contexts. We also have challenged market rules in a variety of contexts, particularly regarding capacity markets, where our clients disagree with ISO and FERC outcomes. We continue to have a leading role litigating such issues in the federal courts of appeals. This area

of regulation is becoming increasingly important given the significant challenges confronting organized electric markets, including changes in generation resource mix, the integration of large amounts of variable resources, and recurring interventions and subsidies by state and local entities. In representing companies in this area, we also utilize our longstanding relationships with the leading electricity market economists.

## FERC Compliance

We have extensive experience in developing compliance programs for energy companies subject to FERC regulation. We authored the *2005 Compliance Handbook* (first edition), which became a leading public reference work on FERC compliance, and released the second edition in late 2014. From 2008-09 we represented 27 companies from across the energy industry in creating a model FERC compliance program guide, which includes a comprehensive identification of FERC requirements; an assessment of actions that can trigger those requirements; and guidance on controls, training and documentation, as well as compliance policies and "culture of compliance" issues. We provide similar services to individual companies, assisting them in evaluating and, as appropriate, updating their compliance programs.

## Electric Reliability

Skadden has been at the forefront in advising on FERC's regulation of electric reliability matters. We have represented companies in virtually every region of the U.S. on reliability enforcement matters, including in major FERC investigations involving outages and electrical disturbances. We also have assisted companies in developing compliance programs that address reliability requirements and processes. Our attorneys have written extensively on FERC's regulation of the standards development process and have counseled companies and industry groups on the participation in that process.

## Electric Transmission

We have represented electric companies over the last two decades in a broad range of proceedings affecting their transmission businesses. Our attorneys played a leadership role in developing the first open access transmission tariffs and in the creation of regional transmission organizations to operate and plan the transmission grid. More recently, we have represented a range of transmission companies in responding to the changing nature of the industry, including integrating renewable resources, addressing the elimination of federal rights of first refusal, obtaining transmission incentives, preparing and prosecuting transmission rate cases, handling disputes over transmission cost allocation, representing merchant transmission developers and participating in regional transmission planning.

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## Affiliate Regulation

Our lawyers have been heavily involved in affiliate regulation issues on both a policy and practical level, from the inception of the first affiliate regulations imposed on energy companies through each step of their evolution. Because we advise numerous electric and gas companies in this area, there are few fact patterns we have not seen. We know how to anticipate problems, resolve issues and distinguish real problems from manufactured ones. Clients turn to us for creative solutions that achieve compliance with minimal regulatory impingement on business objectives (including, for example, obtaining Affiliate Restrictions and Standards of Conduct waivers and no-action letters, as well as sorting through difficult issues regarding permissible activities of employees and officers and permissible compensation for services that affiliated energy companies provide each other).

## Nuclear Power

Skadden has long represented a variety of clients in the energy industry that own, operate and/or design nuclear generating facilities, and we have worked on many transactions that have involved nuclear issues. These transactions have included sales of individual nuclear plants, mergers of utilities that own nuclear plants, mergers of nuclear suppliers including reactor and fuel supply vendors, joint-ownership arrangements for new plants and the spin-off of a utility's nuclear power business. We advise clients regarding the regulatory implications of their transactions, including assisting in obtaining the necessary regulatory approvals when required. Skadden also has counseled clients on potential new construction, government financial incentives, and loan guarantees and joint-ownership arrangements. We advise with respect to tenant-in-common arrangements historically used by traditional utilities as well as the creation of new joint ventures formed to pursue new merchant nuclear plant construction. This has included advising international companies regarding Atomic Energy Act restrictions on foreign ownership of nuclear reactors in the United States and the creation of ownership structures designed to comply with those restrictions.

## Natural Gas

Skadden has been involved with natural gas pipeline and related issues for more than 35 years. In recent years, our natural gas practice has focused on:

- issues arising in connection with complex transactions, including acquisition or divestiture of natural gas supply or pipeline capacity related to the acquisition or sale of gas-fired generation facilities;

- regulatory issues arising from the construction and operation of LNG terminals, liquefaction facilities and cross-border natural gas facilities;
- purchase or sale of natural gas pipeline facilities;
- representing clients in FERC proceedings and investigations under the Natural Gas Act and Natural Gas Policy Act (including cases involving claims of market manipulation);
- assisting companies with FERC compliance issues; and
- pipeline rate cases at the FERC.

## Yieldcos

Skadden has significant experience representing project sponsors in creating yieldco vehicles, including major solar and wind power companies. Yieldcos, with their low cost of capital and need for continued growth, will continue for some time to have a major impact on the renewable energy market, including the M&A market and as an "exit strategy" for developers. Whether or not a company's transactions involve yieldcos, the firm's experience representing developers in forming yieldcos, and our experience with yieldcos in the M&A market, will assist when formulating and implementing an acquisition strategy in today's market.

## Energy Tax

Members of Skadden's Tax Group have significant experience planning and structuring transactions in the energy sector. Our tax-related energy experience also involves assisting energy-focused clients with industry-specific issues, both in the transactional and planning context, and in controversies and litigation, including matters before the IRS.

Many of our attorneys have extensive tax-related administrative and policy experience and formerly have held senior positions at the Treasury Department and IRS, and in key congressional tax writing committees. That experience, coupled with our unparalleled tax controversy capabilities, enables our Tax Group to react quickly in analyzing novel transaction structures and, where necessary, seek rulings or other government guidance to facilitate their prompt implementation.