

Services & Industries

Energy Regulation and Compliance

OVERVIEW

Our Energy Regulation and Compliance practice group has been at the forefront of regulatory development in the energy industry. We are involved in nearly every wholesale market issue and the related financial credit issues arising in that market and assist clients across the country in meeting their obligations to comply with the evolving regulatory requirements. We work closely with state and federal regulators on a routine basis. We help our clients throughout North America navigate critical issues that define their evolution and identity in the changing world of the energy industry.

We represent large energy companies in virtually all aspects of their businesses, helping our clients chart a path through restructuring and deregulation of the evolving electric industry, as well as in the regulatory issues related to energy project development in the West, Southwest, Southeast, Midwest and Northeast regions of the United States. We represent the interests of energy clients before FERC, the DOE and other federal regulatory bodies in Washington, D.C., and confer with federal and state legislators, policymakers, and lobbyists on behalf of those clients.

Regulation in Competitive Energy Markets

Our intimate involvement in the energy markets in New England, in particular, including our central role in wholesale and retail restructuring, provides us with a depth and breadth of industry understanding that we can use to benefit our clients. We have been involved in the competitive wholesale energy market since its inception and thus can effectively assist our clients in anticipating the impacts of market changes or regulations on their energy businesses. We understand the inner workings of the relevant state public utility commissions because we have been involved for decades in helping them shape regulations and enabling legislation. In addition to our work in New England, we also have represented clients in proceedings before federal regulators and state public utility commissions throughout the country.

In the area of wholesale market design, operation and participation, we have served as general counsel to NEPOOL – which includes most of the participants in that region's bulk power industry – since its formation in the early 1970s. We have assisted NEPOOL in all aspects of its operations and played a central role in its restructuring, working closely with market participants to accomplish tasks such as the negotiation and documentation of a region-wide, open-access transmission tariff and the establishment of restructured wholesale power markets with market-based pricing. We advise NEPOOL on modifications to the applicable transmission and market tariff provisions and on the ongoing operation of the power markets in New England.

We have advised clients on the implementation of a congestion management system, with the goal of optimizing the limited capacity of the regional transmission system and the two-part market settlement system, and also advised on the identification of acceptable market arrangements for resource adequacy. Additionally, we have significant experience negotiating and documenting large power supply arrangements involving system power sales, such as the seven-terawatt-hours-per-year international purchase agreement between US and Canada, as well as bilateral power contracts involving nuclear, fossil and renewable facilities. We also were key participants in the development of Regional Transmission Organizations (RTOs) pursuant to FERC Order No. 2000 and in the proceedings that led to FERC's open access, standards of conduct, generator interconnection, transmission planning and cost allocation rules, reflected in Order Nos. 888, 889, 2003, 2004 and, most recently, Order No. 1000. We have been involved actively in efforts to address the ever-increasing dependence of the electric industry on natural gas as a generation fuel, to improve the coordination of the electric and natural gas markets, and to establish and refine market incentives for resource performance. We participated in DOE's efforts to conduct scenario planning for the bulk power system on an Eastern Interconnection-wide basis and the FERC's efforts to improve the competition in, responsiveness of, and management of risk and credit policies in organized wholesale power markets. We also represented NERC in filings before the FERC, and have assisted clients in ensuring their compliance with NERC requirements.

At the state regulatory level, we have helped define restructured retail markets, drafted restructuring legislation and participated in hearings to quantify stranded costs, assisted in divestiture of nuclear assets and competitive businesses (including competitive generating assets and wholesale and retail marketing and energy services businesses), and supported the establishment of standard offer/default service and unbundled rates.

Compliance and Enforcement

Our regulatory strength also extends to the important area of compliance. Our attorneys have worked with numerous energy industry clients in designing, implementing and assessing compliance programs. We have considerable experience identifying, evaluating and proposing solutions to ameliorate legal and regulatory compliance risks faced by energy companies at the federal and state levels. Our thorough understanding of all segments of the energy industry comes from multiple client representations and expansive dealings with stakeholder processes, and this positions us to evaluate energy clients compliance programs against energy industry best practices.

We have substantial experience across the energy sector in both conducting and resolving independent investigations of regulatory compliance. This experience informs our clients strategic and tactical thinking when addressing the potential far-reaching implications and substantial financial ramifications raised by special investigations, whether instituted externally, at the request of a regulator, or internally, as a proactive measure.

In response to utility regulators' active enforcement efforts in the electric industry, we have assisted energy companies in achieving full compliance with FERC, NERC and state requirements by assisting clients in identifying applicable requirements and testing for and recommending enhancements to advance the systematic implementation and integration of rigorous compliance controls. Our compliance services have included representing clients before FERC enforcement staff

in formal and informal investigations and counseling clients on potential self-reports to both NERC and FERC. We also have defended clients before FERC and various state regulators in formal proceedings as well as comprehensive legal and regulatory compliance risk assessments involving critical fact analysis against regulatory standards, risk prioritization and improvement of compliance control (e.g., policies, procedures, standards, processes, audits and training) to better understand and manage compliance risks.

For our natural gas clients, we have represented all segments of the industry in specific compliance and enforcement matters, including FERC-regulated pipeline and storage companies, LNG developers, local distribution companies, and marketers. Our attorneys advise on matters under a variety of federal statutes, including the Natural Gas Act, the Natural Gas Policy Act and the Energy Policy Act of 2005. We help clients respond to FERC audit and enforcement investigations, comply with FERC standards of conduct requirements, and navigate FERC compliance and enforcement rules.

INSIGHTS

Interconnection Is the Word of the Decade – What Do Recent FERC and State Orders Mean for DER and Transmission Project Development?

March 7, 2024

On March 7, Day Pitney Energy Associate Margaret Czepiel is moderating the "Interconnection Is the Word of the Decade – What Do Recent FERC and State Orders Mean for DER and Transmission Project Development?" panel at the 2024 NECA Energy Conference.

Decoding a Post-Chevron World: The Future of Federal Agency Authority

February 29, 2024

Day Pitney hosted a CLE webinar, *Decoding a Post-Chevron World: The Future of Federal Agency Authority*, to explore the future of the *Chevron* doctrine.

"A Guide to ISO-NE's Proposed Changes to the Forward Capacity Market: The What, The When, The How," NECA 2023 Power Markets Conference

November 13, 2023

On November 13, Day Pitney Energy Senior Associate Rosendo Garza is moderating the "A Guide to ISO-NE's Proposed Changes to the Forward Capacity Market: The What, The When, The How," panel at the Northeast Energy and Commerce Association (NECA) 2023 Power Markets Conference, "New England Market "Reno" Light Refresh of Complete Makeover?"

"Managing the Promises and Complexities of Renewable Natural Gas," Energy Bar Association

October 10, 2023

On October 10, Day Pitney Energy Partner Joseph H. Fagan will be speaking at the Energy Bar Association's "Mid-Year Energy Forum – Regulating a Modern Resource Mix," conference.

"Am I a Public Utility? A Primer on QFs, EWGs and Market-Based Rate Authority," Day Pitney

May 18, 2023

On May 18, Day Pitney hosted a one-hour webinar titled, "Am I a Public Utility? A Primer on QFs, EWGs and Market-Based Rate Authority," to discuss the challenges of sorting through the FERC's regulations and practices for Qualifying Facilities (QFs), Exempt Wholesale Generators (EWGs) and Market-Based Rate (MBR) authority.

NEWS

Energy Partners Named to 2024 Lawdragon 500 Leading Energy Lawyers List

February 26, 2024

Day Pitney Partners Sebastian M. Lombardi and Evan C. Reese, III, have been named to the 2024 *Lawdragon* 500 Leading Energy Lawyers list.

Chambers Global 2024 Ranks Day Pitney's Energy Practice Group and Attorneys

February 23, 2024

Day Pitney Press Release

Day Pitney Receives Top Rankings in U.S News & World Report's – Best Lawyers "Best Law Firms" for 2024

November 2, 2023

Day Pitney Press Release

Day Pitney Brings on Energy Atty with Regulatory Focus

October 11, 2023

The arrival of new Energy Partner Valerie Green was featured in the *Law360* article, "Day Pitney Brings on Energy Atty with Regulatory Focus."

Day Pitney Brings On Green as Energy Partner in Washington, DC

October 10, 2023

The news of Valerie Green joining Day Pitney as a partner in the firm's Energy practice was featured in *Bloomberg Law* article, "Day Pitney Brings On Green as Energy Partner in Washington, DC."

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