



**Dewey & LeBoeuf**

**Energy Litigation**





## Energy Litigation

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We have extensive experience representing clients in energy-related regulatory, litigation and arbitration matters throughout the world.

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# About Dewey & LeBoeuf

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Dewey & LeBoeuf is a full-service law firm providing counsel throughout the Americas, Europe, Russia/ CIS, the Middle East, Asia and Africa. With more than 1,100 lawyers in major financial and commercial centers, the firm represents national and global corporations, financial institutions and government agencies in their most complex legal matters.

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Continents

15

Countries

1,100

Lawyers



# Energy Litigation

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Dewey & LeBoeuf has extensive experience representing clients in energy-related regulatory, litigation and arbitration matters throughout the United States and internationally. Our clients include major natural gas companies, project developers, transmission owners, marketers, oil and gas companies, refinery operations, offshore drillers, power generators and utilities. The Global Energy Group's lawyers are thoroughly familiar with energy industry customs and practices as well as applicable regulatory schemes.

Our firm has litigators and arbitration lawyers throughout our network of 26 domestic and international offices. Every one of our offices has access to the experience and litigation/arbitration resources of the entire firm. As a result, we are able to assemble national or international litigation and arbitration teams to handle major matters in any jurisdiction worldwide. We employ advanced litigation technology to produce optimal results with greater efficiency.

Dewey & LeBoeuf also takes pride in its Federal Energy Regulatory Commission (FERC) practice, which represents applicants in matters

subject to the FERC's jurisdiction. The firm's work with respect to the FERC includes every form of complex administrative litigation, such as complaint, enforcement, merger, rate, tariff, refund related matters, contested project approvals, license and certificate revocation proceedings, as well as appeals from agency decisions. We assist clients in preparing every phase of FERC litigation.

Representative clients have included PPL Montana, LLC, Tractebel Energy Marketing, Inc., LILCO, Progress Capital Holdings, Florida Progress Corporation, IdaCorp, Inc., Aquila Energy Merchants, Enron, J.P. Morgan Ventures Energy Capital, Tesoro, Royal Dutch/Shell, Getty Oil Company, Econnergy Energy, Louisiana Energy Services, LP, Edison Electric Institute, Bird Oil Company, Chevron Corp., Constellation Energy Commodities Group, Inc., Intermountain Power Project, CBS Corporation, Diamond Offshore Drilling, Edison Mission Energy, ExxonMobil Corp., GlobalSantaFe Corp., Monterey Resources, Inc., Occidental Chemical Corporation, Occidental Energy Marketing, Inc., PG&E Corporation, Santa Fe Energy Resources,

Texaco Inc., Unocal Corp., Venoco, Inc., Consolidated Edison Company of New York, Orange & Rockland Utilities, Niagara Mohawk Power Corporation (National Grid), New York State Electric & Gas Corp. (Energy East Corporation), Rochester Gas & Electric Corp. (Energy East Corporation), Central Hudson Gas & Electric Corporation, Long Island Power Authority (LIPA) and New York Power Authority.

## Litigation

Litigation attorneys in the Global Energy Group have successfully represented energy clients in complex cases in federal and state courts throughout the United States. Our lawyers have handled cases involving virtually every aspect of the energy industry, including exploration, production, refining, power generation, transportation, distribution and marketing, as well as general commercial matters.

In addition to substantive knowledge of the energy industry, we have a solid track record of achieving litigation success for energy clients. Our lawyers have won numerous trials in significant cases, obtaining disposi-

tive rulings at the pre-trial stage and prevailing on appeal. Where appropriate, we have also negotiated favorable settlements through informal settlement negotiations or mediations.

Our representative litigation experience includes:

- Representing Enron in connection with an investigation by the Commodity Futures Trading Commission into an alleged illegal futures exchange and an alleged illegal agricultural commodity futures contract;
- Representing Enron in connection with a DOJ (N.D. Cal) investigation of Company energy trading practices during the 2000 - 2001 Western Energy Crisis. Following the FBI's seizure of critical Enron trader tapes, coordinated with the DOJ and various private litigants seeking access to the tapes in connection with various protective orders;
- Assisting Enron in responding to various third-party subpoena requests in connection with the Mega-Claims case and other civil litigation matters;
- Representing Alcoa in a multijurisdiction litigation over hydroelectric rights and property issues relating to Alcoa Power Generating's Yadkin Project on the Yadkin River in North Carolina. At the heart of this litigation is a contested relicensing proceeding before FERC under Part I of the Federal Power Act, but the controversy has expanded to involve concurrently a contested Clean Water Act Section 401 Certificate before the North Carolina Department of Environment and Natural Resources and as well as judicial review of a previous 401 Certificate now being heard in North Carolina's Office of Administrative Hearings. Within a short period of time, we anticipate having to defend against claims of property damage from the hydro dams in the North Carolina state courts;
- Representing defendant and counterclaimant PPL Montana, LLC (PPLM). NorthWestern brought claims for alleged breach of an asset purchase agreement based on PPLM's refusal to purchase certain transmission facilities. PPLM asserted counterclaims based on alleged breaches of certain power purchase agreements and NorthWestern's



## Energy Litigation (cont'd)

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indemnification obligations under the asset purchase agreement. The case was resolved by settlement shortly before trial;

- Representing Tractebel Energy Marketing, Inc. (Tractebel) in a dispute concerning alleged breaches of a power purchase agreement. After trial, the Second Circuit Court of Appeals vacated a damage award against Tractebel, and the case is now back in the district court for proceedings on remand;

- Representing PPLM in a lawsuit alleging various constitutional claims against commissioners of the Montana Public Service Commission (MPSC) based on the MPSC's issuance of an order purporting to assert the MPSC's authority to impose price regulation on PPLM's wholesale sales of electricity to The Montana Power Company, contrary to the exclusive jurisdiction of the FERC. Following proceedings in trial court and in the Ninth Circuit, the MPSC rescinded the order challenged by PPLM, and the action was terminated;

- Representing PP&L, Inc. in a proceeding challenging the real property tax assessments on the

Susquehanna Nuclear Power Station. After a three-week trial, judgment was entered adopting in full PP&L's valuation of the property, thereby saving the client more than \$350 million in taxes;

- Representing LILCO in two lengthy trials seeking refunds of real property taxes assessed against the Shoreham Nuclear Power Station covering tax years from 1976 through 1991. The two trials, which consumed 140 and 84 trial days, resulted in two final judgments in LILCO's favor that in total exceeded \$1 billion;

- Representing Progress Capital Holdings and Florida Progress Corporation, subsidiaries of Progress Energy, in a Section 10b-5 securities fraud action filed in the federal court in the Western District of Pennsylvania. The case arose from the purchase of stock of a high technology company in a private sale and was tried before a jury. The jury returned a defense verdict on the securities fraud and breach of contract counts, and found for the plaintiff on the negligent misrepresentation count, but awarded an amount less than previously offered

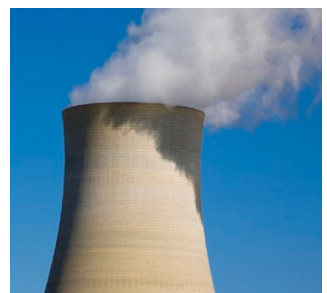
by the clients in settlement. The case is currently on appeal to the Third Circuit;

- Representing IdaCorp, Inc., the parent company of Idaho Power, in a shareholders' securities fraud class action alleging that the company engaged in material omissions when it reduced its earnings guidance in the first half of 2002 as the energy trading market imploded following the bankruptcy of Enron. The case was dismissed on motion by the trial court for failure to adequately allege loss causation and it was dismissed with prejudice by the Ninth Circuit;

- Representing Aquila Energy Merchants in California state and federal class action and multidistrict litigation natural gas pricing index litigation involving claims exceeding \$2 billion;

- Representing Enron before FERC and related federal courts in connection with Western Energy Crisis proceedings involving over \$30 billion in claims for and against the Enron bankruptcy estate arising out of Enron merchant energy trading portfolio;

- Representing J.P. Morgan Ventures Energy Capital before the FERC and related class action proceedings in Chicago federal court involving alleged price manipulation of Illinois Auction and including claims exceeding \$5 billion;
- Representing Texaco against anti-trust and unfair competition claims based on alleged price discrimination, obtaining a defense verdict;
- Representing Tesoro and certain officers in consolidated class actions alleging federal securities violations. The firm obtained a dismissal on behalf of all defendants;
- Representing Occidental Energy Marketing, Inc. in an alleged preferential transfer matter in the Bankruptcy Court for the Southern District of Texas (Houston);
- Representing Royal Dutch/Shell in a US securities class action arising out of Shell's 2004 announcement that it was restating more than 20 percent of its "proved" oil and gas reserves, as well as a Dutch court settlement of the Dutch equivalent of a non-US class action;
- Representing Ampro Energy in a lawsuit defending purported copyright infringement claims;
- Representing Getty Oil Company and Texaco against claims of negligence, breach of fiduciary duty and accounting in connection with oil and gas joint venture agreement in which plaintiff sought more than \$1 billion in damages. After a three month trial, the firm obtained a complete defense victory;
- Representing Texaco in three separate litigations arising from three different explosions and fires at the Wilmington Refinery. Each case involved between 10,000 and 27,000 personal injury claims. In all matters, the firm defeated injunctive and class certification efforts. All cases were either settled on reasonable terms or dismissed for failure to comply with court ordered case management;
- Representing Econnergy Energy in a lawsuit involving the failed merger of Infinite and Econnergy allegedly caused by the failure of Econnergy to timely negotiate a long-term gas and electricity supply agreement;
- Representing PG&E Corporation in a lawsuit brought by the California Attorney General seeking approximately \$5 billion under California Business and Professions Code 17200;
- Representing Unocal in the defense of coordinated class actions alleging wage and benefit fixing in the petroleum industry in violation of the Sherman Act. The firm defeated class certification;
- Representing Diamond Offshore Drilling in an alleged wage fixing lawsuit. The matter was litigated in the U.S. District Court for the Southern District of Texas (Galveston);
- Representing Louisiana Energy Services, LP, in the U.S. Court of Appeals for the DC Circuit, in support of a license issued by the Nuclear Regulatory Commission (NRC) for a uranium enrichment plant in license of New Mexico;
- Representing Edison Electric Institute, defending the issuance by the Surface Transportation Board of a certificate of public convenience and necessity to the Dakota, Minnesota



# Energy Litigation (cont'd)

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and Eastern Railway for a new rail line into Powder River Basin, Wyoming, in the Eighth Circuit;

- Representing PG&E Corporation's trading affiliate in a lawsuit seeking to recover damages based upon allegations of breach of contract;

- Representing a major European power provider in a dispute over the ownership of CO2 emissions credits. The claimant estimates the value of the claim to be as high as €150 million;

- Representing Constellation Energy in a lawsuit in the Western District of Michigan, where the plaintiff sought to shift FERC approved charges to Constellation;

- Representing a natural gas pipeline before the U.S. Court of Appeals, DC Circuit, involving federal jurisdiction over pipeline facilities;

- Represented Occidental suing Entergy and the LPSC alleging that the methodology Entergy uses to calculate avoided cost payments to qualifying facilities (such as Occidental's Taft QF) adopted by the LPSC in 2006 violates the Public

Utility Regulatory Policies Act of 1978;

- Representing Bird Oil Company, defending against a claim for breach of oil and gas lease in which plaintiff sought more than \$200 million in damages. After a one-month trial, our lawyers obtained a complete defense victory; and

- Representing a large natural gas utility in hundreds of cases, including explosions, fires, carbon monoxide incidents, freeze-ups, vehicle accidents, trip and fall cases and workers' compensation matters.

## Regulatory Litigation

Typically, our work in connection with regulatory litigation involves consulting with corporate officials in all planning stages; assisting our clients in developing the theories and bases for their position; preparing tariffs and contracts; assisting expert witnesses; supervising the conduct of discovery; conducting all phases of evidentiary hearings and briefings; formulating and negotiating settlements; conducting appellate

litigation; and assisting in the preparation of refund reports and other compliance filings.

In traditional regulatory matters, largely now before state regulatory authorities, our work includes rate cases involving the litigation of complex financial, accounting, tax and rate issues, and state prudence review proceedings. We also represent an increasing number of clients in proceedings in which state commissions have adopted performance-based rates.

Our representative regulatory litigation experience includes:

- Representing various utility holding companies and individual utilities before the FERC concerning request for declaration of exempt status and related matters under the Public Utility Holding Company Act of 2005;

- Representing IdaCorp, Inc., and lead counsel to the Competitive Supplier Group, in the FERC's California refund proceedings;

- Representing IdaCorp, Inc., and member of the steering committee of Transaction Finality Group, in the

litigation for FERC's Pacific Northwest refund proceedings regarding refunds and contracting in the inflammatory environment surrounding Western market disorders;

- Representing Unocal Corp. before the Federal Trade Commission in connection with the sale of a subsidiary. We obtained regulatory approval for transaction upon negotiation of asset divestiture;
- Representing the Broadwater Project in contested proceedings before the FERC and other agencies of the federal government and New York State in connection with the Project's proposal to site a sub-sea pipeline and floating storage and regasification unit for LNG off-shore Long Island Sound; and
- Representing numerous natural gas pipeline companies in rate, refund, tariff and complaint cases before the FERC over a span of decades.

## Arbitration

Dewey & LeBoeuf represents clients in arbitrations worldwide. We have broad experience with the applicable conventions, as well as remedies

such as attachments, injunctions and freezing of assets. Our firm represents energy clients in high-stakes US and international energy arbitrations around the world. We have extensive experience with various arbitration rules, including the AAA Commercial Rules of Arbitration and International Rules for the International Center for Dispute Resolution, United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, International Chamber of Commerce rules, rules of the London Court of International Arbitration, arbitration rules of the International Centre for Settlement of Investment Disputes and the rules of the Singapore International Arbitration Center (SIAC).

Our lawyers are intimately familiar with numerous different legal systems and cultures. Many have practiced law in both common and civil law jurisdictions and are fluent in a number of languages. Our experience provides our clients with the means to forcefully press their positions in the confidential setting offered by arbitration while preserving existing relationships where possible. We are highly skilled in mediation and settlement negotiations, yet we do

not hesitate to vigorously pursue arbitration awards where settlement is impossible.

Our representative arbitration experience includes:

- Representing a major oil company against another major corporation in a series of arbitrations conducted under AAA rules arising from the exchange of approximately 170 service station sites in the Western United States. Our lawyers conducted arbitration hearings for 20 contract claims and obtained favorable results for our client, and then settled remaining claims on favorable terms;
- Representing an oil company in an arbitration under UNCITRAL rules arising from refinery management and supply contracts, resulting in a favorable settlement;
- Representing CBS Corporation (formerly Viacom Inc.) in three arbitration proceedings against Westinghouse Electric Company, LLC with respect to nuclear remediation and decommissioning disputes arising out of the sale of Westinghouse nuclear business by



# Energy Litigation (cont'd)

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CBS to British Nuclear Fuels from 2002 to 2007. All three arbitrations have concluded, but related licensing proceedings at the Nuclear Regulatory Commission continue;

- Representing the Intermountain Power Project in an arbitration proceeding against Union Pacific Railroad as a result of a dispute over the rate for transportation of coal to a major electricity generating station;
- Appointment by an electric utility as an arbitrator in a coal transportation dispute;
- Advising a subsidiary of a US oil company in Singapore arbitration under SIAC rules arising from a power supply contract dispute. Our lawyers negotiated a favorable settlement; and
- Counseling a Polish oil company in UNCITRAL arbitration in London arising out of breach of an oil supply contract, resulting in a favorable settlement.

## Negotiated Resolutions

The Global Energy Practice Group also represents clients in mediations and other negotiated resolution proceedings concerning energy related disputes world-wide. Mediation, either stand-alone or in combination with or in the context of arbitration proceedings, offers our clients a means to explore whether an early resolution can be reached, thereby saving costs and minimizing disruption to normal business activities. We believe that mediation enables us to address our clients' business concerns and to achieve creative solutions without giving up any strategic advantage.

Dewey & LeBoeuf recognizes that formal litigation is not always the most efficient method to resolve a dispute. We also understand that prompt and confidential resolution can avoid the disruption of business. Thus, we offer audit and training programs designed to prevent litigation or to provide a strong affirmative defense in the event of litigation. At

the outset, we always make an early assessment of each case to determine the fastest and most efficient way to achieve our clients' goals, including if the case is a good candidate for mediation or some other form of alternative dispute resolution. Strong candidates include cases where there is a business need for prompt resolution or where the client wants to avoid publicity, and cases with a significant potential for punitive damages or where defense costs will exceed any settlement value. Our clients have found many benefits to alternative dispute resolution beyond the obvious reduction in legal costs. Negotiated resolutions avoid the disruption of litigation. Additionally, mediated settlements are almost always confidential; in a public forum, privacy is not possible. Courts often require mediation in the course of litigation as a means of attempting to resolve disputes in an agreed-upon manner, to reduce costs and promote better business relationships.

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Our representative negotiated resolution experience includes:

- The United States Court of Appeals for the District of Columbia Circuit ordered mediation to attempt to resolve disputes between parties over the abandonment of a rail line that was proposed for use by a new trolley operation that would adversely impact our client, a local group of affected landowners. The case was resolved without the need for the involved Court to decide the matters in dispute;
- The United States District Court for the Middle District of Florida ordered mediation to attempt to resolve a complex and fact-intensive dispute over railroad demurrage charges. The case was resolved without the need for the involved Court to decide the matters in dispute;

- The United States Court of Appeals for the District of Columbia Circuit ordered mediation in connection with appeals of various pipeline tariff matters for Panhandle Eastern Pipe Line Company. The case was resolved with an agreed upon remand and revised tariff filing which ultimately was approved by the FERC; and
- The United States Court of Appeals has been extensively involved in attempting to mediate the many dozens of consolidated appeals of FERC's orders in connection with the California energy crisis refund and market conduct proceedings, as well as the Pacific Northwest refund cases. We have been active in identifying cases for the mediator to sever for argument before the court while the mediator had continued to work on disputes that remain unsettled.



## Dewey & LeBoeuf LLP

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