



Energy Practice

Overview

Troutman Sanders is one of the world's leading energy law firms with broad-based expertise in numerous practice areas. Our attorneys have extensive experience providing legal representation and business consulting advice to energy industry participants. The firm began representing utility clients in the 1920s. Today, the firm's clients include traditional utilities, energy marketers and aggregators, domestic and international project developers, utility-related organizations, and others. The firm provides a full range of services designed to help our clients develop strategic solutions in the evolving competitive marketplace.

Strategic Solutions

Troutman Sanders lawyers have represented clients in the transportation, natural gas and telecommunications industries as those industries have been restructured. This experience combined with our 80-year association with the electric utility industry provides the basis for the strategic business planning and counseling we provide to the power industry today.

The firm has helped energy companies launch numerous new business ventures – from power and gas marketers to independent transmission companies to providers. Attorneys at the firm have also advised energy clients on corporate divestiture and asset acquisition issues, as well as mergers and acquisitions and branding strategies. As an added client service, the firm publishes a weekly report providing up-to-the-minute details on the energy industry.

Comprehensive Practice

Troutman Sanders provides legal representation and business consulting advice to participants throughout the energy industry. These selected areas of our energy practice listed below are summarized in the following pages.

- Energy Industry Mergers & Acquisitions
- Energy Regulation
 - Regulation of Traded Markets
 - US Federal & State Regulation
- Energy Trading & Marketing
- Climate Change
- Transmission
- Generation Plant Development & Ownership Structures
- Renewable & Alternative Energy
- Hydropower
- Natural Gas
- Nuclear

International Law Firm Resources

Troutman Sanders is an international law firm with 12 offices and more than 650 attorneys worldwide. In 2007, BTI Consulting Group, an independent market research and management company, ranked Troutman Sanders as a "Go-To Law Firm," "National Power Player," and



“Global 500 & Fortune 1000 Primary and Recommended Law Firm” based on individual interviews with corporate counsel of privately held companies and Global 500 & Fortune 1000 corporations. Another notable 2007 ranking includes the *Leading Law Firm in China and Hong Kong* accolade from Asia Pacific Legal 500.

Energy Mergers & Acquisitions

Lawyers in Troutman Sanders Mergers, Acquisitions & Business Ventures practice group assist clients in structuring, negotiating and implementing business transactions in the United States, Europe and Asia. The group represents public and private companies and their separate business units, acquirers, targets, investors, venture funds, management buyout groups, private equity funds, lenders and equity participants.

We have helped clients raise more than \$25 billion in non-recourse and limited recourse project and acquisition debt – in addition to corporate-style debt and equity financings. Most of the financed deals involved multiple sources of equity.

Troutman Sanders has acted as corporate and regulatory counsel on numerous mergers, acquisitions, and asset transactions in the energy industry, including:

- PNM Resources divestiture of gas operations to Continental Energy and simultaneous acquisition of Continental Energy’s electric operations. (Pending)
- Acquisition of Two Power Plants Valued at \$410 million
- Sale of SEMCO Energy to Cap Rock Holdings
- Sale of Point Beach Nuclear Plant
- PNM Resources’ joint venture with Bill Gates and Cascade Investment LLC
- Sale of International Transmission Company to KKR
- Ameren’s purchase of Illinois Power’s T&D assets
- Representation of an underwriter regarding transmission company IPO

Troutman Sanders attorneys offer a variety of tools to assist financial institutions decipher the energy industries. For example, we assisted a large hedge fund in relation to the Constellation Energy and FPL Group, Inc. proposed merger. We were hired to analyze the deal, incorporate our industry expertise and knowledge of the regulatory environment into a functioning financial tool. After creating a proprietary analytical framework that calculated value, risk and the statistical likelihood of the merger being completed, our attorneys successfully identified many of the subsequent events and the final outcome.

Energy Regulation

Regulation of Traded Markets

The firm has long advised clients on the regulation of various over-the-counter derivative and historically regulated contract markets, on market and exchange rules and on pending legislation impacting the traded markets. We have been actively involved on behalf of a number



of companies lobbying in Washington, DC, against Senator Feinstein's proposed amendments to The Commodity Exchange Act.

We have also worked with EFET and its members in meeting with European Commission representatives on issues relevant to Financial Services and Energy Market regulation, emphasizing the EU Directive's potential impact on traditional energy companies participating in Europe's recently liberalized and now increasingly competitively traded energy markets. We have also spoken on behalf of clients with financial services and energy regulatory bodies in several European Union member states.

John Varholy, the Energy Marketing practice group leader, is instrumental in shaping the European market as the outside general counsel to the European Federation of Energy Traders. In that role he is involved in developing a standard master trading agreement for over the counter trading of EU Greenhouse Gas Emission Allowances; Europe's industry standard master trading agreements for physical wholesale power and natural gas; and industry standard appendices to the EFET physical wholesale gas trading agreement for trading at various hubs and trading points in Europe.

The firm has coordinated trading client responses to inquiries from the CFTC and FERC's Office of Market Oversight and Investigations (OMOI), and has conducted a large number of evaluations and reviews designed to determine if deficiencies exist in controls and processes related to their companies' trading functions, and if so, recommending ameliorative responses to both address lingering risks relating to prior conduct and also to bring such activities on a going forward basis up to industry best practice levels.

US Federal & State Regulation

"Troutman Sanders knows how to get things done at FERC" is a common refrain from our clients. We have excellent relationships with FERC Commissioners and Staff, in part, because several Troutman Sanders attorneys previously served as colleagues at the agency with current FERC personnel.

The firm has represented clients from every region of the United States on FERC matters, and has significant experience in both Part I (hydropower licensing) and Part II (public utility regulation) of the Federal Power Act. Our FERC experience also encompasses transmission rates and arrangements.

The firm is proud of its long record of successful litigation of public utility issues in state and federal courts. We have obtained regulatory approvals on behalf of the purchasers of more than 11,000 MW of generating assets in utility divestiture transactions in New York, California, Florida, Massachusetts, North Carolina and the District of Columbia metropolitan area. Recent matters in which Troutman Sanders attorneys have been involved include:

Federal

- The withdrawal of E. ON U.S. from the Midwest ISO, the first-ever withdrawal of a public utility from an RTO
- Federal natural gas pipeline rulemakings, rate hearings, and proceedings
- The California Energy Crisis and its aftermath, the Great Blackout of August 14, 2003, and its aftermath, the collapse of Enron and its aftermath



- Comprehensive industry restructuring rulemaking proceedings and Congressional hearings
- Revision and rationalization of tariff and market design protocols for several regional transmission organizations

State

- Federal and state electric utility ratemaking proceedings resulting in significantly increased rates of return
- Negotiation of natural gas supply and purchase contracts, natural gas transportation contracts, gathering contracts, exchange contracts, and natural gas trading contracts
- Obtaining approval of a \$1.5 billion, 800 MW super critical pulverized coal (“clean coal” technology), over strong opposition from environmentalists, the state Attorney General, industrial customer organizations, and local press.
- Counsel to two utilities in connection with their separate applications before their respective state regulatory agencies for recovery of accounting for early development costs related to the development of nuclear power plants.

Energy Trading & Marketing

Our attorneys have drafted and negotiated literally hundreds of power purchase and sales agreements, encompassing arrangements ranging from system supply agreements to spot purchases of energy to generator-specific, long-term, take-or-pay power purchase arrangements. We represent both buyers and sellers; regulated utilities and unregulated independent power producers. We assist regulated utilities with developing and conducting electric capacity and energy auctions and RFPs, including those subject to independent evaluators or monitors.

We have prepared and negotiated master forward trading agreements and related security arrangements including EEI and GISB contracts; ISDA(c), ERMA(c) and proprietary form master swap agreements for over-the-counter energy risk management and derivative trading transactions; and short form swap confirmation agreements.

In addition, Troutman Sanders attorneys energy trading expertise includes the following:

- Physical Energy Trading
- OTC Financial Trading & Hedging
- Auction of Electricity & Natural Gas
- Exchange Trading
- Electronic Trading Systems
- Retail Sales & Purchases and Long Term Supply Arrangements
- Power Pool & Interchange Agreements
- Fuels Management and Tolling Agreements
- Utility Power Sales Tariffs
- Emissions Allowances
- Master Netting & Bridging Agreements
- Collateral & Margin Agreements
- Foreign Exchange & Interest Rate Swaps



Climate Change

Troutman Sanders provides cutting-edge representation across the spectrum of climate change issues:

- **Carbon Regulation and Legislation.** We advise clients on legislative and regulatory developments at the federal and state levels; our attorneys have twice been called to testify before Congress on climate change issues.
- **Litigation.** We have been involved in most of the principal litigated cases involving carbon dioxide, including the briefing of the landmark decision of *Massachusetts v. EPA*, both before the U.S. Court of Appeals for the D.C. Circuit and the U.S. Supreme Court.
- **Carbon and Other GHG Credit Trading.** Our attorneys have advised corporations, funds, multi-national organizations and governments (including several of the most advanced energy trading and marketing organizations in the world) on all aspects of greenhouse gas (GHG) trading, as well as on harnessing and monetizing the emissions related value of investment in clean development mechanism and joint implementation projects. Further, we provide advice on the commercial, legal and policy implications of future actions to address climate change.
- **Project Investment.** We advise on all aspects of investment in and approval of Clean Development Mechanism and Joint Implementation projects and the development, construction, operation and tax structuring of renewable and alternative energy projects worldwide including solar, wind, geothermal and hydropower projects and transactions, as well as alternative “clean coal,” ethanol, biodiesel, and biomass-related energy projects and transactions.

Generation Plant Development & Ownership Structures

Troutman Sanders’ track record for providing innovative infrastructure development and finance solutions is rooted in its longstanding counsel to many parties in the electric power industry. Out of this practice we became actively involved in the growth of the independent power industry in the early 1980s. Building on these early experiences, Troutman Sanders has developed a dynamic, worldwide project development and finance practice. Over the past several years, we have assisted clients in the development, acquisition and/or financing of more than 400 electric power stations world-wide.

Our representational experience includes:

Development/Operations

- Site Lease/Purchase Agreements
- EPC Contracts (for pipelines)
- Material Procurement Agreements (including pipe supply)
- O&M Agreements

Ownership

- LLC Operating Agreements
- Joint Venture Agreements



- Limited Partnership Agreements
- General Partnership Agreements
- Consortium Arrangements
- Joint Development Agreements
- Project Management Agreements
- Letters of Intent/Memoranda of Understanding

A few examples of our attorney's international brownfield and greenfield projects include:

Power Generation Equipment Procurement Projects. The Firm represented a U.S. independent power company in the negotiation and conclusion of a series of transactions culminating in their purchase of over US\$1 billion worth of power generation equipment from vendors in the U.S. and Japan, including equipment destined for sites throughout Europe.

Cross-Andean Natural Gas Pipeline. The Firm represented an independent power producer in its joint development of a 1,000 km cross-border pipeline to transport natural gas from Northern Argentina and Northern Chile. The Firm took a lead role in the negotiation of the EPC agreements, as well as the equity documents supporting the transaction.

EDELNOR Construction of Electric Generating Facilities. The Firm represented Edelnor's project sponsor in connection with the development and construction of a 166 MW coal-fired generating facility, a 162 MW coal-fired generating facility and a 240 MW combined-cycle natural gas-fired electricity generation facility, all located near Mejillones, Chile.

Rio Bravo Project. The Firm represented a client in its negotiation and execution of a detailed term sheet with Fluor Daniel's Mexican subsidiary for an EPC contract to construct a 540 MW gas-fired power generation facility in Northern Mexico.

Power Project Development. The Firm represented an independent power producer in seeking to develop several potential power projects in Puerto Rico, including the potential acquisition of the EcoElectrica electric power generating project and a desalination and LNG fuel processing facility in Penuelas, Puerto Rico.

Greenfield Power Project Development. The Firm represented an independent power producer in connection with its procurement of multiple sets of power island equipment for use in greenfield project developments in Italy, as well as multiple long term parts and maintenance agreements and related parts sharing arrangements. The Firm also represented this client in connection with all EPC contract negotiations for the balance of plant equipment

Transmission

Troutman Sanders acts as day-to-day counsel to a number of investor-owned utilities regarding electric industry restructuring, mergers and acquisitions, transmission rate and rate design matters, the design of competitive wholesale energy markets and ancillary service markets, interconnection agreements, reliability agreements, transmission tariff administration and service, standards of conduct, and parallel path / loop flow issues.

We have obtained a number of favorable rulings from FERC regarding innovative transmission rates and arrangements. We help clients maximize business opportunities and decrease risk



within RTO structures, and have worked with several RTOs in revising and rationalizing their tariff and market design protocols. Recently, Troutman Sanders, acting as lead counsel, assisted E.ON U.S. with its withdrawal from the Midwest ISO; the first-ever withdrawal of a public utility from an RTO.

The firm also helps clients develop and site transmission projects. We have helped clients raise non-recourse and limited recourse project and acquisition debt – in addition to corporate style debt and equity financings. We have negotiated numerous asset dispositions involving sales of transformers, substations, pole lines, and associated rights-of-way to customers and public power entities on behalf of investor-owned electric utilities.

Renewable & Alternative Energy

Troutman Sanders' diverse renewables portfolio incorporates: structuring renewable projects to maximize tax benefits and project revenues; advising on trading regimes applicable to Renewable Energy Certificates; "Green Tags," Carbon Sequestration Credits and Emissions Trading Credits in the U.S. and Europe; and counseling on a variety of aspects of alternative fuel development. Examples of renewable experience, include representation of wind power developers, preparation of construction contracts implementing new technologies and assisting the acquisition and development of ethanol production facilities.

Examples of renewable experience include:

- Representation of Ampersand Energy LLC regarding development, operation and acquisition of hydro and biomass facilities.
- Representation of independent wind power developer in connection with corporate strategies and project development matters
- Representation of UEK Corporation, a hydrokinetic technology company, regarding the development and implementation of hydrokinetic generating units worldwide
- Representation of major U.S. financial institution in connection with the development and implementation of its IRC Sec. 45 Energy Tax Credit Syndication Program
- Representation of Biomass Investment Group in connection with the development and financing of a biomass energy transport gasification station and related power purchase agreement in Central Florida
- Representation of Abengoa in connection with the acquisition and development of new ethanol production facilities in the United States
- Representation of a U.S.-based advanced technology waste-to-energy developer in connection with the development of projects in Italy and Japan

Hydropower

Troutman Sanders has had an active hydropower practice before the U.S. Federal Power Commission and FERC for over 50 years. The firm represents developers, licensees and governments on every aspect of hydroelectric regulation and licensing. At any given time, the



firm is assisting several clients with the complex process of relicensing, from initial scoping to preparing license applications and negotiating with federal, tribal, and state resource agencies, as well as other stakeholders. Our attorneys have also helped clients build, license, manage, and decommission projects.

Natural Gas

Troutman Sanders attorneys serve clients in matters involving federal regulation of natural gas. Unlike many firms, we are not associated with one segment of the industry; rather, our clients span the industry from producers to consumers, and include individual companies, ad hoc litigating groups, and trade associations. Our representations at FERC involve both FERC-regulated companies and parties with whom those regulated companies do business. We offer pragmatic and creative counsel for clients involved in long-term business relationships that are affected by federal natural gas regulatory programs.

In addition to our regulatory support, our attorneys regularly assist with:

- FERC Litigation
- FERC Certificate Applications and other Natural Gas Regulatory Permitting
- Natural Gas Commodity Transactions
- Natural Gas Transportation/Storage and Other Regulated Services

Nuclear

Troutman Sanders attorneys are involved in almost all legal issues associated with nuclear power plants, including U.S. Nuclear Regulatory Commission (NRC) license transfers, litigation before the U.S. Department of Labor and federal courts concerning retaliation and discrimination claims, representation before state public regulatory commissions, and radioactive waste management. The firm has also negotiated the sale of nuclear plants and has represented clients in investigations conducted by Congressional committees, the U.S. Department of Justice, the General Accounting Office, and the NRC Office of Investigation.

For additional information, please visit our website: www.troutmansanders.com/energy