Regulatory

The energy and telecommunications markets experienced a major transformation in the 1990s as a result of restructuring and increased competition, allowing market forces to wield a greater influence on consumer prices and services. Today, those markets continue to evolve in light of new initiatives to strengthen and modernize energy and telecommunications systems and to promote the efficient use of energy and demand response, the deeper penetration of renewable-energy resources, and the wider deployment of distributed energy resources, empowering consumers with even more choices for managing and consuming energy. Market participants need in-depth knowledge of the complex federal, state, and local laws and regulations and a thorough understanding of the evolving policies, procedures, and requirements of federal and state regulatory bodies.

We combine our energy and telecommunications industry experience and regulatory insight with economic analysis, business understanding, and legal know-how to help clients solve and avoid a wide range of complex regulatory problems. Our attorneys partner with our international, national, and regional clients to understand their unique needs and objectives. We counsel them on compliance with federal and state law and regulations and on operational and financial matters, and we interact with senior management to assist them in the formulating innovative legal, regulatory, and business strategies. We also work in tandem with attorneys from our Environmental, Project Development, Real Estate, Real Property Tax, and Corporate Practice Areas on the project development, mergers and acquisitions, and transactional issues.

Electric & Gas Regulation

Our participation in formal administrative proceedings before the NYS PSC, ORES, the NYS Siting Board and FERC, as well as in the NYISO's governance process, is complemented by the active participation of our regulatory attorneys in a wide variety of commercial transactions where an understanding of the policies and requirements of theses regulatory authorities is essential. These matters include the negotiation of agreements for interconnection, gas-purchase sales and transportation; transmission service; power purchase and sales; and energy management.

Given the continual stream of mergers and acquisition activity in the energy and telecommunications industries, our regulatory attorneys often assist clients in conducting comprehensive due diligence on the projects and facilities to be acquired, on the approvals needed from the NYS PSC and FERC for transfers of electric and gas property, and on compliance issues following mergers and acquisitions. In addition, our regulatory attorneys assist customers, Energy Service Companies (ESCOs), and other competitive suppliers to determine their rights and obligations under the tariffs of New York State's distribution utilities and the NYISO and under the regulations and policies of the NYS PSC and FERC with respect to the competitive retail markets.

As a result of the need for expanded electric and natural gas transmission capacity, our regulatory attorneys have successfully achieved NYS PSC approval to site linear projects as well as approval from ORES and the Siting Board for repowered and new generation projects involving a variety of fuel sources, including natural gas and renewable resources. We work collaboratively with a myriad of government agencies, local municipalities, and private stakeholders to develop innovative solutions that meet competing needs and to navigate the challenges of environmental review and permitting, right-of-way and property rights acquisition, and real-property-tax mitigation and incentives.

Telecommunications Regulation

In the telecommunications and cable industry, our attorneys have extensive experience with relevant federal, state, and local laws and authorities. Our thorough understanding of antitrust law and its implications is another advantage to our clients as they seek to work within increasingly competitive markets. This unique combination of knowledge and experience allows our attorneys to develop effective, comprehensive regulatory strategies for our clients.

Regulatory Litigation

The dramatic market changes in the energy and telecommunications industries have led to an increased volume of business disputes and lawsuits. Disagreements range from basic contract disputes to more complicated matters involving the backdrop of overlapping federal and state statutes and regulations. In addition, because a great deal of our regulatory work proceeds in administrative agencies, intervenors and unsuccessful parties may seek judicial review of the various agency decisions. When disagreements cannot be resolved through negotiation or mediation, our energy and telecommunications attorneys team up with firm litigators to successfully represent clients in the courtroom.

Representative Experience

- Providing strategic advice for the replacement of more efficient and cleaner turbines at an existing generating facility, including securing the necessary permit modifications to enable the project to go forward and interfacing with NYSDEC and other state and local agencies to secure the necessary permits and approvals in a timely manner.
- Represents an energy storage projects developer in handling all aspects of the projects, including counseling on all siting and permitting issues to ensure the most efficient and successful project development while preserving the in-service dates as well as interfacing with key regulators.
- Obtained a SEQRA negative declaration and municipal approvals for a 5 MW community solar facility.
- Represents a power generation company as its NYS Public Service Commission counsel with respect to the interconnecting transmission lines and regulatory siting approvals needed for an offshore wind project, which was awarded a contract for offshore wind renewable energy credits (ORECs) by NYSERDA. Along with our co-counsel on environmental issues, Barclay Damon is working with the client to develop Article VII application materials for its offshore wind project.
- Represents a power generation company as its NYS Public Service Commission counsel with respect to the interconnecting transmission lines and regulatory siting approvals needed for an offshore wind project, which was awarded a contract for offshore wind renewable energy credits (ORECs) by NYSERDA. Along with our co-counsel on environmental issues, Barclay Damon is developing the Article VII application materials for the offshore wind project. We are also assisting in its participation in the NYISO Class Year facilities study process.
- Represents a power generation company as its NYS Public Service Commission counsel with respect to the interconnecting transmission lines and regulatory siting approvals needed for an offshore wind project, which was awarded a contract for offshore wind renewable energy credits (ORECs) by NYSERDA. Along with our co-counsel, Barclay Damon has prepared and filed an Article VII application for a part of the offshore wind project, is responding to a deficiency letter from DPS staff, and is answering questions from DPS staff to ensure the completion of the application. We have also assisted the client with the posting of security in the NYISO Class Year Facilities Study for the offshore wind project as well as the negotiation of support services agreements with another energy company and the negotiation of the interconnection agreement for that facility. Barclay Damon also filed a petition with FERC seeking an extension in the period for achieving commercial operation to be stated in that interconnection agreement.
- Representing the New York Power Authority (NYPA) on rebuilding a major 100-mile transmission line (known as the Smart Path Connect Project) designated by the Public Service Commission (PSC) as a “priority transmission project.” In partnership with National Grid as a co-applicant, we represented NYPA in preparing and filing the Article VII application for the project and participated in months of settlement negotiations with various state agencies and stakeholders, which resulted in a joint settlement. Construction on the project commenced in October 2022. Our attorneys continue to work on various compliance studies and filings for this priority transmission project.

- Representing the New York Power Authority with respect to the siting and construction of a rebuild of an 86-mile-long transmission line that traverses 15 municipalities. Barclay Damon attorneys prepared and finalized the Article VII Application, assisted the NYPA with supplementing filings to achieve a “complete” application, handled the discovery phase, and led months of settlement conferences. The settlement negotiations culminated in a joint proposal for settlement support by all of the active parties and state agencies. A CECPN was issued by the PSC without the need for an evidentiary hearing. We then assisted the NYPA in the preparation of the Environmental Management and Construction Plans (EM&CP) for the project, which were also approved by the PSC. Construction is currently ongoing for this project. We continue to support the NYPA with compliance issues during construction.