

Energy Litigation

Below is a representative list of our experience in energy-related litigation matters:

Regulatory Litigation

NRC Licensing and Enforcement

- Representation of the LES partnership in connection with the NRC licensing of the LES enrichment plant to be built in New Mexico. This case has been a key test case for the NRC licensing process for new nuclear facilities.
- Representation of Duke Energy Corporation in connection with a contested license amendment to authorize use of MOX fuel lead assemblies at its Catawba Nuclear Station. We also represented this client in connection with a contested license renewal application for its McGuire and Catawba stations.
- Representation of Yankee Atomic Electric Company in connection with an NRC licensing proceeding on the decommissioning of the Yankee Rowe nuclear power plant.
- Representation of Pacific Gas & Electric Company in connection with a contested application for a site-specific license for independent spent fuel storage installation at its Diablo Canyon station. This representation involved a petition for review in the U.S. Court of Appeals for the Ninth Circuit. In connection with that appeal, the firm also represented PG&E in a petition for writ of certiorari on the issue of whether the NRC's review under NEPA must consider the threat of terrorism.
- Representation of Systems Energy Resources, Inc. (SERI) in connection with its application for an early site permit for the Grand Gulf Site.
- Representation of Westinghouse Electric Company LLC in an arbitration and before the NRC to define and limit our client's decommissioning responsibility for certain legacy contamination on the Waltz Mill, Pennsylvania site.
- Representation of the Tennessee Valley Authority in connection with a contested NRC staff notice of violation and proposed civil penalty related to a "whistleblower protection" claim.
- Representation of the Tennessee Valley Authority in connection with contested license amendments related to tritium production at its Watts Bar/Sequoyah station.

- Representation of Dominion Nuclear Connecticut in connection with a contested license amendment related to administrative relief based upon an alternative source term related to its Millstone station.
- Representation of Pacific Gas & Electric Company in connection with the NRC license transfer associated with the 2001 PG&E bankruptcy plan of reorganization.

Federal Energy Regulatory Commission

- Representation of Westar Energy, Inc. before FERC in a heavily contested Section 203 proceeding in connection with its proposed acquisition of the 300 MW Spring Creek peaking facility.
- Representation of a Midwestern utility in a FERC investigation into trading practices and compliance with the Standards of Conduct. The firm assisted the client in responding to, and narrowing the scope of, three subpoenas and three data requests issued by FERC, prepared numerous of our client's employees for informal interviews with FERC, and negotiated a compliance plan with FERC.
- Representation of Pacific Gas & Electric in a proceeding before the Ninth Circuit Court of Appeals brought by the City of Fremont, California, and the Northern California Power Agency. The proceeding sought to overturn FERC's decision to allow PG&E to compete in a relicensing proceeding for its 143 MW Poe Hydroelectric Project and to be afforded an "incumbent preference" in that proceeding. We submitted a brief for PG&E in support of FERC and participated in oral argument. The Ninth Circuit affirmed FERC in all respects.
- Representation of Pacific Gas & Electric in a proceeding before the Ninth Circuit Court of Appeals brought by environmental groups against FERC. These groups sought to overturn a FERC decision involving PG&E's DeSabra-Centerville Hydroelectric Project wherein FERC had concluded that it was not required to initiate consultation with the National Marine Fisheries Service under Section 7 of the Endangered Species Act for continued operation of the project that may affect a newly listed salmon species. The court held that, absent some affirmative action by FERC, FERC was not obligated to consult even though PG&E's license contained "reopener" conditions. We submitted a brief in support of FERC and participated in oral argument. The Ninth Circuit affirmed FERC in all respects.
- Defense of CRA International in a certification proceeding commenced by a FERC administrative law judge. The administrative law judge suggested that disbarment of CRA from practice before FERC might be warranted because of its role in compiling data for Enron Corp. After briefing and a hearing, the chief judge determined that the deletion of certain trades from Enron's data submission was entirely appropriate and therefore no sanctions were warranted.

- Co-counsel representing Avista Corporation in a hearing before an administrative law judge pursuant to provisions of the Federal Power Act added by the Energy Policy Act of 2005 regarding material issues of disputed fact associated with mandatory conditions the Department of the Interior's Bureau of Indian Affairs had submitted to FERC for inclusion in the new license to be issued for Avista's Post Falls Hydroelectric Project. We participated in all aspects of the proceeding, including witness preparation and testimony, discovery, the five-day hearing, and post-hearing briefing. The ALJ's January 2007 decision ruled in favor of Avista on a number of key factual issues.

Commercial Litigation

- Representation of a subsidiary of Pacific Gas & Electric National Energy Group (now National Energy and Gas Transmission) in an arbitration proceeding in which the adverse party sought damages of nearly \$500 million in connection with a termination payment due after cancellation of a long-term tolling agreement. Determination of the appropriate termination payment involved complicated assessments of future price curves, plant retirements, environmental regulations, and complex calculations of discount rates. The dispute was tried before an arbitration panel and ultimately was settled as part of National Energy and Gas Transmission's bankruptcy proceedings.
- Representation of New York's Liberty Development Corporation when its decision to issue tax-exempt bonds to support the construction of a new electric generation plant in Astoria, Queens, was challenged in a suit brought by local Congresspersons, other politicians, and several citizen groups.
- Representation of a former subsidiary of Gazprom in connection with litigation arising from the Chapter 11 filing in U.S. bankruptcy court by Yukos oil company seeking to halt the sale at auction of Yuganskneftegaz by the Russian government. The *Yukos* bankruptcy, which would have been the largest in U.S. history, was dismissed.
- Representation of Zion Energy, LLC in a dispute in which an Illinois Circuit Court approved a ten-year settlement of property taxes on our client's power plant. To reach this favorable resolution, we obtained a temporary restraining order preventing the state from assessing tax against the property, the first time this has been accomplished in an Illinois property tax dispute.
- Representation of USGen New England, Inc. in defending a \$41 million claim brought by Tennessee Gas Pipeline Co. arising from USGen's rejection of a gas transportation contract with Tennessee. After a bankruptcy court entered factual findings in USGen's favor, the case settled for \$9 million.

- Representation of USGen New England, Inc. in reducing Algonquin Gas Transmission Company's claim for damages from \$481 million to \$4 million in connection with two long-term gas transportation contracts rejected by USGen New England in bankruptcy.
- Defense of an energy company against a \$48 million claim resulting from rejection in bankruptcy of a gas transportation contract. The case has involved complex issues of Canadian law on damages and assessment of lost volume seller status. A bench trial is scheduled for October 2007.
- Representation of Midland Cogeneration Venture, Limited Partnership in connection with a \$55 million claim resulting from Enron's rejection of a natural gas supply contract in its bankruptcy proceeding.
- Representation of Framatome ANP, Inc. in connection with the asserted misuse of trade secrets involving the design of once-through nuclear steam generating facilities.
- Representation of Commonwealth Edison in *Central Midwest Interstate Low-Level Radioactive Waste Commission v. Pena*. In this case, the Central Midwest Commission argued that it was entitled to incentive payments under the Low-Level Radioactive Waste Policy Amendments Act of 1985 based on its decision to lift the export ban on low-level radioactive waste generators in the region, including Commonwealth Edison. Our attorneys argued that lifting the export ban did not satisfy the milestone that required the Commission to "provide for" disposal of waste generated within the region. The United States District Court for the Central District of Illinois granted summary judgment in Commonwealth Edison's favor and the Seventh Circuit affirmed. As a result, the incentive payments were returned to the generators.
- Representation of Westinghouse Electric and Commonwealth Edison in connection with a suit against the Illinois Department of Revenue, with respect to whether nuclear turbines can be classified as "special use equipment" for Illinois State tax purposes. Winston & Strawn successfully argued that the custom nature of the turbines qualified for treatment as special use equipment. The ruling was upheld on appeal.
- Representation of PSI Energy, Inc. and Cincinnati Gas & Electric Co. in obtaining a reversal of a Court of Federal Claims decision denying our client's claims for recovering millions of dollars in "special assessments" imposed by the Energy Policy Act of 1992. The Federal Circuit remanded the case with an order to award CGE and PSI full recovery of all assessments paid plus interest and effectively freed the utilities from further payments.

- Representation of Taiwanese client Formosa Chemical & Fibre Company in a trade secret case brought by BP Chemical Ltd. in New Jersey federal court. The matter involved trade secret claims related to the development of a chemical manufacturing process. The U.S. Court of Appeals for the Third Circuit struck down a preliminary injunction that had been issued by the district court and dismissed our client on personal jurisdiction grounds. The case has since been dismissed with prejudice, along with companion litigation pending in a federal district court in St. Louis.
- Representation of the University of California in litigation against Enron for recovery of California's Direct Access Cost Responsibility Surcharge imposed as a result of the energy crisis. We also represented this client in the recovery of payments owed on its generation of electricity under California's scheduling coordinator protocols and the applicable ISO tariff.
- Representation of a leading nuclear service company in defense of an action in federal district court seeking relief for alleged misappropriation and alleged violations of the Lanham Act and state trade secret law.
- Representation of CIT Group in the assertion of claims arising from a letter of intent describing proposed construction and a term loan to be secured by a power generation facility on Long Island, New York.
- Defense of a Midwestern utility in an arbitration commenced a group of Midwestern cities seeking a forced transfer of capacity credits and compensation for past credits. The cost of providing the credits would have reached almost \$30 million over the term of the parties' contract. The arbitration panel agreed that our client had no contractual obligation to provide the credits and dismissed all of the cities' claims.
- Representation of Attala Generating Co, LLC v. Attala Energy Company, LCC in defending a \$477 million breach of contract claim arising from the termination of a long-term tolling agreement. Determination of the appropriate termination payment generated disputes over future price curves, plant retirements, environmental regulations, and the use of bifurcated discount rates. We shaped the strategy for the case from the outset through a one-week arbitration hearing and post-hearing arguments. The case settled before the panel issued an award.

Construction Litigation

- Representation of Connecticut Yankee Atomic Power Company in a \$400 million default termination dispute with Bechtel Power Corporation relating to a commercial nuclear decommissioning project in Haddam, Connecticut. This engagement included state court litigation, a FERC rate case, and strategic advice on project completion. The litigation was resolved through mediation.
- Representation of Taiwan Power Company in obtaining a replacement contractor for the architectural/engineering work on TPC's \$4 billion Fourth Nuclear Power Project in Lungmen, Taiwan. The bankruptcy of Stone & Webster (the incumbent a/e firm) presented myriad termination issues, which we were successful in resolving. We also won the dismissal of millions of dollars of claims against our client before the Delaware Bankruptcy Court.
- Representation of Siemens Westinghouse Power Corporation in the successful defense of a \$75 million cumulative impact claim brought by Bechtel Power Corporation in connection with a Massachusetts cogeneration project. Our representation included analysis of claims of increased scope of work and related schedule and cost issues. We also defended our client against \$75 million in claims in a dispute arising out of the EPC contract for a 152 MW combined cycle cogeneration plant in Ontario, Canada. The claims in this matter included breach of contract, misrepresentation, and resulting schedule impacts to engineering, construction, and commissioning allegedly caused by equipment design issues.
- Representation of Christian County Generation, LLC before the Environmental Appeals Board in Washington, D.C. regarding a Petition for Review of an air operating permit issued to our client by the Illinois Environmental Protection Agency. The Petition for Review was filed in opposition to the issuance of the permit and the construction of a state-of-the-art, \$2 billion clean-coal electric energy facility that Christian County Generation plans to build near Taylorville, Illinois. The filing of the Petition automatically rendered the issued air permit ineffective, preventing any further construction on the project pending the Environmental Appeals Board decision. The Board decided in favor of our client and denied the Petition for Review.
- Representation of Westinghouse Electric Corporation, as lead counsel, in defending a \$10 million construction claim by the mechanical contractor and piping supplier arising out of the construction of a 150 MW cogeneration facility in Newark, New Jersey. This litigation, which involved a five-week federal court trial in Kentucky, was resolved through mediation.

- Representation of Alstom Power, Inc. in defending a \$23 million claim by the mechanical subcontractor against the EPC contractor for a 450 MW generation project in Midlothian, Texas. We also represented Alstom in obtaining a \$3.3 million award against Germany-based Balcke-Dürr, Inc. arising out of certain subcontracts for the design, supply, and installation of air-cooled condensers on power plants being built by Alstom. The arbitrators also denied Balcke-Dürr's \$8 million counterclaim.
- Representation of Kawasaki Heavy Industries in disputes arising from its EPC contract for a cogeneration plant in Mexico. Our work on this matter includes presentation of extra work and schedule claims as well as advice on subcontract close-out issues.
- Representation of Raytheon Co. in connection with a \$40 million dispute in Florida federal court involving a contractor's claims arising from construction of a waste-to-energy process plant. We also represented Raytheon in lawsuits in Massachusetts and Alaska, defending \$35 million in subcontractor claims arising out of the construction of a radar facility in Clear, Alaska. After obtaining the dismissal or transfer of most claims to Massachusetts, the cases settled on terms extremely favorable for our client.
- Representation of Washington State Utilities in the successful mediation of a suit filed in federal district court involving an affirmative claim by Bechtel Power Group against the utilities and a counterclaim for professional errors and omissions, arising from the design and construction of a hydro power plant located on the Columbia River in Washington State.
- Representation of SkyGen in an insurance dispute involving delays in completing a cogeneration facility in Maine.
- Representation of Siemens Power Transmission & Distribution in defending a \$22 million construction claim by the civil contractor arising from two HVDC Converter Station Projects in metropolitan New York City. This engagement includes state court litigation and strategic advice on project completion.

Property Damage/Environmental/Toxic Tort Litigation

- Representation of a leading oil and gas company in a mass tort case involving alleged personal injuries and property damage following the malfunction of a Fluid Catalytic Cracking (FCC) unit. The malfunction resulted in the release of sulfur dioxide, carbon monoxide, and unburned hydrocarbons into the air. Plaintiffs include 250 residents who live near one of the company's refineries in California.
- Representation of an oil company in a personal injury and wrongful death claim arising from an alleged toxic exposure to products containing the chemical hexane. The case settled very favorably for our client.

Internal Investigations and Criminal/Fraud Investigations

- Representation of an Eastern utility in an internal investigation of allegations of earnings management, insider trading, and noncompliance with internal guidelines. The investigation team interviewed more than 70 people deemed potentially relevant to the allegations; reviewed records maintained in the ordinary course of business; reviewed more than 30,000 e-mail messages and other documents; reviewed relevant trading activities and financial transactions; and prepared a 180-page report to the SEC.
- Representation of an Eastern utility in the internal investigation of alleged round-trip trading. We refined a protocol for identifying suspicious trades, analyzed underlying documentation for the trades, and interviewed traders. We further defended the client in connection with a Commodity Futures Trading Commission inquiry into reporting by gas traders of false price information to the trade press.
- Representation of CMS Energy, an integrated energy supply and services company, as independent counsel to the Special Investigative Committee of the board of directors, in an internal investigation involving the overstatement of revenues and expenses related to round-trip energy trading activities. We presented our confidential report to the Special Committee and the CMS Board of Directors and later presented our findings to the SEC and other law enforcement personnel.
- Representation of a large utility in an investigation conducted by the CFTC into whether the utility had provided misleading price information on natural gas trades to an industry trade publication. We helped the client navigate a series of CFTC subpoenas and depositions, and ultimately persuaded the CFTC to terminate the investigation without any finding of wrongdoing or assessment of penalties.
- Representation of a utility savings company in connection with an investigation by the Illinois Attorney General's Office.

International Arbitrations

- Representation of a French company in an ICC arbitration in London against a Dutch company relating to a joint venture agreement with another European company for implementation of EPC contracts relating to the construction of platforms in the U.A.E., their offshore installation in West Africa, and the laying of related sub-sea umbilicals and pipe lines. After a complete exchange of pleadings, the case was finally settled through mediation on terms very favorable to the client.
- Representation of a trading company in complex proceedings in Zurich under Swiss law arising from the break-up of a metal/energy joint venture in Central Asia.

- Representation of a European company against a Northern African company in an ad-hoc UNCITRAL arbitration in that country relating to the construction of sub-sea equipment for the development of a gas field.
- Representation of a Latin American utility against a sovereign state in a major investment dispute related to the privatization of electricity distribution networks.
- Representation of a European company in an LCIA arbitration in London against another European company relating to a subcontract for construction of sub-sea equipment for development of an oil field off the coast of Africa.
- Representation of a French district heating company in an ICC arbitration in Paris against a German power supply company relating to the execution of a share purchase agreement. After a successful discovery and exchange of pleadings, the case was settled to the full satisfaction of the district heating company.

Labor and Employment Litigation

Lane v. Atlantic Richfield Corporation (ARCO)

Our attorneys won a motion for summary judgment on behalf of BP in a case brought by a former employee who claimed that her termination from ARCO's Los Angeles oil refinery after her refusal to submit to a random drug test violated her privacy rights and breached an implied employment contract because she was not a "safety sensitive" employee who could be subjected to random testing. The court found that she was a "safety sensitive" employee and entered judgment in favor of our client on all claims.

Ramey v. Potomac Electric Power Company, Potomac Electric Power Company v. Ramey

In the U.S. District Court for the District of Columbia, our attorneys won a motion to dismiss all claims asserted by a former employee. The claims included violation of civil rights; negligent hiring, training and supervision, and retention; failure to create policy or implement policies; negligent infliction of emotional distress; and intentional infliction of emotional distress. In a related action still pending in the Superior Court for the District of Columbia, our attorneys obtained a preliminary injunction restraining the former employee from defaming the company outside its headquarters by handing out leaflets alleging kidnapping and tampering with the former employees alcohol tests.

Goggins v. Westinghouse Electric Company

Winston & Strawn represented our client in a nuclear whistleblower action and federal race discrimination/breach of employment handbook claim before the Department of Labor and the U.S. District Court for the District of South Carolina. We obtained dismissal of the whistleblower complaint filed under Section 211 of the Energy Reorganization Act and obtained a favorable settlement of the race discrimination and breach of handbook claims.

Appellate Proceedings

Mobil Oil Exploration & Producing Se. Inc. v. United Distribution Cos. 498 U.S. 211
Successfully represented virtually all major natural gas producers in an appeal challenging the lawfulness under the natural Gas Policy Act and the Administrative Procedure Act of natural gas rates set by the Federal Energy Regulatory Commission.

Arcadia v. Ohio Power Co. 498 U.S. 73
Represented a municipal power authority in a landmark case interpreting the “conflict of jurisdiction” provisions of the Public Utility Act of 1935.

Pacific Gas & Electric Co. v. San Luis Obispo Mothers for Peace, No. 06-466
Represented Pacific Gas & Electric in a petition for certiorari concerning whether an agency is required to assess terrorism risks related to a power plant, not only in its ongoing security review, but also in public proceedings under the National Environmental Policy Act.

BPF, Inc. v. Alstom Power, Inc., No. 061317
Currently represent a builder and designer of power plants in defense of the liquidated damage portion of an arbitration award.

BBF, Inc. v. Alstom Power, Inc.
Successfully represented the EPC Contractor in defeating the appeal of a \$3.5million arbitration award in our client’s favor.

Practice Areas

- Antitrust*
- Appellate and Critical Motions*
- Banking*
- Corporate Governance*
- Corporate Internal Investigations*
- Corporate Lending*
- e-Discovery and Electronic Information*
- Employee Benefits and Executive Compensation*
- Energy*
- Environmental*
- Financial Services*
- Government Contracts*
- Governmental Relations and Regulatory Affairs*
- Health Care*
- Intellectual Property*
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About Winston & Strawn

Winston & Strawn LLP is an international law firm with 950 attorneys among eleven offices in Charlotte, Chicago, Geneva, London, Los Angeles, Moscow, New York, Newark, Paris, San Francisco, and Washington, D.C. The exceptional depth and geographic reach of our resources enable Winston & Strawn to manage virtually every type of business-related legal issue. We serve the needs of enterprises of all types and sizes, in both the private and the public sector. We understand that clients are looking for value beyond just legal expertise. With this in mind, we work hard to understand the level of involvement our clients want from us. We take time to learn about our clients' organizations and their business objectives. And, we place significant emphasis on technology and teamwork in an effort to respond quickly and effectively to our clients' needs.

Please visit us at www.winston.com if you would like more information about our legal services, our experience, or the industries we serve.