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FIRM PROFILE

Spiegel & McDiarmid is a mid-sized, Washington-based law firm with a nationally known litigation, regulatory and government affairs practice. The firm was founded by George Spiegel in 1967 and today comprises nearly thirty lawyers. While our practice areas might qualify us for a general litigation classification, we dislike labels. We prefer to think of ourselves as a firm with a very significant concern for the public interest, which affects our client representations and policies.

Spiegel & McDiarmid currently serves more than 500 clients throughout the United States. We have substantially more than our share of “cutting edge” cases. In this shared endeavor, we welcome diversity in thought and background and emphasize that we hire on an equal opportunity basis. Our attorneys currently include graduates of the Law Schools of Harvard (10), the University of Pennsylvania (4), Yale (2), Columbia (2), Georgetown (2), Northwestern at Lewis and Clark College (2), New York University (1), the University of Michigan (1), the University of Nebraska (1), the University of South Carolina (1), Northeastern University (1), The George Washington University (1), and the University of New Mexico (1).

This firm description, drafted by committee, reflects some portions of the views and biases of most of our lawyers and a significant portion of the views of our staff. While it is factually correct, no single individual finds it fully accurate in the flavor it conveys. Each of us believes that the firm is unique; no more than two agree on the precise elements of this uniqueness. Those interested are invited to ask as many questions as they may desire, but are warned that there may be as many different responses as there are people asked. *Caveat emptor.*

ENERGY

The firm specializes in societal infrastructure and issues involving the allocation of substantial amounts of money and essential services within society. The practice involves extensive amounts of litigation or potential litigation. Matters that cannot be negotiated are litigated, and most lawyers are expected to spend time in hearings, trials and judicial appeals. Litigation typically takes place before federal regulatory commissions, agencies and federal courts, but also involves state agencies and courts, and arbitration or other methods of alternative dispute resolution.

Our most long-standing client groups are municipalities and cooperatives that own and operate electric and natural gas utility systems, though as described below our representation of these clients has gone far beyond energy matters. We represent these clients in their transmission and wholesale purchase negotiations and litigation with major investor-owned electric utilities, gas pipelines and gas producers before the Federal Energy Regulatory Commission, courts and ADR tribunals as to prices, terms, supplies and services. We seek to protect these clients against anticompetitive conduct in the utility and energy industries before federal and state regulatory agencies, as well as in antitrust litigation in federal district and appellate courts. As the industries in which our clients find themselves switch from being cost-

regulated in most respects to new structures in which they are market-regulated, we have worked with our clients to permit them to continue to compete effectively in these restructured markets. We have also provided representation in matters involving public development issues, public transportation and public water supply.

We represent clients in proceedings and negotiations, often involving multi-million and multi-billion dollar issues, relating to regional electric power arrangements, transmission access, natural gas and oil availability, gas pricing and regulation, gas contracting, licensing of hydroelectric facilities, and joint public/private ownership of major electric generating stations and transmission lines. We provide advice with regard to the complex economic and legal analyses involved in a changing market structure. In addition, from time to time we provide services to state regulatory agencies in connection with regulation of retail rates and major interstate electric and gas arrangements, assist governmental counsel representing consumer interests in various jurisdictions in connection with complex retail consumer cases, advise major industrial concerns that are customers of, or joint generators with, private utility companies, and defend public systems from private-company takeovers. Our representation has involved far more issues of Constitutional dimension than the practice of most of the (substantially larger) firms with whom we compete for attorneys. An anonymous energy litigator cited Spiegel & McDiarmid as “this industry’s most intellectually formidable law firm” in the May 1, 2003 issue of *Electricity Daily*.

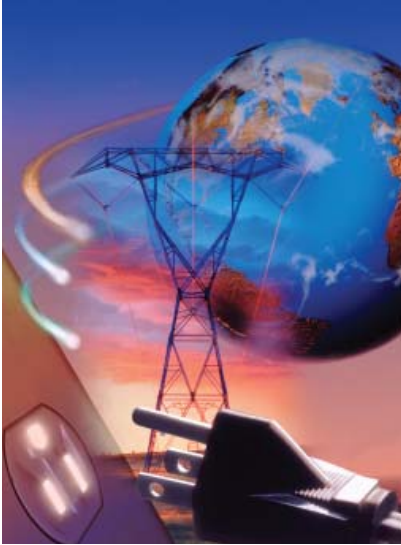
We have also represented a number of minority interest co-owners of nuclear power plants and contract purchasers of nuclear plant output in their myriad legal problems arising from mismanagement, cost overruns and construction delays by controlling majority owners, as well as protecting their interests as minority owners when nuclear plants are sold. This representation has frequently involved questions of corporate responsibility for failure to maintain safety and quality assurance programs and management control and for inadequate disclosure. We are often involved in issues of prudence of generation acquisition, management and operations. These complex cases become quite large in scope.



Over the past several years, we have been expanding what began as an energy-based practice in ways that help our long-term clients and allow us to grow. Even in the energy area, of course, our practice has changed over the years as the needs of our clients have changed. Thus, we now do considerably more energy work in the areas of transmission access (including ongoing efforts to promote competition in the electric industry), legislative representation, hydroelectric licensing, construction cost overruns and mismanagement, fuel purchasing and gas work than in the traditional “rate case” areas. In both our litigation and legislative practices, we have been in the forefront of efforts to bring increased competition to wholesale electricity markets and to deal with the imperfections of these developing markets. We have also been deeply involved in the litigation, administrative rulemaking and lobbying involving the various attempts to modify the industry structure through mergers and otherwise.

TRANSPORTATION

We have grown, and are growing, in compatible infrastructure-related areas as well. Our transportation practice serves public airport sponsors, large and small, across the nation by providing representation and advice in regulatory and legislative matters, such as assisting in the formulation of airport strategy for securing federal discretionary funds, Passenger Facility Charge approvals, and airline competition matters, addressing issues relating to international air service, assisting in the development of Environmental Impact Statement documentation for airport improvement projects, coordinating with the Department of Transportation and Federal Aviation Administration staffs, and communicating with Congressional delegations. The lawyers in the transportation practice are often called to draft lease and use agreements, fixed base operator and other airside leases, and frequently develop and review airport rules and regulations and airport minimum standards. The firm also represents airports in litigation in federal courts and



in agency enforcement actions. We assist airports in capital financing activities, and we work with sponsors of surface transportation projects to obtain federal funding for capital and operating expenditures to supplement funds generated from other sources.

TELECOMMUNICATIONS

In the communications field, the firm has been active advising and representing local governments and nonprofit community groups on a variety of telecommunications issues. Our work for local governments includes cities and counties considering municipal ownership and operation of cable systems, construction and ownership of infrastructure, including fiber optic systems, and issues that arise under cable television franchises, including those in connection with renewal, transfer, enforcement and rate regulation. This work often concerns questions involving interpretation and application of federal telecommunications law, the U.S. Constitution, federal and state antitrust laws, and utility regulatory laws. We are advising local governments on telephone and other communications issues arising from the advent and growth of new technologies. We work with cities that plan to install fiber optic systems, or to have fiber optic systems installed by others, to provide communications services for municipal functions and which will be open systems available to others to provide telecommunication services. Our work in the communications area regularly involves thorny First Amendment issues. We were successful in obtaining two important federal district court rulings in 2000: injunctive relief for the producer of a live call-in public access program that was often critical of city officials when the local franchise eliminated the public access channel as a forum for free expression, and affirmation of a city's denial of a cable franchise renewal, the first such denial since enactment of the Federal Cable Act of 1984 to experience the full formal process provided by that Act.

ENVIRONMENTAL

The Spiegel & McDiarmid environmental and government affairs practice helps local government and green technology clients to obtain government resources, regulatory solutions, compliance counseling, and legal results necessary to advance community development and environmental projects. The firm's ability to provide legal counsel, federal advocacy and litigation services has produced a solid record of accomplishment and success for its clients. The firm's practice is focused on seeking Congressional and agency resources for community development and environmental projects; providing compliance counseling on Smart Growth, Clean Air Act, Superfund, brownfields, land use, and other environmental regulations to localities and public power communities; managing and representing a national trade association, the National Association of Local Government Environmental Professionals (NALGEP); pressing environmental claims in federal and state courts, including appellate and trial court litigation; assisting environmental technology companies to obtain resources and overcome barriers raised by less environmentally-preferable products; and guiding local officials in testimony before Congressional committees.

The environmental practice has represented local governments in the development and release of major policy recommendations on national environmental issues. The firm, working with NALGEP, has issued reports including *Superfund Liability: A Continuing Obstacle to Brownfields Redevelopment* (2006); *Revitalizing Southeastern Communities: A Brownfields Toolkit* (2006); *Clean Communities on the Move: A Partnership-Driven Approach to Clean Air and Smart Transportation* (2005); *Unlocking Brownfields: Keys to Community Revitalization* (2004); *Smart Growth is Smart Business: Boosting The Bottom Line and Community Prosperity* (2004); *Smart Growth for Clean Water* (2003); *Recycling America's Gas Stations* (2002); *Profiles of Local Clean Air Innovation: Empowering Communities to Meet the Air Quality Challenges of the 21st Century* (2000); *Profiles of Business Leadership on Smart Growth* (1999); *HUD CDBG Brownfields Fundings: A Building Block for Community Development* (1998); and *Building a Brownfields Partnership from the Ground Up* (1997).

COMMERCIAL LITIGATION

The skills and instincts developed by our attorneys in various areas for which Spiegel & McDiarmid is well-known have also been applied, to our clients' advantage, in other legal areas that perhaps can be captured best under the broader heading of "commercial litigation." For example, a municipal electric utility may have a contractual dispute with a vendor that is not, strictly speaking, a matter of "energy law," or an airport client may encounter an antitrust problem that does not fit neatly under the heading of "transportation law." Similarly, a local government may face a challenge to its rights-of-way requirements or to a communications-related tax that does not fit squarely within the normal understanding of "communications law."

Part of our practice involves "*qui tam*" litigation under the 1986 amendments to the False Claims Act. *Qui tam* cases may be initiated on behalf of the federal government by individuals, known as "relators," who have knowledge of fraud committed against the government. We are currently working with a number of relators and are engaged in various stages of *qui tam* actions or investigations.

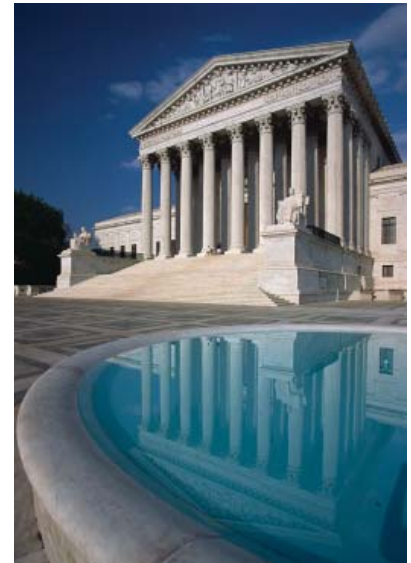
PUBLIC POLICY

Spiegel & McDiarmid's public policy practice is engaged in legislative advocacy on behalf of local governments, public power utilities, public airports, and other clients. We help our clients secure Congressional appropriations, legislative solutions and other assistance to meet community needs. We represent several national coalitions on environmental and energy issues. The firm provides association and project management services to the National Association of Local Government Environmental Professionals (NALGEP). NALGEP is the premier national association representing officials in more than 140 localities who are responsible for environmental compliance and the development and implementation of local environmental policy. The firm coordinates policy development, training and outreach, national advocacy, technical assistance, and networking activities for members on a variety of environmental topics. These topics include environmental management, air quality, water quality, energy policy, brownfields, smart growth, and pollution prevention. As long-time legislative counsel to the Transmission Access Policy Study Group ("TAPS"), a coalition primarily of consumer-owned electric systems throughout the United States, the firm works to secure improved transmission access requirements through advocacy in legislative and administrative forums.

PRO BONO

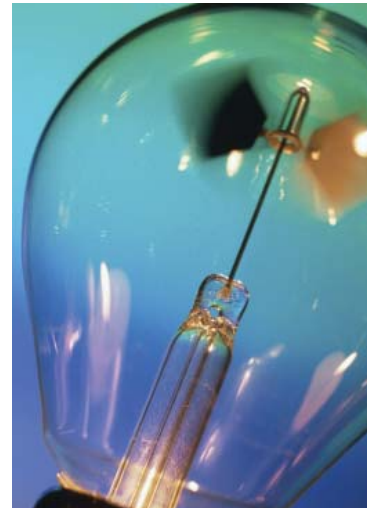
We have worked on such diverse matters as cell phone accessibility for the blind and visually impaired, police misconduct matters, fishing quotas, sex discrimination in insurance rates, zoning, First Amendment rights, minority shareholder claims, the rights of operators of small farms in disputes concerning federal agricultural programs, and the Centralia, Pennsylvania, mine fire. Our efforts regarding cell phone accessibility were described in a February 12, 2004 article in *The New York Times*, "A New Cellphone Nods to the Needs of the Disabled."

We welcome the pursuit by all of the firm's attorneys of personally meaningful *pro bono* causes. Our *pro bono* activities have brought benefits to individuals and organizations and have made new law in areas such as protections against discrimination in health cases on the basis of HIV/AIDS and deafness. The firm joined a coalition of environmental organizations, led by the National Resources Defense Council, in challenging the U.S. Department of Energy's environmental management of the United States' nuclear weapons complex and activities, including the Department's proposed Stockpile Stewardship and Management Program.



SIGNIFICANT ACCOMPLISHMENTS

Although much of our work is concluded at the regulatory level or negotiating table, the flavor of at least a part of our work is documented in some of our more significant judicial victories, which include: *Bonneville Power Administration v. FERC*, 422 F.3d 908 (9th Cir. 2005), *petition for cert. pending*; *Florida Municipal Power Agency v. FERC*, 411 F.3d 287 (D.C. Cir. 2005); *Public Service Commission of the Commonwealth of Kentucky v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005); *Comcast of California II, L.L.C. v. City of San Jose, Cal.*, 286 F. Supp. 2d 1241 (N.D. Cal. 2003); *City of Bridgeton v. FAA*, 212 F.3d 448 (8th Cir. 2000); *Florida Municipal Power Agency v. Florida Power & Light Co.*, 64 F.3d 614 (11th Cir. 1995), *enforced*, 81 F. Supp. 2d 1313 (M.D. Fla. 1999); *CCC Information Services v. Maclean Hunter Market Reports*, 44 F.3d 61 (2d Cir. 1994); *cert. denied*, 116 S. Ct. 72 (1995); *United States ex rel. Fallon v. Accudyne Corp.*, 880 F. Supp. 636 (W.D. Wis. 1995); *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242 (9th Cir. 1995); *Doe v. District of Columbia Commission on Human Rights*, 624 A.2d 440 (D.C. 1993); *Hazardous Waste Treatment Council v. Reilly*, 938 F.2d 1390 (D.C. Cir. 1991); *University of Maryland at Baltimore v. Peat Marwick Main & Co.*, 923 F.2d 265 (3d Cir. 1991); *Allegheny Electric Cooperative v. FERC*, 922 F.2d 73 (2d Cir. 1990); *Duke Power Co. v. FERC*, 864 F.2d 823 (D.C. Cir. 1989); *Union Electric Co. v. FERC*, 890 F.2d 1193 (D.C. Cir. 1989); *United States acting by and through the Western Area Power Administration v. Pacific Gas & Electric Co.*, 714 F. Supp. 1039 (N.D. Cal. 1989); *Safe Buildings Alliance v. EPA*, 846 F.2d 79 (D.C. Cir. 1988); *MTA v. FERC*, 796 F.2d 584 (2d Cir. 1986); *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985); *Fort Pierce Utilities Authority of the City of Fort Pierce v. FERC*, 724 F.2d 1167 (5th Cir.), *reh'g denied*, 736 F.2d 214 (5th Cir. 1984); *Lebron v. Washington Metropolitan Area Transit Authority*, 749 F.2d 893 (D.C. Cir. 1984); *Public Service Co. of New Hampshire v. FERC*, 600 F.2d 944 (D.C. Cir. 1979); *American Public Gas Association v. FPC*, 546 F.2d 983 (D.C. Cir. 1976); *FPC v. Conway Corp.*, 426 U.S. 271 (1976); *Gulf States Utilities Co. v. FPC*, 411 U.S. 747 (1973); *Richmond Power & Light v. FPC*, 481 F.2d 490 (D.C. Cir. 1973); and *Gainesville Utilities Department v. Florida Power Corp.*, 402 U.S. 515 (1971). Our losses, we hope, are generally not as significant and are far less frequent, although they do occur.



Those familiar with our work tend to have strong opinions about the firm. Ordinarily, those characterizations that we see from our clients are favorable; we make no such representations as to the characterization of this firm by our opponents, although many of us have favorite examples of the private (and sometimes unrepeatable) characterizations that have later surfaced in discovery.

Our lawyers have also received recognition for their accomplishments from their peers. For recent examples, see “Scott Strauss and David Pomper Named as Energy and Utilities *Super Lawyers*,” March 2007, available at http://www.spiegelmc.com/publications/pubs/pr_super_lawyers_07.pdf; and “Identifying 10 Leading Energy Lawyers,” *Legal Times*, regarding Cindy Bogorad, May 2005, available at http://www.spiegelmc.com/publications/pubs/csb_legal_times_top_attny.pdf.

PUBLICATIONS

Our lawyers regularly publish articles related to their practices. While a more extensive list of publications may be found on the firm’s website, www.spiegelmc.com, some of our recent articles are listed below. Articles not readily available on the firm’s or others’ websites can generally be found on Westlaw or Lexis.

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- Scott H. Strauss & Jeffrey A. Schwarz, *The Mobile-Sierra Doctrine: A Return to its Statutory Roots*, 145 Pub. Util. Fortnightly 60 (2007).
http://www.spiegelmc.com/publications/pubs/shs_mobile_sierra_puf_5-07.pdf
 - Cynthia S. Bogorad, *Letter the Editor*, 145 Pub. Util. Fortnightly 14 (2007).
http://www.spiegelmc.com/publications/pubs/csb_puf_letter.pdf
 - Scott H. Strauss & Mark S. Hegedus, *New England's Forward Capacity Market: The Future is Now*, 64 Pub. Power 40 (2006).
http://www.spiegelmc.com/publications/pubs/shs_future_now.pdf
 - *Should the FCC Curb TV Violence?* Wall St. J. Online, May 21, 2007, at Reply All column (interview re: Gloria Tristani).
<http://online.wsj.com/article/SB117924182457803432.html>
 - Tillman L. Lay, *Will New Federal and State Video Franchising Laws Sideline Local Governments?* 14 NATOA J. of Mun. Telecomm. Policy 8 (2006).
http://www.spiegelmc.com/publications/pubs/tll_natoa_franchising_laws.pdf
 - Robert A. Jablon, Mark S. Hegedus & Sean M. Flynn, *Dispelling Myths: A Real World Perspective on Trinko*, 50 Antitrust 589 (2005).
 - Frances E. Francis & William S. Huang, *A Growing Problem: Local Land Use Planning and Federal Control of Shoreline Development Around Federally Licensed Hydroelectric Projects*, 46 Mun. Law. 14 (2005).
http://www.spiegelmc.com/publications/pubs/fef_wsh_growing_problem.pdf
 - John J. Corbett, *Siting New Airport Runways: Who Should Decide?* 45 Mun. Law. 21 (2004).
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