

Our hydroelectric practice involves counseling, negotiation, legislative representation, and, when necessary, litigation to resolve virtually all aspects of hydropower licensing. These include, but are not limited to, issues involving licensing, relicensing, enforcement, compliance, annual charges, shoreline management plans, representation of stakeholders in relicensing cases, and surrender and transfers of licenses. Spiegel & McDiarmid LLP has long been involved in assisting clients in hydroelectric issues throughout the US, and this involvement has led us into areas where water supply for municipal and rural water systems arises. We have worked with clients to assure protection of their own water supply and other interests as federal licenses are transferred or modified. These other related issues have been quite diverse, including the acquisition by clients of transportation systems, as well as protection of parkland and municipal amenities. As is the case for other practice areas, we have argued hydro issues on behalf of our clients in the federal appellate courts.

#### ***SELECTED HYDRO MATTERS***

##### **FERC HYDRO RELICENSING CASES**

Spiegel & McDiarmid has assisted its clients, including those who are seeking a renewal of their licenses, as well as those municipalities, water systems, and counties who participate as stakeholders and intervenors, in the relicensing of existing hydro projects. For clients who are stakeholders and/or intervenors in relicensing proceedings, our work has encompassed issues including aesthetics, public access, local parks and recreation, assurance of water supplies, shoreline management, and environmental quality. The Federal Energy Regulatory Commission (FERC) regulations governing relicensing change from time to time, and effective participation requires keeping abreast of these rule changes, as well as familiarity with FERC precedents and practices.



##### **MUNICIPAL ACQUISITIONS OF HYDRO FACILITIES**

The firm has assisted a number of clients in securing licenses for new or existing hydroelectric projects, including projects located within the client's city limits. Such projects are sources of power and/or revenues, but can also play a role

in water supply, urban redevelopment, and recreation.

One example is the City of Columbia, South Carolina, which acquired its hydroelectric project not via a competing relicensing application, but in the context of complicated franchise renewal negotiations that involved the project owner's desire to be relieved of its obligation to operate a public transit system. The City's acquisition of the transit system and the hydroelectric project puts it in a better position to control its future, and the revenues from the project will better enable the City to bear the costs associated with the transit system.

##### **MECHANICVILLE SETTLEMENT SUCCESS**

Spiegel & McDiarmid represented Fourth Branch Associates (Mechanicville) in its efforts to win the right to restore the historic Mechanicville Hydroelectric Station, a FERC-licensed hydro project near Albany, New York. Because of the dispute between the co-licensees, Fourth Branch and Niagara Mohawk Power Corp., it appeared that operations at the project would be terminated, destroying the project's historic value as an operating hydroelectric facility dating back to the late 1890s. Recourse to the Federal Energy Regulatory Commission and to the courts had been made, but time was running out.

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In a settlement reached on April 10, 2003, Niagara Mohawk agreed to transfer the station to Fourth Branch. The settlement allowed Fourth Branch to restore the station and, in coordination with local and state preservation organizations, to turn it into both a functioning power plant contributing to power supply in the region and a working museum of the region's industrial past. As reported in the Wall Street Journal, the settlement announcement "pleased preservationists who saw the hydroelectric plant as a unique example of working hydro technology from a century ago." The case was closely followed by the Advisory Council on Historic Preservation, which hailed the successful settlement at [www.achp.gov/casearchive/casessum03NY2.html](http://www.achp.gov/casearchive/casessum03NY2.html).

With hard work by all concerned, Fourth Branch was able to obtain the FERC Division of Dam Safety and Inspections' (D2SI) review and sign off before the deadline. The approved stabilization plan included a unique escrow arrangement by Fourth Branch and Niagara Mohawk that assured the availability of funds for the stabilization program. The restoration of the historic powerhouse was completed, and the Plant is now running and producing power.

#### **ANNUAL HYDRO CHARGES REFUNDS**

Beginning in 1997, the firm filed appeals with FERC on behalf of several of its licensee-clients challenging federal resource agency costs which FERC passes through to licensees, without review, in its annual charge bills. Along with one other firm, we sought FERC review of staff's denial of the 1997 appeal, and filed a similar appeal the following year. FERC consolidated the 1997 and 1998 appeals for investigation.

The ensuing investigation revealed widespread record keeping deficiencies, such that many of the costs that had

been included in the 1997 and 1998 annual charge bills were unsupportable. A settlement of the 1997 and 1998 appeals yielded substantial credits for the licensees that had pressed these appeals.

Following FERC's initiation of an investigation of the 1997 and 1998 annual charges, many licensees filed similar appeals annually beginning in 1999. As a result of the record keeping deficiencies discovered in the investigation, FERC sought sworn re-certifications from the other resource agencies, and subsequently issued credits to the licensees that had filed appeals in 1999 and 2000.

In 2003, a court decided that FERC cannot meet its statutory responsibilities with respect to setting annual charges unless it reviews the supporting information for other resource agencies' claimed costs. The FERC regulations have been changed to require greater accountability by the agencies seeking reimbursement.

#### **SURRENDER OF A LICENSE**

Spiegel & McDiarmid assisted a client interested in restoring a portion of a river by removing a FERC-licensed hydro project. The project was subject to a tight deadline because of weather and other constraints, but the dam was successfully removed and a segment of the river was restored. The effort was related to a program of credits awarded by the state for environmental enhancements. In addition, the powerhouse is in the process of being restored for public and private use, and a park has been created at the site.

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