

Compliance and Enforcement



Our clients face compliance obligations under a myriad of requirements imposed by federal law, regulations and policy adopted by the various regulators, including the Federal Energy Regulatory Commission (FERC), the Commodity Futures Trading Commission (CFTC) the North American Electric Reliability Corporation (NERC) and the Federal Communications Commission (FCC). Our firm has been able to use our extensive knowledge of the industries in which we practice to assist our clients in successfully navigating compliance and enforcement issues.

Whether defending clients already involved in investigation or enforcement proceedings or proactively helping them develop a compliance and risk management regime to prevent future compliance issues, the lawyers of Spiegel & McDiarmid LLP understand municipal and consumer-owned utilities and the entities that regulate them. Our clients trust our expertise, insights and track record to guide them through the enforcement process and help them avoid the process before it even begins.

Energy Industry Compliance Issues

FERC, CFTC and NERC (through its Regional Entities) all regulate aspects of energy transactions and reliability activities in which municipal and consumer-owned utilities engage. These areas include the investigation and punishment of market manipulation and tariff and antitrust law violations and enforcement of standards to protect the reliability of the bulk electric system. Regional Transmission Organizations and their market monitoring entities are additional entities empowered to conduct inquiries and investigations. Our lawyers use their extensive knowledge of this industry and the key regulatory entities to help our clients comply with the law and deal with investigations of alleged violations and with enforcement proceedings and negotiations. Any investigation or enforcement activity raises the potential of expensive efforts to defend actions taken, and can pose the significant risk of fines and, potentially, civil or criminal penalties. The firm is experienced with handling these sensitive inquiries.

An ounce of prevention is worth a pound of cure, and the firm can provide clients with in-depth regulatory compliance training. Conveniently delivered at the client's place of business and preceded by thorough risk-assessment telephone

interviews of management and staff, these interactive training sessions explain FERC's compliance requirements and counsel clients on whether various incidents could create enforcement exposure. By designing formal compliance policies, we help create an institutional framework for internal compliance reporting within the utility. It is worth noting that enforcement entities often can mitigate penalties for utilities with compliance policies in place.

Regulatory entities also treat self-reported violations more leniently than if a broken rule is revealed through an external investigation or whistle-blowing. Should a client realize that it might have committed a violation, we advise on next steps, which could include self-reporting to mitigate penalties. This is often a complicated high-risk decision, one that companies should not undertake without expert legal counsel.

Nor should a client try to navigate a full-blown investigation alone. We defend clients in these situations through discovery and depositions in front of commissions and courts as necessary.

Communications Industry Compliance Issues

The firm's Telecommunications Practice lawyers counsel local government, municipal utility and school district clients on FCC compliance matters. These matters range from FCC licensing and communications antenna registration requirements to the FCC's Schools and Libraries universal service program. Firm attorneys have achieved successful resolution of FCC compliance matters on behalf of clients in all of these areas. FCC staff knows and trusts us, and that reputation is essential to successful resolution of pending or threatened FCC enforcement actions.