SPIEGEL & MCDIARMID LLP

Litigation and Appeals



Firm attorneys are involved in trial and appellate work before state and federal agencies and courts, up to and including the United States Supreme Court. We seek through these efforts to advance the public interest. We often battle large, resource-rich opponents, typically represented by large, prominent law firms.

Virtually all of the litigation in which we are engaged involves significant policy questions. Some matters are specific to our practice areas: energy and related environmental concerns and telecommunications. Others pose more wide?ranging issues, including the scope of federal preemption of state and local laws and policies, access to the federal courts, and federal constitutional law matters, such as First Amendment, takings, due process and federalism issues. We also often are involved in matters concerning the structure of some of the nation's most important industries, including participation in many — if not most — of the more significant utility mergers and acquisitions in recent memory.

The best way to capture the breadth of our work is to consider some of the more significant proceedings over the past decade in which clients we represent have been central players. These include:

- Representing the Maryland Public Service Commission in *Hughes v. Talen Energy Mktg. LLC*, 136 S. Ct. 1288 (2016), a landmark Supreme Court decision defining the contours of state authority to promote new and needed generation resources.
- Defending the zero-emissions credit component of New York's "Clean Energy Standard," the state's ambitious emissions reduction program. *Coal. for Competitive Elec. v. Zibelman*, 272 F. Supp. 3d 554 (S.D.N.Y. 2017), *aff'd*, 906 F.3d 41 (2d Cir. 2018), *cert. denied sub nom.Elec. Power Supply Ass'n v. Rhodes*, 139 S. Ct. 1547 (2019).
- Representing the State of Connecticut in seeking a lower return on equity (or profit margin) in the rates paid by New England consumers for transmission service. *Coakley v. Bangor Hydro-Electric Co.,* Op. No. 531, 147 FERC ¶ 61,234, *on paper hearing*, Op. No. 531-A, 149 FERC ¶ 61,032 (2014), *on reh'g*, Op. No. 531-B, 150 FERC ¶ 61,165 (2015), *vacated and remanded sub nom. Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017).
- Representing the Maryland Energy Administration in challenging a multi?billion dollar proposed merger, which resulted

in a settlement that included more than a billion dollars in benefits for Maryland ratepayers. *In re the Merger of Exelon Corp. & Constellation Energy Group, Inc.*, Case No. 9271, Order No. 84,698, 295 P.U.R.4th 183 (Md. Pub. Serv. Comm'n 2012).

- Representing the National Hispanic Media Coalition in challenging the Federal Communications Commission's 2017 order that repealed the FCC's earlier net-neutrality rules. *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).
- Representing the Louisville/Jefferson County (Kentucky) Metro Government in successfully defending its "one-touch make-ready" pole attachment ordinance, designed to facilitate deployment of competitive broadband facilities, against attack by the incumbent local telephone company. *BellSouth Telecomms., LLC v. Louisville/Jefferson Cty. Metro Gov't*, 275 F. Supp. 3d 833 (W.D. Ky. 2017).
- Representing a coalition of local government and cable television public, educational and government access (PEG) channel associations, as *amici curiae*, in *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019), a Supreme Court decision construing the state action doctrine in the context of cable television public access channels.
- Representing a joint action agency in an administrative complaint that secured prompt reinstatement of wrongly rejected transmission queue positions for a large solar project. *Mun. Power Agency v. Duke Energy Fla., LLC*, 167 FERC ¶ 61,138 (2019).
- Representing a municipal utility before FERC to preserve a reimbursement obligation and stave off "pancaked" transmission charges in the wake of a utility company's departure from a regional transmission organization. *Owensboro Mun. Utils. v. Louisville Gas & Elec. Co.*, 166 FERC ¶ 61,131, *reh'g denied*, 169 FERC ¶ 61,030 (2019).
- Successful defense of an airport authority in an administrative complaint and in appellate court concerning the airport's ability to use airport revenues to pay presumptively lawful local utility bill notwithstanding airline challenge that certain line item charges concerned services of no benefit to airport. *Air Transport Ass'n of Am., Inc., d/b/a Airlines for Am. v. FAA*, 921 F.3d 275 (D.C. Cir. 2019).