



Compliance, Investigations,
and Enforcement Practice

Providing critical counsel

Compliance, Investigations, and Enforcement Practice



“Dickstein Shapiro’s energy attorneys have a comprehensive knowledge of the industry and our business. They provide invaluable advice, and a proactive and creative approach to solving complex problems.”

Irving Yoskowitz
Former Executive Vice President and General Counsel
Constellation Energy

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Dickstein Shapiro is at the forefront of the energy industry’s renewed commitment to compliance. This focus on compliance results from the Federal Energy Regulatory Commission’s (FERC’s) recently enhanced enforcement authority and the FERC’s expressed intent to be vigilant in investigating and enforcing allegations of improper conduct in the electricity and natural gas markets.

Dickstein Shapiro has unsurpassed experience in representing clients in internal and agency investigations, and in designing and implementing compliance programs and codes of conduct that conform to industry best practices and that would be favorably viewed under the FERC’s Policy Statements on Enforcement, the Principles of Federal Prosecution of Business Organizations, and the federal sentencing guidelines. In recent years, the Firm has represented clients in more than a dozen non-public investigations conducted by the FERC’s Office of Enforcement, in addition to numerous public investigations. The Firm similarly assists clients in conducting internal investigations of compliance matters that arise with respect to energy trading, bidding and scheduling, plant operations, the natural gas “buy-sell” rules, price reporting practices, and the myriad obligations imposed on market participants in tariffs, market rules, and FERC regulations and orders.

The FERC now expects energy companies to develop and instill a culture of compliance. To that end, Dickstein Shapiro also conducts independent assessments of clients’ existing compliance programs, designs and documents revitalized compliance programs, conducts compliance training, and assists in the formulation of trading and plant operations policies and price reporting procedures. The Firm further assists clients in complying with the new requirements imposed by the North American Electric Reliability Corporation (NERC).

Our Practice includes former senior FERC officials who provide critical insights into navigating FERC enforcement policies. In addition, because FERC investigations often overlap with DOJ, SEC, and CFTC investigations, the Firm also utilizes senior attorneys from its securities and litigation practices who focus on these types of compliance and litigation matters.

Representative Compliance, Investigations, and Enforcement Experience

Dickstein Shapiro's clients include more than 100 of the *Fortune* 500 companies.

Investigations and Enforcement

- Counseled NRG Energy, Inc. in connection with a self-report to the FERC relating to the failure of a generating unit to respond to dispatch instructions, which resulted in an Enforcement investigation and audit that culminated in an extremely favorable disposition.
- Counseled KeySpan-Ravenswood, LLC in connection with a FERC investigation of the impact of a financial derivative transaction on the company's bidding practices in the New York City capacity market, culminating in no further action, based on findings that the company did not violate market rules or the FERC's anti-manipulation regulations.
- Represented Duke Energy in a multitude of proceedings that arose out of the California electricity crisis of 2000-2001 and the Enron disclosures regarding market manipulation. This representation resulted in settlements of all FERC-related matters and in the successful culmination of other governmental investigations by the SEC, CFTC, the U.S. Department of Justice and State Attorneys General, and settlement of multiple class action lawsuits.
- Represented electric and gas suppliers and customers in FERC investigations of bidding practices, circuitous scheduling, economic withholding, and buy-sell arrangements for natural gas.

Compliance Programs

- Conducted and documented a top-to-bottom "gap analysis" of a company's compliance program, resulting in recommendations for enhancement of compliance functions and institutionalizing compliance responsibilities.
- Conducted assessments of various compliance program functions at different companies, including effectiveness of training programs, monitoring, telephone taping and electronic records preservation, and internal communications and compliance decision-making processes.
- Drafted Compliance Policies and Procedures for formal adoption by a company's senior management and board of directors.
- Drafted plain-English Energy Trading Compliance Manuals explaining compliance requirements and company procedures for trading desk personnel and supervisors.
- Drafted trading supervisors' guidelines and procedures to ensure effective day-to-day resolution of energy trading compliance issues and on-going monitoring of trading practices.

NERC

- Advised companies on registration status and requirements, prepared comments to the FERC on proposed registration requirements, appealed registration decisions before the NERC and the FERC, negotiated with counterparties on joint registration organization (JRO) arrangements; coordinated with Regional Entities to obtain acceptance of JRO arrangements, negotiated with NERC and Regional Entities on appropriate methods of compliance with certain standards; and coordinated with Regional Entities and the NERC to identify limitations on standard compliance requirements based on project-specific factors.
- Assisted clients in developing procedures to address noncompliance issues, counseled on self-reports with respect to areas of noncompliance and on notices of alleged violation or penalties, and designed and implemented mitigation plans.
- Reviewed transaction documents, power sale agreements, and operating agreements to identify NERC compliance issues and address related issues, including allocation of responsibility and liability among counterparties.

About the Firm

Dickstein Shapiro LLP, founded in 1953, is internationally recognized for its work with clients, from start-ups to *Fortune* 500 corporations. Dickstein Shapiro provides strategic counsel and develops multidisciplinary legal solutions by leveraging its core strengths—litigation, regulatory, transactions, and advocacy—to successfully advance clients' business interests.



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