

Public Utility Regulation

Downey Brand's public utility regulation attorneys possess a wealth of experience representing clients before California agencies that regulate electric, natural gas, energy and water utilities, telecommunications providers, and certain groundwater and transportation companies. We guide clients through the regulatory process and related appellate matters, and provide support for our clients' efforts to achieve legislative solutions to regulatory challenges.

Downey Brand's public utilities team is comprised of some of the most expert and veteran practitioners in California. Senior partners in our practice have held influential positions in state regulatory agencies, giving us unparalleled acumen in utilities law and practice. Our team works diligently with clients to navigate matters overseen by the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), the California Independent System Operator (CAISO), and the Office of Energy Infrastructure and Safety. Notably, our lawyers have achieved great success representing new entrants into the energy and telecommunications markets.

Whether our client is a regulated utility, an energy market participant, an energy project or housing developer, a transportation service provider, a local government entity, a telecommunications service provider, or an entity that is impacted by a public utility, our understanding of the applicable regulatory requirements and our ability to achieve client goals, navigate the regulatory process, and work with regulators and a multitude of agency professions make us the counsel of choice for clients with ambitious goals throughout the region.

Our lawyers represent regulated electric and gas utilities in ratemaking proceedings before the CPUC, as well as independent natural gas storage and suppliers in certification proceedings, regulatory compliance, rate setting, and utility general rate cases. We assist commercial and industrial customers, as well as other large energy users, with issues involving siting, development, interconnection, Power Purchase Agreements, and market incentives for cogeneration, energy storage, demand response, energy efficiency, and renewable energy. Our team also advises on Renewables Portfolio Standard certification at the CEC for renewable energy projects.

We advise on the purchase and sale of regulated utility assets, and the siting and construction of utility assets, such as transmission lines and power generation facilities. We also represent clients in connection with decommissioning of utility assets, such as the Diablo Canyon Nuclear Power Plant and the four dams in the Lower Klamath Project. We also provide counsel and assistance to the Legislature and our clients by crafting legislation affecting regulated utilities, the California energy market, greenhouse gas emissions (GHGs), and wildfire safety and de-energization.

Our lawyers provide expert representation to providers of wireless and wireline telecommunications services, including CPUC certification and regulatory oversight matters.

We represent a broad range of clients in transportation matters. We assist charter-party carriers, vessel ferry and freight service providers, and airport shuttles obtain regulatory approvals for operations and rates. We also assist local governments and railroad corporations with matters relating to rail crossings.

In the event of an enforcement proceeding, we aggressively defend CPUC enforcement actions for renewable energy procurement obligations and telecommunications and transportation services. Our attorneys represent clients in enforcement proceedings against regulated utilities for wildfire liability and other failures to abide by regulatory obligations and assist with appeals of CPUC decisions to the California appellate courts.

As change is both inevitable and a constant in the utilities industries, our team remains diligently proactive in identifying and anticipating developments involving complex utilities regulations. We focus not only on working with our clients to anticipate and meet existing and changed regulatory requirements, but also with assisting them to thrive within their industries' transformational framework.

Selected Experience

CPUC Procedures and Legislation

- Our attorneys have played a central role in the drafting and enactment of statutes modernizing the CPUC's century-old procedures, including crafting measures providing for Internet access to CPUC documents, expanding the opportunity for parties to comment on proposed CPUC orders, evolving CPUC authority to exempt certain financial transactions from otherwise applicable statutory requirements for formal CPUC approval, and revising legislation in which CPUC decisions are published.
- During the 1997-1998 legislative session, our attorneys participated in the drafting and advocacy leading to the enactment of the Calderon-Peace-MacBride Judicial Review Act of 1998 (SB 779), greatly enlarging the scope of judicial review of CPUC decisions, permitting review of most CPUC decisions in the Court of Appeal; prior to the enactment of the measure CPUC decisions were only subject to review in the California Supreme Court by discretionary writ.

Energy

- Firm attorneys have advised clients on various aspects of the emerging energy storage industry, on topics ranging from integrating storage with residential rooftop solar facilities to developing and obtaining regulatory approvals for large energy storage facilities that will help maintain the reliability of the electric grid, integrate increasing amounts of renewable energy into the electric system, and reduce greenhouse gas emissions by improving the efficiency of the generation fleet.
- Firm attorneys assist in performing due diligence and analyzing legal and regulatory risks for companies seeking to acquire, finance, or invest in California energy companies of all types. In addition, our attorneys review and analyze power purchase agreements, and have advised clients on California regulatory issues for some of the most innovative structured financings in the industry. These include the Trans-Elect Path 15 Upgrade, the first privately financed transmission development project in North America.
- Our regulatory attorneys work with independent renewable and conventional generators to negotiate power purchase agreements and interconnection agreements, and to navigate through the federal and state regulatory requirements that affect the economic and legal viability of generating plants. The firm also represents the Independent Energy Producers Association, the largest and oldest trade association of California independent generating companies.
- Firm attorneys have long been active in advising and representing the developers and operators of solar, wind, geothermal, biomass, small hydroelectric, and other renewable resources. In addition to its representation of individual companies and projects, the firm advises and represents the oldest and largest

trade association of California renewable energy producers. Our attorneys represent clients in every phase of the renewable development process, as well as in ongoing regulatory policy proceedings that renewable developers must actively follow.

- Firm attorneys have provided key regulatory representation to independent transmission developers, such as Trans Elect and the Trans Bay Cable project, throughout their innovative privately financed transmission projects.
- Firm attorneys were successful in obtaining certification from the Public Utilities Commission for the state's first independent storage provider.
- Our regulatory attorneys have represented several major interstate pipelines in their efforts to secure effective state policies for ensuring entry of their gas into the state and allowing gas-on-gas competition to occur within California, unimpeded by anti-competitive rate structures of in-state utilities.

Communications

- Our attorneys played a significant role in proceedings that led to the development of much of the current regulatory framework governing telecommunications. For example, firm attorneys, on behalf of their clients, largely drafted the current rules governing Commission approval for mergers and acquisitions of telecommunications providers. We have also played a major role in consumer protection regulation, as well as ongoing proceedings that seek to adapt regulation to the changing needs of customers seeking to acquire and develop the latest telecommunications technology.
- Firm attorneys represent many clients with networks that are directly engaged in increasing broadband access in California. Our attorneys have frequently assisted in explaining how market-oriented policies have fostered the multiple forms of telecommunications network competition, bringing California customers more choices and more competitive options.
- Our regulatory attorneys have represented regulated and unregulated industry participants for over 25 years in proceedings before the CPUC and FCC. These include transactions and disputes involving commercial end-users, major equipment vendors, sales agents, wholesale services and interconnection, access to conduit and other private and public rights-of-way, asset transfers, and construction of fiber optic facilities. Our work has encompassed tax compliance law and enforcement issues, and a myriad of other matters affecting members of the telecommunications industry in California.
- Firm attorneys have been instrumental in shaping and defining the regulation of wireless carriers at the state level in California. Through coordination with CTIA-The Wireless Association®, the nation's largest wireless trade association, our attorneys have successfully assisted wireless carriers in obtaining California state regulatory policies that are consistent with continued growth and innovation in the wireless market, while continuing to provide more services and improved technology for consumers at lower rates.

Water

- Firm attorneys have represented CPUC-regulated water companies, government entities operating water systems, developers seeking extensions of water service into new projects, and homeowners associations.
- Firm attorneys assisted a large state water project contractor in its unprecedented, but successful, effort to acquire the stock (rather than the assets) of a large CPUC regulated water company through eminent domain.

- Our regulatory attorneys sought and obtained authority for Del Oro Water Company to finance and construct a two-mile pipeline from Lake Oroville service areas to the north and west of the Lake. The matter involved the balancing of ratepayer concerns, advanced by the CPUC's Division of Ratepayer Advocates, as well as the appropriate allocation of funds obtained through the state's Safe Drinking Water Bond Act.

Transportation

- Firm attorneys represented the largest airport ground transportation provider in the United States, addressing a multitude of regulatory issues including initial licensing, service area expansion, rate flexibility, and approval for mergers and acquisitions of regulated carriers. Specifically, in late 2009, our regulatory attorneys were successful in obtaining operating authority from the California Public Utilities Commission permitting SuperShuttle to provide service between the Sacramento International Airport and the Napa Valley. The new authority assisted the Sacramento Airport in its efforts to promote the Sacramento Airport as the closest major airport in Northern California to the Wine Country. The new service permits travelers to the Sacramento Airport to enjoy an economic, reliable regularly scheduled service between the airport and the Wine Country.
- Our attorneys frequently assist companies in the hospitality and tourism industries, such as hotels, ski resorts, and parking facility operators, among others, with transportation licensing and enforcement requirements.
- Our regulatory attorneys obtain operating authority and tariffs for a variety of regulated transportation providers, including transportation network companies (TNCs), such as Uber and Lyft, passenger and freight vessels, and chartered transportation.

Trade Groups

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- California Public Utilities Commission (CPUC)
- California Energy Commission (CEC)
- California Independent System Operator (CAISO)
- Federal Energy Regulatory Commission (FERC)
- Conference of California Public Utility Counsel
- Energy Bar Association
- CTIA – The Wireless Association
- Solar Energy Industries Association (SEIA)
- Power Association of Northern California
- Independent Energy Producers Association (IEPA)
- Western States Petroleum Association (WSPA)

