

Energy Project Development

California's energy market is complex and dynamic, and will evolve and expand significantly in the coming decades. California is also a unique legal and regulatory environment for siting, constructing, and operating energy projects of all types. Downey Brand attorneys are valued by clients and co-counsel headquartered both in- and out-of-state for our expertise in California requirements for all aspects of energy project development and operation.

Our attorneys have broad experience representing clients who operate conventional and renewable generating plants and who participate in the energy market. We counsel clients on generation facility siting, project finance, environmental permitting and litigation defense, greenhouse gas and other pollutant credits and trading, power purchase agreements, interconnection, and electric transmission. We have also represented a variety of energy clients before the California Public Utilities Commission and other regulatory bodies. We can provide legal advice through the entire development process, from market assessment, regulatory compliance, commercial agreements, and project siting, permitting and development, and regulatory policy monitoring to ensure changing regulations do not pull the rug out from under a project.

Renewable Energy Sector

Our experience in renewable energy resources extends to solar thermal, small- and utility-scale photovoltaic solar, wind, geothermal, biomass, and hydroelectric resources. Our attorneys have the expertise and experience to assist clients in virtually all aspects of developing emerging sectors of California's energy market, such as offshore wind, including the crucial state-level planning for resource and transmission development. In addition to our expertise in the areas necessary to bring offshore wind projects online, our attorneys have in-depth knowledge of the issues that will be integral to building out California's ports to enable assembly and transportation of offshore wind turbine generator units, including the public trust doctrine and the regulatory and environmental requirements for waterfront development.

Conventional Energy Sector

We have extensive experience representing clients that own and operate crude and refined petroleum product production and transportation facilities, natural gas storage and transmission facilities, and gas-fired generation plants.

Facility Siting

We obtain right-of-way easements from private and public entities as needed for pipelines, transmission lines, power generation stations, and oil and gas facilities. We also conduct environmental and title due diligence, facilitate land purchase and financing, and navigate local and state agency approval processes.

Environmental Permitting

Our attorneys have in-depth experience with all aspects of CEQA and NEPA permitting and compliance, as well

as other state and federal regulatory requirements, including those under the Clean Air Act, Clean Water Act, common law Public Trust Doctrine, and federal and state Endangered Species Acts. We routinely assist clients in evaluating the appropriate level of environmental review for a project and assessing compliance strategies; we also evaluate negative declarations, environmental impact reports, and environmental impact statements for legal adequacy and revise those documents as needed to ensure compliance and minimize litigation risk. We advise clients in the preparation of applications, negotiation of conditions, and establishment of compliance programs for permits, including those issued for the operation of air emissions sources under the Clean Air Act; and for discharges of water or dredge-and-fill under the Clean Water Act and California's Porter-Cologne Water Quality Control Act.

Environmental Litigation

When necessary, we litigate CEQA, NEPA, and related environmental challenges in both state and federal courts and in administrative proceedings before state and federal regulatory agencies. Our attorneys have successfully defended many projects at trial and on appeal, including before the California Supreme Court and the Ninth Circuit Court of Appeals.

Air Pollutant Credits and Trading

Our air quality attorneys have extensive experience advising clients regarding California's greenhouse gas reporting system and Cap-and-Trade program. We have also helped clients reach solutions with regulators to promote California's greenhouse gas reduction goals while also ensuring that business operations remain feasible.

Interconnection and Power Purchase Agreements

Our energy regulatory attorneys advise independent renewable and conventional generators on the details of power purchase agreements and interconnection agreements. We also guide clients through the federal and state regulatory requirements that affect the economic and legal viability of generating facilities and renewable energy projects.

Transmission Projects

We have provided key regulatory advice and representation to independent transmission developers throughout the approval and development of their innovative and privately financed transmission projects. Our representation has included CPUC environmental review and construction approval, and wildfire safety compliance.

Selected Experience

Representative Energy Projects

Renewable Energy

- Advised a solar energy project developer on the process for terminating Williamson Act and Farmland Security Zone protections.
- *Refinancing of Utility-Scale Solar and Wind Projects, California*. Represented several lenders in connection with all real estate aspects of financings secured by solar and wind generation projects located in California.

- *Solano Wind Project, Solano County.* CEQA review for 128 MW project involving 75 wind turbine generators and associated transmission in the Collinsville-Montezuma Hills Wind Resource Area, including review of avian and bat mortality, air traffic control radar, construction-related air quality emissions, and aesthetics.
- *Utility-Scale Wind Project, Oregon.* Helped obtain the California Public Utility Commission's approval for a Power Purchase Agreement for the nation's largest (at the time) wind project.
- *Utility-Scale Wind Project, San Diego County.* Land use and environmental due diligence for transmission (gen-tie) line, a high-voltage substation, and 60-turbine 252 MW wind energy generation project.
- *Utility-Scale Wind Project Repowering, Alameda County.* Advised renewable energy company on permitting due diligence and related real estate matters on sale of wind energy facility and repowering project.
- *Utility-Scale Solar Power Plants, California and Nevada.* Advised developer on regulatory strategies under NEPA and CEQA for development of thermal-solar power plants in California and Nevada with planned output of 750 MW.
- *Distribution Station, Southern California.* Advised public water and energy agency on CEQA compliance for an EIR for the construction of a new power distribution station.
- *Photovoltaic Solar Project, Southern Owens Valley.* Advised public water and energy agency on an EIR for a 200 MW photovoltaic solar farm.
- *Landfill Gas-to-Energy, Midwest.* Advised a large automaker regarding the use of landfill gas to generate energy and to power boilers at several manufacturing facilities. This representation also involved representing a coalition of auto manufacturers in EPA's development of National Emission Standards for Hazardous Air Pollutants for Boilers.
- *GHG Reduction for Retail Energy Service Provider, California.* Represented a large retail service provider in the comprehensive greenhouse gas reduction proceedings in California under Assembly Bill 32 before the California Air Resources Board, California Energy Commission, and CPUC.
- *Air Permitting for Cogeneration and Peaker Plants.* Advised operator of a cogeneration facility on air permit amendments and compliance issues for a gas-fired turbine. Assisted clients with acquiring air permits for installation of gas turbines at peaker plants in California. The work involved advocating for Best Available Control Technology determinations regarding greenhouse gas emissions.
- *GHG Emissions and Mitigation.* Developed an overarching greenhouse gas emissions analysis and mitigation strategy for an oil and gas extraction project.
- *Clean Air Act Compliance.* Advised developers regarding compliance with federal greenhouse gas requirements under the Clean Air Act.
- *Cap-and-Trade Participation and Compliance.* Advised energy clients on the mechanics of and obligations under Cap-and-Trade, following its implementation.

Energy Storage Projects

- *Large-Scale Storage Facility Financing, California.* Performed due diligence analysis of regulatory issues for the financing of several large energy storage facilities.

- *Regulatory Approval Process for Utility-Owned Storage, California.* Represented a nationwide developer of large-scale energy storage projects at the CPUC in connection with a utility-owned storage proposal that raised interconnection issues.

Transmission Projects

- *Land-based Transmission Line Construction.* Our team provided California regulatory representation of Trans Elect, the sponsor of the Path 15 Upgrade project, the first independently financed high voltage transmission project in the United States.
- *Underwater Transmission Line Construction, California.* Represented Babcock & Brown and Pattern Energy in the development, permitting, and construction of the Trans Bay Cable Project, a 400 MW direct current underwater transmission cable linking Pittsburg, CA with San Francisco, providing the first additional transmission connection for the isolated San Francisco electric grid.
- *El Dorado-Ivanpah Transmission Project, San Bernardino County.* Represented two utility-scale solar developers in supporting CEQA compliance for new substation and transmission line upgrades approved by the California Public Utilities Commission.
- *Gates and Round Mountain Dynamic Reactive Support Projects.* Represented the developer of two major upgrades to the California transmission system in proceedings seeking the approval of the California Public Utilities Commission.

Conventional Generation

- *Cogeneration Plant, Contra Costa County.* Land use and environmental due diligence for a 240 MW natural gas-fired combustion gas turbine electrical power generating plant.
- *Power Plant Refinancing.* Provided permitting due diligence in support of refinancing of two natural gas fired peaker plants in the Bay Area.
- *Power Plant Fuel Costs.* Negotiated a significant reduction in gas transportation rates for a large gas-fired generator.

Natural Gas Transmission and Storage

- *Natural Gas Storage Field Permitting and Development.* Represented the first independent natural gas storage providers in California to obtain necessary regulatory approvals to commence operations. We provide ongoing regulatory advice and representation to the storage field operators before the CPUC.
- *Natural Gas Transmission.* Routinely advise and represent natural gas storage providers and independent power producers in natural gas transmission and rate design proceedings at the CPUC.

Pipelines and Terminals

- *Oil Drilling and Production, Santa Barbara County.* Comprehensive CEQA review of oil wellfield and infrastructure needed to deliver recycled water for production process. Significant issues included compliance with California's Cap-and-Trade program, climate change impacts and mitigation, and consultations with federal and state wildlife agencies on endangered species.

- *Lines 901/903 Replacement, Counties of Santa Barbara, San Luis Obispo, and Kern.* Land use, environmental, and real estate and permitting work to support replacement of 123-mile oil transmission pipeline over three counties and private, state, and federal lands.
- *Acquisition of Oil and Gas Pipeline, California.* Supported permitting and land acquisition for large oil and gas pipeline. Addressed concerns regarding safety, impacts to wetlands and wetland species, and impacts to migratory birds. Resolved CalTrans needs regarding right-of-way for needed highway crossing and modified pipeline sizing to accommodate future users without expanding environmental analysis.
- *Environmental Remediation, California.* Represented major oil company in connection with terminals' extensive remediation matters, including related litigation regarding natural resource and development damages claims.
- *Accidental Release Reporting and Compliance, California.* Assisted client in responding to reporting requirements and information requests from multiple federal and state agencies in the aftermath of an accidental release.

Representative Litigation

- *CEQA and ALUP Compliance.* Defending regional power utility district in litigation defending 92 MW repowering project for wind turbine generators in Montezuma Hills Wind Resources Area, Solano County. Land use claims include CEQA, Government Code, and Public Utilities Code.
- *Air Quality Compliance.* Defended biomass energy company in enforcement action brought by air pollution control district alleging hundreds of violations of local and state air quality statutes and permit requirements.
- *Hazardous Substances.* Represented national energy company in action brought by circuit prosecutors for alleged violations of California's Hazardous Substances Account Act (HSAA) and Water Code.
- *Land Use and Development.* Advised and represented a major regional land developer in action brought by the California Attorney General's Office for alleged violations of the California Water Code and Fish & Game Code.
- *Accidental Release Litigation.* Represented petroleum company in parallel state and federal enforcement actions involving the release of thousands of barrels of oil from an oil pipeline in the Los Angeles Region. The matter involved claims under the Clean Water Act and California Fish & Game Code, as well as claims of Unfair Competition under Business & Professions Code 17200.