



Selling Energy to Retail Customers

WE UNDERSTAND YOUR BUSINESS

- Holland & Knight's energy lawyers are highly knowledgeable and experienced in advising clients on developing, investing in, operating, expanding, transacting with, selling or acquiring competitive retail electricity and natural gas supply businesses in the U.S.
- Our retail energy attorneys guide clients through the licensing, regulatory compliance, contractual and consumer issues that retail energy suppliers face in U.S. markets, which have undertaken industry restructuring, deregulation or allowed consumers to choose their retail electricity or natural gas suppliers. Whether the regulatory issues involve the Federal Energy Regulatory Commission (FERC), state public utility commissions, competitive wholesale market qualifications and compliance, or commercial transactions and financings of retail energy suppliers, we are able to counsel clients on all aspects of this industry segment.
- Our attorneys and government affairs professionals leverage our knowledge of the retail energy supply industry to advance our clients' interests before federal and state legislators and regulators, as well as in complex transactions with investors, suppliers, electric and natural gas distribution utilities and end-use customers.

WE CAN HELP

Natural gas competition and choice have flourished nationwide since the 1990s for commercial and industrial customers, and many states have restructured or deregulated their electric utility industries. While the business of supplying electricity and natural gas offers exciting opportunities for innovators, these competitive commodities remain highly regulated and suppliers increasingly find themselves at the center of regulatory scrutiny. Holland & Knight's energy lawyers have been involved in these competitive markets since their advent, literally helping state regulators and lawmakers "write the book" on competitive market development laws and regulations. Our attorneys and professionals provide strategic advice and representation on regulatory, transactional and related matters, including:

- Providing licensing representation before FERC and all states with choice programs
- Structuring contracts for compliance in multiple states
- Providing counsel on capital infusion and project finance
- Establishing regulatory compliance programs for residential, commercial and industrial customers
- Financing retail energy businesses, including credit agreements backed by purchase of receivables or other assets
- Negotiating technology licenses and intellectual property-related matters
- Qualifying suppliers in competitive markets and with electric and natural gas distribution utilities
- Advising on mergers and acquisitions (M&A) transactions involving large retail energy supplier businesses
- Providing strategic advice on call center, internet-based, inbound and outbound telemarketing programs
- Advising on door-to-door and telephone solicitation legal compliance requirements
- Negotiating wholesale commodity contracts, including on International Swap Dealers Association (ISDA), North American Energy Standards Board (NAESB) and Edison Electric Institute (EEI) standard forms
- Franchising in the retail energy sector
- Advising on credits, offsets, and renewable energy and environmental attribute transactions, as well as renewable portfolio standard (RPS) compliance

We represent clients in all aspects of the retail energy business, including corporate acquisitions, asset-based lending transactions backed by purchase of receivables, federal and state licensing and regulatory proceedings, contract negotiations, as well as residential, commercial and industrial compliance programs. We have assisted retail energy supplier businesses from company formation through execution of competitive business strategies and liquidity events. We have advised on investor exit strategies, M&A and portfolio management transactions. We also have assisted our retail supplier clients with compliance with renewable portfolio standards and voluntary green energy product offerings, and guided our clients on contract compliance and implementing effective quality assurance programs.

REPRESENTATIVE MATTERS

CORPORATE/MERGERS AND ACQUISITIONS

- Represented a retail electric and natural gas supplier operating in 10 states in connection with a corporate M&A transaction for the sale of stock of the holding company, including FERC approval under Section 203 of the Federal Power Act and regulatory due diligence and approvals in each relevant state, ISO and EDC jurisdiction
- Represented a retail supplier in the stock acquisition of a retail electric supplier business in Texas, including acquisition of the company call center and customer billing system, as well as regulatory approvals and related filings with the Public Utility Commission of Texas (PUCT) and Electric Reliability Council of Texas (ERCOT)
- Served as lead regulatory and due diligence counsel for the \$175 million acquisition of a retail electric and natural gas supplier licensed in 15 states and at FERC, including all licensing, antitrust and ISO/RTO submissions
- Advised a retail electric and natural gas supplier in the acquisition of multiple customer contract books through asset purchase transactions, including some deals undertaken on an emergency basis during the Polar Vortex to avoid supplier collapse situations; these situations included advising the client and negotiating and coordinating with regulators, ISOs and EDCs on transferring customers to a new supplier, including preparing customer notifications and modifying customer contract terms as appropriate
- Represented a retail supplier in the \$200 million stock acquisition of a retail natural gas supplier with operations in more than 20 states
- Represented an asset purchaser of a large electric and natural gas retail supplier valued at more than \$150 million, including a customer service center and the back-office operations
- Participated in retail electric supplier financing transactions on behalf of both suppliers and lenders, including negotiating factoring agreements and comprehensive asset-backed lending transactions supported with the assignment of purchases of receivables agreements
- Negotiated ISDA standard gas and electric commodity agreements for retail electric suppliers with counterparties supplying wholesale supply for retail resale in multiple competitive state markets
- Advised one of the nation's leading competitive energy suppliers in a stock acquisition of a retail natural gas business in New England
- Advised a retail energy supplier on formation of a joint venture (JV) with a Mid-Atlantic region electric utility's non-utility subsidiary, including negotiating a JV agreement, operating agreement and leading the JV on regulatory licensing and state compliance obligations in development and expansion of a competitive electric and natural gas business in the commercial and industrial space

REGULATORY AND COMPLIANCE

- Developed and managed an industry-leading compliance program for a retail electric and natural gas supplier with operations in 47 states, including chairing a corporate-wide compliance committee
- Served as lead regulatory counsel representing an international retail electric and natural gas supplier before at least 35 state regulatory agencies, FERC and ISO/RTOs
- Advised a retail electric supplier on formation of business and market entry in multiple states, including advising founding shareholders on regulatory risks, obtaining retail licenses or approvals in CT, NY, NJ, PA, IL, OH, MD, MA and TX, as well as establishing retail supplier contracts and a compliance program; assisted this client from startup to growth as a going concern with market value in excess of \$100 million
- Assisted a leading energy supplier in obtaining a retail electric supplier license in Connecticut
- Advised one of the nation's first multistate retail energy suppliers on multiple retail electric and natural gas business acquisitions (stock and asset transactions) in multiple Midwestern states and Canada, including regulatory due diligence and advice on regulatory compliance issues and approvals
- Served as lead counsel in the acquisition and subsequent divestiture of a leading demand response provider, managing all regulatory approvals and transactional negotiations
- Advised a retail natural gas supplier in its business expansion into the retail electric business, including obtaining licenses and preparing retail customer contracts and related marketing materials in compliance with state regulatory requirements in multiple states
- Audited and subsequently revised retail electric and natural gas supply contracts for the two largest retail suppliers to ensure compliance with state regulations
- Represented a large Connecticut city in connection with the competitive purchase of electricity and natural gas for all municipal accounts
- Represented one of the nation's largest home improvement centers on the competitive purchase of natural gas and electricity for its retail stores in the Eastern United States
- Represented one of the largest healthcare systems in New York with regulatory and transactional advice with respect of the competitive purchase of natural gas and electricity for its hospitals and healthcare facilities, assisting the client in saving millions on energy commodity
- Obtained all regulatory approvals necessary for a wholesale energy company to purchase electricity in the ISO-NE, PJM and ERCOT wholesale markets for resale to its affiliates, including obtaining market-based rate authorization from FERC, membership in ISO-NE, PJM and ERCOT, and competitive electric supplier authorizations in Massachusetts, New Hampshire, Connecticut and the District of Columbia
- Represented industrial, manufacturing and commercial users on regulatory matters and the negotiation of competitive electric and natural gas supply agreements, including agreements based on the NAESB standard form of contract
- Advised and represented a retail gas supplier to expand into the electricity business, including regulatory approval to charge market-based rates for electricity before FERC
- Advised and represented a local government electric supplier in Southern California in general rate cases of Southern California Edison on ratemaking issues
- Advised an electric supplier on compliance with California Public Utilities Commission regulations for electric suppliers and on due diligence for contracts with community solar providers
- Represented a local government in Northern California in its request for proposals and negotiation of retail electric supply contracts

- Represented an electric supplier in its due diligence for the potential acquisition of a municipal corporation's electric distribution assets in Anchorage, Alaska
- Served as lead in-house regulatory and compliance counsel for one of the largest retail energy suppliers in the nation
- Managed numerous FERC and state PUC enforcement and self-report matters involving retail electric and natural gas suppliers' billing, operations, metering and trading in the energy and capacity markets
- Represented retail electric and natural gas suppliers in regulatory enforcement proceedings
- Performed a corporate-wide audit of an integrated energy company's wholesale and retail natural gas transactions for compliance with a FERC affiliate, shipper must have title, transportation, capacity, bidding and wash trade regulations
- Represented a retail energy supplier in PJM, NY-ISO and ISO-NE tariff workshops and related Section 205 rulemaking proceedings on issues of energy and capacity market design and procedure changes

CONTACT INFORMATION



Stephen J. Humes

Partner
New York
212.513.3473
steve.humes@hklaw.com



Joseph E. Donovan

Partner
Washington, D.C.
202.469.5417
joseph.donovan@hklaw.com



Mark C. Kalpin

Partner
Boston
617.305.2076
mark.kalpin@hklaw.com



Tara S. Kaushik

Partner
San Francisco
415.743.6924
tara.kaushik@hklaw.com