

# ENERGY

## PRACTICE GROUP



 **BENESCH**  
Attorneys at Law

# Energy Practice Group

In an era in which a rising demand for energy has coincided with decreasing resources, increasing prices, and environmental concerns with carbon based emissions, businesses in the energy sector are often presented with challenging legal, business and regulatory issues as well as exciting new opportunities. The attorneys in Benesch's Energy Practice Group are able to provide knowledgeable legal counsel to clients in all phases of the energy sector in Ohio and nationally. From initial capitalization or acquisition, through licensing, construction and operation of energy generating facilities, Benesch's attorneys offer a comprehensive perspective to best service our clients.

The Energy Practice Group consists of an integrated, cross-functional team of corporate, public and private finance, public utility and regulatory, environmental, real estate, public law, intellectual property and construction attorneys, all of whom are experienced in handling energy and environmental related matters before various federal and state courts and administrative agencies.

Representative clients include energy generation facilities, power marketers, energy equipment manufacturers, alternative energy suppliers, industrial companies, public agencies and private equity firms and development firms.

## ***Regulatory***

State and federal agencies have established requirements for renewable energy portfolios and are focusing on future carbon-based emissions. In addition, states have renewed attention on regulation of the public utility sector, such as the state of Ohio's recent re-regulation of the electric utility industry. As such policies continue to unfold, our Energy Practice Group is able to provide regulatory compliance assistance and strategic advice. We assist clients in related matters including integrated resource planning, siting requirements, environmental permits and licensing, facility construction, tariff issues and interconnection and supply agreements.

## ***Environmental***

Oftentimes, creative solutions must be formed in order to resolve complex environmental issues. The attorneys in our Energy Practice Group are well-versed in handling environmental matters, including permitting and licensing, general environmental compliance and assisting industrial and commercial companies in resolving environmental issues. The compliance counseling which our attorneys provide is backed by a thorough knowledge of existing environmental laws, regulations in the pipeline, and marketplace responses to perceived environmental problems, particularly those not yet regulated.

## ***Real Estate***

A sophisticated level of understanding is required to overcome the ever-increasing complexity of real estate transactions and the growing number of regulatory requirements. Our Energy Practice Group attorneys regularly represent developers and others parties, including buyers, sellers and contractors, in connection with all aspects of the development and finance of energy infrastructure projects of all kinds. We have significant experience in oil and gas leasing, wind farm leasing, tax considerations, and zoning and local government approvals.

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## ***Public Finance***

As nationally-recognized "red book" bond counsel, our public finance attorneys meet our public and private sector clients' capital needs through creative public finance strategies. Given the increased tax and securities regulatory scrutiny of tax-exempt financings, it is imperative for participants in the tax-exempt bond market for public entities to have experienced counsel representing their interests in the planning and execution of tax-exempt transactions. Our attorneys serve in this capacity by providing counsel across a full range of critical issues, anticipating obstacles and finding solutions. We are also aware that strategic decision-making skills and community support are necessary for a project to succeed.

Our public finance attorneys serve as bond counsel, underwriter's counsel, issuer's counsel, borrower's counsel, credit enhancer's counsel and derivatives counsel for both private and public sector clients. In addition, we assist clients in debt structurings with fixed and variable rate securities, conduit financings, public offerings and private placements. We are knowledgeable about various economic development programs, including tax increment financings (TIFs), new community authorities, joint economic development districts and zones (JEDDs and JEDZs), community reinvestment areas (CRAs), enterprise zones, and a variety of other incentive programs. We are able to provide energy-related clients with counsel on matters related to Ohio ethics laws, annexation, intergovernmental agreements, state and federal loans and grants, and constitutional and public law issues.

## ***Strategic and Financial Acquisitions***

The firm is experienced in representing both strategic and private equity investors in the renewable, solid waste and alternative energy industry. With this background, Benesch is uniquely situated to represent business entities in their financing activities, both public and private, as well as merger and acquisition transactions and other legal needs in this dynamic industry. In addition to our strong Ohio presence, a substantial amount of our business is outside of Ohio, mainly concentrated in the Midwest and the East Coast.

## ***Legislative and Public Law***

Attorneys in the firm's Energy Practice Group are experienced in handling legislative matters affecting all aspects of the energy industry. Our hands-on involvement in working with federal and state legislators on drafting legislation and submitting comments positions us to identify emerging issues as they develop, rather than reacting to changes after they have been implemented. The Energy Practice Group works closely with clients at the time new legislation or regulations are being discussed or proposed, and has the experience necessary to assess how courts will treat environmental problems.

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## ***Construction***

As an increasing number of energy facilities are constructed, there is an ever-present need for insight as to the potential problems that could arise over the lifetime of the project. Attorneys in our Energy Practice Group work with contractors, engineers and suppliers on the design and construction of energy facilities. We are also experienced in drafting and negotiating procurement, engineering and construction agreements and operations and maintenance agreements, litigating and arbitrating construction disputes, and filing and dealing with bonding and insurance requirements.

## ***Intellectual Property***

Intellectual property is among the most valuable assets of any energy-related company. When a company's intellectual property is jeopardized, serious setbacks such as financial difficulties and loss of the company's integrity are possible. Benesch's Energy Practice Group attorneys are skilled in protecting emerging environmental and energy-related technologies and providing proactive legal counsel. Among the matters the group handles are patents filings for complex technologies, trademark registrations and regulatory compliance matters.

## ***Litigation***

In a rapidly evolving industry, conflicts surrounding energy matters are inevitable. Our Energy Practice Group exercises preventive counsel to help clients avoid litigation, but is well-equipped to handle litigation matters when necessary. We are experienced in litigating matters for energy equipment manufacturers, coal companies and utility companies, among others, and offer a dedicated products liability team with experience in consultation, prevention and defense of claims. In addition, attorneys in our Energy Practice Group provide effective counsel in disputes involving contracts and other agreements, facilities design and construction, service agreements, insurance coverage, labor and employment matters, environmental matters and safety and health concerns.

# Energy Practice Group

## Representative Matters

Listed below is a sample of the types of matters members of the Energy Practice Group have handled:

- :: Representation of ReliabilityFirst Corporation, a regional entity responsible for transmission reliability enforcement in eleven states in the Midwest with delegated authority under Section 215 of the Federal Power Act of 2005.
- :: Representation of a major operator of electric power generating facilities in North America in its acquisition of three coal fired generation plants in Ohio and Pennsylvania, including Ohio Power Siting Board approvals, PUCO approvals, eminent domain and zoning, real estate acquisitions and license and permit transfers.
- :: Representation of a large holding company engaged in energy marketing before the Ohio General Assembly and various state agencies in connection with various state regulatory initiatives.
- :: Representation of an international hydroelectric company before the Ohio Power Siting Board and PUCO, leading to grant of a certificate of environmental capability and public need for a \$1 billion proposed pumped storage hydroelectric project.
- :: Representation of multiple clients in environmental matters including siting, emission limitations, licenses and permits before the Ohio EPA and U.S. EPA, the Environmental Review Appeals Commission and state and federal courts including the Ohio Supreme Court.
- :: Representation of a large private equity firm in the acquisition of solid waste facilities in Ohio with transportation facilities on the East Coast.
- :: Representation of large manufacturing and industrial clients in negotiating long-term power supply contracts and interconnection agreements with electric utilities in Ohio and across the nation.
- :: Representation of a private equity firm in the state approval of the transfer of control of a hazardous waste facility in Ohio.
- :: Representation of a major American financial services company in Ohio Power Siting Board approval of a transmission service line and in conveyance of line and related facilities.

- :: Representation of public and private water and sewer providers in all aspects including enforcement actions brought by U.S. EPA, state EPAs and state attorneys general in solid waste, hazardous waste, groundwater discharge and air emissions cases.
- :: Representation of public and private clients in environmental permit requirements with federal, state and local agencies, including industrial wastewater pretreatment permits, Title V, RCRA Part B permits, § 404/401 dredge and fill permits, CERCLA actions, state water quality certification projections and Section 208 planning requirements.
- :: Representation of both underwriters and issuers in preparing disclosure sections related to environmental issues and risk factors to be included in offering circulars and registration statements.
- :: Representation of private clients in evaluating Clean Air Act Amendments and implementation of state mandated emission source compliance.

## **Offices and Agencies**

- :: US Army Corp of Engineers
- :: US EPA
- :: State EPAs
- :: State Public Utilities Commissions
- :: State Departments of Natural Resources
- :: State Power Siting Boards
- :: State Departments of Agriculture
- :: State Departments of Commerce (State Fire Marshal, Bureau of Underground Storage Tank Regulations)
- :: State Departments of Health
- :: Air Quality Development Authority of Ohio
- :: Ohio Department of Development
- :: Local County Boards of Health

