
WilmerHale Helps Client Purchase Energy on the Wholesale Market

2010-02-22

Google's recent step towards obtaining authority to purchase bulk power on the wholesale market has been splashed across the news in recent weeks. As analysts and news outlets ponder the implications of the move, attorneys in [WilmerHale's Energy and Clean Tech Practice](#) already understand its significance. In the past year, the firm has helped one of its clients, a national financial services company with facilities in several states, take the same step to fulfill its energy needs in a more cost-effective way.

In the past, companies have looked to aggregate multiple facilities within a state or region when purchasing electricity or gas from competitive suppliers in order to receive better rates. Typically, competitive suppliers will propose to use their own contract forms, which makes it difficult for the company to compare offers from different suppliers. To address this problem, WilmerHale has worked with a number of clients to develop a mandatory master form of contract (or, as an alternative, minimum mandatory conditions) that the client can require all suppliers to adhere to when formulating energy contracts.

The Energy and Clean Tech Group has successfully used these master contracts and conditions with a number of clients, including a major municipality in Connecticut (in several procurements of natural gas and electricity on a citywide basis), a nationwide "big box" retailer (in several regional procurements for electricity and natural gas for the company's stores), and a global asset management company (in connection with the development of a financial data center).

Now, large companies have learned that costs can be lowered even further by bypassing competitive suppliers and going directly to wholesalers. "Companies normally pay retail competitive suppliers to purchase energy on the wholesale markets and resell it to the company," says Partner [Mark Kalpin](#). "Companies that have high energy needs have figured out that by cutting out the middleman, they can save significant money."

As part of its current work for its national client, WilmerHale assisted several affiliates of the national financial services company in obtaining the necessary authorizations from the Federal Energy Regulatory Commission, ISO New England, and the New England Power Pool to purchase and resell electricity on the New England wholesale market and supply electricity on a retail basis to

other affiliates of the company. The firm also assisted those affiliates in obtaining the necessary “competitive electric supplier” authorizations in Massachusetts, New Hampshire and Rhode Island. Based on the success of this work, the firm is now assisting the company in obtaining authorizations to purchase and resell electricity on the wholesale market in Texas.

“It’s something that’s fairly easy to accomplish, and in some cases can save a company 10 percent or more off its electric bills,” says Kalpin. “Purchasing power on the wholesale market is a tool that can be used by a company with one or more facilities that have a high electric demand, or by entities that have a number of facilities that can be aggregated, such as commercial retailers, owners of different real estate holdings or manufacturing companies.”

“There are certain financial assurance requirements that you have to meet if you want to do it, and there also are scheduling and reporting requirements that you have to comply with,” adds Counsel [David Gold](#). “Most large companies are able to meet these scheduling and reporting requirements with assistance from outside consulting firms.”

The attorneys emphasize that many clients may have the need for advice in the energy area—they just may not realize it until the suggestion is made. In the case of this national company, a simple suggestion was well worth it, as the proposed solution has the potential to generate multi-million-dollar savings for the client.

For more information, please contact Mark Kalpin at (617) 526-6176 or at mark.kalpin@wilmerhale.com.