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ENERGY TRADING

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## Our Practice

For more than three decades, Sutherland has helped clients in the trading sector develop the means to anticipate, manage and minimize the unique legal risks associated with engaging in the energy business. Over the last decade, no industry has felt the forces of change more dramatically than the energy sector. In the natural gas and power sectors, participants face new competition at the wholesale and retail levels. Many asset owners now face asset optimization and restructuring, while for others, decisions are driven by increasing environmental regulations and public scrutiny. In all sectors – oil, financial, gas, power and emissions – complex issues have arisen from the commoditization of energy through the increased use of forwards, futures, swaps and options. Sutherland’s attorneys have been at the cutting edge of these developments.

We have represented trading and marketing companies since the 1970s and major financial intermediaries, including the New York Mercantile Exchange, since the early 1980s. Our understanding of trading informs every aspect of our legal work for this sector and helps us find practical solutions to business problems.

Sutherland’s work for energy trading and financial companies has tracked the commoditization of the energy markets. As the business has changed, so has our practice. We

know the economics of the industry and the government programs that affect it, and we are positioned to respond effectively and creatively to the legal challenges faced by participants in the energy markets.

## Crude Oil and Refined Products

Sutherland’s Trading Team has more than 25 years of experience advising oil traders in commercial, regulatory and credit issues arising from the purchase, sale, storage, exchange, financing, marine transportation and processing of oil commodities. In addition, our team advises oil traders on commercial agreements including oil processing and products off-take agreements, crude oil forward sale agreements, inventory financing and consignment arrangements, terminaling and throughput agreements, and marketing and distribution contracts.

## Retail Power and Gas

Retail power and gas providers regularly rely on our energy transactional lawyers to structure and document large, complex physical and financial energy commodity-based transactions, to develop form purchase and sale agreements that accommodate multiple retail markets, to advise them in connection with potential bankruptcy or credit constraint scenarios, and to handle their corporate and M&A needs, such as acquiring or divesting regional electricity providers or retail “books of business.” That same

market segment often turns to our regulatory and litigation teams to develop compliance training programs, provide regulatory advice, litigate commercial and regulatory disputes, and advocate policies at state PUCs.

## Wholesale Power and Gas Trading

Our attorneys have a great deal of experience in the negotiation and documentation of complex, structured transactions providing for the wholesale purchase and sale of electric power and capacity, natural gas, tolling of gas and power, financial hedging of gas and power, gas storage, and the provision of electricity transmission and natural gas transportation. In addition, we have developed model documentation for energy trading and marketing companies, using industry-standard forms, such as ISDA Master Agreements, the EEL Master Power Purchase and Sale Agreement, the Western Systems Power Pool Agreement, Master Netting Agreements and NAESB Gas Master Agreements.

## LNG

Sutherland’s Global LNG Group, comprised of 21 lawyers and other professionals, represents LNG stakeholders at all phases of the value chain. As the global LNG market continues to grow, the LNG Sales and Purchase Agreement (SPA) is evolving from the traditional, long-term, oil-indexed SPA to an instrument of commerce for short-term



transactions, spot trades and other supply arrangements. Our lawyers have represented a number of companies contracting in the fast-evolving LNG short-term and spot markets, and we understand the unique interests of new market entrants, including commodity traders, financial institutions and various niche market participants. We have also advised clients on the commoditization of LNG, including futures, swaps and hedging.

## Derivatives and Financial Products

We counsel clients on a broad range of energy and commodity derivatives issues, including contracting, documentation, regulatory, tax consequences and conflict resolution. We offer an array of services ranging from analyzing and negotiating derivatives documentation (e.g., ISDA Master Agreements, credit support documentation, and cross-product and cross-affiliate Master Netting Agreements), to advising clients with respect to tax and disclosure implications of derivative transactions, to litigation involving the analysis and proper valuation of terminated derivative transactions.

## Emissions and Renewables

We partner with our clients to navigate the changing energy markets and the legislative and regulatory framework driving the development of renewable and low-emissions energy sources. We represent energy traders and

investors in matters relating to biofuels, carbon and renewable and low-emissions power, including biomass, wind, solar, plasma torch and nuclear sources.

Sutherland lawyers currently are compiling and editing a new book, *Carbon Trade and Finance in the Americas*, for Cameron May, a London-based publishing company specializing in International Trade and International Environmental Law.

## Compliance

Compliance issues have become a critical part of our energy trading practice. Sutherland regularly advises clients on a number of compliance issues, including FERC's trading practice requirements; the CFTC's trading practices and market manipulation prohibitions; the requirements associated with trading regulated futures instruments on the New York Mercantile Exchange; and U.S. competition and antitrust laws, anti-money laundering regulations, restrictions on international trade, sanctions and anti-boycott regulations.

## Environmental

We represent energy traders as they address the array of federal, state and international environmental laws and regulations that govern their transactions and investments. We advise both domestic and international energy companies on the U.S. environmental issues associated with their lending

## Representative Matters

- Assisting energy traders in commercial documentation, including the ISDA Oil Annex, LEAP master agreements, physical master sale and purchase agreements, general terms and conditions, marine provisions, netting agreements, collateral agreements and guarantees.
- Representing a jet fuel supplier in long-term supply agreements with major domestic and international air carriers.
- Structuring and negotiating pre-paid natural gas transactions on behalf of a large energy trading company.
- Structuring a long-term arrangement for a power marketer to manage all generation and transmission assets of, and supply power to, an electric utility.
- Representing a shipper in contracting for capacity at a European regasification terminal and related LNG supply arrangements.
- Negotiating several long-term LNG purchase agreements and LNG master purchase and sale agreements, on behalf of the buyer, for delivery to the United States.
- Negotiating settlements involving hundreds of millions of dollars to contract for physical power, natural gas, coal, swaps and derivatives.



and borrowing transactions and when they acquire or dispose of businesses and property. In this context, Sutherland attorneys have litigated major cases concerning state and federal laws and have defended clients in federal and state environmental enforcement proceedings.

### Litigation and Dispute Resolution

Backed by attorneys comprising one of the nation's preeminent energy practices and a world class group of litigators, our energy litigation team is prepared to tackle the broad range of disputes facing energy companies today. We understand the energy industry and your business. Our 25 energy litigation attorneys aggressively pursue the client's interests and have tried cases and argued before both federal and state

courts – trial and appellate – as well as before regulatory agencies and arbitration panels. Recognizing the importance of client resources, we quickly develop a strategy to devote the right mix of attorney experience and skills, and we work closely with the client to achieve optimal results. In short, our energy litigation practice offers a full range of litigation, arbitration, mediation and negotiation services provided by seasoned lawyers who have been involved in the industry as the turbulent energy commodity markets have grown and evolved.

### Restructuring and Bankruptcy

We have been actively involved in the most significant recent bankruptcies of energy trading and marketing companies. We also have represented debtors

in possession as special energy counsel, working closely with traditional bankruptcy counsel and restructuring consultants, to provide specialized advice regarding energy contracts, trading, forward contracts, swaps, netting agreements, futures contracts, tolling agreements and regulatory matters. We provide advice relating to procedures for properly terminating and valuing trading contracts and portfolios, negotiating to liquidate positions consensually, responding to counterparty defaults or terminations, evaluating contract legal risks, and developing strategies for reducing these risks. In this context, we have dealt with contracts for power, natural gas, coal, capacity, emissions and environmental attributes.

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**ABOUT SUTHERLAND** Sutherland Asbill & Brennan LLP is a law firm with global reach known for solving challenging business problems and resolving sophisticated legal issues for many of the world's largest companies. Founded in 1924, the firm handles matters throughout the United States and worldwide. Seven major practice areas—corporate, energy and environmental, financial services, intellectual property, litigation, real estate, and tax—provide the framework for an extensive range of focus areas, allowing Sutherland attorneys to serve a diverse client base that ranges from small and medium-sized start-up businesses to a significant number of Fortune 100 companies.