

## Deborah A. Swanstrom

Member



### Overview

Ms. Swanstrom joined Jennings Strouss in September 2012. Her transactional, regulatory, and litigation skills enable her to serve clients cost-effectively throughout the course of an energy project – from the inception of a creative idea for a project or transaction, during negotiations and the regulatory approval process, and in litigation, if necessary. Ms. Swanstrom frequently represents clients on regulatory matters related to renewable generation and electric transmission projects, trading of energy and renewable energy credits, transmission and interconnection services, rates, and reliability standards.

### Contact

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- Washington, D.C.

### Areas of Focus

- Transmission

- Renewable Energy/Electricity
- Reliability Compliance
- FERC Tariffs and Ratemaking
- Energy and Natural Resources
- Commodity Trading
- Administrative Litigation
- Municipal Representation
- Energy Regulatory and Enforcement: Electricity and Natural Gas
- Hydroelectric

## **Education**

J.D., George Washington University (1988)

- with honors

B.A., St. Cloud State University (1985)

- with highest honors

## **Biography**

Ms. Swanstrom joined Jennings Strouss in September 2012. Her transactional, regulatory and litigation skills enable her to serve clients cost-effectively throughout an energy project – from the inception of a creative idea for a project or transaction, during negotiations and the regulatory approval process, and in litigation, if necessary. She frequently represents clients on regulatory matters related to renewable generation and electric transmission projects, trading of energy and renewable energy credits, transmission and interconnection services, rates, and reliability standards.

Ms. Swanstrom guides clients through the jurisdictional maze of federal and state regulation and advises them on strategies to achieve increased revenues or cost savings while minimizing regulatory burdens. She negotiates and advises clients on project development, fuel, power purchase and supply, generator interconnection, electric transmission and gas transportation contracts. Ms. Swanstrom also counsels clients on Federal Energy Regulatory Commission (FERC) and Commodity Futures Trading Commission (CFTC) regulations, as well as the reliability standards developed by the North American Electric Reliability Corporation (NERC) and regional entities; conducts compliance training and internal investigations; represents clients in regulatory proceedings and investigations; and litigates before federal agencies, state commissions, and courts.

Ms. Swanstrom is skilled in the FERC's policies and regulations regarding renewable energy, open access transmission, the siting of new transmission facilities, transmission planning and cost allocation (including OATTs), generator interconnection, reliability standards, hydropower licensing, permitting and exemptions, standards of conduct, reciprocity and the provision of comparable service by governmental transmission providers, regional transmission organizations (RTOs) and independent system operators (ISOs), transmission revenue requirements (TRRs), rates of return, transmission rate

incentives, demand response, asset acquisitions and divestitures, contract and tariff filings and complaints, anti-market manipulation rules and reporting requirements. She also is skilled in CFTC's policies and regulations regarding the trading of energy commodities and renewable energy credits and has advised numerous clients on compliance with the Dodd-Frank Act. She helps clients proactively shape regulatory policies, builds coalitions and advocates clients' interests in rulemaking proceedings.

Ms. Swanstrom is an experienced administrative litigator, with more than 25 years of experience representing clients from diverse segments of the electric and natural gas industries, resulting in a well-rounded perspective of regulatory issues facing participants in those evolving markets. She has represented government and investor-owned electric utilities, generators, investors in generation and transmission projects, industrial electricity consumers, state commissions and local regulators, gas pipelines, local distribution companies, producers, and marketers.

## **Admissions**

### **Admitted to Practice**

- District of Columbia (1989)
- Maryland (1988) (Inactive)

### **Court Admission**

- U.S. Supreme Court
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Ninth Circuit

### **Representative Experience**

- Advised electric utility clients on compliance with new rules regarding transmission planning, open access transmission, and generator interconnection services, and reliability standards
- Performed compliance assessments to help electric utility clients successfully meet compliance deadlines under the Dodd-Frank Act
- Provided compliance training on CFTC and FERC anti-market manipulation and standards of conduct rules to numerous clients to successfully prevent regulatory problems before they occur
- Won FERC appeal reversing NERC decision that applied reliability standards overbroadly to retail power marketer
- Successfully drafted and implemented innovative reforms to transmission provider's generation interconnection process to advance the development of renewable energy projects
- Successfully advocated interests of a coalition of government and investor-owned utilities on transmission policy issues in major open access transmission and standards of conduct rule-making proceedings at FERC
- Prepared cutting-edge transmission tariff provisions for open season process to upgrade major transmission line exporting renewable energy
- Successfully negotiated multi-party interconnection agreement for a large solar generating

- facility to be constructed in phases
- Achieved FERC approval of the sale of transmission assets, along with major power plant, for a buyer without regulatory conditions or extensive market power analysis
  - Achieved FERC approval of ground-breaking open access transmission reciprocity tariff and standards of conduct filed voluntarily by the non-jurisdictional electric utility at FERC
  - Successfully resolved, without litigation, complaint phoned into FERC Enforcement Hotline regarding transmission service priorities
  - Won litigation at FERC against power marketer seeking an electric contract termination payment from a buyer in excess of \$100 million and persuaded Administrative Law Judge to recommend disgorgement of \$1.6 billion in unjust profits
  - Victorious in numerous discovery motions at FERC, including a request for sanctions against an opponent
  - Achieved favorable ruling from FERC Administrative Law Judge recommending approximately \$21 million refund for energy purchased by the electric utility
  - Achieved favorable dismissal of unsupported allegations of electric market manipulation on behalf of the electric utility
  - Successfully negotiated reduction in gas transportation rates, providing approximately \$3.8 million in savings and obtained right to terminate the contract early for purposes of switching suppliers
  - Successfully negotiated innovative electricity supply, lease, and management agreements on behalf of a corporation providing financing for construction of new co-generation facilities on a college campus
  - Performed comprehensive analysis of the application of antitrust laws to electric industry
  - Retained as an expert witness in a contract dispute involving gas imbalance penalties that settled successfully
  - Persuaded FERC to impose a unique condition on a merger of a large gas and electric companies to protect competition from harm
  - Managed team of attorneys and professional consultants in victorious effort to obtain government funding for clean coal technology

## Media and Presentations

### Articles

- Co-author, "[FERC to Reform Interconnection Procedures for Large Generators](#)," *District Energy Magazine* (2017)
- Co-author, "Corporate Compliance Challenges by Industry: Regulated Energy (FERC & NERC)," *Corporate Compliance Practice Guide* (2009 - Present)
- Co-author, "Grid Interconnection Rules for District Energy/CHP Systems," *District Energy Magazine* (2016)
- Co-author, "New Laws Promote Development of Small Hydropower Projects," *ABA Energy and Natural Resources Litigation Committee Newsletter* (2014)
- Author, "Dodd-Frank Act Extends Beyond Wall Street to Main Street: Why You May Need to Report Your Fuel Supply and Electricity Transactions," *District Energy Magazine* (2013)
- Co-author, "New FERC/NERC Enforcement Trends and Compliance Tools," Infocast Reliability Standards Webinar (2012)

- Author, "FERC Offers Guidance on NERC Penalty Notices," *Managing Power* (2011)
- Author, "FERC Provides Guidance on How it Will Act on NERC Penalty Notices in the Future," *Enforcement Insights Newsletter* (2011)
- Author, "FERC's Office of Enforcement Clarifies AFUDC Policy," *Enforcement Insights Newsletter* (2011)
- Author, "President Obama's Directives to Federal Agencies Are Expected to Alter Compliance Obligations and Enforcement Risks," *Enforcement Insights Newsletter* (2011)
- Author, "FERC Staff Issues No-Action Letter on Asset Management Activities," *Enforcement Insights Newsletter* (2011)
- Author, "FERC Conducts Historic Inquiry into Disruptions of Electric and Natural Gas Service," *Enforcement Insights Newsletter* (2011)
- Co-author, "DOE Transmission Corridor Designations and FERC Backstop Siting Authority: Has the Energy Policy Act of 2005 Succeeded in Stimulating the Development of New Transmission Facilities?" *Energy Law Journal* (2009)
- Co-author, "Incorporating Smart Grid Projects into Your Municipal Electric Utility System," *Colorado Municipalities Magazine* (2010)
- Author, "*Energy Compliance and Litigation Case Strategies*" (Aspatore Books 2007)
- Author, "FERC Gains Greater Enforcement Authority: Is Your Company Prepared?" *Connection Newsletter of Women's International Network of Utility Professionals* (2006)
- Author, "Reliability Takes Center Stage at FERC as It Implements New Authority Under the 2005 Energy Policy Act," *Connection Newsletter of Women's International Network of Utility Professionals* (2006)
- Author, "Legislators Turn Up the Heat on Enron & FERC This Summer," *Connection Newsletter of Women's International Network of Utility Professionals* (2004)
- Author, "The Breakdown of Comprehensive Energy Legislation on Capitol Hill," *Connection Newsletter of Women's International Network of Utility Professionals* (2003)
- Author, "FERC Plans to Revisit Open Access Transmission Rules," *Connection Newsletter of Women's International Network of Utility Professionals* (2004)
- Author, "Legislative Update - Energy Bill Likely to Stretch into Fall," *Connection Newsletter of Women's International Network of Utility Professionals* (2003)
- Author, "The Fate of Energy Bill Lies in House-Senate Conference," *Connection Newsletter of Women's International Network of Utility Professionals* (2002)
- Author, "Presidential Candidates Unveil Their Energy Policy Strategies," *Connection Newsletter of Women's International Network of Utility Professionals* (2000)
- Author, "Electric Restructuring Legislation Not a Top Priority for Congress this Election Year," *Connection Newsletter of Women's International Network of Utility Professionals* (2000)
- Author, "Congress Turns its Attention to Electric Restructuring Legislation," *Connection Newsletter of Electrical Women's Roundtable* (1999)
- Author, "The Clinton Plan: or Is It?," *Connection Newsletter of Electrical Women's Roundtable* (1998)
- Author, "Congress May Not Pass Electric Restructuring Legislation this Year," *Connection Newsletter of Electrical Women's Roundtable* (1997)
- Author, "Congress Wraps Up with Two More Electric Competition Bills," *Connection Newsletter of Electrical Women's Roundtable* (1996)
- Author, "FERC Issues Final Rule on Open Access Electric Transmission Service," *Women's Council on Energy and the Environment Newsletter* (1996)



- Co-author, “Legal Issues in Forming a Municipal System,” *American Public Power Association* (1993)
- Co-author, “Basic Principles and Structure of Natural Gas Pipeline Rate Proceedings,” *Natural Resources & Environment* (1992)

## Blogs

- Co-author, “[New Court Decision Opens Door to Broader Assertion of Jurisdiction by FERC over Governmental Entities](#),” *Energy Law Times* (2017)
- “[Energy Companies Need to Ready Themselves for New CFTC Position Limits Regime](#),” *Energy Law Times* (2016)
- Co-Author, “[The United States Court of Appeals for the Fifth Circuit Remands FERC Orders Addressing Participation by Non-Jurisdictional Utilities in the WestConnect Transmission Planning Region and Re-Opens Cost Allocation Issue](#),” *Energy Law Times* (2016)
- “[New Federal Reserve Board Rule Demonstrates Why Electric Utilities Must Expand Their Monitoring and Compliance Programs Beyond FERC](#),” *Energy Law Times* (2016)
- “CFTC Revamps Its Swap Data Reporting Regulations,” *Energy Law Times* (2015)
- “CFTC Plans To Lighten Regulatory Burdens on End-Users Trading Commodity Options,” *Energy Law Times* (2015)
- “FERC Accepts Pro Forma Agreement for Transmission Project Developers in the CAISO, Enabling New Opportunity to Join the CAISO Only as a Partial Participating Transmission Owner,” *Energy Law Times* (2014)
- Co-author, “FERC Approved First Pilot Project to Test the Fast-Track Licensing Process Provided in the Hydropower Regulatory Efficiency Act of 2013,” *Energy Law Times* (2014)
- Co-author, “FERC Requests Industry Input on Gas-Electric Coordination and Initiates a Paper Hearing on Electric Scheduling,” *Energy Law Times* (2014)
- “CFTC Reporting Obligations Begin for End-Users Engaging in Energy Commodity Swaps,” *Energy Law Times* (2013)

## Presentations

- Moderator, “Settlement Strategies for Energy Companies” EBA Energizer Seminar (2017)
- “What Is the Basic Minimum Necessary to Keep Small Market Participants in Compliance with CFTC Requirements,” ACI Energy Trading Compliance Conference (2015)
- “Compliance with CFTC Regulations: New Developments Important to Governmental Utilities” APPA Legal Seminar (2014)
- “Top Ten Things Every Governmental Utility Needs to Know About Compliance With CFTC Recordkeeping And Reporting Requirements, As Well As Trading With Swap Dealers,” APPA Legal Seminar (2013)
- “New Developments Affecting FERC Transmission Siting and Condemnation Authority of Non-Utility Developers,” Law Seminars International Conference on Electric Transmission in the West (2012)
- “Conflict Resolution Strategies in Solar Development,” PV America West Conference, Solar Energy Industries Association and Solar Electric Power Association (2012)
- “Ten-Year Overview of Market Manipulation Proceedings: Where FERC Has Been and Where It’s Headed Since the Western Energy Crisis of 2000-2001,” National Electric Compliance Forum

(2012)

- “Reliability Compliance and Enforcement: New Directions in Reliability Standards Development and Enforcement,” The University of Idaho 58th Annual Utility Executive Course, 1st Annual Utility Executive Summit (2011)
- “Industry Trends and Regulatory Reforms Affecting the Interconnection of Renewable Generation Projects to the Transmission Grid,” American Public Power Association Legal Seminar (2010)
- “Recommended Practices to Promote Compliance with Anti-Manipulation Rules in Energy Markets: Lessons Learned from Enforcement Cases on Organizational Structures That Do and Don’t Work,” Infocast – FERC & CFTC Compliance Summit (2010)
- Presenter, “New Trends in Transmission Project Development: Has the Energy Policy Act of 2005 Succeeded in Stimulating New Transmission Investments?” Texas Energy Council (2010)
- “Promoting Compliance with Anti-Manipulation Rules in Energy Markets: Practical Tips on Organizational Structures that Do and Don’t Work,” Infocast – FERC Compliance Summit (2009)
- “Expert Witnesses and the FERC Litigation Process: Best Practices for Selecting, Defending, and Cross-Examining Expert Witnesses,” Energy Bar Association Meeting (2009)
- “Practical Guidance on Organizational Structures that Mitigate Compliance Risks: Has Your Company Taken All the Necessary Steps to Promote Compliance with Anti-Manipulation Rules?” Infocast – FERC Compliance Summit Workshop (2009)
- “Demand Response in the Wholesale World,” American Public Power Association Legal Seminar (2008)
- “How a Company’s Organizational Structure Can Foster Compliance or Create Risks of Penalties for Non-Compliance with Rules Prohibiting Fraud and Market Manipulation in the Energy Industry: Is Your Company Sufficiently Protected?” Infocast – FERC Compliance Summit (2008)
- “Compliance Programs to Protect Against Fraud and Market Manipulation in the Energy Industry,” Energy Risk Magazine’s 12th Annual Energy Risk USA Conference (2008)
- “Energy Market Manipulation: Not Your Problem? Don’t Be Too Sure,” Patton Boggs’ Seminar, Dallas, Texas (2007)
- “Compliance with FERC’s New Rule Prohibiting Fraud, Deception and Misleading Statements,” American Public Power Association National Conference (2006)
- “Complying with Energy Market Manipulation Rules,” American Public Power Association Training Seminar (2006)
- “FERC’s Market Behavior Rules and Assertion of Jurisdiction Over Government Utilities in Investigations,” American Public Power Association Legal Seminar (2004)
- “Electricity: How Tribes & Tribal Corporations Can Reduce Costs and Earn Revenues from Its Sale,” UIDA Eastern Tribal Economic Roundtable (2004)
- “Buyer Beware: The Heart of the Federal Power Act Is Barely Beating,” American Public Power Association Legal Seminar (2003)
- “Legal Concerns Raised by e-Commerce: Piloting Your Utility’s Legal Course through Cyberspace,” American Public Power Association Legal Seminar (2000)
- “Courts Tell Federal Government to Keep Out of States’ Backyard,” American Public Power Association Legal Seminar (1999)
- “Gas Industry Regulation: Where Is the Industry Now and Where Is it Headed?” Tennessee Bar Association Utilities Symposium (1999)
- “Antitrust Strategies for Plaintiffs and Defendants,” Energy Institute Conference on Antitrust in Competitive Electric Markets (1998)

- “Securitization of Stranded Costs in the Electric Industry: Lessons to be Learned from the PECO Proceeding,” Energy Daily 2nd Annual Finance Forum (1997)

## **Memberships**

### **Energy Bar Association**

- Member, Electricity Committee (2015 – 2016)
- Member, Alternative Dispute Resolution Committee (2016 – present)
- Member, Renewable Energy Committee (2010 – 2015)
- Member, Compliance and Enforcement Committee (2011 – 2013)
- Member, Electric Utility Regulation and Finance & Transactions Committees (2003 – 2005)
- Chair, Natural Gas Regulation Committee (2002 – 2003)

### **Women in Power® Forum**

- Chair (2004 – 2012)

### **Legislative Issues Committee of Women’s International Network of Utility Professionals**

- Chair, Board of Directors

### **Women’s Council on Energy and the Environment (1992 – 2005)**

### **Environment, Energy, and Resources Section (1989 – 2005)**

## **Honors and Awards**

- [AV Preeminent® Peer Review Rated](#)
- Listed, *Washington, D.C. Super Lawyers* in the categories of Energy and Natural Resources, Utilities, and Administrative Law (2008, 2013 – 2018)
- Listed, Washington, D.C. and Baltimore Top Rated Lawyer in the category of Energy and Natural Resources, *Legal Leaders* (2015)
- Listed, One of the Top Women Lawyers in the Northeast in the category of Energy and Utility Law, *Arrive* (July/August 2011)
- Outstanding Member at Large Award, Women’s International Network of Utility Professionals (2005)