



## Maria C. Faconti

### Partner

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## OVERVIEW

Maria Faconti is a partner in the firm's Austin office and is a member of the Power practice group. Maria is a regulatory and administrative law attorney focusing her practice on the Texas energy markets, energy regulation, and complex energy transactions, specifically within Electric Reliability Council of Texas (ERCOT).

In her Texas Public Utility Commission (PUCT) and ERCOT practice, Maria represents power marketers, generators, retail electric providers, private equity investors, developers, and other clients in a broad range of regulatory and administrative matters, navigating the regulatory aspects of participation in the ERCOT market. She assists these clients with interconnection, registrations and certifications, regulatory compliance, including conducting compliance trainings, enforcement matters before the PUCT, Texas Reliability Entity, and NERC, and administrative litigation. She also regularly provides clients with extensive insight and assistance in fully interconnecting to the ERCOT grid.

Additionally, Maria assists generators, data and crypto miners, and other industrial customers structure complex offtake arrangements, including the creation of private use networks and other behind the meter arrangements. Maria regularly drafts and negotiates all required agreements such as, power purchase agreements, interconnection agreements, shared facility agreements, and tolling agreements.

Maria also works on energy development and acquisition matters for a wide range of resource types including conventional, wind, solar, storage and bio-fuel, advising clients on all aspects of energy infrastructure development, acquisition, and financing. Maria advises clients on energy regulatory permitting issues for renewable and battery projects in a variety of states, in addition to Texas, including Illinois, Nevada, Pennsylvania, Virginia, California, Louisiana, New York, Oklahoma, Michigan, Arizona, Colorado, North Dakota, New Mexico, Wisconsin, as well as in other electric regions, including Midcontinent Independent System Operator (MISO), Southwest Power Pool (SPP), and the California ISO (CAISO). Maria has represented developers, tax equity investors and lenders in project finance transactions, including battery storage, solar, wind, and gas generation projects and related due diligence, totaling over 100 projects across the US.

## PROFESSIONAL BACKGROUND

Prior to joining private practice, Maria worked as an attorney at the Texas Public Utility Commission. While there she represented the public interest in rate cases of investor owned utilities, municipal utility rate appeals, sale, transfer, merger proceedings, and complaints. Maria also worked on many of the agency's rulemaking projects, having updated various rules including the retail electric provider (REP)/transmission distribution utility (TDU) Tariff.

## ACHIEVEMENTS

- Recognized by *Chambers USA* for Energy: State Regulatory & Litigation (Electricity) in Texas, 2023
- Listed in *Best Lawyers: Ones to Watch®* in America in Austin
  - Administrative/Regulatory Law and Energy Law, 2021-2024
  - Oil and Gas Law, 2023-2024

## SPEAKING ENGAGEMENTS

- Speaker, "Let's Make a Renewable Energy Deal," Energy & Mineral Law Foundation Annual Institute, 20 June, 2023
- Speaker, "Key FERC and ISO Market Rule Changes on Energy Storage," YES Energy Summit 2023, 22 February 2023
- Speaker, "Market Design, FERC Updates, and Regulatory Evolution," Nodal Trader Conference 2022
- Speaker, "The Fallout: Legislative & Policy Update Following the Winter Storm & Energy Crisis," GridNEXT 2021
- Private-Use Networks & Self-Generation: What You Need to Know (Webinar - March 2021)
- Building the Renewable Power Project Webinar Series - Environmental, Permitting and State Regulatory Considerations for Wind and Solar (Webinar - November 2020)
- Moderator, "PPA/Hedge Offtake Panel," UT Law 15th Annual Renewable Energy Law Conference, 28 January, 2020

## EDUCATION

- LL.M., The University of Texas School of Law, 2012
- J.D., William and Mary School of Law, 2011
- B.A., University of California at Los Angeles (UCLA), 2007

## ADMISSIONS

- Bar of California
- Bar of Texas

## THOUGHT LEADERSHIP POWERED BY HUB

- 8 January 2024, Texas Updates
- 30 May 2023, FERC Approves Enforcement's Settlements With Two Demand Response Providers
- 17 April 2023, Revised Texas PUC Registration Requirements and Texas Legislative Update

## OTHER PUBLICATIONS

- "Reactive Power Compensation for Renewable Energy Facilities: Opportunity Amidst Change," *Oil, Gas & Energy Resources Law Section Report*, January 2023
- "Texas Power Report Falls Short On Winter Risks, Other Issues," *Law360*, 7 December 2022
- "Lessons From FERC New England Capacity Market Settlement," *Law360*, 29 July 2022
- Foreign Direct Investment in the U.S. and the Defense Production Act - A Look at *Rails Corporation v. Terna Energy USA Holding Corporation*, 10 *TEX J. OIL, GAS, & ENERGY L.* 509.
- How Texas Overcame California as a Renewable State: A Look at the Texan Renewable Energy Success, 14 *Vt J. Envtl. L.* 411

## NEWS & EVENTS

- 1 June 2023, K&L Gates Receives Firm, Individual Rankings in 2023 *Chambers USA* Guide
- 29 March 2023, Reactive Power Compensation for Renewable Energy: Current Models and Potential Changes, Opportunities for Developers, Hosted by Strafford
- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 24 May 2022, K&L Gates Adds Four-Partner, Multi-Office Premier Renewable Energy Team

## MEDIA MENTIONS

- Interview, "You gotta fight for your right to sue ERCOT. But is it a good idea?" *S&P Global Commodity Insights: Capital Crude Podcast*, 6 February 2023

## AREAS OF FOCUS

- Power
- Construction and Infrastructure
- Energy Finance
- Energy Storage and Distributed Resources
- ESG - Sustainability and Renewable Energy
- Mergers and Acquisitions
- Offshore Wind Energy
- Renewables

## INDUSTRIES

- Energy
- Energy Disputes

## EMERGING ISSUES

- Hydrogen

## REPRESENTATIVE EXPERIENCE

### **Public Utility Commission of Texas (PUCT) and Electric Reliability Council of Texas (ERCOT)**

- Represented merchant generator in obtaining dismissal of competitor's request to install two battery storage systems as alternative to traditional distribution system expansion.
- Drafted post-hearing briefs and exceptions to Proposal for Decision (PFD) and made oral arguments before PUCT commissioners.
- Drafted comments in various PUCT projects related to resource adequacy and marketing design changes.
- Routinely counsel congestion revenue rights (CRR) account holders on ERCOT general matters, including minimum participation requirements and other compliance issues.
- Represented governmental entities, including school districts, in three El Paso Electric rate proceeding and El Paso Electric's sale, transfer, merger proceeding, before the PUCT.
- Counseled wholesale market participants with registration, planning, and compliance issues involving ERCOT, NERC, and TRE.

- Defended qualified scheduling entity, generation, and retail clients in violation proceedings in front of the PUCT.
- Represented numerous wind, solar, and wholesale storage project owners in obtaining necessary PUCT certifications.
- Conducted numerous compliance training for power generation companies, retail electric providers, and power marketers.
- Counseled and defended clients on issues related to compliance with PUCT rules and ERCOT Protocols.
- Assisted Texas retail electric providers and power generation companies on compliance with certification, de-certification and reporting obligations.
- Advised clients on impacts of Winter Storm Uri, including, but not limited to, weatherization requirements, billing disputes, default uplift charges, emergency operation plans, market design changes, etc.
- Advised clients on Lone Star Infrastructure Protection Act.
- Assisted clients in understanding impacts of Winter Storm Uri on their power purchase agreements.
- Represented industrial clients in Austin Energy rate proceedings before Independent Hearings Examiner.
- Represented University in dispute over gas bill related to consumption during Winter Storm Uri.

### **Texas Project Development and Transactions**

- Represented buyer in an acquisition of a \$400 million portfolio of energy storage projects in Texas.
- Project development work for 350 MW solar project in Fort Bend County, Texas, including obtaining tax equity financing of the project, focusing on interconnection and energy regulatory compliance.
- Represented tax equity investor in investment in three Texas energy storage projects totaling 705 MW.
- Advised battery storage company in closing of financing for multiple storage projects (both DG and non-DG), ensuring all required energy regulatory approvals with PUCT, ERCOT, and TRE had been obtained.
- Provided energy regulatory guidance to renewable developer in its sale of the development rights of a 260 MW solar project in Brazoria County, Texas, to infrastructure company, along with the debt and tax equity financing of the project.
- Advised renewable developer in the acquisition, financing, and eventual sale of the largest single-phase and single-site wind project in the US, a 525 MW wind farm in Coke County, Texas.
- Represented renewable developer in its acquisition, development, construction loan financing, and tax equity financing of a 492 MW wind project in Concho County, Texas.
- Represented wind developer in drafting shared facilities agreement.
- Advised retail provider on sale of business in Texas.
- Represented utility client identifying and understanding non-wires alternatives to transmission.

- Represented renewable energy developer in tax equity financing of five renewable projects (wind and solar) in ERCOT, as part of a larger portfolio transaction.
- Represented client in sale of its co-generation facility in ERCOT.
- Represented ERCOT generators in tax equity financing using inverted lease structure.
- Served as Texas regulatory counsel for a lender in connection with the financing of four gas "peaker" plants – two operating and two under construction – in Harris and Victoria Counties, Texas.
- Served as Texas regulatory counsel for a construction lender in connection with two carbon capture projects involving the capture of carbon dioxide (CO<sub>2</sub>) from two ethanol plants in Hale and Deaf Smith Counties, Texas, and the transportation of purified CO<sub>2</sub> via pipelines to delivery points in Hale County, Texas, and Curry County, New Mexico. The projects were designed to capture 95% of CO<sub>2</sub> produced at the ethanol facilities, which is currently vented to the atmosphere, for an estimated capture of 1,084 metric tons per day from each facility.
- Represented renewable energy developer developing 260 MW solar project in Lamar County, Texas.
- Assisted renewable energy developer in obtaining all required state level regulatory permits for a 255 MW solar project in Pecos County, Texas.
- Represented renewable energy developer obtain financing for a 240 MW solar facility in Fort Bend County, Texas.
- Represented solar energy development company in the development of one of Texas' largest solar projects, and in completing funding of the tax equity investment by Facebook.
- Counseled solar energy developer on energy regulatory matters in acquisition of 241 MW solar project in Cameron County, Texas.
- Represented client creating behind the meter arrangement to power electrolyzers for the production of green hydrogen.
- Represented buyers and sellers in the negotiation of renewable power purchase agreements and virtual power purchase agreements.
- Represented project developer in negotiating behind the meter power purchase agreement with a crypto miner.
- Evaluated and negotiated behind the meter arrangement for a facility interconnected in a non-opt-in area of ERCOT for tax equity investor.
- Drafted tolling agreement for storage facility.
- Represented Project Company in tax equity investment of 299 MW wind project in Limestone and Navarro Counties, Texas and 250 MW solar project in Hill County, Texas.
- Represented Project developer in 150 MW solar and 200 MW storage facility in Caldwell County, Texas.



## Other Project Development and Transactions

- Represented multiple tax equity investors and lenders on energy regulatory permitting issues involving investment in wind, solar, and battery projects in New Mexico, South Dakota, North Dakota, California, Illinois, Louisiana, Colorado, Iowa, Virginia, Pennsylvania, and Oklahoma.
- Represented renewable developer in its acquisition, development, construction loan financing, and tax equity financing of the 202 MW wind project in Logan County, Illinois.
- Served as Wisconsin regulatory counsel for a developer constructing a 1,800 MMBtu per day anaerobic digester facility located in Brown County, Wisconsin.
- Represented tax equity investor in financing of California Low Carbon Fuel Standard qualifying facility.
- Acted as New Mexico regulatory counsel for a tax equity investor and construction lenders in connection with the 90 MW repowering and 144 MW expansion of a wind project in Guadalupe County, New Mexico.
- Served as Oklahoma regulatory counsel for lender group closing construction loans totaling \$2 billion for three wind projects, 999 MW, 288 MW, and 199 MW.
- Represented client creating micro-grid in Illinois.
- Advised numerous clients in development of community and rooftop solar in a number of states, including Illinois, New York, California and elsewhere.
- Assisted client in developing standardized contract for community solar initiatives in various states, supplementing standard form to meet regulatory requirement of specific utility as company expanded footprint.
- Provided energy regulatory guidance to solar company for the development and financing of a 300 MW solar project in Pueblo, Colorado.
- Represented client in repower of wind facilities in North Dakota, Oklahoma, and Colorado.
- Assisted client in understanding proposed regulatory changes and impacts of deregulation in Nevada.
- Represented renewable energy developer obtaining financing for a 100 MW solar facility in Stephenson County, Illinois.
- Represented investor in 215 MW solar and 215 MW energy storage facility in Arizona.