



Kimberly B. Frank

Partner

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OVERVIEW

Kimberly Frank is a partner in the firm's Washington, D.C. office, and is a member of the power practice group. Kimberly represents clients in a broad array of electric utility regulatory matters before the Federal Energy Regulatory Commission (FERC) and state regulatory agencies and in appeals of these agencies' decisions.

Kimberly helps clients navigate the complex rules of the FERC-regulated regional wholesale markets. She helps them evaluate and advocate for rule changes in the energy, capacity, and ancillary services markets administered by the regional transmission organizations (RTOs). She represents clients in the RTO stakeholder process, and before FERC and the appellate courts on myriad issues including the capacity markets in the eastern RTOs. She also advises clients regarding FERC's regulation of transmission service, rates, and tariff provisions and of regional transmission cost allocation.

Kimberly represents clients in administrative hearings and settlement proceedings, rulemakings, technical conferences, and enforcement matters before FERC. She advises clients in developing strategies for litigation and prepares complaints, protests, comments and other pleadings filed with the agency. She works regularly with economists, engineers, accountants, financial analysts, and other electric utility industry experts.

Kimberly counsels clients developing renewable energy facilities, regulated by FERC on PURPA, PUHCA and FPA compliance. She assists clients with interconnections to transmission systems and with regulatory compliance matters related to federal- and state-regulated electric power transactions.

Before her legal career, Kimberly was research faculty with a law and economics think tank in the Department of Economics, University of Maryland College Park.

ACHIEVEMENTS

- Selected as one of The Best Lawyers in America for work in Energy Regulatory Law by Best Lawyers (2019, 2020)
- Selected as one of The Best Lawyers in America for work in Energy Law by Best Lawyers (2020)

PROFESSIONAL / CIVIC ACTIVITIES

- Charitable Foundation of the Energy Bar Association - Member, Board of Directors
- Energy Bar Association - Member, Board of Directors (May 2016 - 2019)
- Women's Council on Energy and the Environment
- Women's Bar Association of the District of Columbia
- Maryland State Bar Association, Section on Environment & Energy Law
- District of Columbia Bar Association, Section on Environment, Energy and Natural Resources

SPEAKING ENGAGEMENTS

- "FERC's Inaction Frustrates Opportunities for Offshore Wind in New England," *Business Network for Offshore Wind*, Feb. 2019.
- *Connecticut: Ground Zero for Offshore Wind*, Moderator, Business Network for Offshore Wind, June 2019.
- *Cybersecurity Outlook*, Moderator, Women's Council on Energy and the Environment, May 2019.
- *Women in Leadership Committee Holiday Reception* featuring Sue Kelly, Moderator, Women's Council on Energy and the Environment, Dec. 2018.
- *How the Federal Power Act Impacts Your Utility*, Speaker, American Public Power Association, National Conference, June 2018.
- *Lessons Learned from Political Appointees*, Women's Council on Energy and the Environment, Jan. 2018.
- *Florida Electric, Renewable and Telecommunications Updates: The Interplay of Federal, State and Local Jurisdiction*, Speaker, Energy Bar Association and the Florida Bar Association, Oct. 2017.
- *States Move Toward a Cleaner Energy Future: Opportunities and Challenges*, Moderator, Energy Bar Association Mid-Year Conference, Oct. 2016.
- *Federal Energy Regulation*, Speaker, New England Conference of Public Utilities Commissioners Symposium, Feb. 2015 and Nov. 2016.
- *Offshore Innovation: The Development, Implementation and Financing of Offshore Wind Energy in Maryland's Coastal Waters*, Moderator, Women's Council on Energy and the Environment, Dec. 2014.
- *Meet the Judges: Trial Practice with Judge Peter Young*, Moderator, FERC Practice Committee, Energy Bar Association, June 2014.
- *Capacity Roundtable: Sharing Regional Perspectives*, Moderator and Panelist, National Association of Regulatory Utility Commissioners, Sept. 2013.
- *Debating the Minimum Offer Price Rule*, Panelist, Restructuring Today, Dec. 2012.

EDUCATION

- J.D., Georgetown University Law Center, 2004
- M.A., University of Maryland at College Park, 1996
- B.A., The College of Wooster, 1992

ADMISSIONS

- Bar of District of Columbia
- Bar of Maryland
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Third Circuit
- United States District Court for the District of Maryland

THOUGHT LEADERSHIP POWERED BY HUB

- 16 November 2020, Energy Storage Handbook Vol. 6 (*Alerts/Updates*)
- 23 September 2020, FERC Issues Landmark Order No. 2222 to Facilitate the Participation of Distributed Energy Resources in Wholesale Markets (*BlogPost*)
- 17 September 2020, Senate ENR Committee Holds Hearing on FERC Commissioner Nominees (*BlogPost*)
- 15 September 2020, Senate ENR Hearing Slated for FERC Nominees (*BlogPost*)
- 28 July 2020, Trump Nominates Clements, Christie to FERC (*BlogPost*)
- 12 March 2020, COVID-19: Federally Regulated Energy Businesses (*Alerts/Updates*)

OTHER PUBLICATIONS

- Series and survey, *Industrial Maintenance & Plant Operation*, “Manufacturers Show Interest in, But Lack Awareness of, Energy Demand Response Programs,” Jan/Feb. 2014, and “Demand Response Programs Lower Electricity Costs, But Also Pose Risks,” Nov. 2013.
- “Federal Courts Thwart State Efforts to Develop New Generation for Reliability,” *New England Consumer Liaison Group*, Nov. 2013.
- “Ominous News for State Energy Commissions,” *Law360 Expert Analysis*, Oct. 2013.

- “Rethinking Capacity Markets: A Pragmatic New Approach to Assuring Reliability,” *Public Utilities Fortnightly*, May 2013.

NEWS & EVENTS

- 17 August 2020, K&L Gates Advises Tokyo Gas America on Two Acquisitions (*Noteworthy Work*)

AREAS OF FOCUS

- Power
- Appellate Litigation
- Construction and Infrastructure
- Corporate Energy Sourcing and Sustainability
- Energy Storage and Distributed Resources
- Offshore Wind Energy
- Renewables

REPRESENTATIVE EXPERIENCE

FERC and RTOs

- Argued for intervenor state utility commission in FERC proceedings below and in *New England Power Generators Ass’n v. FERC*, 757 F.3d 283 (D.C. Cir. 2014), supporting FERC’s decision to reject proposals to implement buyer-side market power rules in the New England Forward Capacity Market.
- Represented a state utility commission in a FERC proceeding concerning proposed changes to a minimum offer price rule sought by PJM that would prevent new generation from offering to sell capacity at verifiable cost-based prices. Representation continued through the Third Circuit’s review of other elements of FERC’s order. *New Jersey Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).
- Represented a state attorney general opposing petition to FERC requesting that the agency declare a state law to be preempted by the Federal Power Act.
- Represented a state utility commission in complaint proceeding challenging energy market mitigation rules that exempted some generators from energy-offer mitigation in the PJM power market.
- Represented intervenor in proceedings before FERC concerning the merger of two public utilities.
- Represented a state utility commission before FERC in various settlement proceedings setting cost-of-service rates for generators operating to ensure grid reliability, negotiating settlements providing benefits to the generator and customers.

- Represented a state utility commission in FERC proceedings protesting the agency's exercise of jurisdiction over the state's resource adequacy requirements, and petitioned for appellate review of FERC decisions; Petitioned the United States Supreme Court for a writ of certiorari regarding the application of Chevron deference to FERC's interpretation of the scope of its jurisdiction under the Federal Power Act. *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009), cert. denied, 558 U.S. 1110 (2010).
- Prepared comments on behalf of state regulatory commission in FERC proceedings to solicit views on the federal agency's implementation of PURPA.
- Prepared comments on behalf of state regulator in FERC proceedings exploring state policies and wholesale capacity markets operated by the eastern RTOs.
- Represented a state utility commission in complaint and in full hearing proceedings against capacity importers selling in the New England Forward Capacity Market.
- Represented intervenor in FERC proceedings to determine cost-of-service transmission rates and transmission protocols for a nonjurisdictional rural electric cooperative in SPP.
- Represented a state utility commission in FERC proceedings evaluating the New England Forward Capacity Market CASPR rule change proposal to integrate renewable energy resources developed through state initiatives.
- Represented state regulatory commissions in numerous proceedings before FERC and the federal appellate courts concerning the rules governing the PJM or New England capacity markets, addressing multifaceted issues including competition, federal-state jurisdiction, resource adequacy and reliability, product definition and performance, fraud, market power and competition, imports and seams issues, energy offer obligations, zonal pricing, demand curves, cost-of-new-entry benchmarks, administrative pricing, minimum offer requirements, investment, market monitoring and mitigation, reliability-must-run compensation, interconnection queue reforms, and integration of energy efficiency and demand response capacity.
- Defended five petitions for enforcement filed against three state utility commissions seeking that FERC investigate each state's implementation of PURPA. FERC issued Notices of Intent Not to Act in all cases.
- Represented state utility commission in the stakeholder process and FERC proceedings on proposed "Pay for Performance" rule changes to the New England Forward Capacity Market.
- Represented rural electric cooperative in FERC complaint proceedings initiated by its member to terminate power supply agreement.

Project Development and Transactions

- Performed regulatory due diligence in connection with financing of several wind facilities in southern Pennsylvania.
- Represented wind developer in obtaining Exempt Wholesale Generator (EWG) status and market-based rate authority.
- Represented wind developer in negotiating amendments to interconnection agreements with utilities.

- Represented renewable facilities in preparation and filing of self-certifications of PURPA Qualifying Facility status.
- Represented wind developer in the acquisition of four project interconnection queue positions.
- Represented investment company in a multi-state regulatory due diligence review for acquisition of waste-to-energy facilities.
- Represented lender in the regulatory due diligence review of financing for a gas-fired generator in the PJM power market.
- Represented borrower in the regulatory diligence review process for the financing of several solar facilities in New Jersey.
- Represented investment company in regulatory due diligence in connection with the sale of a New Jersey gas-fired generator selling into the NYISO power market.

RECs and Power Procurement

- Advised financial institution client on a behind-the-meter 1 MW solar project for its Connecticut campus and submission of a bid for long-term contract to sell zero-emission renewable energy credits to a Connecticut distribution utility.
- Represented corporate client in negotiations for on-site, behind-the-meter solar facility including agreements for facility design and construction, operation and maintenance, interconnection, and the REC offtake agreement.
- Represented off-taker in diligence review of power purchase agreement for on-site, behind-the-meter solar.
- Perform diligence in connection with REC sales agreements.
- Negotiate electric power supply and REC purchase agreement for large commercial customer.

State Regulation and Renewables

- Advised client on interconnection for a .5 MW community solar installation at an apartment complex for low-income residents. Funded in part through a District of Columbia government grant, the solar project provides approximately 160 residents with a \$500 reduction in their electric power bills each year for the next 15 years.
- Advised a state agency on the development of competitive procurements for renewable energy.
- Counseled pro bono grassroots association on a wide variety of legislative and regulatory initiatives to create opportunities for residential rooftop solar in the District of Columbia.
- Legal advisor to state regulatory commission staff to develop comprehensive regulations implementing the state's offshore wind legislation, which included a commission-administered competitive solicitation process and the development of financeable offshore renewable energy credit payment (OREC) mechanism between energy suppliers and wind projects.
- Advised a state agency participating in the three-state New England Clean Energy RFP.

- Developed appellate arguments for a coalition of nine amici state agencies opposing claims in the Third and Fourth Circuits that state commission-administered procurements for new generation capacity are preempted by the Federal Power Act. PPL EnergyPlus, LLC v. Solomon, 766 F.3d 241 (3d Cir. 2014) and PPL EnergyPlus, LLC v. Nazarian, 753 F.3d 467 (4th Cir. 2014), aff'd Hughes v. Talen Energy Mrkt'g, No. 14-614 (U.S. Apr. 19, 2016).
- Represented solar intervenor in proceedings before a state utility regulator concerning acquisition of electric distribution utility.
- Represented intervenor in proceedings before the state utility regulator concerning the merger of two public utilities.
- Investigated for a state utility commission, the commission's prior proceedings implementing retail electric industry restructuring legislation, and going-forward options to provide retail customers with reliable, cost-effective electric service.
- Represented an electric utility in a complex litigation before a state utility commission, defending allegations of imprudence, gross mismanagement, fraud and concealment in the design, engineering and construction of an integrated gasification combined cycle plant.
- Represented Connecticut town in arbitration seeking damages arising from power supply agreements with a municipal electric cooperative.
- Represented solar developer in rehearing of the state utility commission's determination that the developer's proposed site was not eligible under state law for the project to be deemed behind-the-meter.
- Represented intervenor in state utility commission proceedings to establish an integrated resource planning process for two public utilities.

Transactions

- Negotiated agreement for Connecticut sewage facility to participate as a demand response resource in the New England capacity market.