



Kimberly B. Frank

Partner

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OVERVIEW

Kimberly Frank co-leads the firm's global Power practice group and focuses her electric regulatory practice on representing clients in matters before the Federal Energy Regulatory Commission (FERC) and state utility commissions, as well as transactions in the US market.

Kimberly's clients include investor-owned electric utilities and electric cooperatives, large consumers, and government agencies. She represents clients before FERC in contested proceedings, administrative hearings and settlements, rulemakings, technical conferences, and investigations. 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 helps clients navigate the complex rules of the FERC-regulated regional wholesale markets, assisting to evaluate and advocate for rule changes in the energy, capacity, and ancillary services markets. She has represented clients in numerous proceedings before FERC, including capacity and energy market rules in the regional markets, transmission and generation rate cases, formula rate design, transmission planning, and cost allocation.

Kimberly counsels clients developing renewable energy facilities, regulated by FERC on Public Utility Regulatory Policies Act (PURPA), Public Utility Holding Company Act (PUHCA), and Federal Power Act (FPA) compliance. She assists clients with interconnections to distribution and 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

- Recognized by *Chambers Global* for Energy: Electricity (Regulatory & Litigation) in the USA, 2024
- Listed in *The Best Lawyers in America*® for Energy Law and Energy Regulatory Law in Washington, D.C., 2019-2024
- Recognized by *Chambers USA* for Energy: Electricity (Regulatory & Litigation) nationally, 2023

PROFESSIONAL / CIVIC ACTIVITIES

- Solar United Neighbors-Chair, Board of Directors (2022–current)
- Charitable Foundation of the Energy Bar Association-Member, Board of Directors (2019–2022)
- Energy Bar Association-Member, Board of Directors (May 2016–2019)
- Women's Council on Energy and the Environment
- Maryland State Bar Association, Section on Environment & Energy Law
- District of Columbia Bar Association, Section on Environment, Energy and Natural Resources

SPEAKING ENGAGEMENTS

- *ESG for Renewable Energy Financing*, hosted by Infocast Master Class, Nov. 2021
- *Connecticut: Ground Zero for Offshore Wind*, Moderator, Business Network for Offshore Wind, June 2019.
- “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 (*Economics*)
- B.A., The College of Wooster, 1992 (*Economics*)

ADMISSIONS

- Bar of District of Columbia
- Bar of Kansas
- Bar of Maryland
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Eighth 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 Tenth Circuit
- United States Court of Appeals for the Third Circuit
- United States District Court for the District of Maryland

THOUGHT LEADERSHIP POWERED BY HUB

- 26 March 2024, FERC Interconnection Reform Is Full Steam Ahead
- 6 December 2023, FERC Issues 2023 Enforcement Report
- 27 October 2023, Federal Energy Regulatory Commission Orders Development of Inverter-Based Reliability Standards
- 6 September 2023, Order No. 2023: Interconnection Reform is Finally Here
- 5 September 2023, BOEM Offshore Wind Lease Update: Gulf of Mexico Auction Produces Lackluster Results, Not Likely Repeated in Future Oregon and Mid-Atlantic Lease Areas Auctions
- 30 May 2023, FERC Approves Enforcement's Settlements With Two Demand Response Providers

- 3 November 2022, Heightened Scrutiny of Director Positions by FERC and DOJ
- 7 July 2022, Lessons to be Learned from FERC's Investigation of a New Power Project's Participation in the New England Capacity Market
- 17 June 2022, Unclogging the Interconnection Queues – FERC Proposes Interconnection Reform
- 25 April 2022, Offshore Wind Handbook
- 22 April 2022, FERC Moves Forward on Transmission Planning and Cost Allocation Reform
- 30 March 2022, BOEM Issues Final Sale Notice for Offshore Wind Lease Areas in Carolina Long Bay
- 16 March 2022, Record-Setting New York Bight Auction and Newly-Announced Oregon Lease Areas Portend Rapid Growth in U.S. Offshore Wind Industry
- 24 January 2022, Energy Storage Handbook 2022
- 4 January 2022, FERC Enforcement In 2021: A Year Of Change
- 20 July 2021, FERC Issues Advance Notice of Proposed Rulemaking to Reform Transmission Planning, Cost Allocation, and Generator Interconnection Procedures
- 25 June 2021, FERC Prepares to Launch Long-Awaited MBR Relational Database
- 23 September 2020, FERC Issues Landmark Order No. 2222 to Facilitate the Participation of Distributed Energy Resources in Wholesale Markets
- 17 September 2020, Senate ENR Committee Holds Hearing on FERC Commissioner Nominees
- 15 September 2020, Senate ENR Hearing Slated for FERC Nominees
- 28 July 2020, Trump Nominates Clements, Christie to FERC
- 12 March 2020, COVID-19: Federally Regulated Energy Businesses

OTHER PUBLICATIONS

- “Order No. 2023: Interconnection Reform Is Finally Here,” *The Journal of Federal Agency Action*, January–February 2024
- “The Curious Case of the 1,200 MW Transmission Size ‘Limit’ in New England,” *Marine Technology Reporter*, November/December 2023
- “Offshore Wind Auction Results Portend Difficulties In Gulf,” *Law360*, 12 September 2023
- “Reactive Power Compensation for Renewable Energy Facilities: Opportunity Amidst Change,” *Oil, Gas & Energy Resources Law Section Report*, Jan. 2023
- “Lessons From FERC New England Capacity Market Settlement,” *Law360*, 29 July 2022
- “Key Provisions of FERC's 2021 Enforcement Report,” *Pratt's Energy Law Report*, Feb. 2022

- FERC Enforcement In 2021: A Year Of Change, *Law360*, 3 Jan. 2022
- 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

- 15 February 2024, *Chambers Global* 2024 Guide Ranks K&L Gates Lawyers, Practices
- 1 June 2023, K&L Gates Receives Firm, Individual Rankings in 2023 *Chambers USA* Guide
- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 2-3 November 2021, ESG for Renewable Energy Financing, hosted by Infocast Master Class
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch
- 17 August 2020, K&L Gates Advises Tokyo Gas America on Two Acquisitions

AREAS OF FOCUS

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

INDUSTRIES

- Energy
- Power Generation and Transmission

- Utilities

REPRESENTATIVE EXPERIENCE

FERC Litigation and Appeals, Rulemakings, and Technical Conferences

- Represented utility in complaint proceeding against respondent utility, alleging respondent's transmission formula rate establishing the revenue requirement for certain assets to be unjust and unreasonable. FERC agreed and granted the complaint, ordered refunds, and directed respondent utility to make compliance filing addressing changes.
- Represented New Hampshire attorney general opposing petition for declaratory order requesting that FERC declare a state law to be preempted by the FPA.
- Represented intervenor in Section 203 proceedings opposing certain proposed elements of public utilities' request for merger approval.
- Represented respondent rural electric cooperative in complaint proceeding initiated by its member to terminate power supply agreement; represented cooperative in related proceedings.
- Represented utility in complaint proceeding against respondent utility, asking FERC to provide relief for significant unauthorized flows and adverse impacts to transmission system caused by respondent's new transmission line. The case settled, with respondent agreeing to pay more than \$90 million for transmission facilities necessary to resolve impacts and to new operation and long-term transmission planning protocols.
- Represented state utility commission in complaint proceeding challenging energy market mitigation rules that exempted some generators from energy-offer mitigation in the PJM energy market. FERC agreed and directed removal of the exemptions.
- 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 electric cooperative in formal challenges at FERC opposing a public utility's implementation of its cost-of-service generation formula rate. FERC agreed with the electric cooperative's position each time, setting the cases for settlement and hearing procedures.
- Represented electric cooperative in formal challenge proceedings before FERC opposing the public utility's implementation of its transmission formula rate. FERC agreed, ruling on the papers and directing refunds to transmission customers.
- Represented electric cooperative opposing a public utility's proposal to recover unamortized regulatory assets through wholesale generation and transmission formula rates. FERC agreed, finding the proposal may not be just and reasonable, and set the case for hearing and settlement.
- Represented intervenor electric cooperative in proceeding before FERC to determine changes to the formula setting cost-of-service rates for transmission service and the transmission protocols for a non-jurisdictional rural electric cooperative. FERC agreed, finding the proposal may not be just and reasonable, and set the case for hearing and settlement.

- Represented intervenor electric cooperative in settlement proceedings to update applicant utility's depreciation schedule in its transmission formula rate.
- Represented a state utility commission in various settlement proceedings setting "reliability-must-run" cost-of-service rates for generators operating to ensure grid reliability.
- Prepared supporting comments on behalf of state utility commissions in FERC rulemaking proceedings proposing to revise PURPA regulations.

Eastern Capacity Markets

- Represented state utility 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.
- Represented state utility commission opposing the New England Forward Capacity Market (FCM) "Pay for Performance" rule changes establishing penalties and payments for capacity resources.
- Represented state utility commission opposing the New England FCM rule change proposal, Competitive Auctions with Sponsored Policy Resources (CASPR). The CASPR proposal restricted entry of new entrant renewable energy resources developed through state initiatives.
- 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 FCM.
- Prepared comments for state energy administration and state utility commissions participating in technical conferences about state policies and impacts to the eastern wholesale capacity markets.
- Represented intervenor state utility commission in proceeding opposing proposed changes to a minimum offer price rule change to the PJM Reliability Pricing Model (RPM) capacity market 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. *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014).
- 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 FPA. *PPL EnergyPlus, LLC v. Solomon*, 766 F.3d 241 (3d Cir. 2014); *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014), *aff'd Hughes v. Talen Energy Mrkt'g*, 136 S. Ct. 1288 (2016).
- Represented state utility commission in complaint and in full hearing proceedings against capacity importers selling in the New England FCM.

- Represented 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 US 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 FPA. *Conn. Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477 (D.C. Cir. 2009), cert. denied, 558 U.S. 1110 (2010).

Large-Scale Renewables and Offshore Wind

- 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.
- Represented offshore supply chain association before the Maryland Public Service Commission's "Round 2" offshore wind procurement targeting at least 1.2 gigawatts (GW) of new capacity to be installed by 2030.
- Lead counsel for transmission owners in proposing a method to assign cost responsibility for the transmission upgrades selected by New Jersey pursuant to the PJM State Agreement Approach. The transmission upgrades, paid for by New Jersey ratepayers, will support interconnection of 7.5 GW of offshore wind.
- Advised a Connecticut agency on the development of competitive procurements for utility-scale renewable energy.
- Advised a Connecticut agency participating in the three-state New England Clean Energy RFP.
- Counseled onshore and offshore developers on a variety of issues arising in connection with FERC-regulated interconnection procedures, e.g., acquisition of queue positions, self-build option, milestones, security, study schedules, affected system studies, and interconnection agreement negotiations.
- Prepared PURPA-qualifying facility submissions, Exempt Wholesale Generator (EWG) notices, and applications for market-based rate (MBR) authorizations to FERC.

Community Solar, Distributed and Behind-the-Meter Generation, and Renewable Energy Certificates (RECs)

- Advised financial institution client on a behind-the-meter 1 megawatt (MW) solar project for its Connecticut campus and submission of a bid for a long-term contract to sell zero-emission renewable energy credits to a Connecticut distribution utility.
- 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.
- 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.
- Represented corporate client in negotiations for an on-site, behind-the-meter solar facility, including agreements for facility design and construction, operation and maintenance, interconnection, and the REC offtake agreement.

- Performed power purchase agreement reviews for an on-site, behind-the-meter solar facility.
- Negotiated electric power supply and REC purchase agreement for large commercial customer.
- Represented solar advocacy intervenor before the District of Columbia utility regulator in proceedings to consider acquisition of electric distribution utility.
- Represented solar developer in rehearing of the New Jersey 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.

State Utility Commission Proceedings

- Represented default electric service provider in two proceedings before the Ohio utility commission arising from a governmental aggregator's return of 500,000 customers to default electric service.
- Represented intervenor in Kansas utility commission proceedings to establish an open integrated resource planning (IRP) process for the state's regulated public utility affiliates, with ongoing representation in the IRP stakeholder process.
- Represented intervenor in three proceedings before the Kansas utility commission to evaluate the proposed mergers of regulated utilities.
- Represented an electric utility in a complex litigation before the Indiana utility commission, defending allegations of imprudence, gross mismanagement, fraud and concealment in the design, engineering, and construction of an integrated gasification combined cycle plant.
- Investigated for the Maryland 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.

Energy Regulatory Diligence and Transactions

- Federal and state regulatory diligence for projects under development and operating facilities.
- Assisted buyer in a multi-state regulatory diligence review of waste-to-energy facilities.
- Represented lender in state regulatory diligence for operating gas-fired facility in New Jersey.
- Represented borrower in the financing of several New Jersey solar facilities, focusing on state regulatory issues.
- Advised on energy regulatory matters in connection with the sale of a New Jersey gas-fired generator selling into the NYISO power market.
- Assisted lender with federal and state energy regulatory diligence for a \$350+ million debt financing of a gas-fired generator.
- Assisted potential buyer in evaluating portfolio of competitive retail energy companies.