

NORMAN C. BAY

EXPERIENCE

Partner, Willkie Farr & Gallagher LLP, Washington, D.C. (September 2017 to present). Co-Chair of Energy and Commodities Group, and Head of Energy Regulatory and Compliance Group. Represent clients in a variety of regulatory matters, including compliance and enforcement, policy and ratemaking, mergers and acquisitions, and infrastructure development. Honors: ranked in Chambers as a leading practitioner nationally for Electricity: Regulatory and Litigation and in Best Lawyers for Energy Law.

Pro Bono Activities: non-resident Senior Fellow at Duke University; advisory board member for NYU's Institute for Policy Integrity; advisory board member for Dartmouth College's Irving Institute for Energy and Society; board member of Center for Applied Environmental Law and Policy; advisory board member for The Roosevelt Project (Advancing an Equitable Clean Energy Transition in New Mexico); member of NCAA Division I Committee on Infractions.

Significant Matters: co-wrote *amicus* brief in the Court of Appeals for the D.C. Circuit on behalf of eight former FERC Commissioners arguing that the Federal Power Act did not preclude the EPA from regulating carbon emissions in the Clean Power Plan. The court agreed. *See American Lung Ass'n v. EPA*, 985 F.3d 914, 969 n.12 (D.C. Cir. 2021) ("The effects of environmental regulations on the power grid do not amount to power regulation statutorily reserved to FERC.").

Filed comments on behalf of the Coalition for Community Solar Access that opposed a petition for declaratory order to overturn net metering laws across the United States. FERC denied the petition in *New England Ratepayers Ass'n*, 172 FERC ¶ 61,042 (2020).

Advised renewables developer on interconnection and transmission service-related issues for 247 MW wind project in southeastern New Mexico that was built and achieved commercial operation in December 2020.

Filed comments on behalf of a tech company in support of FERC's Notice of Proposed Rulemaking to allow distributed energy resources to participate in the RTO/ISO markets. FERC issued a final rule allowing such participation in Order No. 2222, 172 FERC ¶ 61,247 (2020).

Chairman, Federal Energy Regulatory Commission, Washington, D.C. (April 15, 2015 to January 23, 2017). Led independent federal agency with jurisdiction over wholesale electricity and natural gas markets, transmission of electricity and transportation of gas in interstate commerce, grid reliability, non-federal hydropower facilities, interstate gas infrastructure, and interstate oil pipeline rates. Set policy agenda for the Commission; issued more than 2400 orders in 2015 and 2016; directed almost 1500 staff; managed budget of \$331 million in FY 2016; conducted open meetings and technical conferences; developed institutional relationships with key international energy regulators; and engaged in extensive stakeholder outreach, including speaking at conferences for state regulators, energy lawyers, and industry.

Significant Accomplishments: promoting a fair, diverse, inclusive, and engaged workplace dedicated to FERC's mission. Based on the results of the Federal Employee Viewpoint Survey, FERC was rated one of the best places to work in government in 2015 (fifth out of 27 mid-sized agencies), fourth in 2016, and first in 2017.

Removing barriers to entry for new resources and innovation by issuing a notice of proposed rulemaking (NOPR) that facilitates the participation of energy storage and distributed energy resources in the RTO/ISO markets. Based on the NOPR, a subsequent Commission issued Order No. 841 (energy storage) and Order No. 2222 (distributed energy resources).

Supporting innovation in the use of analytics and data-driven market oversight and policymaking. FERC obtained critical market data, recruited staff with strong quantitative skills, developed bespoke algorithms to screen market data, and used the analytics for market oversight and more robust decision-making on a wide variety of policy issues.

Improving price formation in the RTO/ISO markets with more efficient and transparent pricing that sends better investment signals and rewards flexible resources that accurately follow dispatch instructions. This resulted in several rulemakings that addressed shortage pricing and settlement intervals, raised offer price caps, recognized the value of fast start resources, and improved uplift allocation and transparency.

Facilitating the interconnection of renewable resources to the grid by requiring new resources to have primary frequency response capability, making conforming changes to the large and small generator interconnection agreements, requiring reactive power support, and improving ride-through capability of small generator facilities during frequency and voltage disturbances. FERC also issued a NOPR to streamline the interconnection process and to provide more certainty and transparency to interconnection customers, which a subsequent Commission finalized in Order No. 850.

Protecting consumers and the wholesale gas and electricity markets from market manipulation. FERC developed a highly effective enforcement program that relied on an innovative market oversight and surveillance program that became the benchmark among international energy regulators. FERC's enforcement efforts resulted in significant settlements and recovered hundreds of millions of dollars for consumers.

Strengthening the cybersecurity of the grid by adopting Version 6 of the Critical Infrastructure Protection Standards and requiring development of a reliability standard to address supply chain risk management. FERC also facilitated the sharing of classified information with state regulators and promoted the adoption of best practices by providing voluntary architectural reviews of the control systems of electric and gas utilities.

Prevailing in two landmark cases in the Supreme Court that recognized FERC's authority over the wholesale electric markets: *FERC v. EPSA*, 136 S. Ct. 760 (2016) (upholding FERC's authority to allow demand response to participate in the wholesale electric market); and *Hughes v. Talen Energy Marketing*, 136 S. Ct. 1288 (2016) (pre-empting attempts by state to set wholesale electricity rates).

Commissioner, Federal Energy Regulatory Commission, Washington, D.C. (August 4, 2014 to April 14, 2015). Nominated by President Obama in December 2013 and confirmed by U.S. Senate in July 2014. As one of five Commissioners, shaped FERC policy, decided matters coming before the Commission, participated in open meetings and technical conferences, and engaged in extensive stakeholder outreach, including speaking at conferences for state regulators, energy lawyers, and industry.

Director of Office of Enforcement, Federal Energy Regulatory Commission, Washington, D.C. (July 2009 to August 2014). Enforced FERC's rules, regulations, and orders; oversaw investigations, audits, and market oversight, analytics, and surveillance; and led an office of approximately 190 staff divided into the Division of Investigations, Division of Audits and Accounting, Division of Energy Market Oversight, and Division of Analytics and Surveillance.

Professor of Law, University of New Mexico School of Law, Albuquerque, N.M. Professor (received tenure in June 2009); Associate Professor (2006-2009); Assistant Professor (2003-2006); Visiting Assistant Professor (2002-2003).

Subjects: Criminal Law; Evidence; Introduction to Constitutional Law; Legislative and Administrative Processes; International Criminal Law; National Security Law; and Ethics.

Honors: Dickason Professor of Law (2008-2009); Alumni Association Award (2006); Regent Lecturer (2003-2004 & 2004-2005); Award from Class of 2011 ("Best Law Professor"); Award from Class of 2007 ("Socrates would be proud"); Award from Class of 2006 ("coolest law professor"); Award from Class of 2004 ("professor most likely to tell it like it is").

United States Attorney for the District of New Mexico, U.S. Department of Justice, Albuquerque, N.M. U.S. Attorney (2000-2001). Nominated by President Clinton in June 2000 and confirmed by U.S. Senate in September 2000. Chief federal law enforcement officer in the District of New Mexico responsible for overseeing federal criminal prosecutions and civil cases involving the United States, developing and implementing enforcement policy, priorities, and practices, and leading an office of approximately 130 staff in Albuquerque and Las Cruces, New Mexico.

Assistant U.S. Attorney, U.S. Department of Justice. Supervisor, Violent Crime Section, Albuquerque, N.M. (1997-2000); Line Assistant in Albuquerque, N.M. (1995-1997) and in Washington, D.C. (1989-1995). Investigated and prosecuted crimes in the District of Columbia and New Mexico; extensive trial and appellate experience.

Attorney-Adviser, U.S. Department of State, Office of Legal Adviser (International Claims and Investment Disputes), Washington, D.C (1988-1989). Litigated and negotiated claims between the United States and other countries, including matters before the Iran-United States Claims Tribunal at The Hague.

Law Clerk, Hon. Otto R. Skopil, Jr., U.S. Court of Appeals for the Ninth Circuit, Portland, OR (1986-1987). Researched and analyzed legal issues, and drafted memoranda and opinions for federal appellate judge.

EDUCATION

Harvard Law School, J.D (1986). Honors: *Cum Laude*; Board of Student Advisers; Williston Competition Award Winner (Best Labor Contract). Activities: Ames Moot Court Competition; Harvard Law Record; Secretary of Asian-American Law Students Association.

Dartmouth College, A.B. (1982). Honors: *Summa Cum Laude*; *Phi Beta Kappa* (junior year); Rufus Choate Scholar; John H. Watson Scholar; Charles Downer Hazen 1889 Memorial Scholarship; Charles Howe Woodbury Law Scholar; High Distinction in History; and Academic Citations in Islamic History and Renaissance Art History Program (Florence, Italy). Activities: Asian-American Association; History Department Student Representative; Chess Club, played in Pan American Intercollegiate Chess Championships (1979).

ARTICLES

Norman C. Bay, *Setting an Agenda: The Next Decade for FERC*, EBA BRIEF 1 (Fall 2020), https://www.eba-net.org/assets/1/6/EBA_Brief_-_Volume_1_Issue_2.pdf.

Norman C. Bay, *Old Blood, Bad Blood, and YOUNGBLOOD: Due Process, Lost Evidence, and the Limits of Bad Faith*, 86 WASH. U. L. REV. 241 (Jan. 2009) (lead article) (cited 65 times, including 10 state courts and 22 law review articles).

Norman C. Bay, *Paradigm Shifts, Executive Power, and the War on Terror*, in ENEMY COMBATANTS, TERRORISM, AND ARMED CONFLICT LAW (David K. Linnan, ed., 2008).

Norman C. Bay, *Prosecutorial Discretion in the Post-Booker World*, 37 MCGEORGE L. REV. 549 (2006) (cited 11 times, including 10 law review articles).

Norman C. Bay, *Executive Power and the War on Terror*, 83 DENV. U. L. REV. 335 (2005) (cited 39 times, including 35 law review articles).

OTHER PUBLICATIONS

Norman C. Bay, Paul J. Pantano, Jr., and Alexandra K. Calabro, *FERC to Traders: “Those Who Do Not Learn from History Are Doomed To Repeat It,”* WILLKIE FARR & GALLAGHER LLP CLIENT ALERT, June 22, 2021, <https://www.willkie.com/-/media/files/publications/2021/06/ferctotradersthosewhodonotlearnfromhistoryaredoome.pdf>.

Norman C. Bay, Thomas R. Millar, and Serge Agbre, *FERC Directs GreenHat and Its Owners to Explain Conduct in PJM’s FTR Markets*, WILLKIE FARR & GALLAGHER LLP CLIENT ALERT, May 28, 2021, <https://www.willkie.com/-/media/files/publications/2021/05/fercdirectsgreenhatanditsownerstoexplainconduct.pdf>.

Norman C. Bay and Thomas R. Millar, *Five Things to Know About Justice Kavanaugh and FERC*, CORPORATE COUNSEL, April 1, 2019, https://www.willkie.com/-/media/files/publications/2019/04/corporate-counsel-norman-bay-article-reprint_wfg-logo.pdf.

Norman C. Bay, Sohair A. Aguirre, and Thomas R. Millar, *FERC Extends Supreme Court's EPSA Decision Beyond Demand Response to Energy Efficiency*, 18 PRATT'S ENERGY L. REP. 130 (April 2018), https://www.willkie.com/-/media/files/publications/2018/04/ferc_extends_supreme_court_epsa_decision_beyond_demand_response_to_energy_efficiency.pdf.

Norman C. Bay, *Why Utilities and Environmentalists Can Find Common (Green) Ground*, UTILITY DIVE, Feb. 20, 2018, <https://www.utilitydive.com/news/why-utilities-and-environmentalists-can-find-common-green-ground/517437/>.

Norman C. Bay, Sohair A. Aguirre, and Thomas R. Millar, *Unanimous Commission Ends Department of Energy's Rulemaking Proceeding*, WILLKIE FARR & GALLAGHER LLP CLIENT ALERT, Jan. 17, 2018, https://www.willkie.com/-/media/files/publications/2018/01/unanimous_commission_ends_department_of_energy_rulemaking_proceeding.pdf.

SELECTED SPEAKING ENGAGEMENTS SINCE 2017

Energy Trading Compliance Roundtable, Featured Speaker on *FERC Update* (June 23, 2021).

World Bank, Keynote Speaker on *The Role of Markets in the Energy Transition* (May 25, 2021).

Energy Bar Association Annual Meeting and Conference, Panelist on *Former FERC Commissioners' Perspective on President Biden's FERC* (May 12, 2021).

Dartmouth Energy Forum: Investing in Our Energy Futures, Moderator on *Driving Progress on Energy and Climate Policy* (May 5, 2021).

FERC Technical Conference on Electrification and the Grid of the Future, Panelist on *Local, State, and Federal Coordination* (April 29, 2021).

ACORE Policy Forum, Panelist on *Fireside Chat: Regulatory Action to Tackle the Climate Crisis* (March 10, 2021).

WIRES Webinar, Featured Speaker on *Electrification and the Grid* (Dec. 10, 2020).

Microgrid 2020 Global Conference, Panelist on *The Future of Microgrid Markets* (Nov. 18, 2020).

AWEA, REAL Houston, and Willkie Farr & Gallagher LLP Webinar, Moderator on *Hydrogen*

Primer (Oct. 29, 2020).

Colorado Energy & Water Institute Conference, Panelist on *Keynote Panel: Evolving Energy Markets in the West*, Steamboat Springs, CO (Jan. 24, 2020)

Transformación Eléctrica Desafíos y Experiencias 2019, Keynote Speaker on *Trends in Electric Power Transmission Systems*, Bogotá, Colombia (Nov. 29, 2019).

International Summit on Future Electricity Markets, Keynote Speaker on *A Perspective from the United States*, Sydney, Australia (Nov. 18, 2019).

National Asian Pacific American Bar Association Annual Conference, Featured Speaker on *Perspectives on Crisis Management*, Austin, Texas (Nov. 7, 2019).

Singapore International Energy Week, Featured Speaker, Singapore (Oct. 29, 2019).

Edison Electric Institute 2019 Fall Legal Conference, Panelist on *FERC Enforcement Update*, Philadelphia, PA (Oct. 23, 2019).

Japan Electric Power Information Center Seminar on U.S. Power Markets, Featured Speaker on *U.S. Energy Policy and Regulatory Landscape*, Tokyo, Japan (Feb. 27, 2018).

Independent Power Producers Society of Alberta Annual Conference, Keynote Speaker on *The Good, the Bad, and the Ugly*, Alberta, Canada (March 19, 2018).

POWER Conference, Haas School of Business, Discussant, Berkeley, CA (March 23, 2018).

Greentech Media U.S. Power & Renewables Summit 2017, *Fireside Chat with Former FERC Chairman*, Austin, TX (Nov. 7, 2017).

Bits & Watts Annual Conference, Precourt Institute for Energy, Stanford University, Co-Keynote Speaker on *Energy Policy & Regulatory Landscape*, Palo Alto, CA (Nov. 6, 2017).

Vermont Law School Energy Symposium, Keynote Speaker, Washington, DC (Oct. 18, 2017).

EU's Agency for the Cooperation of Energy Regulator Sixth Annual Conference, Keynote Featured Speaker on *Regional Electricity Markets: The U.S. Experience*, Brdo, Slovenia (June 29, 2017).

Third Annual Energy Storage Policy Forum, Keynote Speaker, Washington, DC (Feb. 15, 2017).