



## → Mark F. Sundback

### Partner

2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, DC 20006-6801

T: +1.202.747.1946

F: +1.202.747.1901

[msundback@sheppardmullin.com](mailto:msundback@sheppardmullin.com)

Mark Sundback is a partner in the Real Estate, Land Use and Environmental Practice Group in the firm's Washington, D.C. office.

### Areas of Practice

Since 1981, Mark has been engaged in the representation of energy industry participants before federal and state agencies charged with jurisdiction over energy markets and their participants. His representations have focused on the rates, terms and conditions associated with gaining access to regulated energy transmission systems, transactions involving changes in ownership of jurisdictional assets and unbundling matters.

#### *Retail Electric*

Mark has been involved in rate proceedings with regard to retail electric service of numerous utilities including Florida Power & Light, Tampa Electric, Duquesne Light, Allegheny Power Utility subsidiaries, First Energy utility subsidiaries and other utilities in various jurisdictions including Texas, Maryland and Washington, D.C. He also has appeared before the regulatory commissions of numerous states.

#### *Wholesale Electric*

With regard to wholesale electric service, Mark has been involved in proceedings involving unbundling transmission, distribution and generation rates in PJM and ERCOT. He has been involved in counseling multiple independent merchants of electric power, and in filings on their behalf with the FERC. His work frequently requires the integration of both transactional and regulatory goals. He has been involved in counseling clients in the SERC and ISO-NE regions. He also has been involved in arbitrations involving interpretations of ISO rules and technical aspects of tariff provisions. He also has represented RTOs on issues regarding resource adequacy. Mark has successfully represented entities against RTO claims in arbitration.

Mark has successfully defended TransCanada Energy from claims by *inter alia* the California Public Utilities Commission and California's Attorney General of unlawful market conduct in proceedings arising from the West Coast power crisis in 2000-2001.

He has served as chief energy regulatory counsel in bankruptcy proceedings, involving bankrupt electric generators and their creditors.

## Natural Gas

Mark has been involved in FERC proceedings related to regulation of pipelines since 1981. He has represented several natural gas companies, and has for decades served in a first chair capacity in hearings before the commission as well as judicial appeals. He has been involved in precedent-setting cases concerning rates, certificates and accounting regulation of natural gas companies and the scope of FERC's jurisdiction under the Natural Gas Act, the Outer Continental Shelf Lands Act and the Natural Gas Policy Act.

## Honors

- World's Leading Practitioners, Energy and Environment, *Euromoney's Energy and Environment Expert Guide*, 2018
- *The Best Lawyers in America*, Energy Law, 2013-2021
- Washington, D.C. Top Rated Lawyer, General Practice, *ALM*, 2012-2013
- Leading Lawyer, Energy: Oil & Gas (Regulatory & Litigation), *Chambers Global and Chambers USA*, 2012-2021
- Leading Lawyer, Energy Regulatory, *Legal 500 US*, 2012-2019
- Washington, D.C. Super Lawyer, Energy & Natural Resources, *Super Lawyers*, 2010-2017, 2019-2020
- Legal Media Groups Expert Guides, Energy and Natural Resource Attorneys
- AV Preeminent rating, *Martindale-Hubbell*

## Experience

### Natural Gas:

- Has been involved in seminal cases defining limits on FERC's jurisdiction
  - Represented Amerada Hess Corporation in the case establishing the modern "modified primary function" test for gathering and secured recognition of non-jurisdictional status under NGA Section 1(b)'s production and gathering exemption for the longest high pressure pipeline downstream of treatment facilities in FERC's history as of that time
  - Represented pipeline owners in litigation involving the Outer Continental Shelf Lands Act
- Has been involved in over two dozen pipeline rate cases
- Litigated issues involving importation and exportation of natural gas supplies at the Department of Energy and FERC; has advised multiple industry participants regarding LNG
- Lead attorney in controversial proceeding seeking market based rates for storage capacity previously charged at cost-based rates
- Negotiated agreements and represented pipelines in contested proceedings involving access to transmission facilities and interconnection agreements between pipelines
- Established the basis for a successful agreement between joint owners of a single pipeline that resolved long-running disputes
- Successfully overturned proposed FERC Office of Chief Accountant's ruling on Alternative Minimum Tax
- Extensive experience involving stranded costs

- Represented power plant owners in disputes regarding pricing provisions of natural gas fuel supply contracts.
- Extensively involved in disputes before FERC regarding income tax allowances for pass-through entities and the FERC's method of determining return on equity

## Electric:

- Successfully represented only entity subject to FERC jurisdiction involved in the California 2000-2001 power crisis that has not either provided consideration as part of a settlement or been found to have engaged in some form of market manipulation
- Represented MISO on resource adequacy issues
- Represented generation developers on issues related to: interconnection queues; in arbitrations with regional transmission organization regarding market rules; and compensation and in disputes involving automatic generation control/regulation service
- Counseled clients regarding gas-electric scheduling coordination issues
- Successfully represented only party which, until that time, had obtained a monetary award on behalf of a market participant from the RTO in question in arbitration
- Has appeared in retail proceedings of over a dozen regulated utilities
- Represented/counseled utility regarding the calculation of income tax expense/flow back schedule for ratemaking purposes.

## Articles

- Economic consequences of stranded assets for energy market participants  
*Financier Worldwide*, July 2021 issue
- Facing Policy Shifts, Oil And Gas Cos. Need Depreciation Help  
*Law360*, 10.16.2020
- FERC's New Return On Equity Formulas Are Out Of Sync  
*Law360*, 06.03.2020
- FERC Energy Capacity Orders Invite Lawsuits, Uncertainty  
*Law360*, 04.27.2020
- Considering Blockchain In The Electricity Industry  
*Law360*, 11.07.2018

## Energy Law Blog

- "FERC Issues Second NOI Concerning Its Certificate Policy," February 22, 2021
- "FERC Seeks Further Comment Regarding Pipelines Initiating Construction While Rehearing is Pending," January 27, 2021
- "FERC Considers Whether to Modify Accounting System for Renewables," January 26, 2021
- "Six Key Items to be Aware of Today in U.S. Offshore Wind ('OSW')," October 26, 2020
- "NYISO Battery Storage Rules," October 14, 2020

- "Blockchain in the Electricity Industry: Six Items to Consider," September 28, 2020
- "Federal Energy Regulatory Commission Gives Distributed Energy Resource Aggregators a Boost; Implementation Will Present Challenges," September 25, 2020
- "How will Energy Market Participants Protect Themselves from Ongoing Shifts in the Sources of Energy?" September 17, 2020
- "Natural Gas Pipeline Development," July 21, 2020
- "FERC Rejects Net Metering Petition, But Fight Is Far From Over," July 27, 2020
- "CPUC Issues Order Promoting the Development and Interconnection of Microgrids," June 22, 2020
- "FERC Issues Regulation Prohibiting Construction of Newly Approved Natural Gas Pipeline Facilities Until Resolution of all Rehearing Requests," June 16, 2020
- "FERC Issues Revised Guidance Regarding Return on Equity Calculations," May 26, 2020
- "FERC Reaffirms Controversial Energy Capacity Decisions: Insights and Analysis," April 24, 2020
- "FERC Orders, Notices, and Other Guidance Regarding the Novel Coronavirus," April 8, 2020
- "FERC Continues to Squeeze Renewable Resources Participating in Wholesale Electric Capacity Markets," March 6, 2020

## Media Mentions

FERC Tax Policy Change Hurts Pipeline MLPs, DC Circ. Told  
*Law360*, 07.15.2019

Law360's Weekly Verdict: Legal Lions & Lambs  
*Law360*, 09.27.2017

## Speaking Engagements

- Panelist, "Energy, the Grid, and Security Issues," Our Energy Policy, May 6, 2020

## Events

Decarbonizing the American Energy Economy: The Infrastructure Challenges and Associated Regulatory Issues  
American Bar Association Webinar  
03.23.2021

Webinar: Solution, or Compounding the Problem? FERC's Order on PJM's Minimum Offer Price Rule  
02.18.2020

## Podcasts & Webinars

Nota Bene Episode 97: The Seismic Changes Renewables Are Bringing to Energy Transmission and Its Infrastructure with Mark Sundback

09.16.2020

## Practices

Bankruptcy and Restructuring

Energy, Infrastructure and Project Finance

Environmental

Real Estate Acquisitions and Dispositions

Real Estate and Land Use

## Industries

Energy, Infrastructure and Project Finance

Healthcare

## Education

J.D., Columbia Law School, 1981, Editor, *Columbia Journal of Transnational Law*

B.A., Dickinson College, 1978, *magna cum laude*, Omicron Delta Kappa, William Lenox Avis Prize

## Admissions

District of Columbia

U.S. Court of Appeals for the First Circuit

U.S. Court of Appeals for the Fifth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Tenth Circuit