

Counsel, Washington, D.C.

Energy Regulation and Litigation



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Education

J.D. and LL.M., Comparative and International Law, Duke University School of Law, 1999 (*summa cum laude*), Order of the Coif; Research Editor of the *Duke Law Journal* (1998-1999); Executive Editor of the *Harvard Journal of Law and Public Policy* (1998-1999)

M.A., Yale University, 1991
(with highest honors)

B.A., Yale University, 1991
(*summa cum laude*)

Bar Admissions

District of Columbia

U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth and D.C. Circuits

U.S. District Court for the District of Columbia

U.S. Supreme Court

John Shepherd represents energy suppliers, utilities, and other electric power and natural gas market participants in complex litigation before the Federal Energy Regulatory Commission, as well as appellate litigation before the United States Court of Appeals and the Supreme Court. His practice focuses on market design, market power and market manipulation issues in the energy and natural gas markets.

Representative matters have included:

- Public Service Electric & Gas Corp. (and its subsidiaries) in the remand of capacity auction adjustments, *see PSEG Energy Resources & Trade LLC v. FERC*, 665 F.3d 203 (D.C. Cir. 2011); on appeal, along with the PPL Companies and Exelon, of FERC orders holding that there is no right of first refusal for the construction of transmission facilities in PJM Interconnection, LLC., *see Public Serv. Elec. & Gas Co. et al. v. FERC*, No. 12-1382 (D.C. Cir. filed Sept. 17, 2012), and in a multi-petitioner appeal of FERC Order No. 1000 *sub nom. South Carolina Pub. Serv. Auth. v. FERC*, Nos. 12-1232 *et al.* (D.C. Cir. filed July 16, 2012);
- FirstEnergy Corp. in the realignment of its transmission, generation and local utility subsidiaries from the Midwest Independent System Operator to PJM Interconnection, LLC and related proceedings, including the Schedule 39 hearing at FERC, Docket No. 12-715, and an appeal of FERC's Multi-Value Project Orders *sub nom. Ill. Commerce Commission v. FERC*, Nos. 11-3421 *et al.* (7th Cir. filed Oct. 31, 2011);
- PJM Power Providers (P3) in administrative and appellate matters related to the PJM capacity market and Minimum Offer Price Rule (MOPR). *See PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, *reh'g denied*, 137 FERC ¶ 61,145 (2011), *reh'g denied*, 138 FERC ¶ 61,194 (2012), *appeal pending sub nom. N. J. Bd. of Pub. Utils. v. FERC*, Nos. 11-4245 *et al.* (3d Cir. filed Nov. 28, 2011). This representation earlier included a successful defense of PJM's Reliability Pricing Model by various state commissions in *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283 (D.C. Cir. 2011);
- Entergy, FPL Energy, Mirant and NRG Inc., in defending the New England Forward Capacity Markets against challenges by state regulators in the United States Court of Appeals for the District of Columbia Circuit, and NRG Inc. in litigation before the United States Supreme Court. *See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010), *reh'g in part Maine Pub. Utils. Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008);
- The dismissal of a non-public investigation against a Midwest natural gas company for alleged capacity "flipping" violations;
- Energy Transfer Partners, L.P., and its affiliated companies, including Oasis Pipeline and Houston Pipe Line Co., in civil penalty actions under the Natural Gas Act and Natural Gas Policy Act before FERC and the United States Court of Appeals for the Fifth Circuit. *See Energy Transfer Partners, L.P. v. FERC*, 567 F.3d 134 (5th Cir. 2009); *Energy Transfer Partners, L.P.*, 128 FERC ¶ 61,269 (2009); *Oasis Pipeline, L.P.*, 126 FERC ¶ 61,188 (2009);
- Dynegy and NRG, Inc. in the California Refund and Long-Term Contract cases before FERC the United States Court of Appeals for the Ninth Circuit and the United States

John Lee Shepherd, Jr.

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Supreme Court. *See Pub. Utils. Comm'n of California v. FERC*, 474 F.3d 587 (2006), *vacated and remanded sub nom. Dynegy Power Mfg., Inc. v. Pub. Utils. Comm'n of California*, 128 S. Ct. 2993 (2008);

- Duke Energy Ohio (formerly Cinergy Corp.) in litigation concerning MISO market rules before FERC and the United States Court of Appeals for the D.C. Circuit. *See Wisconsin Pub. Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007);
- Exelon in preemption litigation before FERC to exempt AEP from certain state laws that were preventing AEP from joining PJM. *See New PJM Companies*, Opinion No. 472, 107 FERC ¶ 61,271 (2004);
- Entergy Operating Companies in multistate system agreement litigation before FERC and the United States Court of Appeals for the D.C. Circuit; and
- Duke Energy Corp. and Cinergy Corp. in merger application approved by FERC. *See Duke Energy Corp.*, 113 FERC ¶ 61,297 (2005).

In addition to his energy practice, Mr. Shepherd devotes substantial time and energy to *pro bono* representation of deployed soldiers and indigent persons in family law, criminal, and landlord and tenant matters before the D.C., Maryland and Virginia courts. In 2012, he was named a "Legal Champion" by *The National Law Journal* and *Legal Times* for his exceptional *pro bono* service.

Concurrent with his legal practice, Mr. Shepherd continues to serve in the reserve component of the United States Army, where he has commanded and trained soldiers in a variety of arctic warfare, airborne infantry and special forces units. Mr. Shepherd has been deployed on active duty twice during his career at Skadden, including on a combat tour in Baghdad, Iraq, from May 2007 to May 2008.

Associations

Federalist Society

Chairman, Energy Bar Association Judicial Review Committee (2010-2011); Vice Chairman (2009-2010)

Vice-Chairman, American Bar Association, Section on Environment, Energy and Resources, Gas and Electricity Marketing Committee (2006-2007)

Publications

"The New FERC Enforcement: Due Process Issues in the Post-EPA Act 2005 Enforcement Cases," 31 *Energy Law Journal* 55 (2010)