



## → Mark F. Sundback

### Partner

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

### Areas of Practice

Mark has been involved in FERC proceedings related to regulation of transmission pipelines since 1981. He has represented over two dozen natural gas companies, and has for decades served in a first chair capacity in hearings before the Commission. He has been involved in precedent-setting cases concerning rates, certificates and accounting regulation of natural gas companies under the Natural Gas Act ("NGA") and the Natural Gas Policy Act ("NGPA") as well as concerning the scope of the Commission's jurisdiction under those statutes and the Outer Continental Shelf Lands Act ("OCSLA").

During the 1980s Mark served as first chair counsel in hearings involving Northwest Pipeline Corporation (*e.g.*, Docket No. RP82- 56). During that time period he also was extensively involved in proceedings regarding the request for authorization to construct and operate the Trans-Alaska Gas System ("TAGS"). The TAGS proceedings related to a proposal to build LNG and pipeline facilities associated with natural gas produced in Alaska.

Mark has served as first chair counsel for numerous pipelines in rate, certificate hearings and conferences. He has been first chair counsel in proceedings involving approximately a dozen regulated pipelines and storage companies before FERC. He has successfully litigated or settled issues including rate design, cost allocation, open season and capacity awards, the propriety of dealings among, and contractual arrangements and communications between, affiliates within the same corporate family. He has litigated dozens of rate cases.

Similarly, Mark has forged durable settlements among pipelines and their shippers, by blending concepts of more general commercial law with the regulatory requirements of FERC. He has successfully negotiated resolution of disputes regarding facilities interconnections, as well as the arrangements between different pipeline companies that share a single pipeline. He was involved in proceedings that produced some of the most important pronouncements to date of the courts and the Commission regarding the OCSLA. He has been involved in proceedings before the FERC concerning pipelines and proposed projects in every one of the continental United States. In addition, Mark serves as legal counsel to holding companies and their subsidiaries regarding pipeline operations in the U.S.

## Honors

- World's Leading Practitioners, Energy and Environment, *Euromoney's Energy and Environment Expert Guide*, 2018
- *The Best Lawyers in America*, Energy Law, 2013-2026
- Washington, D.C. Top Rated Lawyer, General Practice, *ALM*, 2012-2013
- Leading Lawyer, Energy: Oil & Gas (Regulatory & Litigation), *Chambers Global and Chambers USA*, 2012-2025
- 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

### Electric:

- Successfully represented before FERC and the U.S. Court of Appeals for the Ninth Circuit 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.

### 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

## Articles

### Energy Law Blog

- "Six Key Considerations for Transitioning Existing Fossil Fuel Transport, Storage and Electricity Generation Assets to New Uses," May 9, 2023
- "Sheppard Mullin Launches California Green Hydrogen Readiness Assessment – How Prepared Are You and the State?," January 12, 2023
- "FERC Seeks Comments on Potential Alternative Reactive Power Compensation Mechanisms in Reactive Power Capability Compensation, 177 FERC 61,118 (2021) ("NOI"), November 23, 2021
- "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

Energy Roundtable: Opportunities for an Industry in Transition  
Webinar, 03.21.2023

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

Energy Roundtable: Opportunities for an Industry in Transition  
03.21.2023

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

ESG and Sustainability

Real Estate, Energy, Land Use & Environmental

## Industries

Energy, Infrastructure and Project Finance

ESG and Sustainability

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