

KING & SPALDING

Energy Newsletter



August, 2019



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FERC

Power - U.S./Canada

Significant Changes to FERC's Rules for Market-Based Rate Sellers

Neil L. Levy, David G. Tewksbury, Stephanie S. Lim

On July 18, 2019, the Federal Energy Regulatory Commission issued two orders modifying its rules for sellers to obtain or retain authorization to make sales at market-based rates. Order No. 861 modifies the rules regarding the horizontal market power analyses required for market-based rate authority for sellers that are required to study Regional Transmission Organization or Independent System Operator markets and submarkets therein, while Order No. 860 revises the data collection requirements for market-based rate sellers. [More »](#)

TRANSACTIONS, GOVERNMENT RELATIONS

Europe, Asia



UPCOMING EVENTS

Peter Hsiao to Speak at ABA's Section of Environment, Energy, and Resources 2019 Fall Conference

When: September 12, 2019

Where: Westin Copley Place Hotel, Boston, MA

[More Information »](#)

Monica Hwang to Speak at 18th Annual Gas and Power Institute

When: September 26, 2019

Uzbekistan: New PPP Law and Opportunities

Jennifer Josefson, Alexandra Rotar

Uzbekistan recently enacted a series of major reforms, offering new energy sector public-private partnership investment opportunities. [More »](#)

LITIGATION

U.S./Canada

Third Circuit Rules Intercreditor Agreement Doesn't Apply to Plan Distributions

Jeffrey R. Dutson, Sarah L. Primrose, Britney Baker

The U.S. Court of Appeals for the Third Circuit recently issued a decision concerning the distribution of collateral under an intercreditor agreement, finding that adequate protection payments and plan distributions that were not generated from sales of collateral were not collateral or proceeds thereof and, therefore, were not subject to the intercreditor agreement's waterfall provision. [More »](#)

GOVERNMENT RELATIONS

Latin America

H1 2019: Latin America Enforcement Observations

Brandt Leibe, Grant Nichols, Luke Fields, Russell Martinez

The energy sector appears to remain an enforcement priority for authorities throughout Latin America during the first half of 2019. Allegations of corruption related to state-owned petroleum companies in Mexico and Ecuador, previews of additional criminal prosecutions related to Odebrecht, and continued cooperation between U.S. and Latin American law enforcement all point to continued interest across the region for the energy industry and related business segments. In this article we review key developments in the region during 2019. [More »](#)

GOVERNMENT RELATIONS, REGULATORY

Where: The Whitehall Hotel, Houston, TX

[More Information »](#)

Monica Hwang to Speak at International Oil & Gas Law, Contracts, and Negotiations Conference

When: October 3, 2019

Where: The Westin Galleria Hotel, Houston, TX

[More Information »](#)

IN THE NEWS

Freeport LNG Signs Contract with KBR for the Construction of Train 4 of its LNG Export Project [More »](#)

K&S counsels Bank of America Merrill Lynch in MEAG Power's limited offering of tax-exempt serial and term bonds that raised \$619M [More »](#)

David Runnels discusses the three biggest energy M&A trends in 2019 [More »](#)

Tracie Renfro and Carol Wood represent ConocoPhillips before the Ninth Circuit [More »](#)

Gas Processing & LNG's article about the European gas industry references Dan Rogers and Richard Nelson's client alert on LNG import terminals in Europe [More »](#)

K&S advises 9Ren in an award payment dispute under the Energy Charter Treaty with the government of Spain [More »](#)

Oil & Gas - Latin America

PEMEX 2019–2023 Business Plan— Opportunities in Storage and Transport of Fuels and Aviation Fuel

Vera de Gyarfas, Marco Portillo

Pemex, the Mexican national oil company, recently published its 2019-2023 business plan which outlines the economic strategy that Pemex and its subsidiaries will adopt and implement during that period. Although the new plan provides certain business opportunities for foreign investments, it has been received with mixed feelings. [More »](#)

GOVERNMENT RELATIONS, FERC

Power - U.S./Canada

The Ninth Circuit Affirms that California QF Contracts Do Not Comply with PURPA

Zori Ferkin

On July 29, 2019, the United States Court of Appeals for the Ninth Circuit in *Winding Creek Solar LLC v. Peterman et al*, Case Nos. 17-17531, 17-17532 (9th Cir. July 29, 2019), affirmed a district-court judgment that a Renewable Market Adjusting Tariff established by the California Public Utilities Commission (“CPUC”) violates, and is therefore preempted by, the requirements under the Public Utility Regulatory Policies Act of 1978, which is expected to change the Standard Contract that the CPUC offers to qualifying facilities. [More »](#)

GOVERNMENT RELATIONS, FERC, REGULATORY

Power - U.S./Canada

Impact of the Delayed PJM Base Residual Auction on Excess Cash Flow Sweeps under Construction Financings

Brandon Dalling, Frank X. Schoen, Tristan Pelham Webb

In a July 25, 2019 order, the Federal Energy Regulatory Commission (“FERC”) directed PJM Interconnection, L.L.C. (“PJM”) not to conduct the Base Residual Auction to procure capacity for

the 2022-2023 delivery year in August and instead to wait until FERC prescribes a remedy for the flaws in PJM's buyer-side market mitigation rules identified in its June 2018 order. This delay may have unintended—and, from a sponsor's perspective, unfortunate—implications. [More »](#)

EDITORIAL CONTACTS



Andrew M. Stakelum
+ 1 713 276 7341
astakelum@kslaw.com
[View Profile »](#)



Erich J. Almonte



Steven G. Williamson
+ 1 713 276 7311
swilliamson@kslaw.com
[View Profile »](#)

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