

Phyllis J. Kessler

OF COUNSEL / ENERGY, RENEWABLE RESOURCES & SUSTAINABLE
DEVELOPMENT PRACTICE GROUP

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As an energy lawyer, I have always followed cutting-edge energy technologies and combined that with my knowledge of contractual and regulatory issues to arrive at the best possible outcomes for my clients. My work is personally gratifying, because the way we fulfill our energy needs impacts every aspect of our society, including the environment, the economy, and the lives of future generations.

Ms. Kessler practices in the area of energy project development and regulation, with a focus on the provision of electricity and gas through renewable technologies such as solar and wind, among others. She has broad expertise in energy project transactions and the drafting and negotiation of related corporate agreements and has significant experience in state and federal energy regulation and proceedings.

Ms. Kessler has advised clients on energy projects involving solar, wind, microgrid, fuel cell, energy storage, cogeneration, biofuel-generation, interconnection and line extension. She also provides guidance on power and gas marketing, and other issues related to deregulated energy markets, as well as submetering, energy efficiency, and rate design. Her clients have included project developers, financial institutions and large consumers of regulated and unregulated energy services (such as industrial, commercial, data center, multifamily housing, non-profit, university and hospital customers), marketers of competitively sourced electricity and gas and power authorities. She has appeared on behalf of such clients in federal and state court energy litigation matters and in regulatory proceedings in various states.

Departments

Corporate

Practice Groups

Energy, Renewable Resources
& Sustainable Development

Education

New York University School of
Law, J.D., 1972

University of Wisconsin-
Madison, B.A., 1969

Bar Admissions

New Jersey, 1972

New York, 1975

U.S. District Court, District of
New Jersey, 1972

U.S. District Court, Eastern
District of New York, 2003

U.S. District Court, Southern
District of New York, 2003

U.S. Court of Appeals, Third
Circuit, 1972

In addition, Ms. Kessler represents clients of energy facilities involved in the Independent System Operator (ISO) process. She formerly represented a retail marketer of electricity, the first urban electric cooperative, on several New York ISO Committees, including influencing development of rules related to interconnection, ICAP, creditworthiness, operational issues and demand response. Throughout her career, Ms. Kessler has negotiated gas and electric power contracts for commercial and industrial clients in locations including New York, New Jersey, Connecticut, Pennsylvania, Maryland, Virginia, Massachusetts, California, Washington, DC and Ohio. She has conducted numerous regulatory proceedings with Con Edison, Public Service Electric & Gas and other utilities.

Results may vary depending on your particular facts and legal circumstances.

HONORS & AWARDS

- Listed in *The Best Lawyers in America*® (a trademark of Woodward/White, Inc.) in the Energy Law practice area (2010 – present)
- Martindale-Hubbell® Peer Review Rated AV® Preeminent (a trademark of Internet Brands, Inc.)

REPRESENTATIVE MATTERS

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Renewable Energy

- Represented a clean energy development and financing platform in connection with the development of a microgrid to produce and distribute electricity to offtakers in an Opportunity Zone
- Represented the developer of a community fuel cell project with multiple sites on Staten Island in drafting and negotiating contracts with fuel cell supplier and EPC contractor to permit sale to residential customers
- Represented a regional transportation agency in connection with a major solar energy project that can provide more than 50% of the total electricity consumption through solar energy, including drafting and negotiating seven power purchase agreements (PPAs) with respect to the purchase of power from a 21-megawatt solar project at seven sites, and which is the first solar powered traction rail project in the nation
- Represented a mission-driven specialty finance organization focusing on clean energy and community development in multiple projects, including drafting form power purchase agreements (PPAs), EPC agreements and loan documents
- Evaluated the Massachusetts Solar Smart program on behalf of a solar developer seeking to site solar plants on leased roofs
- In connection with a \$400 million pilot project to establish a competitive market for renewable power in Vietnam, played a key role as a member of the U.S. team in developing key form documents,

including power purchase agreements (PPAs), interconnection agreements, contracts for differences, wholesale market participation agreements, Memoranda of Understanding (MOUs) for participation in the pilot program, sales agreements, and meter data service agreements

- Represented power authority in connection with the purchase of electricity and water through PPAs and interconnection agreements with renewable projects being developed in the US Virgin Islands, including a biofuel cogeneration plant, four large-scale solar projects developed by two different developers and offshore wind generation projects with two different developers
- Represented the state power authority in connection with preparation of a form PPA to be used by school districts in New York State for K-12 schools; school districts and universities, which could then enter into PPAs for rooftop, ground mount or canopy solar covering multiple schools
- Represented a lender in connection with a hospital cogeneration project, including negotiating power purchase and energy supply agreements
- In connection with representing a New Jersey industrial building owner acting as developer of solar rooftop project, drafted all project agreements, including consultant, engineering, purchase of panels and racking, installation and financing; addressed all utility tariff and state regulatory requirements; and worked with utility to enable the building owner to submeter the solar power to tenants
- Represented wind generating project developer in developing a utility scale wind project and associated PPA in Pennsylvania, including corporate, commercial, real estate and regulatory issues

Energy Regulatory

- Represented a U.S.-based nonprofit environmental advocacy group before the New Jersey Board of Public Utilities in PSE&G's Energy Strong case, which involved proposals made by the utility to strengthen its system post-Hurricane Sandy and other major storms
- Represented global telecommunications company in connection with large data center project involving negotiations of a high power line with one New York utility and connection of line to substation in another utility service territory
- Represented a global pharmaceutical company in connection with upgrade of high power distribution line, including negotiations with Jersey Central Power and Light, an operating subsidiary of FirstEnergy
- Served as lead counsel for appellant in In the Matter of Public Service Electric & Gas Company's Unbundling, Stranded Costs and Restructuring Filings, 167 N.J. 377 (2001)
- Acted as outside counsel to retail energy marketer, including addressing regulatory requirements for solar demonstration project; developing on-site generation projects; preparing form contracts for energy commodity sales to retail customers; defending litigation related to energy contract disputes, including procurement of fuel in wholesale markets and purchase of retail marketing customer contracts; and counseling related to energy business strategy

- Represented commercial and industrial customers in electric and gas deregulation proceedings before New York and New Jersey utility commissions seeking unbundled rates favorable to client interests
- Represented universities, hospitals and other commercial customers for electric and gas service in electric and gas deregulation proceedings in the design of rates, seeking unbundled rates favorable to client interests and opposing imposition of hourly electricity rates
- Represented commercial office buildings in state utility regulatory proceedings involving electric, gas and steam rates in order to improve the allocation of revenues and the design of tariffs to reduce the share of increased rates imposed on commercial office buildings
- Represented hospitals before the state utility regulatory agency in various electricity, telephone and water rates cases to improve the allocation of revenues and the design of tariffs in order to reduce the share of increased rates imposed on hospitals and nursing homes
- Represented commercial building owners, hotels and other large customers in disputes with Con Edison involving overcharges and individual tariff-interpretation issues

UNIQUELY NJ

- New Jersey State Bar Association; Renewable Energy, Clean Tech, Climate Change committee; Public Utility Law Section (past Chair)

MORE ACTIVITIES & EXPERIENCE

- Association of the Bar of the City of New York; Energy Committee
- Association of Energy Engineers New York Chapter; Board Member Emeritus
- Energy One Solutions Advisory Board Member

PRESENTATIONS & SPEAKING ENGAGEMENTS

Speaker, Negotiating a Financeable Power Purchase Agreement for Renewable Energy
Sponsor: *CARILEC*, March 16, 2021

Speaker, Key Documents for a Financeable Energy Project
Sponsor: *Columbia Law School*, September 21, 2018

Speaker, Constructing the Future of Energy
Sponsor: *Seminar*, October 8, 2015

Speaker, Reshaping the NY Energy Market: Overview & Implications of REV Order
Sponsor: *Agrion*, June 3, 2015

Speaker, The New Regulatory Environment: The Future is Now

Sponsor: *World Association of Distributed Energy Conference*, October 16, 2014

Speaker, Harnessing the Power of CHP

Sponsor: *Breakfast Briefing*, October 6, 2014

Speaker, Superstorm Sandy's Shadow: Reliability and Resilience as DG Drivers

Sponsor: *World Association of Distributed Energy Conference*, November 20, 2013

PUBLICATIONS & ALERTS

Quoted, NYC's Roofs Are Getting a Sustainable Makeover

Smart Cities Dive, January 22, 2020

Co-Author, New York City's Sustainable Roof Laws Likely to Increase Construction Costs

Client Alert, December 19, 2019

Co-Author, Sweeping New Electricity Legislation—Will New York Become a Net-Zero State?

Pratt's Energy Law Report, October 2019

Co-Author, Sweeping New Electricity Legislation - Will New York Become a Net-Zero State?

Client Alert, July 22, 2019

Co-Author, What Does U.S. Supreme Court Decision Upholding FERC's Authority over Demand Response Mean for the Future of FERC's Jurisdiction?

Client Alert, February 19, 2016

NEWS

Greenbaum, Rowe, Smith & Davis Welcomes Phyllis J. Kessler as Of Counsel

February 2, 2024