

Energy Group Of The Year: Jenner & Block

By **Annie Pancak**

Law360 (February 4, 2019, 3:28 PM EST) -- Jenner & Block LLP's new energy group racked up achievements last year, from upholding nuclear credit programs at two appellate courts to helping eliminate entry barriers for distributed energy resources in wholesale markets, earning it recognition as one of Law360's 2018 Energy Groups of the Year.

When the group started a year and a half ago, it joined together attorneys from a variety of backgrounds, including a former FERC commissioner, general counsel of Exelon Corp. and head of the U.S. Department of Justice's Environment and Natural Resources Division. Because of the diverse backgrounds among the six-member team, its ability to form creative approaches has quickly propelled it to a place as a leading energy group, said partner Matthew Price.

"We all come at issues from different perspectives, and the result is great brainstorming," he told Law360. "We're looking at the same problem from different dimensions."

In September, Price led a team representing nuclear energy provider Exelon in two wins at the Second and Seventh Circuits, for which he was also named a Law360 Energy MVP.

The lawsuits arose after New York and Illinois adopted so-called zero-emissions credit programs, which compensate nuclear power plants at risk of retirement. Competitors claimed the programs were preempted by the Federal Energy Regulatory Commission's authority over wholesale electricity markets. The cases were included in Law360's Energy Cases to Watch in 2018.

But in July 2017, federal judges in New York and Illinois each said the programs the states offered to Exelon nuclear plants were within the state's authority to tackle climate change. The appeals courts upheld the rulings, finding that credits for nuclear plants do not intrude on FERC's jurisdiction over electricity markets.

Price said the cases were good examples of how the practice group is particularly successful operating at the "leading edge of cases."



"We really excel on handling cutting edge issues where you're making a law and seeing issues that maybe people haven't seen before and seeing opportunities that people haven't recognized before," he said.

In addition to Jenner & Block's victories in the appellate courts last year, the group's Co-chair Suedeen Kelly led a team that successfully represented trade group Advanced Energy Economy at FERC.

In April, the agency affirmed its finding that it had exclusive authority over the participation of energy efficiency resources in wholesale electricity markets in a win for Jenner & Block's client.

Advanced Energy Economy had sought an order declaring FERC had jurisdiction over the rates and terms and conditions that energy efficiency resources are sold. States and PJM Interconnection argued that states had the authority to decide whether distributed energy resources could sell at wholesale.

But Kelly, who previously worked as a commissioner at FERC, was able to convince the agency that it has jurisdiction over all energy efficiency resource participation in wholesale markets. The result of the finding eliminates barriers to entry for distributed energy resources in wholesale markets, Kelly said.

Her perspective as a former regulator was key to the success of the case, because of her insight about FERC's view of its role versus the role of the state in the market.

"[FERC] had a footnote that I knew about, because I knew that whole decision making process ... that sort of signaled FERC's view of the law as giving them exclusive jurisdiction," she said. "So that's where it's helpful to be able to bring that kind of experience and expertise to a client's problem."

Kelly was also named an influential woman in energy law by Law360 in August.

The group's other achievements this past year include an Illinois Supreme Court win over the statutory requirements to be a public utility, a bench trial victory in a challenge to California's program for compensating small renewable energy producers and a D.C. Circuit win defending FERC's order on underfunding of financial transmission rights.

Looking ahead, this year Kelly said the group's goals are to continue to craft creative approaches to cutting edge issues, in particular focusing on changes brought on by technology.

"We try to anticipate where the industry is going and one of the things that we are pretty certain is going to happen is that the technology advances that we've seen in the energy industry are going to continue," she said. "Technology is going to cause regulatory change, and frankly, a lot of litigation."

--Editing by Nicole Bleier.