



David E. Pomper

Senior Counsel

A seasoned litigator and negotiator, David Pomper has been fighting for local governments and municipal and cooperative utilities since 1989.

“Law is practical philosophy,” says David. “And by my philosophy, some problems can only be solved collectively.”

He has been working to solve problems at the crossroads of economic development, environmental protection, private enterprise and the public interest.

“Where a lot of money is at stake, issues get complicated,” says David, “often because those holding the money pay smart people to complicate matters and win by stalemate. But a simple principle invariably lies at the dispute’s core. I make that principle known.”

He’s represented utilities nationwide, the Transmission Access Policy Study Group (TAPS), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA) and official utility consumer advocates, in negotiations, Federal Energy Regulatory Commission-sponsored mediation, rate litigation and more. David is ranked in Chambers USA, which notes his “great depth of knowledge on industry issues,” as well as in Chambers Global. David has been recognized as a “Super Lawyer” in Utilities.

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EDUCATION

University of Pennsylvania Law School, JD, 1989
Philadelphia, PA

University of Pennsylvania Law Review, Articles Editor

Swarthmore College, BA, 1984
Swarthmore, PA
Special Major in Science and Religion

ADMISSIONS

District of Columbia

United States Courts of Appeals for the District of Columbia, Fourth, Sixth and Eighth Circuits

Representative Matters

- David was the main drafter of the first successful transmission access complaint under Federal Power Act Section 211. The resulting order and consequent rule provide the national foundation for wholesale electricity markets. *Florida Power & Light Co.*, Docket No. TX93-4 (FERC).

MEMBERSHIPS

American Bar Association

Energy Bar Association

- David served as a lead trial counsel in seeking a lower Return on Equity for New England transmission investments, resulting in a substantial reduction, the first such successful complaint in many years. *Coakley v. Bangor Hydro-Electric Co.*, Op. No. 531, 147 FERC ¶ 61,234, *on paper hearing*, Op. No. 531-A, 149 FERC ¶ 61,032 (2014), *on reh'g*, Op. No. 531-B, 150 FERC ¶ 61,165 (2015), *vacated and remanded sub nom. Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017).
- When liquefied natural gas projects repeatedly had ridden over litigated opposition, he helped persuade the federal courts to rule otherwise, upholding local zoning against a federal Natural Gas Act preemption challenge. *Washington Gas Light Co. v. Prince George's County*, 711 F.3d 412 (4th Cir. 2013).
- David helped St. Louis maintain its legacy as an aviation leader, by piloting STL's new runway through environmental review and appellate litigation. *City of Bridgeton v. Slater*, 212 F.3d 448 (8th Cir.), *reh'g en banc denied*, 2000 U.S. App. LEXIS 13701 (June 13, 2000), *cert. denied*, 531 U.S. 1111 (2001).

Practice Focus

Complex electric utility industry litigation and transactions involving transmission access rules, antitrust issues, wholesale ratemaking and regulatory policy. And a simple question at the bottom of much current litigation: are monopoly utilities' allowed profits ("return on equity") too high? Environmental and land use review of energy and transportation infrastructure siting. Regulatory policy for new technologies such as electricity storage.

Resources

- *Putting the "Profit" in "For Profit": FERC Regulation of Return on Equity*, by David E. Pomper – American Public Power Association Legal & Regulatory Conference (October 2018).
- *"The Same Numbers, Constantly in a State of Flux"—Transmission Return on Equity*, by David E. Pomper – Energy Bar Association Annual

Meeting and Conference (May 2018).

- *Double Jeopardy: FERC-Regulated Transcos and Retail Consumers*, by David E. Pomper – National Association of Regulatory Utility Commissioners Annual Meeting (November 2014).
- *Garbage Out: The Unreliability of DCF Extremes*, by David E. Pomper – Energy Bar Association Mid-Year Meeting and Conference (November 2014).
- *Utility Capital in the Twenty-First Century*, by David E. Pomper – Public Utilities Fortnightly (August 2014).
- *Electricity Storage: Technologies and Regulation — an Update*, by David E. Pomper – PNWER Energy Storage Coalition Meeting (October 2012).
- *ROFR Not Over: Rights of First Refusal After FERC Order 1000-A*, by David E. Pomper (September 2012).