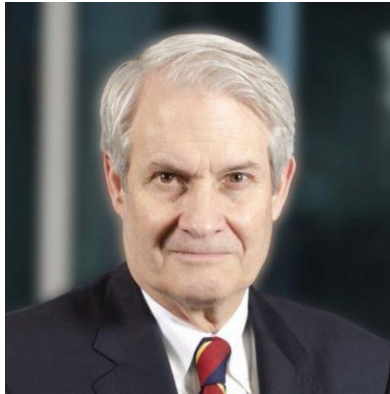


Hon. Thomas B. Griffith



Judge Thomas B. Griffith, served as a federal judge on the United States Court of Appeals for the District of Columbia Circuit from 2005–2020. The Washington Post has described him as “widely respected by people in both parties” and a “sober lawyer with an open mind.” Judge Griffith is now focusing his practice on appellate litigation, congressional and internal investigations, and strategic counseling.

Judge Griffith began his legal career in private practice before serving for four years as Senate Legal Counsel, the nonpartisan chief legal officer of the United States Senate (1995–1999). In this capacity, he represented the interests of the Senate in litigation as well as advising Senate leadership and committees on investigations. After a brief return to private practice, Judge Griffith served for five years as General Counsel of Brigham Young University, the largest religious university in the country.

As a member of the DC Circuit, Judge Griffith was the author of approximately 200 opinions on a range of matters including administrative, environmental and energy law, and congressional investigations. He was appointed by the Chief Justice of the United States to serve on the Judicial Conference’s Committee on the Judicial Branch, which involves the judiciary’s relationship to the Executive Branch and Congress, and the Code of Conduct Committee, which sets the ethical standards that govern the federal judiciary. Judge Griffith is a Lecturer on Law at Harvard Law School, and has held the same faculty position at the law schools at Stanford and Brigham Young Universities. He has long been active in rule of law projects in Eastern Europe, Eurasia, Asia and domestically.

Areas of Expertise:

- APPELLATE
- CIVIL RIGHTS
- COMMERCIAL DISPUTES
- COMPLEX LITIGATION
- CORPORATE INVESTIGATIONS/WHITE COLLAR
- EMPLOYMENT
- ENERGY, OIL, GAS & WATER
- ENVIRONMENTAL/CERCLA
- HEALTHCARE/HOSPITALS
- MONITORING
- PRODUCT LIABILITY
- TELECOMMUNICATION

Federal Energy Regulatory Commission (FERC) Opinions:

Alcoa Inc. v. F.E.R.C.

- C.A.D.C. | May 08, 2009 | 564 F.3d 1342 The newly created Electric Reliability Organization proposed that its costs be allocated according to a method of computation called net energy for load. FERC approved the proposal and the Court of Appeals, held the decision as reasonable and thus denied the petition for review.

Black Oak Energy, LLC v. F.E.R.C.

- C.A.D.C. | August 06, 2013 | 725 F.3d 230 The virtual marketers petitioned for review of two sets of FERC orders arguing that FERC's orders violate the Federal Power Act (FPA) and the Administrative Procedure Act. The Court of Appeals remanded the orders in question to FERC for reconsideration.

Blumenthal v. F.E.R.C

- C.A.D.C. | January 23, 2009 | 552 F.3d 875 FERC rejected Connecticut's challenge to the structure of the state's electricity market. FERC concluded that the current "hybrid" market, in which some electricity generators sell power at regulated rates and others at market rates, is lawful, and that Connecticut's proposed alternative would not be. Court of Appeals held that FERC's denial of Connecticut's complaint was not arbitrary and capricious and thus deny the petition for review.

Cogeneration Ass'n of Cal. v. F.E.R.C.

- C.A.D.C. | May 23, 2008 | 525 F.3d 1279 A small fraction of the PG&E's users are "standby customers": entities that generate their own electricity, but contract with PG&E for back-up supply. The petitioners, two unincorporated associations comprised of PG&E standby customers, challenged how the PG&E determines the price for their service. At issue is whether FERC reasonably approved the unique rates PG&E applies to standby customers. Upheld FERC's decision as reasonable and denied the petition for review.

Colorado Interstate Gas Co. v. F.E.R.C.

- C.A.D.C. | March 26, 2010 | 599 F.3d 698 Petitioner, Colorado Interstate Gas Company (CIG) operates a natural gas pipeline that includes a gas storage facility in Fort Morgan, Colorado. An accidental leak at the Fort Morgan facility led to the loss of a substantial amount of gas, which CIG asked its shippers to replace. The shippers refused, and FERC held that under its tariff CIG could only recover from its shippers gas that was lost in the course of normal pipeline operations, which this was not. Court of Appeals denied CIG's petition as FERC's interpretation of the tariff was reasonable, and its conclusion that the loss did not result from normal operations was supported by substantial evidence.

Council of City of New Orleans, La. v. F.E.R.C.

- C.A.D.C. | August 14, 2012 | 692 F.3d 172 Denied petition for review of an order of FERC allowing two companies to withdraw from a regional energy system agreement without paying exit fees not mentioned in the agreement.

Duncan's Point Lot Owners Ass'n Inc. v. F.E.R.C.

- C.A.D.C. | April 15, 2008 | 522 F.3d 371 The operator of a hydroelectric project, acting pursuant to a license issued by FERC, granted a developer an easement for a wastewater discharge pipe and permission to build a seawall. Denied petition for review and upheld FERC's finding that both actions violated the license and ordered several remedies.

East Kentucky Power Co-op, Inc. v. F.E.R.C.

- C.A.D.C. | June 15, 2007 | 489 F.3d 1299 customers of a public utility challenged a decision of FERC that approved new charges for electricity service. Petitioners argue that the Commission's decision to approve the charges was arbitrary and capricious and that the Commission did not engage in reasoned decision making because its conclusion is inconsistent with previous determinations. FERC responds that the services for which new charges are assessed are "new services," and distinguishes its conclusions in previous proceedings by arguing that the utility owners (intervenor in support of FERC) had failed to demonstrate that the services were not already covered by existing rates.

Held that FERC considered substantial evidence that a proposed tariff to collect charges associated with new services and FERC's decision to approve that tariff was rational. We also find that FERC's conclusion was not inconsistent with its prior determinations because, as the Commission has explained, new evidence was before it. Court of Appeals therefore deny the petition.

Exxon Mobil Corp. v. F.E.R.C.

- C.A.D.C. | July 07, 2009 | 571 F.3d 1208 Independent electric power generators and public utilities objected to the manner in which FERC resolved an application of its interconnection pricing policies. Court of Appeals held FERC's decision reasonable, and dismiss the Utilities' petitions because they lack standing.

Iberdrola Renewables, Inc. v. F.E.R.C.

- C.A.D.C. | February 26, 2010 | 597 F.3d 1299 Petition for review of FERC orders requires straightforward application of the plain terms of a written contract. The question is whether FERC arbitrarily or capriciously read a contract to allow a pipeline to change its rates without first obtaining FERC's approval. Denied the petition because the contract expressly excludes such a role for FERC.

Kourouma v. F.E.R.C.

- C.A.D.C. | July 23, 2013 | 723 F.3d 274 In a summary disposition, FERC ordered energy trader Moussa Kourouma to pay a \$50,000 civil penalty because he had made false statements and material omissions in forms he filed with the Commission and a market operator the Commission regulates. Denied Kourouma's challenge to the order.

MarkWest Michigan Pipeline Co., LLC v. F.E.R.C.

- C.A.D.C. | July 01, 2011 | 646 F.3d 30 Oil pipeline owner agreed with two of its three shippers regarding rate increases for a three-year period. But neither the agreement nor the relevant regulations clearly lay out how to determine the rates thereafter. FERC rejected pipeline owner's proposal and replaced it with its own. Finding both the agreement and the regulations ambiguous, the Court of Appeals deferred to the reasonable views of the Commission and denied petition for review.

Murray Energy Corp. v. F.E.R.C.

- C.A.D.C. | January 07, 2011 | 629 F.3d 231 Rockies Express Pipeline LLC (REX) is a natural gas company that built and now operates the REX-East pipeline where it crosses an underground longwall coal mine owned Murray. Longwall mining causes the surface above to subside in a planned, controlled manner this places stress on pipelines that cross the mine area which may rupture a pipeline and cause an explosion. Concerned by the substantial hazard the REX-East pipeline poses, Murray petitions for review of two orders by FERC authorizing its construction. Court of Appeals denies petition.

Seminole Electric Cooperative, Inc. v. F.E.R.C.

- C.A.D.C. | June 30, 2017 | 861 F.3d 230 FERC determined that Florida Power & Light Company overcharged Seminole Electric Cooperative, Inc. for electricity and ordered a refund. Seminole claims that it was entitled to a larger refund and petitions for review. Court of Appeals deny the petition.

Sierra Club v. F.E.R.C.

- C.A.D.C. | August 22, 2017 | 867 F.3d 1357 Petitioner sought review of FERC's authorization for an increase in production capacity at a liquefied natural gas terminal for failing to consider certain environmental consequences of its authorization in violation of the National Environmental Policy Act of 1969. Petitioner has standing but its challenges to the Commission's orders fail on the merits, and otherwise the court lacks jurisdiction over challenges to the Commission's cumulative impacts analysis due to petitioner's failure to exhaust its administrative remedies.

Transmission Agency of Northern California v. F.E.R.C.

- C.A.D.C. | July 20, 2007 | 495 F.3d 663 Petitioners challenge three orders of FERC that require the City of Vernon, California ("Vernon") to issue refunds to the California Independent System Operator Corporation ("CAISO") for overcollection of its transmission revenue requirement ("TRR"). Petitioners argued that because Vernon, as a municipality, is exempted from the Federal Power Act when it provides transmission services, FERC has no authority to order Vernon to pay refunds. Held: although FERC has sufficiently demonstrated its authority to review Vernon's TRR under the just and reasonable standard, FERC lacks jurisdiction to order Vernon to pay refunds to CAISO. Accordingly, Court of Appeals vacated the portions of the orders requiring refunds by Vernon and remand for further proceedings.

F.E.R.C. Concurring Opinion:

Allegheny Defense Project v. F.E.R.C.

- C.A.D.C. | June 30, 2020 | 964 F.3d 1 Denied petition because the challenges to the FERC's decision cannot surmount the deferential standards of agency review and binding circuit precedent.

Memberships:

- Member, International Advisory Board of the CEELI Institute in Prague
- Member, Advisory Board of the Neal A. Maxwell Institute for Religious Scholarship at Brigham Young University
- Senior Advisor, National Institute for Civil Discourse
- Member, Advisory Board of the Center for Constitutional Studies at Utah Valley University
- Member, the Secretary of Education's Commission on Opportunity in Athletics (the Title IX Commission) (2002–2003)
- General Counsel, Congressional Advisory Commission on Electronic Commerce (1999–2000)

Awards & Recognition:

- Distinguished Service Award, Brigham Young University (2018)
- Recipient of the David W. Peck Sr. Medal for Eminence in the Law from Wabash College (2014)

Events:

- [Judge, The Ames Moot Court Competition, Harvard Law School, April 14, 2021](#)
- [Judge, Seventieth Annual Robert J. Beaudry Moot Court Competition, Georgetown University Law Center, March 31, 2021](#)
- [Speaker, Moving Forward with Civility, Utah Valley University's 2021 Annual First Amendment Conference: Looking Forward – Religious Liberty Under a New Court, March 24, 2021](#)
- [Judge, Virtual Mock Trial, Shakespeare Theatre Company, March 11, 2021](#)
- [Speaker, Retired D.C. Circuit Judge Thomas B. Griffith Presents Civic Charity: A Key to Legal Professionalism, February 25, 2021](#)

Publications:

- Author, How judicial activism on the right and left is threatening the Constitution, Deseret Magazine, February 1, 2021
- Author, The Degradation of Civic Charity, 134 Harv. L. Rev. F. 119, 2020
- Author, Civic Charity and the Constitution, 43 Harv. J.L. & Pub. Pol’y 633, 2020
- Author, Amy Coney Barrett’s Religion Won’t Dictate Her Rulings, Bloomberg Opinion, October 12, 2020
- Author, Was Bork Right About Judges?, 34 Harv. J.L. & Pub. Pol’y 157, 159–62, 2011

Bar Admissions:

District of Columbia

Awards & Recognition:

- JD, University of Virginia School of Law, 1985
- BA, Brigham Young University, summa cum laude, 1978