

FOCUS ON ENERGY



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About Bates White Energy Consulting

Bates White is a consulting firm offering services in economics, finance, and business strategy to leading law firms, fortune 500 companies, and government agencies. Our Energy Practice provides expert economic services for a wide range of energy-related matters, focusing on litigation support and regulatory and public policy issues in the areas of alleged market manipulation; energy pricing and contract disputes; market power analysis; mergers and acquisitions; market design, restructuring and privatization; environmental policy; finance; market analysis, modeling, and forecasting; and transmission system modeling and analysis.

Whether you are familiar with Bates White or if Bates White is new to you, we hope you enjoy reading about some of our recent engagements and our services in the key areas of renewable energy, energy markets, natural gas and fuels markets, and transmission.

Engagements

Amaranth Market Manipulation Case

Dr. [Kathleen King](#) provided expert testimony before the Honorable Carmen Cintron, Administrative Law Judge of the Federal Energy Regulatory Commission (FERC) on August 31 and September 1, 2009, in the Amaranth Advisors market manipulation case. Dr. King served as a rebuttal witness for FERC's Office of Enforcement, which filed a show cause order in 2007 alleging that Amaranth and head trader Mr. Brian Hunter manipulated NYMEX natural gas futures prices downward and profited because Amaranth held offsetting swap positions. Bates White also provided support to FERC expert witness Dr. Vincent Kaminski. Nine of the ten Amaranth defendants agreed to pay \$7.5 million pursuant to an uncontested joint settlement after Dr. King, Dr. Kaminski, and another FERC expert filed their rebuttal reports on July 14. The case then proceeded against the sole remaining defendant, Mr. Hunter.

Dr. King's testimony examined NYMEX prices on the at-issue days and found, contrary to the report of Mr. Hunter's expert, that price movements were consistent with the manipulative scheme alleged by FERC. Mr. Hunter's expert claimed that no "price reversal" occurred, but Dr. King found statistically significant evidence that prices were driven downward and subsequently recovered, consistent with the alleged manipulation. Dr. King also examined Amaranth's trading behavior during the at-issue time periods and found that it was unusual when compared with the behavior of other market participants and Amaranth's own historical behavior. In addition, Dr. King examined news events and fundamental supply and demand factors before and during the alleged periods of manipulation and found no evidence that news or market fundamentals caused the at-issue price movements. An Initial Decision in the Amaranth case is expected on December 22, 2009.

Hot Fuels

In January 2009, Bates White, LLC, and Dr. [Leonardo Giacchino](#) were retained by the three main gasoline wholesalers in Puerto Rico—Chevron de Puerto Rico, Shell Company (Puerto Rico), and Esso Standard Oil Puerto Rico—to prepare an expert report in a class action brought against fuel wholesalers, retailers, and the Department of Consumer Affairs in Puerto Rico concerning the pass-through of temperature adjustments in gasoline to final consumers. Gasoline volume expands with increases in temperature, and the volume expanded is called temperature adjustment. In 1996, Puerto Rico passed a law requiring that this temperature adjustment be passed through by wholesalers to retailers and by them to final consumers.

The allegation in the case is that the defendants are not passing through the temperature adjustment along the gasoline supply chain and to the final consumer. The plaintiffs allege that wholesalers purchase gasoline at 60 degrees Fahrenheit, which is lower than the average temperature in Puerto Rico, and hence receive more gasoline than they pay for. Dr. Giacchino presented an expert report in March 2009 and a Supplementary Report on behalf of another wholesaler, Sol Petroleum, in April 2009, showing that wholesalers do not keep any benefit from this temperature adjustment and pass through completely any changes in purchase costs to retailers. This was done using three approaches: (1) a conceptual review using economic theory and economic literature, (2) a company document review, and (3) three econometric tests the results of which show that the temperature adjustment was fully passed through. Dr. Giacchino testified in state court on October 20 and 21.

National Gas Distributors Bankruptcy Case

Dr. [Kathleen King](#) filed an expert report on May 11, 2009, in the Chapter 11 bankruptcy case of National Gas Distributors, LLC (NGD), on behalf of a joint defense group of some of NGD's former customers. Her report addressed the issue of whether the contracts entered into by NGD and the customers were commodity forward agreements or swap agreements and thus protected from avoidance by the safe harbor provision of the bankruptcy code. In 2008, Dr. King had also filed reports on the fair value of the contracts between NGD and the defendants.

The trustee for NGD had filed adversary proceedings against a number of NGD's customers, following NGD's bankruptcy in the wake of hurricanes Katrina and Rita, claiming that NGD had sold natural gas to the defendants for "less than reasonably equivalent value" while NGD was insolvent and, therefore, that such sales constituted avoidable "fraudulent transfer." Some defendants sought to bar the avoidance action by employing a safe harbor defense provided by the bankruptcy code that is applicable to "swap agreements," which are defined to include commodity forward agreements. In February 2009, the United States Court of Appeals for the Fourth Circuit reversed a decision by the bankruptcy court, which had held that the contracts at issue were not commodity forward agreements, and remanded the case for further factual findings.

In her 2009 report, Dr. King examined, in particular, industry practices, the contracts at issue, and the contracts in the *In re Borden* case cited by the Fourth Circuit in its guidance that "the quantity and time elements of the contracts must be fixed at the time of contracting." The case has been closely watched because of its implications as to whether often-used contracting forms will be granted safe harbor protection under the bankruptcy code, with implications for the stability of financial and commodity markets.

For further details about Bates White experience in energy company bankruptcy and related cases, please view descriptions of our [Energy Company Bankruptcy Services](#), and [Energy Company Bankruptcy Experience](#).

Portland Natural Gas Transmission System

On April 1, 2008, Portland Natural Gas Transmission System (PNGTS) filed a rate case with the FERC (RP08-306). In this case, PNGTS proposed a depreciable life of 23 years, with a negative salvage value in excess of \$37 million, and a return on equity (ROE) of 14.75%. The proposed term of the depreciable life and the ROE were based on the position, among other things, that the quantity of natural gas available from the western Canada sedimentary basin (WCSB) would decline to such a point that PNGTS would no longer have access to adequate natural gas supplies. PNGTS also argued that they faced a higher market risk because (1) their transportation rates were higher than those of older, competing pipelines and that the value of PNGTS had declined over time, and (2) they were at risk for the revenue associated with the capacity stranded as a result of the Calpine bankruptcy.

Bates White experts [Christopher Gulick](#) and [Jonathan Lesser](#) were retained by the PNGTS Shippers Group to rebut expert reports of some of the PNGTS witnesses regarding the risks faced by the pipeline and the appropriate depreciable life. Contrary to the assertions of PNGTS' experts, Bates White experts demonstrated that the value of PNGTS into the New England market had, in fact, increased over time. They also (1) exposed the fallacy in PNGTS' analysis of increased market risk that compared the rates for transportation on pipelines with no available capacity to the rates on PNGTS where capacity is available and (2) demonstrated that natural gas could easily feed the PNGTS system from regions in North America should exports from the WCSB cease, a point of view supported by one of PNGTS' parent companies.

Contrary to PNGTS' claim they were at risk for the capacity returned by Calpine, Bates White experts pointed out that PNGTS' recovery of \$120 million from the Calpine bankruptcy was equivalent to receiving many years of pre-paid revenue. Adding this pre-paid revenue to the firm commitments of PNGTS' remaining customers through 2019, Bates White experts concluded that PNGTS would not face material risk for a number of years.

The PNGTS Shippers Group is represented in this proceeding by Hall, Estill. An initial decision is expected on or before December 18, 2009.

Virginia - Demand Side Management

As an independent expert advisor to the Staff of the Virginia State Corporation Commission (VaSCC), [Nicolas Puga](#) reviewed Virginia's generating utilities' and selected nonutility parties' responses to an April 30, 2009, VaSCC Order that asked for input in order to determine feasible levels of EE and demand response (DR) and associated costs over the next 15 years. On September 24, 2009, Mr. Puga testified on the reasonableness of the costs and benefits of proposed DSM/EE/DR program portfolios reported by the testimony and discovery responses of Dominion Virginia Power (DVP), Appalachian Power Company (APCo), and Old Dominion Power Company (ODP) in response to both the Commission's Order and Staff interrogatories.

Mr. Puga analyzed the likelihood of achieving the demand and energy savings targets of the energy efficiency and demand response program portfolios proposed by the generating utilities and nonutility respondents, as well as the relative contribution of some of the portfolios' program components. His assessment of the reasonableness of proposed savings targets considered other utilities' historical achievements in light of the significantly different economic environment under which the proposed programs are likely to operate. Mr. Puga's testimony presented an exploratory engineering analysis of the effectiveness a conservation voltage reduction program like the one proposed by one of the utilities and on the difficulties in estimating the savings potential of this type of energy efficiency program.

West Virginia Transmission Line

On behalf of the Public Service Commission of West Virginia, Bates White experts, [Nicolas Puga](#) and others, are evaluating the application for a certificate of public convenience and necessity for the Potomac-Appalachian Transmission Highline (PATH) with the West Virginia Public Service Commission. The proposed transmission line would extend 275 miles, from Putnam County WV to New Market MD, and would cost an estimated \$1.8 billion to construct. Bates White experts are conducting a reliability needs assessment and economic impact analysis to determine whether the need for the project, and its impact on West Virginia are properly supported in the application. The reliability need is being evaluated using power flow analysis of the PJM system. If a reliability need is found to exist, the team will determine whether that need can only be met with transmission and whether PATH is the best transmission alternative, or if the need can be met more cost-effectively with non-transmission alternatives such as new generation, expanded demand response programs, or increased conservation. Finally, Bates White experts will estimate the economic impacts on WV that would accrue from the construction of the proposed transmission line.

Publications and Presentations

- [Primer on Market-Based Rate Authority](#)
- [Kathleen King](#), David Metz, and Ai Deng, [An Econometric Analysis of Recent Oil Price Movements: The Role of Political Events, Economic News, and Market Fundamentals](#). (If you would like to be notified of updates to this working paper, please contact [Kathleen King](#).)
- [Nicolás Puga and Famarz Nabavi](#), "Cross Border Renewable Energy Challenges and Opportunities: Discussion of Regulatory, Land, Infrastructure and Tax Issues / Baja Wind Energy Generation and Transmission: Potential for Development"
- On November 10, 2009, [Christopher Gulick](#) presented on the topic of asset management agreements at the [Western Energy Institute's \(WEI\) Energy Management Meeting](#) in Tempe, AZ. His presentation can be viewed on our [website](#).

Services Spotlight

Renewable Energy and Transmission



Nicolas Puga has more than 20 years of experience as a senior energy advisor and executive of energy consulting services in international marketing, business development, and operations. He has worked as a technical advisor on energy infrastructure project development, energy end-use efficiency, renewable energy technology policies and marketing. Nick is an expert in U.S.-Mexico cross-border energy trade and in the market, regulatory, and commercial aspects of energy project development in Mexico. He has worldwide experience with private and public sector clients in such countries as the U.S., Canada, Mexico, Argentina, Chile, Venezuela, Colombia, the Philippines, and Australia. He has an MSc in energy engineering from the University of Arizona.

Energy Markets



Kathleen King has 30 years of experience as an economist in energy markets and bank regulation, including litigation support, advisory services, and transaction support. Her litigation support experience has involved a wide range of issues, notably energy trading practices and business practices of energy merchants, bankruptcy, energy pricing issues, and damage and lost profit calculations in disputes involving power plants. Dr. King's litigation support work on energy trading practices has included assessment of allegations of market manipulation, assessment of strategies and practices of trading organizations and the accuracy of descriptions of these practices, valuation of transactions and assessment of the risk in trading books, analysis of trade and position data and market data. She has filed expert reports or testimony on the fair market value of natural gas transactions in a bankruptcy case and the definition of commodity forward agreements under the safe harbor provision of the bankruptcy code, on the reasons for oil price increases, and on analysis of alleged market manipulation. Dr. King has conducted economic due diligence on trading and marketing companies and on generating assets, including market assessment and price forecasting studies in wholesale power markets. She has worked with private equity clients to identify opportunities in energy markets and structure transactions.

Natural Gas and Fuels Markets



Christopher Gulick provides expertise in natural gas supply and transportation contracting, market assessments, energy demand and price forecasting, natural gas operations and portfolio planning, and developing and implementing fuel supply plans for electric generators. He also supports clients with litigation, regulatory filings, and due diligence associated with gas supply and transportation contracts, investments in natural gas infrastructure, LNG facilities and markets, and electric generation facilities. Chris is a compelling expert witness and has served in this capacity in many matters, including an international arbitration regarding LNG price re-openers, a dispute regarding a joint marketing venture (where he provided a damages estimate), a commercial litigation regarding the forward sale and delivery of natural gas, and the integration of gas resource portfolios.

Chris has both micro- and macro-level knowledge of the natural gas industry based on 26 years of working as a gas company executive and energy consultant. He was heavily involved in the restructuring of the U.S. natural gas industry on behalf of Boston Gas, and he has been a frequent witness on natural gas supply and planning matters.

Market Design



Collin Cain specializes in developing and assessing power procurement and sale strategies for regulators and corporations. Collin's expertise includes RFP design and evaluation, forensic analysis in litigation support, and auction development and implementation. He also has extensive experience developing risk analysis and energy market pricing models. He has applied these models in consulting assignments to assess damages, power supply contracts, infrastructure investment opportunities, divestment and buyout options, and hedging strategies. Collin also assists clients in developing regulatory strategies, and has provided expert testimony in both regulatory and private legal proceedings. He has undertaken strategic advisory work on issues such as asset divestment, stranded cost recovery, and rate unbundling. In addition, Collin has analyzed various market design efforts, such as the capacity auction design for the Northeast ISO's resource adequacy market initiative and the annual auctions of New Jersey Basic Generation Service (BGS) load.

Market-Based Rate Authority Applications



David W. DeRamus is a founding member of Bates White and the Partner in charge of the firm's Energy practice. He specializes in the analysis of issues related to competition, market power, market manipulation, and antitrust; pricing, valuation, and the estimation of damages; and various energy regulatory policy issues, including competition policy, market design, and transmission cost allocation. David has served as a testifying and consulting expert in a range of antitrust cases, including monopolization and price-fixing cases; in market manipulation cases; in market power and other proceedings before the FERC and other regulatory agencies; and in disputes related to mergers and acquisitions, breach of contract, and other commercial litigation.



Spencer Yang specializes in the following areas: transmission modeling, regulatory market power analysis, portfolio analysis, power systems analysis, and economic and quantitative analysis. Spencer provides attorneys and senior management with strategic advice and litigation support in electric transmission business, efficient generation portfolio planning, and regulatory market power disputes.

To learn more about our services, see:

[Litigation and arbitration](#) | [Renewable energy](#) | [Traded energy markets](#) | [Regulatory and public policy](#)
[Generation and transmission system modeling](#) | [Mergers and project finance](#)

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