Services and Capabilities

Litigation Support in Energy, the Environment, and the Water Industry
Who NERA Is

NERA is a premier litigation support and economic consulting firm comprising experts who are leaders in their fields and have impeccable credentials. NERA economists have an unmatched reputation for highly defensible analysis, based on rigorous economics and quantitative methods, and grounded in a thorough understanding of the market facts. We work with clients at all stages of the litigation process, from pre-complaint counseling through discovery and trial, and as testifying experts or consulting experts, as appropriate. When engaged early in the case, NERA economists can make an important contribution to a legal team’s efforts to craft an appropriate strategy. And in our testimony, we present our findings in a clear and concise manner that is accessible to attorneys, juries, judges, and other economists.

NERA economists have been actively assisting clients in energy markets for more than 45 years. Today’s energy markets are highly complex, involving intricate market and pricing arrangements and, often, multi-jurisdictional market regulation and oversight. NERA experts possess a wealth of knowledge about the electricity, natural gas, petroleum, water, and transportation markets of today. We also provide a suite of technical skills that can help to resolve the most complex business disputes.

Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity and the unvarnished truth. The consequence is that the testimony of NERA experts is weighed heavily in the findings of tribunals.
NERA experts employ a rigorous economic framework, customized to each case, that is well-accepted by the profession, the courts, and regulatory bodies to establish the relevant “but for” situation.

Our Approach

NERA economists approach each case with an understanding of the workings of the relevant markets that complements and expands upon the approaches of experts from other fields. We combine our practical understanding of how markets work with an analytic framework based on accepted economic theory utilized by the economics profession, accepted by courts, and acknowledged by market oversight entities in establishing regulatory requirements. We employ rigorous economic and statistical techniques grounded in scientific methods to provide robust results and competent evidence.

As economists, our approach begins with an assessment of the performance of the underlying business or markets in the absence of the alleged breach or event. An analysis of the economic value of an alleged breach or event requires first determining what likely would have occurred “but for” the alleged breach or event. This analysis provides the necessary baseline for determining the limit of any liability and helps to guide and inform further efforts to resolve disputes.

NERA’s methodology differs from that of engineers and accountants (although we work closely with experts in both professions), whose disciplines are not directed toward assessing the economics underlying the performance of the business or markets “but for” the alleged event. Our approach adds a dimension to the case that may expand the attorneys’ theory of the case or may add arguments to the existing theory of the case.

Our Services

Our experts provide support in a number of areas in the energy, environment, and water industries. Our areas of expertise include contract disputes, environmental litigation, international arbitrations, energy industry standards and practices, and energy trading and risk management.

Contract Disputes

NERA experts bring a valuable and unique perspective to contract disputes. Our analytic framework for assessing the economics of the contract and the market conditions surrounding the dispute is well-accepted and persuasive. Our analysis of the economics of market conditions and the commercial arrangements between parties can reveal weaknesses in the opposition’s case. It can help to establish liability by illuminating the role that the economic self-interest of the parties played in their actions.

In order to establish the damages caused by a contractual dispute in a product or service market, the price and quantity that would have prevailed but for the alleged breach or event must be determined. Similarly, for disputes concerning operations or concessions contracts, it is necessary to establish the “but for” payment streams between parties. Possible mitigation must also be considered. NERA experts employ a rigorous economic framework, customized to each case, that is well-accepted by the profession, the courts, and regulatory bodies to establish the relevant “but for” situation.

NERA experts have provided testimony and expert advice in a wide range of contract disputes ranging from breach of power sales, gas supply contracts, and international arbitrations, to disputes between power plant developers and their EPC contractors.
Environmental Litigation
NERA experts have participated in litigation and administrative rulemakings related to a wide range of environmental disputes including air emissions standards, natural resource damages, climate change regulations, and water-related standards. Examples include emission standards for vehicles such as cars, lawn and garden equipment, heavy-duty trucks, large construction equipment, and snowmobiles; alleged New Source Review violations for electricity generators; Clean Water Act standards for electricity generators; and natural resource damage assessments for a variety of sectors.

The litigation and administrative rulemaking in the environmental sector often involves developing detailed data on the costs and benefits of alternatives, as well as the economic impacts of regulatory requirements. In some cases, the litigation involves detailed modeling of various markets. In the case of litigation related to automotive air emission and climate change standards, for example, NERA has developed detailed models of new vehicle markets and the effects of new vehicle market conditions on used vehicle fleets. Our evaluations of how the environment affects the electricity sector have included detailed modeling of electricity markets, as well as the effects of various regulatory requirements on facility emissions. Our assessments of natural resource damages have included evaluations of methodologies to assess various types of damages, including non-use damages.

International Arbitrations
NERA experts have extensive experience in providing critical economic assessments when international investments go sour. Our experts provide persuasive testimony on the underlying economic principles of foreign investments, broadening the perspective of a case beyond narrow accounting and legal frameworks. For example, when the opposing side was focusing on whether a particular contract was let in accordance with the letter of the statutory process, NERA experts explained the purpose of the competitive bidding process, how the purpose was undermined, and the consequences of that undermining. In another case, by explaining the underlying economic principles of the contractual relationship, NERA was able to demonstrate that the intent of the contract documents could not possibly have been what the opposing side was claiming.
NERA experts have deep industry expertise and are well-versed in industry standards and best practices in a variety of disciplines related to energy.

Industry Standards and Practices
Industry standards and best practices are a key aspect of many different types of cases. For example, comparing actual behavior to standard industry practices contributes to a determination of whether negligence or fraud occurred, whether a party’s obligations or fiduciary duties were met, or what a party’s reasonable expectations might have been.

NERA experts have deep industry expertise and are well-versed in industry standards and best practices in a variety of disciplines related to energy. We have provided testimony and expert advice that draws on knowledge of standard energy industry practices in many areas ranging from methods of valuing power plants and assessing their expected operating profile, to forecasting power prices, energy trading, and risk management practices.

Our expert understanding of the water and wastewater industries includes the nature of and rationale for methods of delivering water services, as well as associated regulatory and contractual arrangements. NERA has provided advice and testimony in the sector on technical issues, such as the optimality of proposed capacity expansion plans, or whether water service prices are justified by service costs, and on institutional issues, such as whether the actions of an independent regulator in overseeing contract provisions conform to international best practices.

NERA’s analysis is also grounded in established economic, statistical, and finance theories and practices. Examples of key elements of a case that rest on standard practices in economics and related fields range from the appropriate discount rate for calculating today’s value of future damages, to standard finance methods for valuing positions in a trading company’s books.

Energy Trading and Risk Management
NERA’s expertise in energy trading and risk management stems from years of familiarity with energy markets and standard industry practices as they have matured over a number of decades. Our experts have backgrounds as energy traders, risk managers, regulators of traded markets, and academics, as well as consultants. We have provided testimony and expert advice on energy trading companies’ business models, strategies, management, and sources of profits, and on standard industry practices in areas as diverse as hedging practices, pricing of affiliate transactions, and marking of derivative positions. We have conducted a wide variety of analyses of trading books, including the sources of trading company profits and the risks in their trading books. Our experts have provided testimony and expert advice regarding alleged market manipulation in a number of traded energy markets.
NERA Economic Consulting is an international firm of economists who understand how markets work. We provide economic analysis and advice to corporations, governments, law firms, regulatory agencies, trade associations, and international agencies. Our global team of more than 600 professionals operates in over 20 offices across North and South America, Europe, Asia, and Australia.

NERA provides practical economic advice related to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance, and litigation. Our more than 45 years of experience creating strategies, studies, reports, expert testimony, and policy recommendations reflects our specialization in industrial and financial economics. Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity and the unvarnished truth.

NERA Economic Consulting (www.nera.com), founded in 1961 as National Economic Research Associates, is a unit of the Oliver Wyman Group, an MMC company.