

President's Message



Our theme this quarter is membership! Building a robust and diverse membership is one of the ways in which we can continue to deliver to you, our existing members, the high-quality programming and scholarship that you expect, plus the networking benefits that you value. To widen the circle, we need your help. I am asking every EBA member to bring someone new into the EBA membership within the next year.

There may be a prospective EBA member in the office next door. Open your EBA directory to the "Firm/Company Cross-Reference" index (last tab) and review the list of members from your organization. Is there someone missing? Also consider the attorneys and non-attorney energy professionals that you work with outside of your organization including, regulators, consultants, members of a trade organization, clients or outside counsel. Which of them would profit from EBA programs or help us develop even stronger ones? Please invite them to join now while you are thinking about it.

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FERC Office of Enforcement Director Susan J. Court Relentlessly Remediates Non-Compliance!

Acting on Tips, Referrals, Self-Reports, Internal Investigations and Audits, She is Top Cop! Also Stresses Other, Proactive Roles

Gary E. Guy and Channing D. Strother

You asked for her and now you have her! By popular demand, your faithful reporters Gary Guy and Channing Strother (aka "Merriman Smith and Bill Lawrence") now bring you the straight scoop directly from Susan J. Court, Esquire, long-time FERC official, currently holding the impressive post of Director of the Office of Enforcement. You are cordially invited to view our riveting interview at www.eba-net.org. Also posted is a copy of the organizational chart for the Office of Enforcement.

A Veritable Lifetime Devoted to FERC (While Raising Five Kids!)

Ms. Court (J.D. and a Masters, almost a Ph.D., in European history) recounted for us her various roles at FERC, beginning in 1982. That is when she came to the agency by way of Kentucky, where she had

worked for Governor Louie B. Nunn (successor to Governor Edward T. Breathitt, Jr., father of former FERC Commissioner Linda K. Breathitt), and interacted with Washington powerhouse Danny J. Boggs (now Sixth Circuit Chief Judge). Chief Judge Boggs was President Reagan's Energy Advisor and then Deputy Secretary of Energy. He had been on the liaison team with FERC Chairman C.M. "Mike" Butler III during the Carter and Reagan transition, and suggested



that Ms. Court consider a career at FERC. (Years later, ex-Gov. Breathitt hired Ms. Court's daughter as a summer associate at his law firm, neither realizing that they each had a relative working at FERC until one happened to mention a connection to FERC!) (It's trivia, but it's interesting!)

She started in the Office of General Counsel Rulemaking Division, where she

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News from the Charitable Foundation of the Energy Bar Association

Happy Birthday, Marji Philips!

EBA member and former Northeast Chapter President Marji Philips recently celebrated a birthday. When her adoring friends asked her what birthday gifts she wanted on her special day, she told them it would make her happiest if -- instead of giving her gifts -- they would make donations to the Charitable Foundation of the Energy Bar Association. In response Marji's friends have now donated more than \$500 to the Foundation. We at the CFEBA say, "happy birthday, Marji -- and may you have many more, indeed!"

Be like Marji and support the CFEBA through your own donations and donations from your friends and colleagues. As the following examples demonstrate, the CFEBA is working to make a difference in Washington, around the United States and around the world. Join us in this effort by helping CFEBA to identify opportunities for grants for energy-related and general charitable purposes, as well as opportunities for service projects. Show your support of CFEBA right now by making your reservation for CFEBA's gala fundraiser at the Capitol Hilton on November 13th. Spend a festive evening with colleagues and friends while helping the CFEBA achieve its charitable goals. The CFEBA's Board of Directors looks forward to welcoming you at the gala!

CFEBA-FUNDED SOLAR PANELS INSTALLED AT SCHOOL IN UGANDA

The CFEBA received news this October that the solar panels it funded for the Arlington Academy of Hope ("AAH") in Uganda have been installed. The solar panels will provide much-needed electricity to this elementary school in Bumwalukani village in the mountainous region of eastern Uganda.

The CFEBA's participation came through the efforts of EBA member Gunnar Birgisson, who has since joined the CFEBA Board. Gunnar first heard about the AAH at his children's school in Arlington, Virginia, which is also attended by the children of John and Joyce Wanda, emigrants from Uganda to the U.S. The Wandas founded the AAH to provide better educational opportunities for children in the region where they grew up. The school now has 300 students, including both boys and girls, and dedicated teachers and staff. John and Joyce Wanda and the many supporters of the school in Arlington, VA and Uganda have built and run a model school that has lifted the educational standards in the region.

The electricity supply in Uganda is limited, however, with only 300 MW of installed capacity in this country of approximately 30 million people. Rural electricity service is erratic and unreliable. The lack of electricity hampered the operations of the AAH and its related facilities, which include a health clinic serving the community, and securing better electricity supplied became a top priority.

Gunnar volunteered to assist the AAH. After the school's supporters found quotes for equipment procurement and installation from Kenya and Uganda, an application was submitted to the CFEBA requesting \$12,500 in funding for solar panels and related equipment. The CFEBA unanimously approved the request and is very pleased to see the results of its support help schoolchildren in Africa. The CFEBA is grateful to Gunnar for presenting this grant opportunity. Look for pictures of the newly installed solar panels for the Bumwalukani Village elementary school on display at the CFEBA Gala on November 13.



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Charitable Foundation Update continued

CFEBA TO FUND GRANT TO MY SISTER'S PLACE

The CFEBA is delighted to announce that it will fund a previously-announced grant to My Sister's Place, a shelter in Washington, D.C. for battered women and their children. The CFEBA plans to donate \$95,000 to My Sister's Place before the end of 2008, to pay for a high efficiency HVAC system for the shelter's new home. The CFEBA is proud to support My Sister's Place, which first opened its doors in 1979.

CFEBA LAW STUDENT SUMMER INTERNSHIPS

As previously announced, the CFEBA funded internships for three law students at FERC and DOE in the summer of 2008. One internship was in Washington at FERC; the other two were at DOE, one in Washington and one in the Chicago area. The CFEBA looks forward to expanding its summer internship program and it has made tentative plans for internships next summer at the California Public Utilities Commission and the Illinois Commerce Commission, in addition to DOE and FERC. The following reports from CFEBA's 2008 summer interns, demonstrate the value of the internships to future energy practitioners. These reports from the 2008 interns have been edited for inclusion in this newsletter.

Summer Internship at the Department of Energy Office of Chief Counsel

Christina England - Vanderbilt Law School

When I arrived at the Office of Chief Counsel at the Department of Energy, my supervisors said they would treat me like a new hire, rather than an intern, and handed me my first assignment ten minutes after I arrived. My first task was a research project involving the miscellaneous receipts statute. Though I had taken an introduction to Administrative Law, I had not yet had the opportunity to study the "red book" or read Comptroller General decisions. It felt good to apply a tough year of theory and study in an environment that affected real people. I spent most of the summer working on a constitutional analysis of a particular legal issue and I particularly enjoyed this introduction to litigation. A great part of working at DOE was exposure to so many different topics, both legal and non-legal. I was taken on a tour of both Fermi National Accelerator Laboratory and Argonne National Laboratory. At Fermilab, I saw the Tevatron, the world's highest-energy



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The Charitable Foundation of the Energy Bar Association Invites you to its Sixth Annual Fundraising Gala The Power of Giving

November 13, 2008

5:30 to 7:30 p.m.

*In conjunction with the EBA Mid-Year Meeting at
The Capital Hilton
Washington, D.C.*

*Tickets \$100 - \$50 for government employees
(Purchase with Meeting Registration or Separately)*

202/223-5625

Sponsorships \$2000

*Featuring Live Music, Silent Auction, Hors d'oeuvres, Open Bar
Proceeds contributed to energy-related charitable projects*

*Honored Guests of the Gala will be
The Honorable Jon B. Wellinghoff
The Honorable Suedeem G. Kelly
The Honorable Philip D. Moeller*



Charitable Foundation Update continued

particle accelerator, and learned about its many uses—from studying astrophysical matter and making advances in nuclear energy to treating the most severe, inoperable forms of cancer. While touring Argonne, I visited the Advanced Photon Source (APS) and the Argonne Tandem Linear Accelerator System (ATLAS). The most exciting part of the tour was visiting HELIOS, the Helical Orbit Spectrometer, a gigantic magnetic superconductor which was turned on for the first time only a day after our tour. Even though it was not turned on during our visit, the magnetic field was so strong that one attorney's phone lost all of its data and would no longer turn on!

I was welcomed into the Chicago area by members of the Midwest chapter of EBA. They answered my questions about practicing energy law and shared aspects of their own careers. Getting to know these EBA members was a highlight of my summer, and I greatly appreciate their support, encouragement, and friendship. ;;;

Before this summer, I thought energy law covered primarily government regulation and protection of oil and gas companies. Now, I have returned to law school with a much deeper understanding of what energy law entails. I am very grateful for the opportunity to learn and experience so much this summer. Without CFEBA's support, I would not have been able to invest the same amount of time and energy into my DOE internship. I cannot fully express my gratitude nor all that I learned this summer in an essay or letter, but I hope one day to provide the same support to another law student in pursuit of his or her educational and professional goals.

Gaining Exposure to National Energy Law Issues at the U.S. Department of Energy

David Frenkil - American University, Washington College of Law

This summer, with the help of a generous scholarship from the Charitable Foundation of the Energy Bar Association, I worked as an unpaid Summer Intern for the Office of the General Counsel at the U.S. Department of Energy ("DOE"). I primarily worked with Warren Belmar, the Deputy General Counsel for Energy Policy. In his role, Mr. Belmar is the principal legal advisor, on behalf of the General Counsel, to the Secretary of Energy and other senior DOE officials on issues including legislation, regulatory law, fossil energy, energy efficiency, regulatory interventions and power marketing. Throughout my summer at DOE, I had the opportunity to gain exposure to all of these areas.

Two topics on which I spent a great deal of time involved exports of natural gas and the development of electric transmission for renewable energy resources. Through the course of my research, I recognized how rapidly energy law is evolving and how it integrates strong interests of mine, including government policy, business and science. In the coming years, as changes will be made to the way in which energy is produced, distributed and consumed, while the

United States faces the challenges of achieving energy independence, satisfying a growing demand for energy resources and mitigating the effects of climate change, it will be an exciting time to be involved in energy law. The opportunity to work at DOE informed my interest in pursuing a career in, and contributing to, the field of energy law.

Behind the Curtain: My Summer in FERC's Office of the General Counsel

Scott Johnson - American University, Washington College of Law



I must begin this summary of my summer 2008 internship in the Office of the General Counsel at the Federal Energy Regulatory Commission by thanking the Charitable Foundation of the Energy Bar Association and its board mem-

bers for making it possible. Before proceeding, I want to share my reasons for choosing to spend the summer in OGC. First, after six years as a Law Clerk in a law firm's energy regulatory group, I wanted to determine whether public service might be an option. Second, having worked on only one side of the regulatory playing field, I wanted to gain a new perspective on how the Commission fulfills its statutory mandates.

Not long thereafter, I arrived at my workstation one morning to find a case file bearing a cover sheet that designated me as the OGC team leader for a new proceeding. After confirming with my assigned OGC reviewer that my assignment as team leader was correct and that I indeed would lead the preparation of a Commission order, I reviewed the pleadings and began my research. I met several times with the Commission staff assigned to the case as well as my OGC reviewer. Armed with all of their guidance, I prepared an initial draft of the order, only to later face an amendment to the filing and additional responsive pleadings, which required additional meetings and a revised approach to the order. Several weeks later, after numerous conversations with the legal and technical teams, I finished the order, submitted it for and obtained the necessary approvals, and filed it for Commission review. A day or so later, "my order" received five notational votes and was issued by the Secretary, complete with its FERC reporter citation.

Beyond my substantive projects, I participated in a broad range of development activities, all of which substantially enriched my experience. These included informal lunches with senior OGC attorneys during which we discussed our respective backgrounds and interests, Markets Working Group and Pre-Agenda meetings, tours

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FORMER FERC CHAIRMAN JAMES HOECKER CONTINUES TO TACKLE THE TOUGH ENERGY ISSUES

Marcia C. Hooks

Since leaving public service in January 2001, former FERC Chairman James John “Jim” Hoecker has been actively engaged in pursuing solutions to the many difficult challenges facing the energy industry. He is particularly proud of helping to organize and serve as counsel to WIRES, the acronym for Working Group for Investment in Reliable and Economic Electric Systems. Mr. Hoecker explained that it is a non-profit group dedicated to promoting investment in the North American electric transmission network. Mr. Hoecker also is founder and principal of HELP PLLC, Hoecker Energy Law and Policy. Recently, HELP became strategically affiliated with the prominent litigation, business and energy law firm of Husch Blackwell Sanders LLP, where Mr. Hoecker also now serves as Senior Counsel.

Before focusing on his post-FERC endeavors, we discussed the former FERC Chairman’s perspective on his many dedicated years of public service. He proudly pointed out that he has spent over half of his career in public service, 15½ years at FERC. Mr. Hoecker commenced his energy law career with a tour of duty as a Staff Attorney at FERC, 1979 until 1988. He became Assistant General Counsel for Rulemaking and Legislative Analysis and subsequently Assistant General Counsel for Gas and Oil Litigation. Along the way, he served as a gas assistant to Commissioner Matthew Holden, Jr., and a hydroelectric and gas assistant to Commissioner Georgiana Sheldon. He fondly remembers as a Staff Attorney being very much involved in the Commission’s first significant entree into tackling restructuring of the energy industry through Order Nos. 436 and 436-A, which ushered in open access to natural gas transportation.

During his first departure from FERC in 1988, he continued his energy career by

becoming a partner in Keck, Mahin & Cate in Washington, DC. In 1990, he became of counsel to Jones, Day Reavis & Pogue in Washington, DC.



On May 20, 1993, Mr. Hoecker was appointed by President Clinton to FERC as a Commissioner. Mr. Hoecker relates that he was very proud to be a part of the leadership that in April 1996 established Order No. 888, which began the pro-competitive restructuring of the electric industry by making the transmission network accessible on a non-discriminatory basis. With respect to Order No. 888, he commended former FERC Chairman Betsy Moler for spearheading this major achievement.

As Chairman of FERC, beginning on June 19, 1997, he oversaw the implementation of Order No. 888 and came to understand its strength, as well as its inadequacies. Having gained that knowledge, he sought to enhance the operations of the electric market, by undertaking the passage of FERC Order No. 2000, the legislative progenitor for the establishment of the Regional Transmission Organizations (RTOs). He candidly admits that although the RTO model achieved much toward enhancing electricity operations, it didn’t

accomplish as much as he originally anticipated, largely because of its voluntary nature and the focus on emerging energy markets that became extremely troubled in 2001, especially in California. Also, he observes that the emergence of competitive generation and energy trading took the focus off the development of transmission infrastructure, which still remains a challenge.

The former FERC Chairman states, “under my leadership the Commission was able to make some important adjustments to the natural gas open access regime, which had been put in place starting with Chairman Raymond J. O’Connor in 1985 and largely completed during Chairman Martin L. Allday’s term.” That measure is known as Order No. 637, which, he notes, allowed for important incremental changes in the gas transportation and markets. Also, Mr. Hoecker observes that under his chairmanship, the Commission was able to finally come to terms with the contentious Kansas ad valorem tax refund issue and the long-lived Cushman Dam relicensing case. He definitely smiled as he recalled another very memorable accomplishment during his tenure as Chairman when a 17-mile endangered Atlantic salmon spawning [migratory] run was opened up because of the Commission’s bold and unprecedented step of ordering decommissioning of the Edwards Dam along the Kennebec River in Maine.

Mr. Hoecker not only left his imprimatur on the energy industry during his tenure as FERC Chairman, but also under his direction the agency was reorganized and reengineered in many ways through his FERC First initiative. He believes this effort was one of his most interesting endeavors and an important legacy, although he doesn’t underestimate the internal controversy it

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Interview with Former Chairman Hoecker *Continued*

probably caused. Mr. Hoecker notes that it was important for the agency to develop more clearly its administrative mission and practices to enhance its effectiveness and efficiency. FERC First, he recalls, resulted in the new Projects Office, the market oversight function, consolidation of all Commission rate and tariff review functions, establishment of a separate administrative litigation office to make separation of functions clearer inside and outside the agency, the Commission's First Strategic Plan and its first energy markets report.

He forthrightly acknowledges that he learned that it is not always possible to manage a government agency in the same manner that you would a business. Nonetheless he is very pleased that he was able to make significant administrative changes that made more effective use of the agency's personnel and improved how FERC conducted business. He remains effusive in praising the agency's staff then and now, as among the most professional and effective in government.

He pointed out through FERC First, the agency was brought into the digital age by streamlining and enhancing information technology and by initiating electronic filing processes to handle more efficiently the large volume of documents that FERC receives daily. His administrative efforts called for retooling people to encourage them to work together in teams. Mr. Hoecker praised the efforts of Rick Miles, who headed up the Office of Alternative Dispute Resolution, which was also a FERC First Initiative and that, since his return to private practice, the talent of that office has proved useful to his clients in helping to resolve cases short of conventional litigation.

Mr. Hoecker found the Chairmanship presented more challenges than he experienced as a Commissioner not only because of the administrative duties of budgeting and managing personnel, but also in gaining a consensus among his colleagues. This task was particularly daunting because, during the lengthy period when he had only three colleagues, it was often a two-to-two split among the four Commissioners on certain high-profile cases. Mr. Hoecker states that his priority was to reach pragmatic, not ideological, resolutions to problems. That was sometimes very difficult, especially when the California energy crisis happened.

Mr. Hoecker acknowledges, "the Chairmanship of FERC is a very powerful position, because that person sets the agenda of matters heard by the Commission (except for statutory items), when they will be heard, and the policy preferences the Commission will pursue. Like the recent 'bail-out' legislation on Capitol Hill, how-

ever, consensus can be very powerful. If there are events that adversely impact the energy industry, Congress and the industry will look first to the Chairman for his or her opinions and for expert help. The Chairman has to use his or her authority judiciously so that he or she encourages creative and independent thinking, does not discourage the ventilation of differences, and yet is still able to make progress and get orders out."

The former FERC Chairman believes that the Commission process now is somewhat less transparent; remembering the Charles Curtis years (1977-1981), after FERC was established when there was a Commission meeting every week and the public and the industry were privy to some of the differences and the debate amongst the Commissioners on the issues. Hoecker acknowledges he may be alone among his former colleagues in liking the Sunshine Act. He applauds the efforts of current Chairman Joseph Kelliher in his efforts to improve energy markets on all fronts and to articulate a scholarly perspective on the challenges we



face. However, he observed that FERC now holds only one public meeting a month and many more decisions are made without discussion on the consent agenda or notationally. On the other hand, this Commission is more actively engaged in conferences about a wider range of issues, often at the frontiers of the agency's jurisdiction, than any FERC in the past. He acknowledges that because of the large volume of cases the Commission cannot return to the Curtis days yet he believes that the public deserves to hear directly from regulators about core regulatory determinations more than they typically do now.

Former Chairman Hoecker remarked, "FERC has some of the most intelligent and creative talent in government. I know of no challenge or complexity in the energy arena to which they have been unable to find solutions. This is all the more remarkable because of the relative size of the staff." He noted that when he first started at the agency, there were over 1800 employees. However, when he assumed the Chairmanship there were fewer than 1200 employees. Mr. Hoecker points out FERC manages to respond in a very credible and professional manner to enormous responsibilities even though it is much smaller than other independent agencies like the Federal Communications Commission.

After leaving FERC in January 2001, the former Chairman was a partner with Swidler Berlin Shereff Friedman, which is now defunct. During that time, he was also elected to serve on the

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Interview with Former Chairman Hoecker *Continued*

Board of Directors of Allegheny Energy, Inc. (2001 to 2003). He also was a partner with Vinson and Elkins, which he indicated is an excellent Texas firm.

In 2008, Mr. Hoecker launched HELP, his own public policy and law firm. He is very excited that HELP is now affiliated with Husch Blackwell Sanders, a Missouri firm with offices in Washington, D.C. and a strong presence in the Midwest and in London. He indicated that this alliance ensures that the clients of HELP have access to full service and diverse expertise, and it will allow him to broaden his client base in other parts of the country.

While he is pleased with his diverse energy practice, the former Chairman is particularly pleased about his work with WIRES, a non-profit association group formed to promote development of a robust high voltage transmission network in North America. WIRES' members include electric transmission owners (both investor- publicly-and cooperatively-owned), investors, and transmission customers in the North America energy markets. He recently testified on Capitol Hill on WIRES' behalf.

Mr. Hoecker notes that significant strides are needed to address the energy supply issues through the development of "clean" energy resources such as solar, wind, nuclear and biomass, but he believes that it's also critical that the United States takes steps to strengthen and expand the grid to be able to deliver that energy to customers who will typically be some distance from these resources. He foresees that a well planned, reliable, and adequate transmission infrastructure will become a high national priority along with other infrastructure issues, regardless of who occupies the White House in the next four years. He rightly proffers that the issue of transmission development is very controversial because of problems associated with siting facilities and environmental impacts. He does not shy away from these tough issues because he says, "it's important to the economy and, believe it or not, to the environment, and those of us who have experience should keep thinking about solutions to this challenge."

Mr. Hoecker strongly believes that having sufficient energy supply is also a critical issue because demand for power is projected to increase more than 30 percent over the next 20 years. He advocates that implementing conservation measures and striving for more energy efficiency will depend on the right price signals. He further states, "[m]arkets do a good job of this, as demonstrated during the increase in crude oil prices that peaked when gas reached four dollars a gallon. Energy consumer behavior is an important ingredient in any energy policy or plan."

He praised Chairmen Patrick Wood and Joseph Kelliher for
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Commissioner/Chairman Hoecker Dissents (Forthrightly)

"The mantle of major policymaking now shifts to the states and to the U.S. Congress. . . . [R]emarkable and largely unforeseeable changes counsel against the temptation among public policymakers to over-plan and over-prescribe the future of power markets. . . . I suspect that the amount of deference that the Commission provides to the states may be directly proportional to the level of stranded cost recovery that states grant utilities. In sum, the majority's ingenious attempt to federalize stranded cost claims arising from municipaliza- tion, while admirable in terms of the need to resolve transition cost issues expeditiously, is more likely to cause greater uncertainty and more argument about the appropriate standard to apply than it is to promote settlement of the matter." Order No. 888-A, *FERC Stats. & Regs.* Para. 31,048, 30,544-6 (1997).

"What the Order next concludes . . . is nothing short of remark- able: it finds that this Commission . . . is powerless to remedy this vio- lation of Congress' basic mandate that we ensure just and reasonable rates. Such a result is peculiar and inequitable, in my judgment. It defies both logic and common sense to presume that Congress . . . purposefully denied this agency – its delegate – the authority to enforce its will. . . . This is necessarily a derelict view of the statute and I must disagree with it. . . . Rights and remedies must be con- gruent; in other words, a right is no better than its remedy. However mute the NGA may be with respect to the precise factual circum- stances of this case, I believe that, under the NGA, the availability of restitution necessarily follows where a gas shipper's statutory right to a just and reasonable rate for pipeline transportation has been infringed." *Union Pacific Fuels, Inc. et al. v. Southern California Gas Co.*, 76 FERC Para. 61,300, 62,497-8 (1996).

"[I]t is very troubling to me that the majority suggests that it will deny an otherwise lawful service request because it fails to conform to the preconceptions and schedules underlying even incipient and untested state restructuring programs. I submit that this places pri- mary value on market regimentation and predictability, not innova- tion. Or, as Alfred Kahn has wisely observed: 'regulation confront- ed with competition will have a systematic tendency to either sup- press it . . . or to orchestrate it and control the results it produces.' The majority confirms his observation." *City of Palm Springs, California*, 76 FERC Para. 61,127, 61,705 (1996).

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Interview with Former Chairman Hoecker *Continued*

their success in resolving the California energy crisis and taking the heat off the Commission. He adds that, tough as that was, energy issues are not likely to get less complicated. Instead he maintains that they will be more complex and specifically points to the issues of climate change and carbon emissions as challenges that the next President and Congress must address.

I asked Mr. Hoecker did he have more time to pursue his hobbies now that he is no longer in public service. He looked at me and point blankly asked, “[a]re you kidding?” Mr. Hoecker did respond by saying that he takes time to spend with his family, his wife, Rebecca Evans Hoecker, their two children and their three granddaughters. He mentioned also that he gets a few hours to try to perfect his golf game and cook for guests and that he compulsively gardens in the summer. He also discussed his love of history and was elated that he had acquired an original copy of a History of Electricity, written in 1767 by Joseph Priestley, which first publicized Benjamin Franklin’s kite experiment.

The former Chairman, a native of Rhinelander, Wisconsin and a resident of Virginia for 29 years, obtained a B.A. in history from Northland College in Ashland, Wisconsin and an M.A. and Ph.D. also in the same subject from the University of Kentucky in 1970 and 1975, respectively. He earned his J.D. from the University of Wisconsin Law School in 1978. Mr. Hoecker has also taught history at the university level. He is a prolific writer, who has written many energy articles for various publications, and he continues that avocation.

When we started talking about history, he digressed back to his days as FERC Chairman pointing out that under his tenure he established the FERC second floor history gallery bearing vintage pictures of all the former Commissioners and past building locations. He concluded by saying, “I have a personal investment in FERC.” It was obvious to me that he not only treasures his days at FERC, but also that he is deeply immersed in his energy practice and has a passion for pursuing the tough energy issues.

Marcia Hooks serves as Assistant Secretary for EBA’s Board of Directors.

Commissioner/Chairman Hoecker Dissents

“I understand the appeal of longstanding policy. But . . . the longevity of a policy is not necessarily evidence of its merit under current circumstances. . . . As pipelines and utilities begin (as they must) to contemplate the self-promotional strategies needed to succeed in a competitive environment, this Commission should become more (not less) vigilant about what constitutes an eligible cost of doing regulated business.” *Williston Basin Interstate Pipeline Co.*, 72 FERC Para. 61,074, 61,388 (1996).

“[T]he majority appears to allow the judge to re-decide the substantive issues of this appeal. I would hope the Commission could ordinarily provide parties with greater certainty than this. . . . I believe a judge is entitled to take a highly restrictive approach to reviewing an element of a formula rate. . . . [T]he majority is mute and the judge is left alone to draw his own conclusions about the relevance of Southern’s evidence and the proper scope of an ROE proceeding under a formula rate. I would prefer to avoid such ambiguity, particularly if it amounts to an invitation to unnecessary litigation.” *Southern Co. Services, Inc.*, 71 FERC Para. 61,333, 62,286-7 (1995).

“[I]t is highly doubtful that the Commission’s policy of allowing recovery of such contributions in rates was ever a very good idea. That Commission policy has, in effect, allowed ratepayer funds to be used simply to purchase customer good will and employee loyalty, primarily for the benefit of company shareholders.” *Panhandle Eastern Pipe Line Co.*, 71 FERC Para. 61,228, 61,872 (1995).

“The majority of my colleagues chose . . . to embark . . . upon a course of action leading first to a finding that the contract is not an absolute bar . . . to a request for transmission service. . . . [I]f this case does not settle . . . you don’t have to be a weatherman to know which way the wind blows!” *City of Bedford, Virginia*, 66 FERC Para. 61,186, 61,407 (1994).

“A contract should not be read in order to find ambiguity. . . . The drafters of the contracts regrettably furnished no definitions. Their preamble is not descriptive. They were also stingy with section titles and cross-references. But, the resulting untidiness does not give rise to any reasonable reading that Blue Ridge is entitled to replace Appalachian’s power and energy with that of any other seller.” *City of Bedford, Virginia*, 64 FERC Para. 61,381, 63,642 (1994).

“[I]f the Commission had not committed legal error . . . there would be no question that the customers appropriately would have been required to pay Order No. 94 costs The Commission’s assessment of interest charges against the pipelines in these cases is a penalty. Panhandle and Trunkline are left ‘holding the bag.’” *Panhandle Eastern Pipe Line Co.*, 64 FERC Para. 61,218, 62,639-40 (1993).



Interview with Susan Court Continued

first worked on a Delegation of Authority rulemaking. She called that “a great place to start” because it was a way to get to know a wide array of people at the Commission. She told us that she had lots of questions about various roles of Office Directors, and learned that she could call them up directly and they would be very generous with their time. “That set the stage and the tone here for me,” Court declared. She calls this willingness of experts to help out others an appealing aspect that makes FERC “a wonderful place to work.” She encourages people to join the FERC Staff, exclaiming, “I learn something new every single hour!” What’s more, she points out that “we easily affect 5% of the Gross National Product.”

After only eight months, Ms. Court was recruited by the Office of Commissioner Anthony G. Sousa. She came to the attention of the Commissioner, a Hong Kong native who was a Hawaii Bell executive at the time of his FERC appointment, based on her expertise on the Alaskan Natural Gas Transportation Act (“ANGTA”) and System rulemaking. “Tony” Sousa was named by Chairman Butler the lead Commissioner on ANGTA matters and invited Ms. Court to join his Staff. For the first approximately 14 months of her four years in Mr. Sousa’s Office, she was a Commissioner’s Assistant for Hydropower and Electric Rates, and then became a Commissioner’s Assistant for Natural Gas (the field in which she would be most engaged for the next decade). She was his Executive Assistant during Sousa’s brief tenure as Chairman, and then was named to the never-before-filled position of Associate General Counsel for Gas and Oil by Chairman Martha O. Hesse. “At that time gas was King around here,” Ms. Court recalled. “We averaged about 130 Orders every two weeks.” And she alone handled

the press briefings after each of these Commission Open Meetings. From there, she moved on to Associate General Counsel for Pipeline and Producer Regulation, a position that brought Litigation under her

FERC Solicitor's Office has the "best law practice in the whole world!"



supervision.

In 1993 she went to the Solicitor’s Office, eventually moving up to Deputy Solicitor. Among her many accomplishments there was arguing the Order No. 636 appeal before the D.C. Circuit, opposing *cert* petitions of that victory to the Supreme Court, and handling all the Order No. 636 implementation appeals. She kept track of all 1,035 issues raised in those appeals by developing a data base with the help of “some great IT people.” In fact, she related that the D.C. Circuit itself adopted the computer tracking system for its own use. She relished her time in the Solicitor’s Office, calling it the “best law practice in the whole world” because “there is nothing like practicing solely before the United States Courts of Appeal.”

Having shown both great knowledge of substantive matters and great administrative

skills (“I do like to organize things. One of the jokes around here is that I organize closets for fun on weekends!”), Ms. Court was given two portfolios in the spring of 2001 by Chairman Pat Wood III: Ethics Officer and Associate General Counsel for General and Administrative Law. Once again, she found herself where the action was, both with the Enron bankruptcy and the 9/11 terrorist attacks. Ethical behavior in the industry became a key concern because of Enron, and critical infrastructure issues came to the fore because of worry over homeland security. She was the lead on both fronts at once. (One of your reporters recalls attending a non-public technical conference dealing with LNG-related security issues that Ms. Court presided over during that turbulent time.)

Obviously impressed with Ms. Court, in 2004 Chairman Wood named her his Chief of Staff. As Wood was preparing to leave FERC at the expiration of his term in 2005, Ms. Court was given an assignment at the European Union in Ireland. She called this “an opportunity to study EU energy law on the ground.” She worked with the Irish agency equivalent of FERC in: issuing its first natural gas storage license for Marathon Ireland, Ltd.; the creation of a pooling market, including the definition of “market power,” between the Republics of Ireland and Northern Ireland; and the Irish agency issuance of what is here referred to as a NOPR. As the “resident American” at the time of enactment of the Energy Policy Act of 2005, she was called upon to speak before numerous European Union audiences on that legislation. Little did she know that her tutorial on EAct 2005 would be more than an academic exercise! Ms. Court was about to be recruited to take a lead role in effectuating EAct requirements.

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Interview with Susan Court Continued

Office of Enforcement: An Expanding Umbrella of Authority!

Being continuously called to serve, Ms. Court is presently working for her 11th Chairman, Joseph T. Kelliher. George Washington called Thomas Jefferson home from France to be Secretary of State; Chairman Kelliher called Susan Court home from Ireland to be Director of the Office of Market Oversight and Investigation. She helped to reorganize this into the expanded jurisdiction Office of Enforcement, which has been in operation for the last 2 ½ years. (Jefferson founded a political party that is still in existence; perhaps Ms. Court's Office of Enforcement will be equally successful.) Her Office has responsibility for four areas of enforcement authority under EPAAct 2005: million dollars a day penalty authority, wholesale transmission reliability, market manipulation, and transparency.

"We are responsible for enforcement of all the Commission's rules, regulations, and Orders," Ms. Court explained about the Office of Enforcement. While her Office is fairly evenly focused on gas and electric matters as its two major areas, the first settlement to be reached at Enforcement was a hydro matter, the *Taum Sauk* case. As she recounted for us, the penalty authority under the hydro provisions of the Federal Power Act are less than under the electric provisions, and yet there was a \$15 million settlement in that case. So, electric utilities beware!

She called market manipulation a chief area of concern since Commission Rules regarding market manipulation were promulgated in January 2006. She advises that new ground will be broken in this area. Stay tuned!

Making NERC Reliability Standards Mandatory!

Another ground breaking area within her purview is reliability of the electric bulk power system. "The paradigm of enforcement is that the eight regional entities [within the ERO (NERC)] are the first line of defense" for enforcing reliability standards. But she stated that FERC reviews the actions of the reliability organizations to look for consistency of treatment of like cases within and among the regional entities.

In line with that objective, Ms. Court observed that FERC has instructed NERC that it has first responsibility to develop, maintain,

"We are responsible for enforcement of all the Commission's rules, regulations, and Orders."



and oversee such regional entity consistency. She acknowledged that this is a "challenge" since each region has a different makeup. But she has had the opportunity to meet with every region and she affirms that the compliance staffs are committed to meet this obligation as they go from voluntary to mandatory standards. She also pointed out that the Commission has not yet had the opportunity to opine on whether there is a lack of consistency because the public

record (as distinguished from non-public reporting of alleged violations and dismissals of such allegations in closed proceedings) is just beginning to be compiled.

Indeed, she recited that there have only been 37 NERC Notice of Penalty filings at FERC. Of these 37, only two resulted in anything other than zero penalties. These notices were issued in the start-up period June 18, 2007 through December 31, 2007, wherein Ms. Court stated that FERC authorized NERC and the regional organizations to concentrate on the most significant transgres-

sions. In the future, according to Ms. Court, FERC has advised NERC and the regional organizations that the records have to be more fully developed than in this initial start-up period in detailing exactly what happened, the full extent of the investigations, and all the pertinent facts.

To help ensure consistency in the disposition of reliability violation cases, she noted that a Base Penalty Amount Table has been developed. (We found it in "Sanction Guidelines of the North American Electric Reliability Corporation," App. 4B, p. 19, effective January 15, 2008.) As she explained, the Table in effect constitutes a matrix with an x axis labeled "Violation Severity Level" and a y axis labeled "Violation Risk Factor." The regional entities, she elaborated, are expected to use this Table/matrix to determine the correct intersection between these factors by drawing two lines to coincide based on the relative severity and risk levels before assessing a penalty.

Such a consistency matrix has been requested by various members of the industry relating to non-reliability rules that come under the Office of Enforcement. But that is not likely to be achieved, according to Ms. Court, because these other rules come out of Title 18 and the Orders and policies contained in the FERC Reports, which do not lend themselves to the more mechanical process of applying a reliability risk factor and a severity level to the 700 reliability standards overseen by NERC and the regional entities subject



Interview with Susan Court Continued

to FERC review.

Alternative Origins: Deep Throat, J'Accuse, or Stop Me Before I Kill Again!

Ms. Court identified the following sources for initiating action by the Investigations Division of the Office of Enforcement: self-reporting; the Hotline (celebrating its 20th anniversary); referrals by the RTO Market Monitors; referrals from other parts of the Office of Enforcement (such as the Division of Audits, or Division of Energy Market Oversight); referrals by other FERC Offices; and Commission referrals (such as the complaint by Tennessee Gas Pipeline against Columbia Gas Transmission, and the DC Energy complaint).

In order to have a uniform approach to handling these investigations, from whatever source derived, Ms. Court stated that, "We are guided by two policy statements," most notably the most recent one issued in May 2008 that revised the prior statement and is intended to be a stand-alone document. In other words, she calls it "a one-stop shopping policy statement" that lays out the operative factors that the Commission will consider in determining the level of the penalty and credits against any penalty for such things as having a corrective compliance program, having come forward with a self-report, or disgorging resulting undeserved profits (which she conveyed is not considered a penalty, but rather akin to a form of restitution or remedy).

Interestingly, she joked that the expression "level the playing field" is extremely apt for this approach to enforcement actions but that the term has been so overused to explain open access policies over the years that "we can't use that term any more." So instead, she used a different formulation by saying that the policy guidance is designed to make sure that we have

"You will see a theme" in investigation settlements.

"fair and firm enforcement with consistency."

She confirmed that orders on settlements of investigations go through these various policy statement factors to demonstrate how they have been weighed and balanced in reaching an agreed outcome.



While she recognized that there will always be factual differences from one case to another, she was confident that "you will see a theme between the seriousness of the violation, the harm, the kind of company, and the role of senior management" so as to make sense out of the decisions reached. These are not your rate case "black box" settlements!

On the other hand, she elaborated that because most of the sources for initiating investigations are non-public (although the direct referrals contained in Commission Orders are very public), many cases remain non-public. That is, when a non-public referral or initiation of an investigation is undertaken, it is usually kept non-public until the case is either closed due to a finding that there has been no violation, as in many Hotline inquiries, or a settlement is reached and formally approved by the Commission.

Ms. Court further explained that most investigations are purposely kept non-public in order to avoid having companies and employees being "tainted unfairly" if they are eventually exonerated, and also to get more cooperation from the companies being investigated. She stated that this approach is fairly routine among investigative agencies generally. She noted that there can be exceptions to allow the public to know that a particular problem is being studied from all angles, as when the Commission made it known that an investigation was underway involving loop flow around Lake Erie in a NYISO case. She continued that most investigations that are public are those that end in settlement. ("We work out the settlement, and draft the Order.") However, she noted that two hearings initiated by FERC Orders involving Energy Transfer Partners and Amaranth, respectively, are being litigated before FERC Administrative Law Judges. Others that have been publicly opened have also been publicly closed, such as those involving the NYISO ICAP and the DC Energy complaint.

While cases that are non-public from their inception and lead to no findings of fault are never made public, Ms. Court observed that statistics of such cases are compiled, and that the Fiscal Year 2008 (and second) Annual Report will be issued by FERC later this month with the latest such numbers.

The penalties that FERC is authorized under statutes to impose, and that the Office of Enforcement is charged with investigating and making recommendations concerning, are for civil infractions. Ms. Court noted that even before EPA 2005 FERC was empowered to refer cases to the Department of Justice for possible action in the criminal field. (Aside: She has a daughter working as an attorney at Justice.) However, she clarified that

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Interview with Susan Court Continued

EPAAct 2005 has given the Justice Department authority for increased imprisonment and fines. She was quite clear, however, that she stays clear of any such criminal dispositions: "I carry a badge; I don't carry a gun!"

**"I carry a badge;
I don't carry a gun!"**

What Else Do Enforcement Folks Do? They Promote Up-Front Compliance!

These Division of Investigation cases constitute only one area of responsibility within the Office of Enforcement, and, as Ms. Court characterized it, represent the "reactive function" of her Office. That is, the Investigations Division deals with recommending Commission penalties for violations that its investigations show have already taken place (although the major reason for a penalty, she maintained, is to serve as a deterrent against future transgressions by any entity). As she summarized it, at the Investigations Division within the Office of Enforcement, "We are focused more on after-the-fact."

On the flip side, the Office of Enforcement performs what Ms.

Court described as a "proactive function" of ensuring compliance through its three other divisions: the Division of Audits, the Division of Financial Regulation, and the Division of Energy Market Oversight. Taking these one-by-one, she stated that, "In order to conduct audits, it helps to be under Enforcement." This is largely because of the data intensive nature of the Enforcement Office. The same is true with respect to the Division of Financial Regulation, under which the Chief Accountant administers all financial forms. Again, Ms. Court expressed the view that it makes sense that this Division support enforcement efforts. ("We're data junkies!") And the Division of Energy Market Oversight has interaction with RTOs, their Market Monitor Units, and both gas and electric industries with respect to pricing issues.

"We're data junkies!"

This is a similarly fact-intensive area, where documentation is gathered to assist in enforcing compliance. (Another aside: She loves forensics and first became interested in the law by watching Perry

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Susan Court Personified

If You Had Spare Time: Work more on genealogy, and visit grandson in Pasadena.

Favorite Books: *The Scarlet Pimpernel* and *To Kill a Mockingbird* (in that order).

Nightstand Reading Material: Several histories of countries and areas (Balkans, Spain, Austria), a variety of fiction and non-fiction, and a Sony reader for traveling containing 33 murder mysteries (she has read all of Michael Connelly).

Favorite Movies: *Henry V* and *Glory*.

Motto: "There is no limit to how far a person can go if he doesn't care who gets the credit." (Rough paraphrase of Ronald Reagan.) "Be willing to take the blame, and don't try to pass the buck."

Favorite Word: "Please."

Least Favorite Word: "Booger." (Tony Randall called this the ugliest word in the English language.)

Turn-On: Kindness.

Turn-Off: Hatred.

Sound You Love: Classical music.

Sound You Hate: Anguish in the voice of any of her children (no matter how old they get).

Walter Mitty Job Aspiration: Teaching (Has taught high school, college, and law school).

Job You Would Not Want: Plumber.

Would Like to See on an International Bank Note: Pope John Paul II.

Favorite Characters in History: Abraham Lincoln, Eleanor of Aquitaine, Pope Gregory, and St. Thomas More.

Wants to hear on Arriving at the Pearly Gates: "Come in!"



Interview with Susan Court *continued*

Mason.)

Thus, the overall focus of the Office of Enforcement according to Ms. Court is compliance. Moreover, she continued that the Office of Enforcement works with all the other Offices (such as Energy Projects) to promote compliance. In that connection, Ms. Court explained that she and her Enforcement Staff, along with that of other Offices, preside over technical conferences that deal with the subject matter over which compliance is at issue, including the promulgation of new rules with which industry participants may be required to comply. Indeed, the Office of Enforcement has a lead role as to rulemakings that concern enforcement matters, including Standards of Conduct, Order No. 670 Market Manipulation and Transparency Initiatives, and Order Nos. 704/704-A concerning Form 552 Annual Reports by buyers and sellers of natural gas and pipeline posting.

All of Ms. Court's many-faceted, energy-related experiences naturally build on one another in terms of informing her judgment concerning these significant matters under her responsibility. For example, she credits her appellate advocacy with giving her a deeper understanding of how to craft an agency decision to survive judicial review by making sure that record evidence and reasoning is clearly laid out in the orders and, thus, among other things, can be pointed to at oral argument. She has had direct responsibility for Commission order-writing as an advisory staff managing counsel, appearing before the Commission countless times to present draft Orders and Final Rules. As discussed above, she still provides guidance and advice on proposed rulemakings on matters for which her Office has responsibility. Plus she has had managerial responsibility over complex litigation. All told, Susan Court has had a well-rounded career in all aspects of FERC practice to stand her in good stead for the path breaking job at hand. Hopefully, a 12th and even additional Chairmen will call upon her good services!

IN MEMORIAM: PAUL E. NORDSTROM

We lost former Energy Bar Association President Paul E. Nordstrom, one of our finest and bravest colleagues, on August 15, 2008. Paul was brilliant, gracious, and possessed an indomitable spirit.

Paul was born in St. Louis, Missouri and lived most of his childhood and teenage years in Cedar Rapids, Iowa. He is a graduate of George Washington Senior High School of Cedar Rapids.

Paul earned his bachelor's degree from Middlebury College in Middlebury, Vermont and his Juris Doctor from New York University School of Law. Upon his graduation from law school, Paul moved to Washington, D.C. and began a twenty-five year practice in energy law. He was a partner with the firms of Sullivan & Worcester and Verner, Liipfert, Bernhard, McPherson and Hand.

Paul loved baseball, basketball, running, skiing, and being with his family on family vacations and outings. He attended Potomac United Methodist Church.

Paul is survived by his loving wife, Kathleen Henry, his children, Soren, Neysa, and Skyler Nordstrom of Potomac, his parents Roy and Delphine Nordstrom, and brothers Karl and David Nordstrom of Michigan.

In addition to his leadership of the Energy Bar, Paul was the very first President and Co-Founder of our Charitable Foundation and this was one of his greatest professional legacies. The Charitable Foundation has created a service award in Paul's honor.

He also was a relentless champion for the City of New Orleans in energy regulatory matters, and helped save New Orleanians hundreds of millions of dollars during his distinguished career. In the aftermath of Hurricane Katrina, he helped rebuild the destroyed electric and gas systems and was part of a team of lawyers that was called "Heroes of New Orleans" by the local media.

Socrates once wrote that "one cannot know until the evening how splendid the day has been." Paul was taken from us way too soon—but he was an elegant man and he lived his life in a splendid way.



FELJ Update: Mogel Senate Internship Once Again a Success, plus a Preview of the Energy Law Journal's Upcoming Issue

Richard G. Smead and Richard L. Roberts

The Foundation of the Energy Law Journal has continued to work in conjunction with the University of Tulsa Law School to provide an annual summer internship opportunity for Tulsa law students in Washington, D.C. As was noted in the Summer Newsletter, Christopher Brecht was this year's Mogel Intern at the Senate Committee on Public Works, Energy and Environment. This internship, named in honor of our friend and colleague Bill Mogel, the founding editor-in-chief of the *Energy Law Journal*, provides tremendous opportunity to participate in the workings of Capitol Hill.

Christopher worked for the minority office of the Committee, interacting directly from time to time with the minority leader on the Committee, Senator Jim Inhofe (R-OK). He was directly involved in articulating the minority's positions on Lieberman-Warner, the landmark carbon-policy bill considered this year, up to the point of its being voted down in the Senate. Then he was called upon to draft a massive spreadsheet of the many amendments proposed to the bill, so that the Committee could be prepared for the next round of climate-change debate. Christopher was also heavily involved in researching and drafting white papers on multiple environmental and infrastructure issues, from nuclear power to deforestation, and including analyses of various environmental movements and their funding.

Overall, the combination of an exciting time on the Hill and the opportunity to spend a summer in Washington itself was a great success for Christopher. He summed it up best: "I loved my time in D.C., both on the job and off, and I couldn't be happier with the opportunity that FELJ gave me. Thank you very much. I can only hope that I represented FELJ in a way that would make the organization proud of recommending me for this position." Elisabeth Myers, President of the Foundation, shares Christopher's enthusiasm: "By providing these internship opportunities, the Foundation is helping to cultivate a generation of

young lawyers who will enter the energy bar enthusiastic and experienced. Christopher is a fine example of the kind of success the program regularly achieves."

Meanwhile, be sure to look for the next issue of the *Energy Law Journal*. Volume 29, No. 2 will be packed with very timely articles on power, gas, nuclear, carbon, and renewables issues, including information and advice on the negotiation and execution of various types of energy contracts. Specifically, we're honored to have Senior Judge

Cudahy of the Seventh Circuit, examining the evolution away from hydrocarbons, FERC Commissioner Wellinghoff and his co-authors examining regulatory support of hydrokinetic energy development, and a role-playing exercise in which experienced practitioners demonstrate the negotiation of a master agreement and structured transaction. Bob Fleishman, the Editor-in-Chief, commented on this issue, "As always, we are delighted at the level of effort and expertise that comes forward to make the Journal possible. This issue exemplifies the

Journal's successful commitment to be in the forefront of the current issues in a rapidly evolving industry." Volume 29, No. 2 is set to be released in mid-November.



Mogel Intern, Christopher Brecht and FELJ President Elisabeth Myers



Foundation Boards Gather to Honor Mogel Intern at Jones Day



President's Message Continued

As we hope you would agree, there are multiple benefits to membership. Members receive timely notice of all of our programs, preferred registration fees and preference in the event we need to limit program attendance. The EBA Directory and Job Bank are available exclusively to members. Members receive a subscription to the Energy Law Journal at no extra cost. Every member is invited to participate in any of our six regional chapters and our twenty committees, which provides the opportunity to help organize programs on the topics members find of interest. And unlike many other bar associations, we do not charge extra for joining committees or chapters. The most important benefit – based on what our members have told us in surveys – is networking. We have over 2500 members, including decision-makers, new practitioners, attorneys, economists, engineers and representatives from multiple disciplines and organizations.

EBA relies on the broad diversity of talents and interests of its members to stimulate the best debates, generate the best ideas and provide all of us with a better professional network to draw upon to serve our clients and constituents. Moreover, in this time of financial stress, we know that you and your organization will become more cost-sensitive. As we struggle to hold the line on fees despite our growing costs, maintaining and growing our membership helps spread our fixed costs for staff and office space over a wider group. You can expect to see increased fees for non-member participation in EBA activities over the next year, but we will maintain preferred rates for EBA members and do our best to keep them as low as possible.

To help EBA stay strong and continue to improve in its ability to meet your needs, please meet our “one new member” challenge. Thank you for your help!

For on-line registration and dues information, go to www.eba-net.org — “Membership Information”



CFEBA Update Continued

of the Market Monitoring Center and Reliability Monitoring Center, FERC 101 from the Office of Enforcement and FERC 102 with department heads from around the agency, training workshops on subjects from drafting Commission orders to the Commission's new No-Action Letter process, and several Commission meetings.

In late June, interns from across the agency were treated to a "Friends of the Court" tour of the Supreme Court. In addition to the areas open to the public, our guide showed and described to us the Conference Rooms and Supreme Court library. We also enjoyed a comprehensive presentation in the Courtroom on the history, architecture, and art of the Court, Supreme Court practice, and the American legal system generally.

I would not change a single thing about my experience in OGC, and have returned to work and school with a new perspective on federal energy regulation and the Commission. The Commission is filled with exceptional people, and it was truly a privilege to work among them. With some luck, our paths will cross again during what I hope will be a long career in the energy field. I am most grateful to the CFEBA for funding my position, to the attorneys in OGC for showing me the ropes and keeping me from getting tangled in them, to the OGC intern coordinators for available for questions and working so hard to make the program run smoothly, and to the partner for whom I work at the law firm, for creating an environment in which I could develop the skills I needed to get the most from my experience at the Commission.

Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

"[I]ntricate relations between economies of scale and scope, contracting costs, and free entry will complicate the task of moving gas and electric markets from regulation to competition. As deregulation progresses, we can expect a prolonged period of instability as firms experiment with production, product offerings, marketing techniques, and contracting methods. Regulatory commissions will likely continue to play a prominent role as this industry evolution occurs. It is probably best, therefore, not to view deregulation as a withdrawal of government from utility markets, but rather as a shifting of responsibilities. Where yesterday's regulatory commissions acted principally as a mediator between a protected monopolist and consumers by taking a relatively active role in approving investments and setting prices, tomorrow's regulators will write, monitor, and enforce rules to govern the new competition in all its possible dimensions. They will continually be called upon to assess a firm's conduct in terms of its efficiency effects and market power potential and adopt rules accordingly. This shift in regulators' roles may not, in the end, represent a reduction in government's role in gas and electricity markets."

Roger Ridlehoover, *The Role of Entry in Deregulating Gas and Electricity*, 19 ELJ 307, 329-30 (1998).

Twenty Years Ago

"The Canada/U.S. free-trade regime will regulate and, ideally, eliminate economic barriers to trade, including tariffs, non-tariff barriers and other economic irritants in the trade relationship.

The provisions of the FTA applicable to each country are not necessarily mirror images of the other. A significant aspect of the negotiations was the inequality of the two nations in their respective market sizes and economic strengths. A guaranteed open market between the two nations without other concessions from Canada would not have been acceptable to the U.S. Congress, since Canada is effectively gaining access to a market ten-times the size of its own and the U.S. to one of only one-tenth the size of its domestic market. In exchange for assuring continued open access to the larger American market to Canada, the U.S. obtained concessions in other areas such as American access to Canadian investment and financial markets, automotive policy, trade in services and energy policy."

Shelly P. Battram and Reinier H. Lock, *The Canada/United States Free-Trade Agreement and Trade in Energy*, 9 ELJ 327, 332 (1988).



Upcoming Events

**Wine & Cheese Reception-hosted by
the Young Lawyers Committee**

**November 12, 2008
Brasserie Beck
Washington, D.C.**

Mid-Year Meeting

**November 13-14, 2008
The Capital Hilton
Washington, D.C.**

**Charitable Foundation Sixth
Annual Fundraising Gala
*The Power of Giving***

**November 13, 2008
The Capital Hilton
Washington, D.C.**

EBA Western Chapter Meeting

February 27, 2009

EBA Midwest Chapter Meeting

March 5, 2009

EBA Primer Meeting

**April 22, 2009
Reagan Building & ITC
Washington, D.C.**

Sixty-Third Annual Meeting

**April 23, 2009
Reagan Building & ITC
Washington, D.C.**

*For more information on any of these events, please contact
Michele Duehring at 202.223.5625 or michele@eba-net.org.*

News Bulletin Courtesy of FERC Staff

***FERC Staff is alerting the
EBA about FERC's upcoming
December 3rd technical
conference on E-Filing
requirements pursuant to
Order No. 704, and has
provided us with their link:
[http://elibrary.ferc.gov/
idmws/common/opennat.a
sp?fileID=11837218](http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=11837218).
for members to follow up.***

We appreciate this heads-up!

ABOUT THE ENERGY BAR ASSOCIATION: EBA is a non-profit voluntary association of attorneys, non-attorney professionals and law students whose mission is to enhance the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies. Established in 1946 as the Federal Power Bar Association, the Association generally was focused on those lawyers practicing energy regulatory law at the federal level. In 1977, the organization changed its name to the Federal Energy Bar Association to reflect the name change of the Federal Energy Regulatory Commission. Today, the Energy Bar Association is an international, non-profit association of attorneys, non-attorney professionals and law students active in all areas of energy law. It has approximately 2,500 members, six formal chapters in Houston, New Orleans, Midwest, Southern, Western and Northeast regions of the U.S. and an increasing number of members across the United States and Canada.

DIVERSITY POLICY STATEMENT: The Energy Bar Association is committed to the goals of fostering an inclusive and diverse membership and increasing diversity across all levels of the Association, so as to reflect the diversity of the energy industry and the Nation as a whole. Attorneys, non-attorney professionals in the energy field and law students are welcome to join our ranks regardless of race, creed, color, gender, ethnic origin, religion, sexual preference, age, or physical disability and are encouraged to become active participants in the Association's activities.

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