

President's Message



As you will see in this newsletter, EBA members have been remarkably active since the last newsletter. I hope you have found the time to participate and take advantage of the many opportunities that have been offered and urge you to participate in future events, including the upcoming Annual Meeting on April 25, preceded on April 24 by the FELJ reception in honor of the FERC Administrative Law Judges, and followed on April 26 by the CFEBA's Fourth Annual Charitable Golf Tournament.

For those members with energy practices outside of the Washington D.C. beltway, there was a Western Chapter Conference in San Francisco, a Midwest Chapter conference in St. Louis, and a Chapter lunch meeting in Houston. Also, members across the country were able to participate in six Committee brown bags, in person or by phone. Chairs and Commissioners from five states participated in the San Francisco and St. Louis meetings. FERC Chairman Kelliher reviewed with the Western Chapter electric industry progress since the Western energy crisis. FERC Commissioner Wellinghoff spoke to the Midwest Chapter about current priorities of the Commission and

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FERC Commissioner Philip D. Moeller: Consumers Are His Priority; Competition His Objective; Reliability, Safety, Adequacy, and Price His Foremost Concern



The Only Non-Lawyer Commissioner, and a First-Time Regulator, This Star Debater Brings a Fresh Perspective out of the Northwest Ranchlands and the Canneries of Alaska

Gary E. Guy and Channing D. Strother

Sitting across from Federal Energy Regulatory Commissioner Philip D. Moeller in the Commission Library on the 11th Floor of the agency, *EBA Update* reporters Gary Guy and Channing Strother (aka "Walter Lippmann and Walter Winchell") were keenly aware that the hour's allotted time could easily be interrupted by an aide rushing into the room with an announcement that the Commissioner's wife had gone into early labor. While the birth of the twins was not scheduled for another 10 days or so, they knew that infants sometimes have their own timetable. Fortunately, all remained calm, and the interview went to its conclusion without any such development. Indeed, the reporters' concern on this score was not shared by an extremely

relaxed, effusive, and engaging Commissioner Moeller, as can be seen by tuning into the video of the interview, available on the EBA website, www.eba-net.org.

Man on the Move: Election Loss Leads to Eventual FERC Appointment

Mr. Moeller is no stranger to Senate Committee Hearing Rooms. However, sitting at the witness table under the klieg lights as President Bush's nominee to FERC and being grilled by the Senate Energy and Natural Resources Committee was an entirely new experience. Previous to this, he had been engaged in Senate business as a member of Senator Slade Gorton's Staff. Senator Gorton has the

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American Public Power Association

Here is the fourth in our series, briefly looking at various trade associations that address particular energy-related needs of their members.

The American Public Power Association is the trade association that represents the interests of more than 2,000 community- and state-owned electric utilities and their 44 million consumers. APPA's policy positions are developed by its membership through the drafting and passage of resolutions, which are considered at the APPA Legislative Rally held in Washington every spring and at its National Conference held in late June. APPA's current advocacy priorities include:

The Electricity Marketplace

Almost all public power systems purchase some of their power supply on the wholesale market. Two-thirds of them do not generate any of their own electricity, instead relying on the wholesale market exclusively. Ensuring opportunities to secure reasonably-priced and reliable wholesale power is therefore a high priority. APPA actively advocates before the FERC on a variety of wholesale market-related issues, including open access transmission terms and conditions, mandatory reliability standards, market-based rate policy and merger policy.

In 2006, APPA launched its Electric Market Reform Initiative (EMRI) to address potential market failures and other serious challenges facing wholesale markets. APPA has funded through EMRI a substantial number of analytical and research studies of wholesale markets, and plans to work with experts, other stakeholders and policy makers to develop policy proposals for reform.

Environmental Protection and Energy Efficiency

In March 2007, APPA members adopted unanimously a new resolution on climate change, urging Congress to "consider carefully all solutions for addressing climate change" and to incorporate 10 principles in any new federal policy designed to reduce emissions of greenhouse gases. The principles were developed by APPA's CEO Climate Change Task Force, which was formed to provide guidance to APPA members and to Congress on this important issue. The Task Force intends to further refine APPA's policy before the 2007 National Conference this June.

Coal Rail Transportation

Coal fuels one-third of the nation's power supply, but monopoly practices of the nation's major railroads artificially increase its price and threaten deliveries to power plants. Rail customers across the electric utility industry and other vital sectors of

the economy have united under the banner of Consumers United for Rail Equity to support reform legislation and regulatory changes. APPA and its members are active partners in the effort.

Keeping Communities Connected

More than 700 public power systems offer internal or external community broadband services to their communities. APPA advocates that as Congress makes changes to existing communications laws, it should ensure that cities and towns will be able to own and operate broadband infrastructure and services in the public interest if their citizens so desire.

Interested in learning more about APPA? Connect to <http://www.APPAnet.org>, or contact EBA member Sue Kelly at 202-467-2933, or skelly@appanet.org.

Houston Chapter Expands Board; Plans May Event

Jason F. Leif

The Houston Chapter has been very active over the last few months, spurred on by the appointment of a new, larger Chapter Board. Two of those new board members, Deanna Reitman and James Cargas, did an outstanding job putting together the first of what we hope will be regular Houston Chapter networking happy hours. Harlan Murphy, another new board member, lined up his firm, Sutherland Asbill & Brennan, as an event sponsor. Approximately 35 people attended the happy hour. In March, the Houston Chapter held its first luncheon meeting of the year, entitled *The Energy Compliance Function*. Kathleen Magruder of CitiGroup Energy Inc. and Peter Rodgers of Sutherland Asbill & Brennan presented to 45 attendees and addressed some of the fundamental elements of an energy compliance function (how do you build it; what do you do) as well as some of the specific legal principles it should address. Next up for the Houston Chapter is a luncheon on May 2, which will feature Commissioner Spitzer's views on the industry and the FERC's regulation.

Mr. Leif is President of the Houston Chapter.



New Orleans Chapter Program Focuses on Hurricane Insurance

The New Orleans Chapter sponsored a program in October 2006 on Insurance for the Energy Industry in the Wake of Katrina and Rita. The presentation was made by leading authorities on insurance underwriting and placement, claims adjustment and litigation involving energy coverage. The program was very well received. The transcript of the program will be published in the Spring edition of the *Energy Law Journal*. Pictured are three of the speakers (left to right), MARK ROBERTON, Director of Risk Management for Nexen, Inc., an independent Exploration & Production company based in Calgary, with operations around the world, VALERIE CUSANO, President of Iridium Risk Services, a retail insurance brokerage firm based in Calgary, which specializes in the provision of insurance and risk management expertise for the energy industry, and SIMON PRINGLE, a Director and founding member of Newman Martin and Buchan Limited, (NMB), a wholesale insurance brokerage firm based in London, England.



CFEBA Helps New Orleans Habitat for Humanity

The recovery in New Orleans from the devastation caused by Hurricane Katrina is still ongoing. Habitat for Humanity is helping to rebuild housing for families who lost everything in the hurricane. The CFEBA recently donated \$20,000 to the New Orleans Habitat for Humanity to further their efforts. The money will be used for energy saving materials, such as insulation. Pictured (left to right) is Gina Stilt, fundraising coordinator for the New Orleans Habitat for Humanity and Stacy Brown, president of the New Orleans Chapter of the EBA.



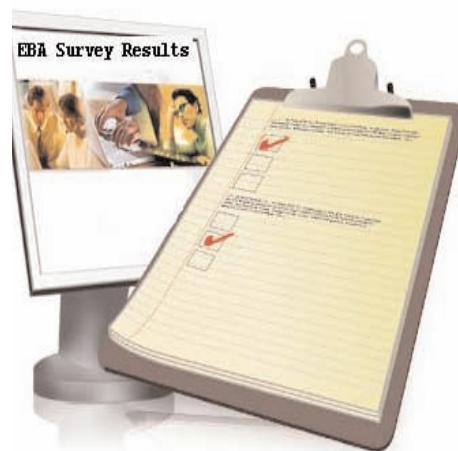
Survey Results Available on EBA's Website

Marcia C. Hooks

The Energy Bar Association is pleased to announce that it has completed its online survey and telephone follow-up survey of its members. We are very grateful for the EBA membership's widespread participation, thoughtful and insightful comments.

BTI Consulting Company, a marketing research firm from Wellesley, Massachusetts, which assisted EBA in designing and implementing the survey, has compiled and analyzed the survey responses and prepared an Executive Summary of the results. The Presidents of the EBA, Foundation of the Energy Law Journal and the Charitable Foundation of the Energy Bar Association responded to the Executive Summary, outlining the leadership's plans in response to the findings of the survey. The Executive Summary, Response of the Presidents to the Executive Summary along with a more detailed presentation of the survey results prepared by BTI will be available on EBA's website very shortly.

Ms. Hooks is a Board Member of the EBA.



From Skadden and Back Again: Thoughts of Former FERC Commissioner Naeve

Adrienne E. Clair

Former Commissioner Clifford “Mike” Naeve has gone both very far and not far at all since his term with the FERC. Naeve thoroughly enjoyed his term as a FERC Commissioner and recalls that he took to it “like a fish to water,” which explains why in the years since his term ended in 1988, Naeve hasn’t strayed far from his FERC roots. He currently heads the Energy Practice Group at Skadden, Arps, Slate, Meagher & Flom LLP, the firm to which he returned upon leaving the Commission.

Getting his feet wet was perhaps the toughest aspect of Naeve’s experience as a FERC Commissioner. He recalls that his transition from private practice into his seat on the Commission was a swift one. When Naeve agreed to be sworn in on the day that he received the phone call, he had no idea that would be his last day at Skadden. Yet he says getting up to speed on the volume of material that had to be absorbed in order to do well at his new job was something that’s likely difficult for any new FERC Commissioner. “The first six months were among the most difficult in my professional life just because there was so much to be learned,” says Naeve, “but I also learned a great deal about myself and how I felt about the issues that were before the Commission at that time.”

One of the most significant issues before the Commission during Naeve’s term was restructuring the natural gas industry. Order No. 436 was issued in October 1985, just before Naeve began his term in November, 1985. The one thing that Naeve concedes kept him up at night was the issue of take-or-pay contracts. After the issuance of Order No. 436-A, Naeve recalls that pipelines felt that they were left in the untenable position of having an obligation to purchase while facing customers who had been relieved of their minimum bill obligations. He notes that the Natural Gas Policy Act provided “somewhat mixed signals” on the issue and that while pipelines looked to FERC to amend contracts that were no longer just and reasonable, producers argued against such abrogation of existing contracts. The remedy? FERC issued its Order No. 500, a remedy which Naeve was very involved in crafting and which he surmises “didn’t satisfy anyone.”

Even with these difficult issues, Naeve believes that the work of his Commission, led by former Chairman Martha Hesse, was

pioneering in many ways. According to Naeve, “we were just starting to formulate principles that are still being used at this time, like when do you regulate? What principles need to be in place in order to make the decision whether to regulate prices or let them be set by the market? How much competition is sufficient to get just and reasonable prices and what can the FERC do to engender that level of competition?” Given the statutory framework, Naeve still believes the Commission did a good job in

getting the ball rolling to inject competition into the natural gas industry. These same principles, he says, led the Commissioners during his term to begin thinking about ways to “unleash competitive forces” in electric markets.

Naeve also believes that many of the same challenges facing the Commission today existed during his term. For example, he recalls that when it came to natural gas industry restructuring, there was a great deal of distrust of the FERC by state regulators, even though he thinks the same regulators from whom FERC received a “fairly frosty reception” during his term would now agree with the outcome of Order Nos. 436 and 500. He also recalls the need to foster and maintain a beneficial relationship with



Take-or-Pay, without reciprocal minimum bill obligations, kept him up at night.

Congress. While Congress may have recently taken a more active role in FERC matters, Naeve says that as a former Hill staffer (he had been Senator Lloyd Bentsen’s Legislative Aide), he made a point of reaching out to the Congress. “When I arrived at the FERC, there was the perverse situation of surplus natural gas and rising prices that were being propped up by regulation and contracts that afforded producers most favored nation status with regard to prices. Since we were working to achieve a competitive market where surplus supplies should produce lower prices, Congress was willing to take a wait-and-see attitude and allow [the FERC’s restructuring regime] to work.”

Since leaving the Commission in 1988, Naeve has continued to work on energy matters, and has often been called to testify before Congress. In order to gauge his current positions, I asked Naeve whether he still believes in the following principles, as he testified in 1999 before the House Judiciary Committee: (1) the FERC should have eminent domain and siting authority over

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Thoughts of FERC Commissioner Naeve continued



interstate electric transmission facilities; (2) FERC jurisdiction should extend to transmission facilities owned by government-controlled utilities, such as municipal entities; (3) the Tennessee Valley Authority, Bonneville Power Administration, and federal power marketing agencies should all be required to transfer control over their transmission facilities to a FERC-approved RTO; and (4) Congress should eliminate duplicative federal review of electric utility mergers by the DOJ/FTC and the FERC. While he doesn't feel quite as strongly on all of these issues, Naeve's general position has not changed. When it comes to the bulk electric transmission grid, Naeve says that he simply has not heard any public policy against FERC jurisdiction that makes any sense. He believes that the benefits of an RTO, where one already exists in a region, should be extended to include the transmission facilities of PMAs and still thinks that for utility mergers, "a single entity with a more consistent methodology would help solve the problem of the potential for competing methodologies and inconsistent remedies, which makes it more difficult to plan and execute transactions."

It's this kind of in-depth analysis and problem-solving that led Naeve back into private practice. Naeve said he is most satisfied by the opportunity to delve into issues more deeply than he could as a FERC Commissioner. Notably, Naeve recalls working on the first market-based rate tariff and open access transmission tariff for a public utility, as well as drafting the first tariff for network transmission service. When asked what gives him the greatest pride, Naeve quickly responds that he is most proud of the talented and enjoyable colleagues that he has assembled at Skadden.

As for the current state of the industry, Naeve admits that even with his belief in competition, there exists a stalemate in terms of an understanding between market participants and the FERC on what needs to be done to make sure markets are working as efficiently as possible. Progress, of course, is not always linear.

Ms. Clair is Assistant Secretary of the EBA.

Commissioner Naeve Dissents (Sparingly)

"The Commission is entertaining a new approach to rate review – that of relying on market forces to support a finding that rates are just and reasonable. I appreciate the majority's desire to have before the Commission an initial decision addressing Natural's proposed rates before those rates become effective. Because we may be charting untested waters, however, I believe that it is improvident to impose upon the participants and the administrative law judge a procedural schedule that does not provide ample time for the development of the most complete record possible. . . . [W]e must have before us a comprehensive record. Reasoned decision-making demands no less. I am concerned that the procedural schedule adopted by the majority will not provide sufficient time to develop that record." *Natural Gas Pipeline Co. of America*, 41 FERC Para. 61,119, 61,293-4 (1987).

"I have concluded that certain changes and modifications are needed to ensure that we do not frustrate the goals and purposes of that order. I have enumerated some of my concerns Because I believe that the Commission should address these and other problems on rehearing of Order No. 500, I feel that it is premature for the Commission to begin clarifying the regulations as promulgated. . . . In my opinion, the exemption should apply to gas which has been permanently released from the contract even if other gas continues to be subject to that contract. Therefore, I dissent from this portion of the clarifying order." *Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol*, 41 FERC Para. 61,025, 61,069 (1987).

"I part company with my colleagues to the extent that they have elected to address the jurisdictional issues raised by the Southern Companies in their petition for declaratory order.

The exercise of primary jurisdiction is an issue committed to the discretion of the Commission. We must proceed with extreme caution when requested to assert primary jurisdiction regarding a contractual dispute. The Commission has jurisdiction over tens of thousands of contracts. If we do not exercise restraint with respect to primary jurisdiction in such cases, we will find our resources increasingly committed to refereeing parties' contractual disputes and our fundamental regulatory mission jeopardized. . . . [T]he instant contractual dispute between Gulf States and Southern Companies reveals far from a compelling case for the assertion of primary jurisdiction. . . . Absent a compelling case for the assertion of primary jurisdiction, I believe the Commission should protect its limited resources and decline to interject itself into contractual disputes. For that reason, I would deny Southern Companies' petition for declaratory order." *Gulf States Utilities Co. v. Alabama Power Co.*, 37 FERC Para. 61,256, 61,655-6 (1986).



Midwest Chapter Efficiency and Reliability Conference

A Great Success

Christine F. Ericson

The Midwest Chapter of the Energy Bar Association held its tenth annual Midwest Energy Conference on March 6-7, 2007 at the Chase Park Plaza Hotel in St. Louis, Missouri. The conference focused on recent developments in energy policy and the impacts on the Midwest. The Honorable Jeff Davis, Chairman of the Missouri Public Service Commission, (MPSC) welcomed the Midwest Chapter with an overview of key energy issues facing the Midwest. EBA President David Doot recapped EBA events over the year, highlighting the Midwest Chapter's fundraiser held in conjunction with last year's regional conference in Chicago that raised money to benefit low income families with energy needs through Illinois LIHEAP. The Honorable Jon Wellinghoff, FERC Commissioner, presented the keynote address. He discussed the importance of efficiency and demand response for optimizing the "most complex machine in the world," the U.S. electric system, stressing that in the push for building new transmission infrastructure, consideration should be paid to whether the proposals utilize the best available technology for optimizing efficiency.

The U.S. electric system called "most complex machine in the world" by FERC Commissioner Jon Wellinghoff.

The first panel, moderated by Marline Breece, addressed demand-side management and demand response. The Honorable Robert F. Lieberman, Commissioner, Illinois Commerce Commission, and co-chair of the Organization of MISO States Midwest Demand Response Initiative, led off the discussion, explaining the need for price-responsive retail load in organized wholesale electricity markets. Sherman Elliott, Manager, State Regulatory Affairs for MISO, provided an overview of the MISO DR Taskforce developments in both the day ahead and real time energy markets, as well as in MISO emergency procedures. Phil Giudice, Senior Vice President, EnerNOC, explained how DR is having a material impact and adding value to the system. Robert G. Mork, Deputy Consumer Counselor for Federal Affairs, Indiana Office of Utility Consumer Counselor, highlighted Indiana pilot programs and suggested that smart metering may require utilities to upgrade billing systems and software integration to process hourly data instead of monthly readings.

The second panel, moderated by MPSC Chairman Jeff Davis, discussed the Midwest ISO and PJM and how those RTOs are meeting customer needs. Maureen Borkowski, Vice President, Ameren Corp., provided an overview of Ameren's experience within MISO, reporting that after a rough start and 22 months of operations, the Day 2 energy market is operating more smoothly – with less volatility in LMPs. The Honorable David Hadley, Vice President, State Relations, MISO, and former Commissioner, Indiana Utility Regulatory Commission, explained the benefits found in MISO's recently released ICF Study, as well as those they expect to see from the implementation of the Ancillary Services Market. James Dauphinais, Brubaker & Associates, presented the large industrial end-use customer perspective and noted that there still is a disconnect between buyers and sellers in the markets. W. Scott Miller, III, Vice President, Regulatory Affairs, Constellation New Energy, asserted that there are measurable RTO benefits, pointing to his assessment that real time reliability improved with the advent of Day 2 markets. He also stressed the importance of transparent pricing and reliable operations for any wholesale market to be successful.

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Midwest Chapter Meeting **Continued**

Tom Casten, Chairman, Recycled Energy Development LLC, presented the luncheon address, providing his innovative perspective on how to best satisfy Midwest electric load growth. He suggests that the best option for new generation is local generation that recycles waste energy.

The next panel tackled the industry's growing transmission expansion concerns. The Honorable Charles E. Box, Chairman, Illinois Commerce Commission, moderated the panel. Craig Glazer, Vice President, Government Policy, PJM Interconnection, spoke about the PJM regional transmission expansion plan and noted the move away from the distinction between economic and reliability in labeling proposed transmission projects. Richard Schultz, Senior Vice President, Planning, ITC Transmission, provided an engineering perspective, asserting that transmission's contribution to energy cost is small, but the impact on reliability is large. Steven Naumann, Vice President, Wholesale Market Development, Exelon Corporation, provided guidance on economic versus reliability upgrades on the transmission grid, and described the uncertainties surrounding cost allocation. Bill Smith, Executive Director, Organization of MISO States, outlined the state concerns surrounding transmission expansion and posed the question of whether there could be a risk of overbuilding or inconsistent planning of the projects that might actually undermine the goals of efficiency and reliability.

The final panel, moderated by the Honorable Robert Clayton, MPSC Commissioner, focused on renewable energy and distributed generation. Philip Stoffregen, Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., discussed the status of PURPA section 210 since the passage of the Energy Policy Act of 2005, as well as the related FERC ruling in Order 688. The Honorable Robert M. Garvin, recently retired Commissioner, Public Service Commission of Wisconsin, spoke about the renewable resource credit program in Wisconsin and the importance of transmission in promoting and developing renewable energy resources. Jamie Wimberly, CEO, Distributed Energy Financial Group, LLC, discussed the fundamental issues facing alternative energy that will guide strategic decisions going forward.

At the Midwest Chapter's annual business meeting, the election of the Chapter's new officers and directors for 2007-2008 was announced: Christine F. Ericson, President; Marline R. Breece, Vice President; Leslie Recht, Secretary/Treasurer; and Directors Martin J. Bregman, Freddi L. Greenberg, Patrick J. Joyce, Robert Mork, and Anne Callenbach. David Hennen will serve as an *ex officio* member of the Board as past President. Frank Caro and Lisa Langeneckert will continue to serve on the Planning Committee.

The Midwest Chapter also hosted a cocktail reception for all participants. The Midwest Chapter Board wishes to thank the sponsors of the event: AmerenUE; Belin Lamson McCormick Zumbach Flynn; Blackwell Sanders Peper Martin LLP; Constellation Energy Group; Defrees & Fiske, LLC; Foley & Lardner LLP; Howard & Howard; Jones Day; LS Power Development LLC; Offices of Freddi L. Greenberg; Polsinelli Shalton Welte Suelhaus PC; Sonenschein, Nath & Rosenthal LLP; Stinson Morrison Hecker LLP; and The Stolar Partnership LLP.

The 2006-07 Midwest Chapter Board of Directors and Planning Committee for this event were David Hennen, President; Christine Ericson, Vice President; Marline Breece, Secretary/Treasurer; Directors Lisa Langeneckert, Freddi Greenberg, Marty Bregman, and Patrick Joyce; *ex officio* member Leslie Recht and former Chapter President Frank Caro. We recognize and gratefully acknowledge the support of the Energy Bar Association Board, Administrator Lorna Wilson, and her staff. We are also most appreciative to all the speakers and attendees who made the event possible. Hope to see you again next year for the Eleventh Annual Midwest Chapter regional conference which will be held in Chicago!

Ms. Ericson is President of the Midwest Chapter of the EBA.



EBA Board Member Carolyn Thompson, & Midwest Board Members Leslie Recht, Lisa Langeneckert, Marline Breece, David Hennen, Christine Ericson & Martin Bregman



Interview with Commissioner Moeller Continued

distinction of being elected to the United States Senate by the good people of Washington, then defeated by those same voters, only to be elected back in again, and then once again voted out of office.

The vagaries of Senator Gorton's political fortunes had a direct impact on that of Phil Moeller. In a way, his route to FERC was paved by the voters' intentions with respect to his boss. Mr. Moeller got to know the Senate and build up friendships on both sides of the aisle while serving Senator Gorton. He also acquired extensive experience with writing laws, as he also had done prior to that at the state level, indeed as he had spent virtually his entire career doing. That much knowledge and experience was too good to allow to go to waste. The Administration approached Mr. Moeller about taking on a FERC appointment, and he readily indicated an interest in the prospect. (On a previous occasion, there had also been discussion of such an appointment, but it did not come about at that time, when the Senator was unseated in 2000.) Mr. Moeller was duly nominated, and returned to the Senate, both for courtesy visits with individual Senators and then to testify before the Energy Committee. He was glad to still have his Capitol Hill friends, who cross party lines. And he also had the benefit of consultation with others who have been nominated for FERC slots. However, he explained that most of his discussions with former Commissioners were concerned with the job to be performed rather than the confirmation process. Still, he spent hundreds of hours preparing for approximately 1000 potential questions from Senators, ranging from national in scope to the particular concerns of their home areas.

A Consumers Champion Comes to FERC!

Having continued to move up the ladder of success despite Senator Gorton's downfall, and modestly saying that he first began seeing himself as a FERC Commissioner at his swearing in by Chief Justice Roberts, Commissioner Moeller told us of how he sees his mission in his new post. Specifically, Commissioner Moeller states that, "The efforts we undertake here should ultimately benefit the consumers of the United States. That's what drives me!" By this, he elaborated that he seeks to secure "adequate, reliable, safe, sufficient" energy for the consumer, as "energy is the lifeblood of this economy."

In carrying out this mission, the Commissioner disabused us of any notion that he is in any way an ideologue or part of any faction. He calls them as he see them, saying that "each case is very differ-

ent." He has no favorite energy source, believes "a variety of options" should be made available for consumers through competition, and maintains that it would be improper for a Commissioner to be pushing any fuel supply over another. He jokingly responded to our question about promoting any particular project that, "I only root for sports teams."

The role of the Commission, according to Commissioner Moeller, is to open up the electric transmission grid to alternative sources of power, and to open up the natural gas infrastructure to access to multiple supply sources, be it domestic on-shore, domestic off-shore, Alaskan, Western Canadian, or foreign shipments of liquefied natural gas. He acknowledged that the importation of certain supplies is partly a matter for Congress to consider, as well as other federal agencies, such as the Coast Guard, and that LNG terminals also involve state issues. FERC makes the options meaningful by making sure that the interstate transportation systems are adequate, safe, and reliable. And as to that function, Commissioner Moeller has a clear vision as to what needs to be done.



Uncertainty over investment returns seen as hindering major transmission upgrades.

Mandatory Electric Reliability Standards: Long Overdue!

First, with respect to electricity, Commissioner Moeller expressed a sense of "honor" in having been part of the current Commission that has approved mandatory reliability standards for wholesale transmission. He remarked about how long it has been since the massive blackout in the 60s, and how blackouts that followed have finally given impetus for reliability and safety standards to be more than voluntary actions by industry.

Second, he sees a need to spur investment in the electric industry, particularly transmission construction, which he described as being in a "catch-up mode." He credits the Energy Policy Act of 2005 as giving national recognition that the aging electric transmission infrastructure is in need of drastic overhaul and enhancement through the provision of business incentives. He indicated his conviction that uncertainty over investment returns has dampened the enthusiasm of investors to take long-term commitments to finance construction of major transmission upgrades. He sees the need to give more certainty that adequate returns to attract the necessary capital will be approved by the FERC.

Third, the Commissioner spoke of the need to provide stability in the wholesale electric power markets, recognizing that generation

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Interview with Commissioner Moeller *Continued*

is more predominantly in the domain of the states. By this, he explained that he believes that there must be more accurate price signals, a better conservation and demand response system, and more encouragement of the development of “various regional energy markets.” He touted the joint FERC/NARUC dialogue on the next round of generation resource adequacy for which he noted that his colleague, Commissioner Marc Spitzer, is the designated FERC representative.

The Power of Positive Thinking: Global Warming and Proper Market Behavior

As to our question if the societal problems the nation faces with global warming and Congressional debates over carbon-neutral initiatives are pertinent to FERC’s activities, Commissioner Moeller responded enthusiastically that the FERC can be and hopefully has been a “positive” influence in designing policies that will allow more environmentally friendly sources of power to be fostered. As an example, he cited the Order No. 890 “10-year look-back on Order 888” as providing a

Penalty authority: “It’s serious, it’s real, and we’ll use it!”

potential boon to wind power by taking steps to give wind energy better access to the grid as a “conditional firm product.” He said that with “more accurate market price signals” demand response should result in greater utilization of renewable energy sources as a voluntary choice by consumers. He clearly displayed a long-term view by his repeated use of the term “ultimate,” as when he spoke of his agenda as being to take action that redounds to the “ultimate benefit of the consumer.”

In achieving these ends, Commissioner Moeller is also a strong believer that the FERC should continue its recent actions of sending signals through the penalty authority that Congress gave the FERC in EPCRA 2005 to prod proper behavior by the restructured industry. He says of this new authority, “It’s serious, it’s real, and we’ll use it!” He maintains that the range of penalties being imposed accurately reflects the scale from higher to lower based on the extent, nature, and amount of the particular misdeeds dealt with in each case.

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At Ease with Phil Moeller

How Would He Spend Any Additional Spare Time? Going to ball games and concerts, from new rock bands to the symphony. (Check out one of his favorite Seattle bands, who his best friend from high school plays with, “The Levitations.”)

Magazines on Nightstand? *The Economist, Sports Illustrated.*

Favorite Movie? Original version of *RoboCop*. (Prefers documentaries.)

Recent Book Read? *Killing Yourself to Live* (Road trip to places where rock stars, like Buddy Holly, met their end).

Words to Live by? “Work hard and be kind to people.”

Favorite Word? “Courage.”

Least Favorite Word? “Arrogance.”

Favorite Sound? Crickets on a summer night.

Least Favorite Sound? Being honked at when waiting for a pedestrian to cross a street.

Creative Turn-On? New Ideas.

Spiritual Turn-On? Solitude.

Emotional Turn-On? Laughter.

Biggest Turn-Off? Arrogance, rudeness, pomposity, and whining.

Walter Mitty Fantasy Occupation? Knuckle ball pitcher for the Seattle Mariners (“I’d probably last about a third of an inning.”)

Job Least Like To Have? Any job already done, although he enjoyed them all, “some more than others.”

What He Hopes to Hear Upon Reaching Heaven? “Job well done!”



Interview with Commissioner Moeller Continued

Growing Up Western: Saving Lives

Commissioner Moeller came into this world at the University of Chicago Hospital Maternity Ward. When he was 7, the family moved to Washington State. His father, who grew up on a Midwest farm, wanted his son raised on a livestock ranch. He had a lot of responsibility as a “pretty young kid” in running the ranch because his father was called upon to travel a great deal in his job. He entered Stanford University (where his “T.A. in international political affairs” his senior year was a graduate student and another future Bush appointee named Condi Rice), and earned his tuition money by working summers as a machinist in a cannery in Southeast Alaska. It was there that the future Commissioner received his first exposure to “seams elimination.”

Calling himself one of the lucky ones to come back with all his fingers intact, Commissioner Moeller gave a detailed account of how his job entailed removing holes in cans for packaging salmon by, among other things, squeezing heavy metal sheets into a tapered configuration (resembling yogurt cups that are smaller at the bottom than at the top) to prevent contamination of the salmon that could lead to salmonella poisoning. It was no minor responsibility, but a matter of life and death. Commissioner Moeller recounted that three persons died from salmon poisoning in Britain the year before he started his summer sojourns to Alaska as part of the repair crew charged with minimizing seams, and thereby removing liability for the American Can Company of Oakland, California. (Ronald Reagan saved swimmers from drowning; Phil Moeller saved salmon aficionados from being poisoned!)

This was a life-forming experience for Mr. Moeller in many respects. He saw how innovation in the technology of canning salmon revolutionized the industry for the benefit of the consumer. Now, says Moeller,

salmon is no longer a seasonal delicacy, but can be stored and consumed year-round at a lower, less volatile price. It is a safe, reliable product that is readily available through proper re-engineering of canning techniques by which the integrity of seams has been maintained. He was given a practical lesson in life that is readily applicable to the issues he faces as an energy regulator. (“I’m a machinist of a different sort now.”)



Strong legal talent is the touchstone of the Moeller Office Staff.

Indeed, everything in Mr. Moeller’s early life seemed to be pointing him in the direction of energy regulation. In 1979, there was a great deal in the news about energy in that America was reeling from an oil shortage, massive gas lines, and the Three-Mile Island disaster. The country was witnessing President Jimmy Carter’s addresses to the nation in his cardigan sweater about energy conservation, the Natural Gas Policy Act of 1978 was being implemented, and the FERC was in its first year of existence. That was when 16-year-old Phil Moeller, a devotee of public affairs, was a self-described “debate nerd” in high school. His debate topic was “Energy Independence.” To prepare for his topic, he had to master his own assigned position as well as the strengths and weaknesses of all opposing points of view. The young lad was hooked on the subject. Then, as already described, he had his experience in Alaska with “seams elimination,” and the development of new markets that gave him

insights that interweaved the energy issues that the country debated as restructuring became the consensus policy perspective in the country.

Small wonder that Mr. Moeller became a state legislative assistant in Washington, heading the Committee Staff dealing with energy, utilities, nuclear waste, and telecommunications. The latter included the after-effects of the break-up of AT&T and the creation of more choices and lower prices for consumers. This state-level activity was followed by his entrance into the Congressional sphere as an assistant to Senator Gorton. Mr. Moeller calls the Senator “a great political hero” with whom he still has contact, and who he recalls being the most active member of the Senate Energy Committee during his tenure.

With this background and his current activities at the FERC, Commissioner Moeller sees the energy field as an exciting and evolving area that he would advise young people to get involved in. As Mr. Moeller puts it, energy is always relevant, and current technological breakthroughs, particularly on the demand side, cause this to be an especially exciting time of transition in the energy sector.

Staff Expertise at the Moeller Office

What does a non-lawyer, non-previous regulator, former ranch-hand, and former Alaskan salmon cannery machinist do to staff his office upon becoming a FERC Commissioner? For Philip Moeller, the answer is to secure a strong mixture of legal talent with a working knowledge of the ins-and-outs of the agency and a smattering of matters from outside of FERC. Commissioner Moeller spoke very glowingly of those he has around him on his Staff. He described his Policy Advisor, Jason M. Stanek, as very knowledgeable about the FERC and the particular role of an attorney-advisor through his previous ser-

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Interview with Commissioner Moeller **Continued**

vice for former Chairman Pat Wood III. He praised his Legal Advisor, Jignasa P. Gadani, formerly of FERC's Office of General Counsel, for her expertise on electric issues, particularly in the West. He recruited Patricia Hurt from the Department of Justice, where she went after acquiring invaluable experience in private practice and inside FERC's Office of Administrative Law Judges.

He called his Confidential Assistant Jennifer A. Quinlan, formerly of FERC's Office of External Affairs and formerly on the Staff of former Senator Don Nickles of Oklahoma (and who helped to schedule our interview) "terrific." He was also complimentary of his secretary, Blanche Gause, "who helps makes things run smoothly."

Independent Thinker: Receptive to Ideas

One area where the Commissioner indicated he relies on his Staff is on inter-acting with the general FERC Staff who reports to Chairman Joseph T. Kelliher but whose members are generously made available by the Chairman to each individual Commissioner's Staff. Mr. Moeller specifically asks his assistants to speak with the technical experts within the agency that help to prepare Commission orders to make sure that the Commissioner's concerns are reflected in those draft issuances.

Commissioner Moeller, like previous Commissioners interviewed in this series, believes that the strictures in the Sunshine Act by which a quorum of the Commissioners never meet to discuss a pending matter except in open Commission Meetings, is "the proper way to do things." He indicated, in response to a question, that he would enjoy having oral argument on a particular case before the full Commission when circumstances merit it, as he says has happened occasionally although not yet during his own brief time as a Commissioner.

He stated that no special significance should be attached to the fact that four of the five Commissioners are from the West. In particular, he noted that the West is not monolithic in its outlook on energy. For example, he pointed out that hydropower is dominant in the Pacific Northwest, but not in Nevada, Arizona, or New Mexico. "Everyone is a creature of their own circumstances," he declared, adding that he "likes the clash of ideas." His public-spirited nature, long-time involvement in energy matters, and debating and law-writing background all make Commissioner Moeller well-suited temperamentally and intellectually for the role of a decision-maker and policy formulator in a quasi-judicial capacity as a FERC Commissioner. Once again, we came away from an interview with a FERC Commissioner eager to convey to our EBA colleagues the essential outstanding qualities that we found exhibited by an individual entrusted with this important position.

New Brown Bag Lunch Series: "Meet the Judges"

On February 20, 2007, in a conference room on FERC's eleventh floor, a new brown bag lunch series dubbed "Meet the Judges" got off to an excellent start with Chief Judge Curtis L. Wagner, Jr. participating in the inaugural event. The program, co-sponsored by the FERC Practice and ALJ Committee and the Young Lawyers Committee, offers the opportunity to spend an hour with a judge in a more casual setting than the hearing room. As Chief Judge Wagner noted, the participants had the chance to see "what makes me tick."

With many interesting anecdotes and humor, the Chief Judge recalled his long and distinguished journey from law school in Tennessee to recent cases on his docket at FERC. Along the way, Chief Judge Wagner practiced law with a firm in Knoxville and held positions at the Department of Justice and the Department of Defense. In the early 1970s Judge Wagner joined the Federal Power Commission, and shortly thereafter ascended to the position of Chief Judge, in which he continues to serve today. After discussing his background, Chief Judge Wagner answered questions from the audience in the room and on the phone.

Karen Kruse, an Associate with Troutman Sanders and attendee at the event, expressed her appreciation for Chief Judge Wagner's participation. "It is wonderful that the Chief Judge is willing to take time out of his busy schedule to meet with us. I enjoyed hearing about his experience at the FERC and learning more about the relationship between the Commissioners, the Chief Judge and the rest of the ALJs."

EBA President David Doot lauded the new series as "an excellent opportunity to get to know the people who oversee our hearings and settlement proceedings." Monica Gonzalez, Chair of the co-sponsoring Young Lawyers Committee, noted that "the chance to talk with a judge outside the usual hearing room setting should not be missed by any FERC practitioner, especially the younger members of the bar who may not have had the opportunity to meet the judges in any setting yet."

The sponsoring committees plan to hold additional Meet the Judges brown bag events later this year. Watch your email inboxes for announcements.



A Past EBA President Interview: Robert S. Fleishman

This is the second in our series of interviews with former EBA Presidents conducted by Darrell Blakeway, Executive Director of Perennial Energy Consulting, Inc., which provides consulting services for renewable energy and energy efficiency development. Darrell left the Enforcement Office of FERC in 2004 after 25 years of service in various legal offices of the Commission.

In this issue, Darrell talks with Robert S. Fleishman, President of the Energy Bar Association in 1999-2000. Bob received a B.A. from Georgetown University in 1974 (*cum laude*) and a J.D. from Boston University School of Law in 1978. He was an Attorney at the Federal Energy Regulatory Commission in a number of offices, including Enforcement, from 1980 to 1985 after beginning in 1979 as a Public Utilities Specialist auditing for compliance of the Natural Gas Policy Act.

Bob left the FERC for Baltimore Gas & Electric (now Constellation Energy Group) in 1985 and eventually became General Counsel and Vice-President of Corporate Affairs. In 2002 he left Constellation and in 2003 began to work for Covington & Burling LLP, as Of Counsel. He also serves as the Editor-in-Chief of the *Energy Law Journal*, succeeding Clint Vince and the long-serving William A. Mogel. He has an interest and expertise in ADR as both a mediator and arbitrator, and has served as Chairman of EBA's Alternative Dispute Resolution Committee, Chairman of the Business Initiative for the Maryland Mediation & Conflict Resolution Office and President of the Community Mediation Program in Baltimore.

Darrell spoke with Bob in a conference room late one Friday afternoon, at the end of a very hectic week in which Bob had been working on the proposed acquisition of TXU Corp. (formerly Texas Utilities) by Kohlberg Kravis Roberts and Texas Pacific Group, private equity firms.



Q: When did you first become a member of EBA (or FEBA), and what were your early impressions of its role?

A: I joined the Federal Energy Bar Association (predecessor of EBA) in 1981 after seeing the first volume of the *Energy Law Journal* in 1980. I was impressed with the journal's quality and saw that attending FEBA programs would allow me to become more educated about a broader spectrum of energy law and policy issues. In 1982, I started attending the mid-year and annual FEBA meetings.

Q: How did you get involved in the leadership of EBA? What prompted you to accept the presidency in 1999? Did you have an agenda or "platform" going into the presidency?

A: Jennifer Waters, who was President of FEBA in 1996-1997, first encouraged me to get involved in the leadership. I was General Counsel of BGE and she was outside counsel for BGE. She encouraged me to accept a position on the FEBA Board of Directors. The first thing I pursued on the board was helping to create a FEBA website. I encouraged the Board to set a goal of getting a website up and running by the end of December 1997, got some help from a web designer at BGE, and helped get the website on-line a few days before the end of December. I later was honored by a request to serve as Vice-President of FEBA. As you know, that entailed a three-year commitment. You serve one year as Vice-President, a year as President-Elect, and a year as President. I didn't really have a "platform" when I began that process, but did have a sense that FEBA needed to evolve in response to changes in the practice of energy law.

Q: Steve Herman (interviewed in the Winter 2007 EBA Newsletter) spoke in very flattering terms of your presidency, and the various initiatives you pushed successfully. With the benefit of some hindsight, would you comment on what you think were the major accomplishments of EBA that you were advocating or initiating as president?

A: I had developed an appreciation for the value of strategic planning, and realized that FEBA had not engaged in that sort of planning. It was clear that a lot of changes were going on in the practice of energy law. It was no longer just an "inside-the-Beltway" affair. More market participants were getting involved in energy transactions, and activities in the states were of greater significance. The Board was persuaded to undertake a systematic strategic planning and we retained a consultant. A number of Board members and long-

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Interview with Bob Fleishman Continued

time FEBA leaders worked hard to help establish a new focus for the organization and set a number of new goals.

We decided the organization should no longer be called the Federal Energy Bar Association. It was no longer just a matter of FERC and federal regulatory law. So we recommended to the membership that FEBA should become the Energy Bar Association and developed a new logo. We set a goal to increase our membership from about 1700 in 1999 to 2000 by the end of 2001; and we met that goal. We opened the membership to non-attorney professionals. We made the nominating process for EBA officers more transparent. Now EBA mails out letters to all the membership seeking nominations, and allows anyone to nominate themselves. We also began the process to get more local and regional chapters activated. In 1999, we had local chapters in Houston and New Orleans. Now there are four regional chapters in addition to these two. These were all outcomes of our strategic planning process.

Q: You know of my interest in renewable energy and I know you share that interest. Would you care to forecast the future of the energy industry (or energy law business) over the next 10-20 years, and especially what role renewable energy will play?

A: A diversified portfolio of resources that includes a significant amount of renewable energy is important, and I believe that the role of renewable energy will increase over the coming years. It is increasingly clear that climate change issues will have a large impact on all aspects of energy law.

Q: Any other topics that currently strike you as significant to the Energy Bar, especially the future of EBA?

A: I am very pleased with EBA's sponsorship of the *Energy Law Journal*. I've now served as either the Editor-in-Chief or Executive Editor for six books (three years). It truly is the "jewel" of our association because of its very high quality and unique role as a peer-reviewed professional energy law journal. We are pleased to now make all articles of the *ELJ* available for free on the EBA website, beginning with the very first volume in 1980. This is a very valuable resource for legal practitioners, non-attorney professionals and scholars.

Q: Thank you, Bob, for the opportunity to talk about your contributions to EBA, and thank you, as a member, for the *ELJ* and other programs that EBA makes available.

President's Message

Continued

his priorities as Commissioner, and also discussed his passion for energy efficiency and demand response at an informal brown bag with the Renewable Energy Committee. Other energy experts from across the country shared their experiences and expertise with fellow EBA members at these conferences and brown bags. These EBA events all presented great opportunities for networking and exchanging ideas.

"My admiration has grown for this organization and the incredible level of dedication, talent, experience, expertise and generosity of its members."

You will continue to read in this and other issues of the newsletter about the high level of EBA Committee activity. You also will be receiving or have already received under separate cover the latest issue of the *Energy Law Journal* and notice of the upcoming Annual Meeting and all events surrounding that meeting. The Charitable Foundation is putting finishing touches on its brochure and I hope you can take the time to read about how charitable contributions from our members have been invested in energy-related charitable projects in California, Louisiana, Maryland, Mississippi, Montana, New Jersey, Virginia, Washington D.C., and the Appalachian region of our country, as well as internationally in Asia and Africa.

Reflecting back as my one-year term serving you as President draws to a close, my admiration has grown for this organization and the incredible level of dedication, talent, experience, expertise and generosity of our members. As the members' survey reported in this issue validates, the Energy Bar Association puts on first-class educational programs, publishes a premier law journal, and provides extremely valuable networking opportunities for practitioners across the country. It has a vibrant charitable organization that truly showcases through energy-related contributions and service projects how our members collectively can and are making a positive difference in our communities. Every volunteer organization depends on the dedication, qualities, and engagement of its members. The noteworthy successes and achievements of the Energy Bar Association and its affiliated *Energy Law Journal* and Charitable Foundation are a tribute to you—our members.

Thank you all for the honor and opportunity to serve you.

David T. Doot
EBA President



All Issues Of The Energy Law Journal Now Available On The EBA Website

On February 16, 2007, the Energy Bar Association and the Foundation of the Energy Law Journal posted all the back issues of the *Energy Law Journal* (1980 to 2006) on the EBA website. The addition of the back issues of the *Journal* to the EBA website was the culmination of months of planning by the EBA and FELJ to make all contents of the *Journal* available on the internet. The current issue of the *Journal* has been available on-line since November, and future issues will be posted as they are published. Members will, of course, continue to receive their bi-annual editions of the *Journal* in hardcopy format.

In making the *Journal* available on-line, the Association wished to make accessing the *Journal* as convenient as possible for its members. The Association had heard from its membership that access to the *Journal* on the EBA website would be very valuable. Moreover, recognizing that more and more legal research is now performed electronically, the Association expects that having the *Journal* available on the internet will further increase the publication's profile.

The back issues of the *Journal* are posted on the EBA website in "PDF" format. Because the back issues were scanned from original hardcopies, the electronic editions maintain the same "look and feel" as the bound volumes of the *Journal*. In order to access the back issues, the EBA website includes a link for each of the 53 issues published since 1980. Clicking on the link for a particular volume will open up the table of contents for that volume in PDF format. Each article in the volume can then be retrieved by clicking on the desired article from within the table of contents. The contents of the current edition of the *Journal* are accessed through links posted directly on the EBA webpage.

Currently, one can use the search functions in Adobe Acrobat Reader to look for specific terms within an article once it has been opened. The EBA and FELJ are currently working with the Association's website developer to add more robust search capabilities for the on-line copies of the *Journal* with the goal that a visitor to the EBA website will be able to search for particular terms across all the current and back issues of the *Journal*. In the meantime, a searchable table of contents for all back issues of the *Journal* is available on the EBA website. Consistent with the goal of raising the profile of the *Journal*, efforts are also underway to

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Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

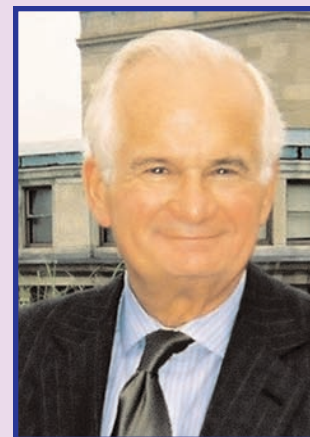
"Just as it looked as if a whole new world of ruthless rivalry was about to emerge, a cloud no bigger than a man's hand appeared on the horizon. At the edge of the cloud one could barely make out the letters of a word – 'Merger.' For when the electric power people awoke from their long night of natural monopoly, they began to rush into each other's arms to attempt an unprecedented number of corporate couplings. In the minds of many observers, a wave of electric utility combinations could only stifle the very competition that deregulation was committed to fostering. Mergers might confer that most dreaded endowment, market power, on the merging partners. There has, therefore, been anxious attention to consolidation in the electricity industry because of fear that mergers will strangle the infant, Competition, in her crib. But now, with its recent Merger Policy Statement, we are assured that the FERC vigilantly stands guard at crib-side."

Hon. Richard D. Cudahy, *The FERC's Policy on Electric Mergers: A Bit of Perspective*, 18 ELJ 1, 113-4 (1997).

Twenty Years Ago

"Common sense suggests that the FERC cannot have its cake and eat it too. If the FERC has jurisdiction over sales of power at wholesale in interstate commerce, as the Federal Power Act provides, then there must also be purchases, which connote arms-length transactions among the parties – even if those parties are part of multi-state, integrated power pools or holding companies. After all, those separate corporate entities are permitted to exist as parts of a holding company by explicit provision of the Public Utility Holding Company Act. If, as the FERC would apparently have it today, there are only 'allocations of costs' among such entities, how can there be a 'wholesale' sale justifying the FERC's exercise of exclusive jurisdiction?"

Walter W. Nixon, III and Dr. Robert E. Johnson, *Nantahala Affirms Narrangansett – Wither Pike County?*, 8 ELJ 1, 19 (1987).



William A. Mogel
First ELJ Editor-in-Chief



New Energy Bar Association Member Profile – A Continuing Series

Jennifer L. Hong

Among the new non-attorney professional classification of members joining the Energy Bar Association in the past few months is Paula A. Gant. Paula, an economist, recently joined EBA after moving into her new position as the Vice President of Regulatory Affairs for the American Gas Association.

Paula has more than ten years of experience in the energy industry. Paula has served on the faculties of the University of Louisville and Louisiana State University, teaching economics and specializing in the areas of regulation and industrial organization. As electricity deregulation was being considered in Louisiana, Paula moved into lobbying for the Louisiana Alliance for Lower Electric Rates as an advocate for competitive restructuring. Later, Paula joined Duke Energy Corporation, where she served in a variety of policy and government affairs positions. In this position, she helped Duke with regulatory and public policy initiatives important to the company's portfolio of interests, including franchised electricity, energy trading and marketing, natural gas transmission, storage and processing, and international energy infrastructure. Paula joined AGA last Fall with responsibility for developing and executing strategies in the area of federal and state energy regulatory issues.

As a result of EBA's initiative to expand its ranks to include non-lawyers, Paula saw joining EBA as a great venue for networking with others that were "plugged" in to the issues impacting the industry. Additionally, EBA offered a clearinghouse for information on the latest developments in the energy area through EBA-sponsored events, including meetings, as well as the *Energy Law Journal*. Paula is looking forward to the upcoming Sixty-First Annual Meeting, as well as becoming active in the regional chapters to better understand the state issues facing the industry.

While expressing a desire to get back to some of her old interests, Paula is focused on having fun with her young son in her free time.

We welcome Paula to EBA and look forward to her contributions!

Ms. Hong, a long-time EBA member, recently joined Pillsbury Winthrop Shaw Pittman LLP.



Paula A. Gant

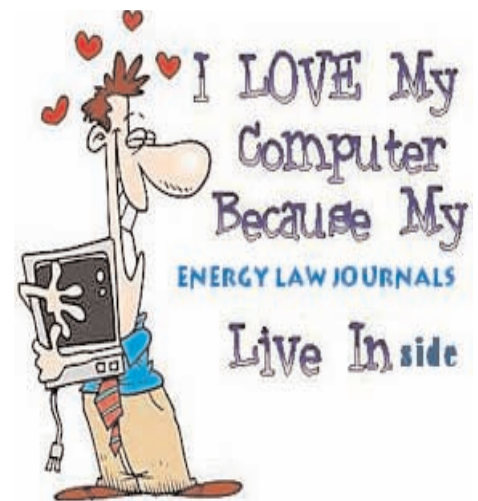
ELJ on Website

Continued

make sure that the electronic *Journal* contents are picked-up by internet search engines such as Google.

Converting 26 years worth of *Energy Law Journals* to electronic format and posting them on-line was no small task. Regina Speed-Bost, Harvey Reiter and John McCaffrey took the lead in managing the process. Special thanks go to Regina, Harvey and Frank Kelly for nobly sacrificing a number of their old *Journals* for the good of the cause. Sullivan & Worcester LLP and Stinson Morrison Hecker LLP donated significant time and resources to the project by splitting the scanning duties. In particular, Chris Attalla of Sullivan & Worcester and Stephanie Jones at Stinson Morrison Hecker made sure the work went smoothly. Steve Cosentino of Stinson Morrison Hecker also provided guidance regarding copyright and intellectual property issues on a pro bono basis.

All the members are encouraged to take the on-line *Journals* for a test-drive. The back issues of the *Journal* are available at <http://www.eba-net.org/journals.php> and the current edition is posted at http://www.eba-net.org/journal_vol27-2206.php. Please feel free to provide any comments or suggestions to John McCaffrey at jmccaffrey@stinson.com.



Day 1 Market: An auction based real-time electricity market but not an auction based day-ahead market.

Day 2 Market: An auction based day-ahead and real-time electricity market. Participating in a Day 2 Market qualifies a utility for relief from mandatory purchase obligations under PURPA.

Expressio unius est exclusio alterius: Expression of one thing implies the exclusion of the other.



CFEBA Doings and Opportunities to Participate

A. Karen Hill

The CFEBA's Fourth Annual Fundraising Golf Tournament will be held at Westfields Golf Club in Clifton, Virginia, on April 26, 2007, the day after the Energy Bar Association's Annual Meeting. The day begins with an optional Putting Tournament at 8:00 am., followed by a 9:00 am. shotgun start for the tournament, which will have a "shamble" format. The Golf Tournament Committee, headed up by Susan Moore and Evan Reese, are seeking sponsors and contributions. Hole Sponsorships are available for \$500, and Premium Sponsorships for special competitions such as hole-in-one, longest drive, putting contest are also available for an additional sum. Contact the EBA Administrative Office to register. The Tournament will feature raffle prizes and contests for golfers of all abilities.

Look for the CFEBA's new brochure at the Energy Bar Association Annual Meeting. It features a colorful format and pictures of many of the donation recipients. The new brochure will help spread the word about the worthwhile charitable activities in which the CFEBA engages. Karen Hill and Linda Walsh helped develop the new brochure.

A Habitat for Humanity build day is scheduled for May 12, 2007 at the Northeast DC site, and will include work on revitalizing a nearby park. Contact Bill Booth to sign up to participate in this popular event -- no prior construction experience required!

The Western Chapter of the EBA began its annual meeting with its second successful reception and wine auction to support the CFEBA. Sponsored by Manatt, Phelps & Phillips, the reception included a silent auction of wine donated by David Huard and Bruce Webster. CFEBA President Paul Mohler and Board Member David Huard awarded a grant to the Los Angeles Unified School District for development and implementation of an "energy and conservation" curriculum. EBA President David Doot also attended the reception to encourage participation in the auction and contributions to CFEBA.

The CFEBA recently donated \$23,000 to Samaritan Inns to replace the windows of one of their home facilities in Columbia Heights in the District of Columbia. Energy cost comparison between that facility and a similar one with new energy-efficient windows was approximately \$5500 annually. Samaritan Inns has a successful program to help homeless men and women with addictions rebuild their lives.

Another recent donation went to Arlingtonians Meeting Emergency Needs (AMEN), for \$7,750 to help poor families pay utility bills this winter. Because AMEN receives matching funds from Virginia Power and Arlington County, the CFEBA's donation was effectively doubled. CFEBA also donated \$10,000 to Aid to Distressed Families of Appalachian Counties, which provides direct utility assistance to families identified by local agencies as being below federal poverty levels.

Building on its experience and success with funding solar panels for the Chungba Primary School in Tibet, the CFEBA awarded the Arlington Academy of Hope, Inc. (AAH) \$12,500 to purchase and install solar panels to help power an elementary school in Uganda. AAH is a non-profit entity, dedicated to helping children in rural Uganda with education and basic health care. The primary school recipient of this award enrolls over 300 students in seven grades and is a model school for villages in eastern Uganda. CFEBA will follow up with this recipient to ensure the success of the project.

The CFEBA Board sincerely thanks its contributors for their ongoing generosity and support. The Board seeks suggestions from the EBA membership for eligible recipients for CFEBA donations. Please contact Rich Meyer, Chair of the Charitable Grants Committee, or any Board Member if you have suggestions. Information on donating to the CFEBA is available on the EBA website.

Ms. Hill is a Board Member of the CFEBA.

The Charitable Foundation of the Energy Bar Association

Invites you to its

Fourth Annual Fundraising GOLF TOURNAMENT

Thursday, April 26, 2007

Westfields Golf Club

Clifton, Virginia

8:00 a.m. Putting Tournament

9:00 a.m. Shotgun Start

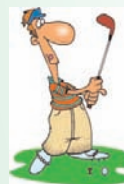
In conjunction with the **EBA Annual Meeting**

at the Capital Hilton
in Washington, D.C.

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Registration Fee \$160

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Tail Gas: The residue after liquids and liquefiable hydrocarbons are removed.

New Electricity Trading Agreements: The trading agreements, referred to as NETA, in England and Wales.



Tulsa Luminaries Hosted in D.C. by FELJ

The Foundation of the Energy Law Journal hosted two important visitors from Tulsa in March. Robert Butkin, Dean of the University of Tulsa College of Law School, and Irma Russell, Director of the National Energy-Environment Law and Policy Institute, came to Washington, D.C. to meet with the leadership of the EBA organizations they have been working with, discuss ongoing efforts such as the joint publishing of the *Energy Law Journal* and summer internships in Washington for Tulsa students, and explore how Tulsa and the EBA might further work together on matters of mutual interest and benefit.



Dean Robert Butkin and NELPI Director Irma Russell visiting with FERC General Counsel John Moot and Minority Counsel to the U.S. Senate Environment and Public Works Committee Judith Pensabene.

During two busy but productive days, Robert and Irma attended meetings of the FELJ, CFEBA and EBA boards. They thanked the FELJ for continuing to support the *Journal* and the students. They especially appreciate the efforts to sustain the Mogel summer internship and the personal visits by FELJ officers and practitioner editors to the law school in Tulsa. In turn, the FELJ directors expressed a strong desire to continue and expand upon the partnership with the school and the *Journal*.

Robert and Irma also sought out other Washington-based energy leaders. Their meetings included a session with John Moot, FERC General Counsel, who has contributed important articles to the *Journal*, and Judith Pensabene, Minority Counsel to the U.S. Senate Environment and Public Works Committee and a Tulsa Law grad. Rounding out their busy D.C. schedule, the Tulsa visitors "broke bread" with some EBA, FELJ and CFEBA officers on their last evening in town. Both Robert and Irma enjoyed productive meetings with board members and gained insights about the structure and work of the interlocking energy organizations.

*The Foundation of the Energy Law Journal
requests the pleasure of your company
at a reception honoring the
Federal Energy Regulatory Commission
Administrative Law Judges
on Tuesday, the twenty-fourth of April
at 5:30 - 7:30 o'clock
Capital Hilton Hotel
South American Room
16th & K Streets, N.W.
Washington, D.C.*

Contribution \$70.00 (EBA Member) or \$25.00 (Government)



Upcoming Events

Foundation of the Energy Law Journal Reception Honoring the Federal Energy Regulatory Commission's Administrative Law Judges

**April 24, 2007
Capital Hilton
Washington, D.C.**

Sixty-First Annual Meeting

**April 25, 2007
Capital Hilton
Washington, D.C.**

The Charitable Foundation of the Energy Bar Association's Fourth Annual Fundraising Golf Tournament

**April 26, 2007
Westfields Golf Club
Clifton, VA**

Northeast Chapter Meeting

**May 23, 2007
The Williams Club
New York, NY**

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

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 competence of those who practice and administer energy law. 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 over 2400 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.

Energy Bar Association, 1020 19th St., N.W., Suite 525, Washington, D.C. 20036, Tel: 202/223-5625, Fax: 202/833-5596, E-mail: Michele@eba-net.org, website: www.eba-net.org

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READER EXCHANGE

One of the great suggestions received from the Members Survey was to provide readers an opportunity to submit their comments on various topics in the Newsletter. Since the EBA is a non-profit, non-issues-advocacy organization dedicated to enhancing professional competence and promoting the proper administration of laws involving energy regulation, we do not want to stir up a running debate of matters on which our members are otherwise engaged in litigation or lobbying.

In order to maintain a fine line between discussions of trivial matters and advocacy on behalf of client interests, *EBA Update* begins a new column with this issue in which we solicit reader comments on such things as ways to better fulfill the mission of our organization and forecasts of concerns that will be confronting the energy practitioner in the future.

We cordially invite you, Dear Reader, to e-mail four or five lines to admin@eba-net.org in response to the question presented in each issue. We will reprint representative responses in the following issue. Please note "Reader Exchange" in the Subject header of your e-mail.

As the first topic of discussion, we invite your views as to the extent to which Global Warming will affect regulatory decisions and legislative enactments on the use of particular fuels, such as coal, nuclear energy, LNG, cellulosic ethanol, biomass, fossil fuels, natural gas, hydro-electric power, and wind power.

Receipt of all comments on or before June 30, 2007 will be appreciated.

(Oh, and if you have an idea as to a future topic of discussion, that would be good to know as well.)

