

Charitable Foundation Supports Hurricane Relief Efforts

A. Karen Hill

On August 31, 2005, immediately following recognition of Hurricane Katrina's devastating impact on the Gulf Coast states, the Charitable Foundation of the Energy Bar Association ("CFEBA") had authorized the expenditure of \$25,000 for relief efforts.

Immediately, Board members were in contact with generator suppliers as well as government agencies in Alabama, Mississippi and Louisiana to supply generators to hospitals, schools and

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FERC Chairman Joseph T. Kelliher Outlines an Ambitious Agenda Backed by New EAct Powers

Incoming Chair Ready to Roll Now that He Actually Heads the Agency, After Longest Wait in History to be Confirmed as a Commissioner; "A Reformer, Not a Revolutionary"

Gary E. Guy and Channing D. Strother



You say you want a revolution? FERC's new Chairman wants no part of it. Sleuthful EBA Update reporters Gary Guy and Channing Strother (aka "Dynamic Duo") were entranced by Chairman Kelliher's rendition of how revolutionary leaders met their end. Leon Trotsky, recalled Chairman

To view the entire interview with Chairman Kelliher please visit the EBA website at www.eba-net.org.

Joseph T. Kelliher, was killed "with a pick in his skull." Robespierre the Incorruptible ("I love that name 'Incorruptible'") was sent to the guillotine. And Irish revolutionary Theobald Wolfe Tone was said by the Chairman to have had his throat cut.

With a bookshelf behind him filled with historical books, Chairman Kelliher pronounced that his hero is the "reformer" Teddy Roosevelt. (The good Chairman omitted the fact that TR was shot in the chest giving a speech (which he insisted on finishing), but at least he survived the attack, and subsequently managed to die peacefully in his sleep.)

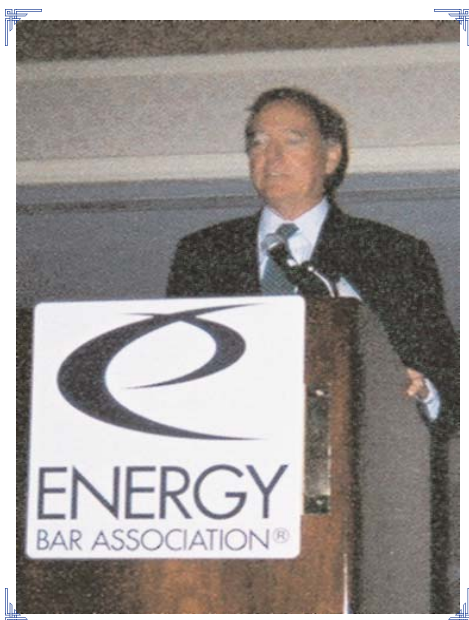
In regaling us for a 50-minute interview in September, Chairman Kelliher explained that he is a student of history. He stated that when he makes decisions he often thinks about his predecessors from the

President's Message

In this Fall Edition of EBA Update, I thought it would make sense to write about something other than Hurricane Katrina and Hurricane Rita, since thousands and thousands of news articles and editorials have already reported on those catastrophic storms that struck the Gulf Coast within the space of a few weeks in August and September. On further reflection, however, it became obvious to me that those two hurricanes remain by far the most important recent events for the Energy Bar Association and its members in a number of important respects and thus deserved comments from an EBA perspective.

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EBA Midwest Chapter's Ninth Annual Meeting Reviews the Impact of Federal Energy Legislation on the Midwest

Leslie P. Recht

The Midwest Chapter of the Energy Bar Association is planning its ninth annual Midwest Energy Conference, to be held on March 2, 2006 at the Palmer House Hilton in Chicago, Illinois. This conference has always provided an opportunity for energy practitioners to hear about issues of interest in both federal and state energy regulation, and to hear state and federal regulators address issues together. The conference will focus on the impacts in the Midwest of the new federal energy legislation and related FERC rulemakings. Panels will discuss the current status of the Midwest ISO, PJM and proposals for EROs. Conference organizers have confirmed a distinguished group of speakers, with a keynote address by FERC Commissioner Suedeen G. Kelly, outlining recent FERC actions and initiatives which are of interest to Midwest energy attorneys. There will also be a luncheon presentation by Iowa Utilities Board member and NARUC President Diane Munns, who will give her perspective on issues of special interest to Midwest state utility commissions, and the panels will include presentations by several state utility commissioners and chairs.

The Midwest Chapter's annual business meeting and cocktail reception will be held the evening of March 1, 2006.

Leslie P. Recht is the President of the EBA Midwest Chapter.

First and foremost, on behalf of all of the EBA officers, directors, staff, and members, I want to extend our most heartfelt sympathy and condolences to all of our EBA members who live or work in the affected regions of the Gulf Coast. Although the devastation of the hurricanes is even now far from clear, we do know that the storms have profoundly affected the lives, jobs, and well-being of millions of Americans in the region. We also know that many, many EBA members live and work along the Gulf Coast; indeed, the first two EBA chapters were founded by members in New Orleans and Houston several decades ago. As a result, almost all of us have EBA friends and colleagues whose families and homes have been adversely affected by the storms and for whom we remain terribly concerned. We therefore wish the very best for all of you who may have been affected by Katrina and/or Rita. Please let us know if there are particular relief or recovery organizations in your communities that merit our support.

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Change at the Top of the Houston Chapter

Randall S. Rich

The Houston Chapter's plans took an interesting turn when Chapter President Neil Patten of Vinson & Elkins announced that he will be moving to Doha, Qatar. Jason Leif of Jones Day, the Vice-President, will take the presidential post and new elections will be held to fill the veep slot. Jason Ryan of Baker Botts was elected Secretary in July. Houston members also will fill two Director positions.

In July, the Chapter held a luncheon with presentations regarding the development of the energy industry in China, featuring Michelle Michot Foss, Chief Energy Economist and Head of the Center for Energy Economics, The University of Texas at Austin, Bureau of Economic Geology.

Randall S. Rich is the Board Liaison for the EBA Houston Chapter.

Chairman Kelliher's Interview Continued

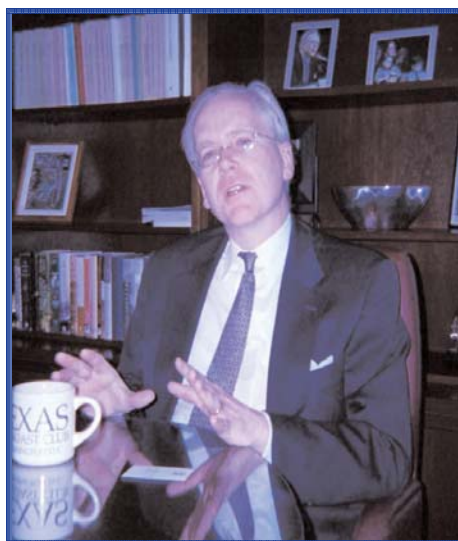
Federal Power Commission who used to hold meetings to decide the initial cases under the Natural Gas Act and Federal Power Act at the very table at which we were then sitting at in the Office of the Chairman. He told us that he even desires to write historical novels "that people will actually read." He declared Teddy Roosevelt a "great President who did a lot of good." Clearly, Chairman Kelliher is committed to doing a lot of good as a "reformer" FERC Chairman, not as a "revolutionary."

When asked what he hopes to accomplish during the Kelliher Administration, he gave the following litany of action items: (1) reform electric transmission open access by eliminating discrimination; (2) expand gas storage and thereby mitigate volatility in gas prices; (3) reform Regional Transmission Organization mandatory cost accounting procedures in order to limit them to actual cost recovery like other regulated public utilities; (4) move on "discretionary initiatives" to achieve these ends; and (5) move on meeting the deadlines and directives in the Energy Policy Act of 2005.

From Longest Confirmation to Chairman: You've Come a Long Way, Baby!

Not only is Chairman Kelliher well-steeped in American and world history; he may very well be the foremost authority on the arcana of Senate confirmation "hold" rules after having his own confirmation as a FERC Commissioner held up for 752 days. As the Chairman put it, he "holds the record" for being kept from an up-or-down vote longer than any other FERC or FPC nominee, including those who were nominated but never confirmed. He explained that Senators can place holds on votes anonymously, and that unless you have a friend on Capitol Hill you never

know who it is who is preventing a floor vote on you. As Majority Counsel to the House Commerce Committee from 1995 to 2000, he most likely had such sources. He explained that there was a desire to send a signal to FERC about matters that had nothing to do with him that resulted in several holds being placed on his nomination. He also discussed the difficulty that other FERC nominees have recently had over being confirmed ever since FERC became more public and more controversial with the California energy crisis. He charitably expressed the hope that he will still hold this record once nominees are named and confirmed to fill the two vacancies at the Commission. On the



He devoted much of the time that his nomination was pending reading up on FERC orders and filings.

bright side, the Chairman revealed that he devoted much of the time that his nomination was pending reading up on FERC orders and filings, and learning things that he did not come across in his prior government, corporate, and law practice experience, such as "black start" generation and "gathering" of gas production.

Reaching even further back into FERC/FPC lore, Chairman Kelliher recalled the confirmation proceedings for FPC nominee Leland Olds, who was opposed by then Senator Majority Leader Lyndon Baines Johnson. Chairman Kelliher noted that Mr. Olds' career came to an end over the harsh criticism he received. The Chairman pointed out that 70 pages are devoted to this confirmation battle in Robert Caro's *Master of the Senate*, and that the Olds nomination was the impetus for *Advise and Consent*, the Allen Drury novel about a controversial Secretary of State nomination. The movie version of that fictional account is among the Chairman's collection of classic films, and he used excerpts from that movie for his EBA 2004 Annual Meeting after-dinner speech lampooning his own confirmation troubles. He revealed to us that if the EBA invites him back, he will provide a sequel to that speech with other excerpts from his movie collection. It is a pretty safe bet that the Association can get itself a sell-out crowd by taking up the Chairman on this offer!

The Chairman also discussed events leading up to his selection by President Bush as Chairman. He recalled briefing President Bush on energy issues when he was Senior Policy Advisor to then-Energy Secretary Spencer Abraham under whom he helped develop the National Energy Policy in the President's first term. He also stated that he was part of the transition team when the Bush-Cheney Administration came into office. But, despite being on the "team," as it were, he recounted still going through the vetting process of being interviewed at the White House, having others speak on his behalf, and having a thorough FBI investigation. Once he was informed that he had been picked, he stated that he was told not to disclose this information so that the White
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Chairman Kelliher's Interview Continued

House could make the announcement when it was ready. Being conscientious, he requested permission to tell his wife, who he described as "discreet." His request was granted!

Energy Policy Act of 2005: Most Powerful FERC Chairman Ever?

We asked Chairman Kelliher if he is not in fact at least potentially the most powerful Chairman FERC has ever had by virtue of the transfers of authority to FERC on such matters as mergers, and the clarification of FERC authority on such matters as LNG import authorization contained in the recent Energy Policy Act of 2005. Modestly, Chairman Kelliher replied that he might end up on the losing end of some 2 to 1 votes on the current Commission. Turning serious, Chairman Kelliher agreed that the EAct of 2005 does give the Commission "a lot of new responsibilities" and "new authority" with "lots of statutory deadlines that we don't want to miss." He reiterated public statements to the effect that this law constitutes "the biggest change in our laws since the Natural Gas Act and the Federal Power Act."

When asked about his philosophy about carrying out the legislative intent of statutes, such as are contained in the EAct of 2005, Chairman Kelliher drew a distinction between the directives that the Commission consider legislative goals, such as providing incentives for electric transmission, and actual ratemaking decisions, which he stated are within the expertise of the Commission to decide. He pointed out that in January of 2003, the Commission issued a Proposed Policy Statement calling for incentive adders to rates of return for utilities that join RTOs and for those that construct new transmission. He indicated that he believes that these incentives are needed. Noting that Congress has now given its support for transmission incentives, he maintained that the law refrained from setting rates in recognition that "the expert agency is better equipped to do this." Instead of being directed as to how to decide issues, Chairman Kelliher stated that laws typically set deadlines, sometimes as short as 30 days or 60 days for the Commission to act, and that the Commission must meet such deadlines while having the flexibility to determine what action to take.

One of the areas where the EAct of 2005 instructed FERC to act, discussed by Chairman Kelliher, deals with LNG. Specifically, the statute requires the Commission to promulgate rules making mandatory public pre-filing procedures for carrying out National Environmental Policy Act requirements concerning environmental assessments and impact statements. The Chairman pointed out

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Inside Joe Kelliher

And now, things you have always wanted to know about our Chairman but have been afraid to ask:

His favorite word? Affirmed.

His least favorite word? Reversed.

What turns him on? Reading, particularly reading history, including historical novels.

What turns him off? Pass ("Questions like these").

Sounds he likes? The cooing of his one-month-old baby. ("I forgot those sounds. I remembered the crying.")

Sounds he hates? "Vulgar sounds I probably should not describe."

The job he would most like to have? Writer of historical fiction.

The job he would least like to have? The optimistic and intellectual Chairman was unwilling to accept that any job would be totally devoid of uplifting and educational benefits.

What he wants God to say to him at the Pearly Gate? "That I can enter and my family is there waiting for me." (His Staff is hoping he won't have any "holds" placed up there too. If he hears that, he will know that Saint Peter has a sense of humor.)

His favorite movies? *Manchurian Candidate* and *Lawrence of Arabia*. (An honorable mention was given to *The Bridge over the River Kwai*.)

A Look Forward From Our Past: Perspectives From a Former FERC Commissioner

In this Fall Edition of the EBA Update, we are introducing a new column in which we interview a former FERC Commissioner, other government official, or energy industry newsmaker to both discuss their experiences and provide a perspective on current and future issues of interest. In this inaugural column, we interview Professor Matthew Holden, Jr., FERC Commissioner from 1977 through 1981.

Adrienne E. Clair

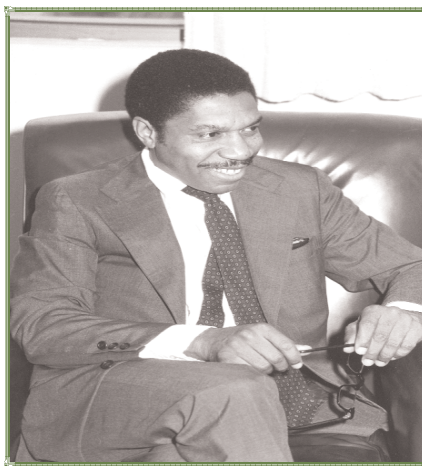
In the late 1970's and early 1980's, when Matthew Holden, Jr., served as a FERC Commissioner, the country was experiencing an energy crisis in the wake of the Iran Revolution. Oil shortages led to increased prices and there was a question whether the shortages were artificially created by oil companies in order to increase prices. Sound familiar?

Recently, I asked Holden, now "Professor" Holden as opposed to "Commissioner", to reflect on his time at the Commission and the issues that the Commissioners faced. Without pause, Professor Holden answered that his most notable memory of his term as a Commissioner is one that is "common to us all" – the period following enactment of the Natural Gas Policy Act in 1978 – when the FERC had the task of the "very long and demanding" rulemaking process to adopt rules pursuant to the NGPA, while still administering the Natural Gas Act, which remained in effect. Holden hastened to add that to this day, he still is not quite sure how the Staff accomplished such a Herculean task, but he gives a lot of the credit to the Commission Staff, notably former General Counsel Bob Nordhaus, the Gas Staff, and the Commissioners' own individual assistants. Added Holden, "I would like to mention my gratitude, from FERC days to Terry Vogel, my legal adviser who worked on gas, and Greg Martin, who started with me on electric. Then Terry left and I was lucky to get Beth Emery, who took over the legal side and worked on electric more while Greg moved more to gas."

Even though the NGPA established authority for the FERC over intrastate as well as interstate gas production and provided for the establishment of price ceilings, Holden recalls that one of the most contentious issues was the escalator provisions in pre-existing contracts. While the industry and the majority of the Commissioners agreed that these clauses were automatically trig-

gered by the statute, Holden disagreed with that view.

As for personal victories, Holden also recalls his disagreement with the view that costs related to the research, development, and demonstration of the Great Plains coal gasification project should be included in rates. Holden's disagreement was shared by the D.C. Circuit, and the Court reversed and remanded back to the Commission its orders on the Great Plains gasification project, citing Holden's dissent in the opinion. On this score, Holden observes that "as a Commissioner, you learn to consider what a case is going to look like on appeal."



Commissioner Matthew Holden (1979)

"As a Commissioner, you learn to consider what a case is going to look like on appeal."

Holden also remarked on the Carter Administration's attempt to put the country in the position of energy conservation, complete with photo ops of President Carter in energy-saving sweaters and installation of solar panels at the White House. Holden recalls that "the concept that the country had an energy conservation problem vanished for a good many years, but that could not continue indefinitely." Asked about history apparently repeating itself, with President Bush issuing the call last week for Americans to conserve energy, Holden replied that the problem is perhaps more complex than may seem, noting that "we have a phenomenon in the country now of increased demand, at the same time as increasing global demand. The idea of Morris Adelman [professor emeritus of economics at MIT] that the oil supply is one big pool is for the most part accepted. Once people dip into the pool in one part of the world, the rest of us feel increased pressure through prices."

Given the sentiment that history is indeed repeating itself, I

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CFEBA Hurricane Relief Continued

other facilities where power was needed. Members have contributed over \$16,000 to the CFEBA for Katrina relief. To date, the CFEBA has purchased and delivered twenty generators for the relief efforts.

Earlier in the year, CFEBA also provided generator operated refrigeration units to support the medical supply chain for Project HOPE (Health Opportunities for People Everywhere), in aiding victims of the tsunami that devastated Southeast Asia in December.

These experiences help in developing CFEBA's goal of providing even quicker action to deploy generators and other energy-related disaster relief in the future. CFEBA is in the early stages of establishing a standing committee to implement immediate action when the Board decides to respond to disasters. This proposed committee would establish the communication and resource links necessary to facilitate CFEBA's ability to respond rapidly with deployment of generators or other energy related relief.

Other recent contributions include approximately \$12,000 to the Phoenix Society for Burn Survivors to establish a World Burn Scholarship fund for electrical linemen who have sustained burn injuries. The Phoenix Society partners with other such organizations to provide education, collaboration, and advocacy to anyone affected by a burn injury, including the victims' families.

The CFEBA seeks to support energy-related charitable projects with contributions that are received directly by the beneficiaries wherever possible. The Board is mindful of adding value to its supporters' contributions by selecting beneficiaries that are not readily available to the general public.

A. Karen Hill is a CFEBA Board member.

CFEBA September 2005 Caulking Event



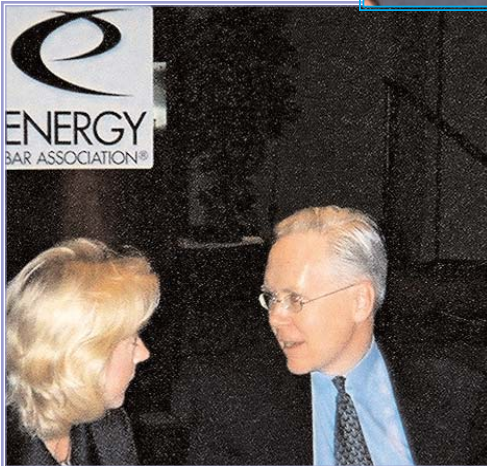
From left to right: Paul Breakman, Abigail Briggerman, Judd Legum and Roshini Thayaparan



Lunch at the Legislative Program on the Energy Policy Act of 2005



Robert Pease, Cindy Marlette, Donna Attanasio & Mike Manning listen intently to Chairman Kelliher's speech.



Chairman of Arkansas PSC Hochstetter and FERC Chairman Kelliher engage in conversation over lunch.



EBA President Fred Berner, Secretary Gary Guy and morning speaker Susan Tomasky smile for the camera.

Commissioner Kelly's Luncheon Address presented by the EBA Electric Regulation Committee



Bill Dudley fielding Q&A Segment at Commissioner Sudeen Kelly's Luncheon with Bill DeGrandis looking on.



A candid picture as Commissioner Kelly discusses her career.

CFEBA Gets Fall Fundraising Efforts Underway

A. Karen Hill

The Charitable Foundation of the Energy Bar Association initiated its annual sustaining members campaign with letters to all Energy Bar Association members as well as past contributors seeking renewed contributions. While gifts of any amount are welcome, the Foundation identifies several levels of contributors for recognition in the EBA Journal and at the Foundation's Annual Gala Reception:

- Cornerstone Contributors -- \$10,000
- Foundation Benefactor -- \$5,000 to \$9,999
- Foundation Patron -- \$2,500 to \$4,999
- Foundation Sponsor -- \$1,000 to \$2,499

In addition to the sustaining member drive, the CFEBA is planning its Third Annual Fundraising Gala Reception for November 17, 2005, in conjunction with the EBA Mid-Year Meeting, at the Renaissance Hotel in Washington, DC. The Gala, as in the past, will feature a jazz trio headed by Jon Schneider, EBA member. In addition, a \$2000 American Express gift certificate will be raffled off. A number of mixed cases of wine, contributed by the Board members of the EBA, the CFEBA, the EBA Law Journal as well as contributed by members of regional chapters, will be sold in silent auctions. Also to be auctioned off silently is a week at a beach house on Anna Maria Island, Florida.

The CFEBA has contributed to relief efforts for the natural disasters that have beset the Gulf Coast and Southeast Asia this year. In addition, the CFEBA has pledged to contribute a heating and cooling unit to a renovated shelter for victims of domestic violence and to an organization that supports utility burn victims. The CFEBA regularly supports Habitat for Humanity.

A. Karen Hill is a CFEBA Board Member.



***The Charitable Foundation of the Energy Bar Association
Invites you to its Third Annual Fundraising Gala
a Cocktail Reception***

November 17, 2005

5:30 to 7:30 p.m.

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

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

202/223-5625

Sponsorships \$2000

***Featuring Jazz Trio, Raffle and Silent Auction
Proceeds contributed to energy-related and other charitable projects***

***Special Invited Guest of the Gala will be
The Honorable Joseph Kelliher***



Blockbuster Fall 2005 Energy Law Journal

Volume To Feature Articles by Commissioner Kelly, Senator Inhofe, And Newly Appointed Commission General Counsel John Moot; Judge Cudahy Returns to the Journal

Clinton A. Vince

The Fall volume of the Energy Law Journal will contain a likely record number of articles, each cutting edge and extraordinarily timely. Here is a preview:

- *FERC Commissioner Suedeen G. Kelly authors an article on the use of reference prices in mitigating market prices, including issues of whether the use of such prices is a permissible delegation of Commission authority.
- *Senator James M. Inhofe, Chairman of the U.S. Senate Committee on Environment and Public Works, is contributing an article on the future of natural gas and the environment.
- *The Journal is very fortunate to publish an article by John S. Moot, newly appointed Commission General Counsel and frequent previous Journal contributor, on potential reforms to Order No. 888, including how to properly characterize and address issues of undue discrimination.
- *Judge Cudahy of the U.S. Court of Appeals for the Seventh Circuit has granted the Journal permission to publish his keynote address at the June 29, 2005 Commission FPA 70th Anniversary Celebration, June 29, 2005.
- *Jeff M. Gray presents a provocative article entitled, "A Hybrid Ratemaking Regime in Wholesale Electricity Markets? Reconciling Market-based Rates with the Just and Reasonable Standard."
- *David G. Tewksbury and Stephanie S. Lim co-author, "The Applicability and Application of the Mobile-Sierra Doctrine to Market-Based Rate Contracts."
- *James Bohn writes, "Shareholder Litigation in the Utilities Sector."
- *Darrell Blakeway and Carol Brotman White author, "Tapping the Power of Wind: FERC Initiatives to Facilitate Transmission."

This volume should be out around the time of the EBA's November Mid-Year Meeting.

Clinton A. Vince is the Editor in Chief of the Energy Law Journal.

Western Chapter Elects New Officers, Plans Meeting

The Western Chapter of the Energy Bar Association has chosen its new officers for the coming term and continues the planning for its 5th annual conference to be held in San Francisco February 23–24, 2006. The incoming officers are: Bruce Webster, President; David Huard, Vice President; Peter Jazayeri, Secretary; Brooks Harlow, Board Member – Pacific Northwest; Ted McMurtrie, Board Member – Rockies and Southwest; and Kevin McSpadden, Board Member – California.

"In addition to offering another comprehensive conference, we look forward to expanding our membership base and working with the EBA Charitable Foundation", said Mr. Webster. "Many thanks to outgoing President Kevin McSpadden for his leadership and successful efforts to continue building the Western Chapter."

RECEPTION HONORING ENERGY LAW JOURNAL SUMMER INTERNS

On the evening of July 28, 2005, the Jones Day law firm held a reception at its offices on Louisiana Avenue, NW to honor the 2005 Energy Law Journal summer interns. Christina Deaton and Zach Hyden interned in Washington, D.C., on the U.S. Senate Environment and Public Works Committee this past summer after finishing their second year of law school. They are currently third-year students at the University of Tulsa College of Law and are executive articles editor and senior student staff, respectively, on the Journal.

The Journal and the EBA established the internships to honor William A. Mogel, the Journal's former editor-in-chief. Bill served in that position for twenty-five years, from 1980 to 2004.

Bob Fleishman, the Journal's current Executive Editor, spoke briefly and introduced the interns but the event was otherwise a social occasion, an opportunity for the interns and various EBA members to interact. In addition to Christina and Zach, guests included Bill Mogel, the editors and Board of Directors of the Journal and the Boards of Directors of the EBA and the EBA Charitable Foundation.



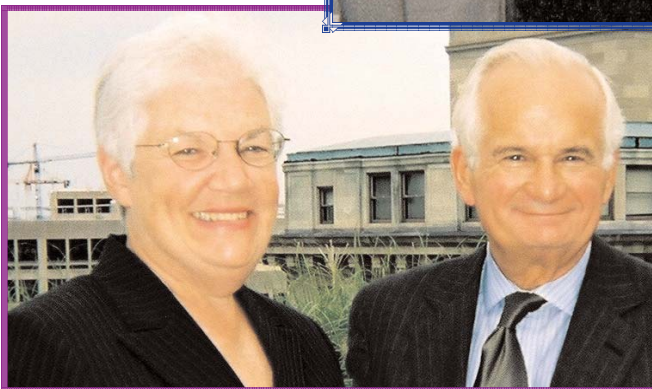
Christina Deaton & Zach Hyden enjoy a rooftop reception in their honor.



Above, Elisabeth Myer, Rich Meyer & Peter Meier smile at the social event.



From left to right: Bob Fleishman, Zach Hyden, Christina Deaton, Fred Berner, Bill Mogel, Earle O'Donnell, Derek Dyson & Meredith May join together for a wonderful group photo.



Carolyn Thompson and Bill Mogel are pleased at the fine turnout for the reception at Jones Day.



Bob Weishaar, John McCaffrey & Gloria Halstead enjoy the beautiful view

EBA Members Enjoy a Delightful Reception after the Legislative Program on the Energy Policy Act of 2005.



**Reception Sponsors of the
EBA's
Legislative Program
Held on September 29, 2005**

Bingham McCutchen

Blackwell Sanders Peper Martin

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**Milbank, Tweed, Hadley &
McCloy**

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Ross, Marsh & Foster

Sidley Austin Brown & Wood

Stinson Morrison Hecker

Troutman Sanders

Introducing the EBA Staff and its New Office

Channing D. Strother, Jr.

On April 1, 2005, the EBA Administrative Office moved to 1020 19th Street, NW, Suite 525, from its previous location near Washington Circle. The EBA, thus, now has its own separate suite. Thanks to EBA Administrator Lorna Wilson and Bob Weishaar for their laudatory efforts in finding the new space and negotiating a beneficial five-year lease. Thanks to everyone in the

active regional chapters, but also for the Charitable Foundation, created in 2002, and the Foundation of the Energy Law Journal and the Journal itself. The EBA has staffed its administrative offices leanly for a voluntary bar association and sister organizations of their membership level and scope of activities. As noted, Lorna Wilson has been EBA Administrator since 1987. She is

“The EBA Administrative Staff – Lorna, Marlo, and Michele – is an extraordinarily important component of the Energy Bar Association, and we sincerely hope that we can continue to benefit from their unique and trusted expertise for a long time.”
Fred Berner



Marlo Brown, Michele Duehring & Lorna Wilson

“The success of the EBA is due in no small measure to our superb Staff. One of the primary objectives that I had was to find EBA office space, and I am glad that it has turned out so well.”
Steve Huntoon

Administrative office for undergoing all of the effort and disruption of a major move just two weeks before the Fifty-Ninth Annual Meeting. The Administrative staff reports that it is delighted to have its own suite and that the new location is convenient and otherwise pleasing.

responsible for logistics of all national and regional meetings-securing meeting sites, preparation of budgets, securing of continuing legal education credit with State Bars, compilation of speakers' meeting materials, and on-site management of national programs and regional meetings. She is a primary manager of the EBA web-

site, through the EBA's internet service provider, and has primary responsibility for the EBA's contracts and transactions with a plethora of vendors. She works with EBA Officers with respect to preparation for and

“Lorna and her Staff are absolutely wonderful! I can truthfully say that I do not know what I would have done without them. The work done by the EBA Staff is carried off so well and so smoothly that I am sure most members have no idea how hard our Staff works. We all owe them a large debt of gratitude.”
Barbara Heffernan

Everyone is invited to drop by to have a look at the new digs!

Until 1987, EBA's address was that of the Secretary of the organization. With the hiring of Ms. Wilson as full-time Administrator, the EBA Board determined that the Association should have a more permanent location. Over the 17 years, the Administrative Office occu-

piated sublet space in three different law firms. This is the first time it has had its own suite.

Presently, the Administrative team consists of three full-time staff members. Administration is provided not only for the increasing membership of the EBA and the EBA's six, ever more

“Members of the EBA Staff are dedicated and hard-working. In addition, they've been key to the association's success over the last five years as it evolved from the FEBA to the EBA and expanded its membership, chapters, programs, and activities.”
Bob Fleishman

organization of monthly Board meetings and preparation of the annual EBA budget. She collects and manages all revenues and expenses for EBA-she writes all the checks for EBA-as well as processes all revenues for both the CFEBA and the FELJ/Journal, and works with the

“Lorna is the Rock of Gibraltar. She is unfailingly kind, perceptive, indefatigable, and a pleasure to work with.”
Sheila Hollis

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public accountants for each organization. She attends all Board meetings for each organization and provides enormous support for the activities of those organizations as requested of their Boards, Officers, and Committees.

"The EBA would not be what it is without its wonderful Staff. I am so glad that they have newly leased office space of their own to facilitate their great contributions."

Jennifer Waters

Marlo Brown is Senior Administrative Assistant. She first came to the EBA in 1999, at the time EBA was implementing its five-year strategic plan. She assists Ms. Wilson in all of the above duties. She is deeply involved in preparation for national and regional meetings and programs of EBA, its chapters, and its sister organizations, and is frequently on-site in support

"I am delighted that the Staff now has its own superb office space. The Staff – and in my time that meant primarily Lorna – was what made EBA tick. We could not have 'made it happen' without the dedicated work of the Staff."

Ed Grenier

of those activities. In particular, with the EBA Program Committee, she prepares the meeting brochure and assists in publicity efforts generally. She handles e-mail broadcasts to members, on-line credit card payments for dues and meetings, and is deeply involved in the preparation of the annual EBA membership directory, and its maintenance on the EBA website. If you need your membership number to access the restricted portions of the EBA website, she is the one to contact. She supports the FELJ/Journal by managing subscription payments and contributions, and interacts with the University of Tulsa staff

on logistical matters. She provides similar support to the CFEBA.

Michele Duehring is an Administrative Assistant and first came to the EBA in 2004. She is primarily responsible for annual dues collections and management, including such related items as new member packets. She manages contributions

"It's no secret that Lorna Wilson and her colleagues on the EBA Staff do a superb job and are indispensable to the smooth running of the Association. Those of us who have been fortunate to hold EBA leadership positions over the years know this better than anyone and owe Lorna and her team a huge debt of gratitude. My best wishes to the staff in its new office!"

Paul Nordstrom

made to the CFEBA and the FELJ. She is responsible for processing and registration of meeting attendees and acquisition, compilation, and distribution of meeting materials. Working with the EBA Secretary and others, she produces the EBA's quarterly newsletter, "EBA Update," among other things, compiling and formatting articles, pictures and other announcements, into specialized newsletter software. She has taken a lead role in assisting the CFEBA in setting up its yearly golf outing and annual gala raffle.

"The Energy Bar Association has been blessed with a dedicated and loyal Staff over the years. I am pleased to hear that the Association has arranged for them to have such nice office space to create a pleasant working environment."

Dave D'Alessandro

Ask any EBA member that has ever worked with the Administrative Office on EBA or sister organization activities, and they will tell you that these wonderful,

"Lorna's focus on the long-run interests of EBA and her leadership on day-to-day matters with the Board, members and Staff have been essential factors in the Association's success. Marlo's dedication and success in managing EBA's responsibilities and needs are impressive. We very much appreciate and admire their contributions."

Steve Herman

hardworking, talented individuals are simply invaluable to these organizations, and we are deeply grateful for all that they do.

By the way, the EBA Administrative Office phone number, (202) 223-5625, and the overall contact e-mail address, admin@eba-net.org, remain the same.

"I always found it a delight to work with Lorna. She was always helpful and accommodating. In subsequent years, she was of real assistance when I was asked by the U.S. Office of Personnel Management to find members of the private bar to serve on review panels of ALJ candidates."

John Miller

"The Staff was always very effective and very helpful."

Chris Boland

Channing Strother is the Assistant Treasurer of the EBA.

More EBA Presidents on the EBA Staff

"Having been the Secretary of the Association (Federal Power Bar Association) in the late 60's, when the Secretary and the Secretary's secretary were the administrators of the Association, I was very pleased as Vice President in 1987 that we hired someone named Lorna Wilson to be a full time Administrator. I was elated two years later when I became President and fully realized what a prize we had in Lorna. Intelligent, conscientious, hard working and, perhaps most important, not too reticent to correct the President on administrative matters.

Keep up the great work, Lorna!"
Dave Ward

"Lorna and her Staff have always been friendly, efficient, and supportive of the Association. When the Association sub-leased space in my former law firm's office, I had the occasion to visit with her more frequently than in earlier years, and she continued to be a joy and pleasure to visit with."

Bill Harkaway

"I always had great support from the EBA Staff and could not have gotten along without them. They are instrumental to the success of the Association."

Dick Merriman

"Lorna's contributions to the Association are immeasurable. Her dedication to performing at the highest level has been instrumental in bringing the Association's operations into the 21st century and conducting the many worthwhile meetings and programs. I miss the opportunity to work with her and miss the social visits with her and her husband."

Frank Saponaro

Perspectives from Holden continued

asked Holden whether there are lessons on energy conservation or policy that Americans, particularly energy professionals, should have learned from the past but have not. Holden answered that "we have not learned that there's nothing we can do that will be done both quickly and effectively." Holden does not expect that Congress can immediately fix the energy industry, as a whole (despite the passage of the EPAct of 2005). Instead, because of the nature of the energy industry, Holden believes that solutions take time to develop, and cannot be implemented by a single regulatory body or legislature. "Our energy system does not allow substitutions," he commented, "we are committed to things in bulk and much of the energy system is dictated by the transmission requirement, so that there is no way for people to shift from one energy source to another. By the time you shift, the problem has changed."

When asked about the toughest part of

being a Commissioner for the FERC, Holden says he has no personal regrets, but that the process of working long hours and the feeling of isolation from reality can be difficult; "the argument that happens in a hearing room has real world effects on someone's business and the gap between what happens in the real world and what happens in the Commission can be both isolating and difficult."

Since leaving the Commission, Holden's reality has been lecturing, writing, and testifying on the political process. He served as the Henry L. and Grace M. Doherty Professor of Politics at the University of Virginia and even testified during the Clinton impeachment hearings. For his work, Holden was elected as a Fellow of the American Academy of Arts and Sciences and served as President of the American Political Science Association. He and his spouse, Mrs. Dorothy H. Holden, also created a non-

"There's nothing we can do that will be done both quickly and effectively."

profit corporation, the Isaiah T. Montgomery Studies Project, Inc. (named after the founder of Mound Bayou, Mississippi, the town in which Holden was born), to focus on historical research related primarily to Mississippi. In 2001, he was a Public Policy Fellow at the Woodrow Wilson International Center for Scholars, working on regulatory policy, including an article entitled "The Artificial Earthquake: Electric Restructuring in California," *Public Works Management & Policy* Vol. 6, # 3 (January 2002), 159-169.

Recently, Holden completed a chapter on energy policy in the Oxford Handbook of Public Policy, which is being edited for publication quite soon. That chapter

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Holden Interview Continued

relates American legislative and regulatory policy to contemporary energy issues, the emergence of China and India as big consumers, the question of Hubbert's Curve and of post-oil options, including hydrogen.

Although he professes to follow energy issues only "generally" since leaving the Commission some 24 years ago, Matthew Holden, Jr. remains plugged into the energy industry. As history continues to repeat itself and as new issues are injected into the energy policy process, we can be certain that Holden is watching.

Mrs. Clair is the Assistant Secretary of the EBA.



Mrs. Holden and Dr. Holden at his Politics Department retirement party in May 2002

Commissioner Holden Dissents (Colorfully)

"The majority opinion reminds one of the Datsun commercial. It is driven. But the end to which it is driven seems unattractive and the logic unpersuasive." *Consolidated Gas Supply Corp.*, 13 FERC Para. 61,0596, 61,130 (1980).

"The present matter has been rendered mouldy by time, but it is by no means trivial. . . . The option to say that the application is moot, as the order does, is unavailable. One may add that even if mootness were plausible, it would only arise because of an unfortunate lapse in the Commission's administrative processes." *Valero Transmission Co.*, 15 FERC Para. 61,244, 61,569, 61,570 (1981).

"If there is as much confusion as is here indicated about matters that appear to be relatively clear . . . we can only have greater fears . . ." *Great Plains Gasification Assoc.*, 10 FERC Para. 61,066, 61,152 (1980).

"The silence of the Commission on the jurisdictional issue . . . could, I think, lead to unfortunate inferences that the Commission itself doubts its jurisdiction or its effective capacity." *Ohio Edison Co.*, 2 FERC Para. 61,017, 61,028 (1978).

"The central question in this case is whether ratepayers may be charged money which does not go directly toward providing service to them, and which someone else is allowed to keep The Commission is the representative of the public, and the public's interests. If we are not for the ratepayer, who will be? If not now, when?" *Columbia Gulf Transmission Co.*, 8 FERC Para. 61,002 61,011, 61,016 (1979).

"The wiser course for the Commission, when it discovered that Tennessee was not unique, would have been to make the following simple statement, "We thought Tennessee was unique, and we were misinformed. It is embarrassing to admit that we were wrong, but we are not going to commit further error. Instead, to maintain the integrity of the regulatory process, we will stop now, and we will deny Texas Eastern the pass-through that it seeks." *Algonquin Gas Transmission Co.*, 3 FERC Para. 61,011, 61,033 (1978).

"It is apparent that the people in question have to have some source of heat, and even the company apparently recognizes that it just would not do to tell them "so long, it's been good to know you." . . . In this, the only thing 'equitable' I perceive is the name of the company." *Equitable Gas Co.*, 3 FERC Para. 61,013, 61,041 (1978).

Presidents Message Continued

In the aftermath of Hurricane Katrina, the Charitable Foundation of the Energy Bar Association immediately pledged \$25,000 for energy-related relief efforts, and an even greater amount was subsequently committed. More concretely, the Charitable Foundation has provided ten portable electric generators to the State of Louisiana, for use in St. Bernard, Plaquemines, and Washington Parishes, and an additional ten generators for use in the State of Mississippi. These initiatives of the Charitable Foundation were made possible through the contributions of EBA members, and we ask you to give serious consideration to the Charitable Foundation's recent request for further financial support in view of the enormity of the ongoing Gulf Coast relief and recovery operations.

Finally, the unique legal and policy issues regarding the Gulf Coast relief and recovery efforts will be a principal focus of the EBA's Mid-Year Meeting, to be held in Washington on November

"Gulf Coast relief and recovery efforts will be a principal focus of the EBA's Mid-Year Meeting."

17 and 18. A featured panel in the program will address topics relating to catastrophic risk management and recovery in the energy industries, including property and casualty insurance coverage, operational effects of the hurricanes, and regulatory implications.

Other panels of experts will address such diverse subjects as corporate mergers and acquisitions in the wake of PUHCA repeal, proposed FERC policies and regulations to implement the Energy Policy Act of 2005, LNG facilities and markets, and market-based rate developments. We hope that all of you will be able to join us for what promises to be a stimulating and eventful Mid-Year Meeting of the EBA.

Fred Berner

EBA President

Interview with Chairman Kelliher Continued

that the Commission acted within weeks of the legislation becoming law in issuing a Notice of a Proposed Rulemaking doing exactly that. He added that LNG terminal siting and associated pipeline take-away construction authorization is as much a matter of high priority now as it was under his immediate predecessor, Pat Wood III. He stated that the agency has a "good record" of processing LNG import applications in 15 months. Given the NEPA requirements, Chairman Kelliher stated that it is virtually impossible to give final clearance in anything less than a year. Unlike the FERC's responsibility for economic regulation over regulated pipelines and electric utilities under the NGA and FPA, respectively, Chairman Kelliher, pointed out that FERC's primary role in the LNG import area under Section 3 of the NGA is safety regulation. He cited the "40 plus" safety conditions that FERC imposed on its LNG import certificate order issued in July 2005 for the Weaver's Cove LNG terminal as an indication of how FERC carries out this responsibility, and he indicated that the recent law indicates that Congress is "comfortable" with FERC's actions in this area.

In response to questions about proposed legislation that did not survive final passage in the EPAct of 2005, Chairman Kelliher refrained from second-guessing Congress because the particular matters relate to methods of generating, producing, or procuring

LNG siting is as much a high priority now as it was under Pat Wood.

energy rather than the delivery of energy over the pipes and wires that are regulated by the Commission. For that reason, he declared himself an "agnostic" over such issues as ANWR and Renewable Portfolio Standards ("RPS"), neither of which is covered in the recent energy statute. Chairman Kelliher did, however, indicate a considerable depth of knowledge of these issues by, for example, explaining that state statutes have varying definitions of what constitutes renewable resources, some specifically including biomass while others do not, and concluding that having a federal overlay for mandatory RPS within a utility's supply portfolio may unduly complicate the matter. He also observed that with Hurricane Katrina and other factors leading to high natural gas prices, the political climate for ANWR may have changed since the EPAct of 2005 was voted on earlier this summer, but he disavowed any expertise in gauging such political trends.

At the FERC Helm: What Will the Workload Be?

Certain misconceptions were identified by Chairman Kelliher. For one thing, the Chairman pointed out that FERC processes cases that are filed by applicants, and therefore FERC is not in complete control over either

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Interview with Chairman Kelliher continued

how busy it is or what matters it handles. For another, he pointed to the EAct of 2005 as an example of statutorily-imposed duties that again the agency has no control over. And third, the Chairman pointed out that many people overlook the fact that the Commission has authority over oil pipeline regulation precisely because the Commission does such a good job in that area that it gets little attention, and tends to be forgotten.

Acknowledging that the FERC Staff works hard on these matters that come before it for which the Commission has no control, Chairman Kelliher also pointed out that the agency initiates rulemakings of its own to add to its already heavy workload. For example, Chairman Kelliher indicated that while his agency is committed to meeting the deadlines contained in the EAct of 2005 in several areas, he is also committed to moving on a rulemaking to address any needed reforms of Order No. 888 open access requirements for electric wholesale transmission service. He described this "discretionary initiative" as an intent to "look anew at undue discrimination in transmission services." He explained that this Order No. 888 reform initiative has a "dotted line relationship" to the Standard Market Design NOPR that was officially terminated shortly after the Chairman assumed office, in that remedying such discrimination was one of the topics of the ill-fated SMD NOPR. However, the SMD NOPR was also aimed at "encouraging an efficient rate design" and "imposing market reform," according to the Chairman, and those objectives are not contained in the Order No. 888 reform initiative that he has in mind, he maintained.

In addition, Chairman Kelliher spoke about the fact that the Interstate Commerce Act, as the precursor of the NGA and FPA, is partially within the jurisdiction of his agency rather than the now-defunct Interstate Commerce Commission, a fact for which he expressed great pride. The

Chairman indicated again and again his sense of fulfilling a historical responsibility with a long legacy and tradition behind him. While many of the cases before FERC or on appeal pre-date his tenure, given the lengthy processes involved with rehearing and remands, he indicated that he takes the responsibility for judicial reversals of such cases occurring since he became Chairman even though the FERC decisions were "already on base," that is, issued before his tenure. He indicated that the full Commission collectively decides whether to approve recommendations from the FERC Solicitor to voluntarily request a Court remand, and that he has favored doing so in certain instances.

New General Counsel and Staffing: Writing for Success!

We asked the Chairman about his selection of John S. Moot as his General Counsel, and about the heavy workload and large number of Senior Staffers coming up for early retirement after 20 years of service and more. The Chairman was eager to discuss each of these matters.

Stating that he "knows John" and has "great respect" for him as a "very successful and brilliant lawyer," Chairman Kelliher also referenced the law review articles that Mr. Moot has written on legal and policy issues as reasons for his selection. Presumably, the Chairman was including Mr. Moot's prolific contributions to our own *Energy Law Journal*, for which he may well be the most frequently published author. The Chairman explained that he wanted someone to advise him who has thought about policy issues confronting the Commission. He also volunteered high praise for Cynthia A. Marlette, the outgoing General Counsel, who has agreed to stay at the Commission and assist with EAct of 2005 compliance and implementation issues. He indicated that he has known Ms. Marlette longer than any other FERC Staff member going back to

his Commerce Committee Majority Counsel days when he worked with her extensively.

The turn-over of the FERC Staff is not a source of concern to the Chairman. He stated that there is a broad range of young, mid-level, and senior members of the FERC Staff, and maintained that the turn-over at the agency is less pronounced than in the private sector. He indicated that he is having a hard time thinking of himself as having reached middle age, but in any event, he is committed to meeting all deadlines required by law and to achieving the rulemaking goals he has set for the Commission.

In concluding the interview, Chairman Kelliher indicated that he has had some contact with former Chairs of the Commission concerning how they handled the agency and got along with their colleagues, and that he is looking forward to having "reinforcements" appointed by the President and confirmed by the Senate. He singled out former Chairman Wood as one of the predecessors with whom he has had conversations lately. Actually, there is a special reason for those two to talk to each other. Chairman Kelliher mentioned that his third child was born a month ago, and that former Chairman Wood is anticipating the birth of his fourth child soon (an event that has since taken place we understand). The two have been discussing these truly momentous events!



Mr. Guy is Secretary & Mr. Strother is Assistant Treasurer of the EBA.

Upcoming Events

Mid-Year Meeting

November 17-18, 2005
Marriott Renaissance Hotel
Washington, D.C.

Charitable Foundation of the Energy Bar Association Third Annual Fundraising Gala Cocktail Reception

November 17, 2005
Marriott Renaissance Hotel
Washington, D.C.

Western Chapter Annual Meeting

February 23-24, 2006
Hyatt Regency Hotel
San Francisco, CA

Midwest Chapter Annual Meeting

March 1-2, 2006
Palmer House Hilton Hotel
Chicago, IL

Reception honoring the Federal Energy Regulatory Commission Administrative Law Judges

April 26, 2006
Marriott Renaissance Hotel
Washington, D.C.

Sixtieth Annual Meeting

April 27, 2006
Marriott Renaissance Hotel
Washington, D.C.

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

EBA Website Has "Links of Interest"

Channing D. Strother

The EBA Website (www.eba-net.org) maintains, under a section entitled "Links of Interest," and tabbed on the left side of each webpage of the site, a convenient list of clickable links to energy-related websites. These may be of interest to EBA members and others for any number of purposes, including legal research, factual research, and contact information.

We would be very interested in suggestions for additions to the list, as well as reports of any links that are no longer valid. Please send suggestions and/or corrections to Michele Duehring (admin@eba-net.org).

Channing D. Strother is EBA Assistant Treasurer and is on the EBA Board of Directors Communications Committee.

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 2200 members, six formal chapters in Houston, New Orleans, Midwest, Southern, West 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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