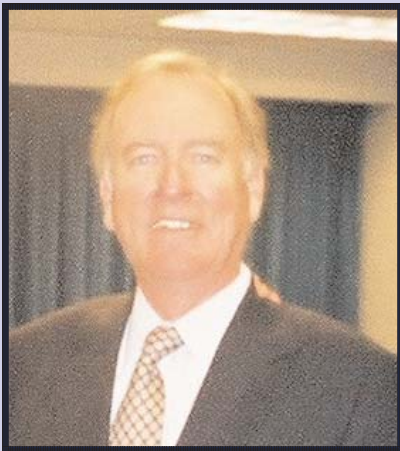


## President's Message



In April, the Energy Bar Association will celebrate its Sixtieth Anniversary. The EBA was formed as the Federal Power Bar Association in 1945 by a handful of practitioners before the Federal Power Commission, including the Association's first three presidents – Carl I. Wheat of Washington, D.C., C. Huffman Lewis of Shreveport, Louisiana, and Randall J. LeBoeuf of New York City.

The history of the EBA's first 50 years has been recounted in detail in a 1996 article in the Energy Law Journal (17 Energy L.J. 1) and need not be reiterated here. Rather, the purpose of this brief message is to highlight major developments in the EBA over the past decade, at least from this EBA member's perspective:

**EBA Diversity.** The EBA has maintained a continuing emphasis on fostering an inclusive and diverse membership and has sought to increase diversity in all of the Association's foundations, committees, and leadership

*continued on page 12*

## FERC Commissioner Nora Mead Brownell Speaks Out On the Need to Open Electric Markets/Build Infrastructure

**The Longest Tenured Current Commissioner Discusses the Two Most Recent Chairmen, and the Nation's Slow Progress Toward Market Pricing Transparency; "History Will Judge Us Harshly"**

*Gary E. Guy and Channing D. Strother*

On a mild but rainy afternoon in late December, with the second floor hearing rooms empty for the holidays, a characteristically outspoken FERC Commissioner Nora Mead Brownell graciously sat down with investigative EBA Update reporters Gary Guy and Channing Strother (aka "Woodward and Bernstein") with her familiar coffee cup in hand for a spontaneous and unrehearsed interview of over an hour's duration. Her videotaped riveting discourse, covering everything from what never to put in a brief again to what gets FERC's attention in pleadings, is must viewing for every FERC practitioner and can be seen on the EBA website, [www.eba-net.org](http://www.eba-net.org).



**Reflections of a Long-Time FERC and Pennsylvania PUC Commissioner**

FERC's senior ranking Commissioner in terms of service was asked to comment on the changes she has seen with Commissioners, and indeed Chairmen, coming and going, and to also point out

what has remained fairly constant over time at the agency. She stated that the "extraordinarily strong Staff" has remained a "given" all of the time that she has served as a Commissioner. She described the "intellectual capacity" of the Staff as a "gift." She stated that there has always been a spirit of collegiality among the Commissioners even when

*continued on page 3*

## The Western Chapter Announces Program for Fifth Annual Meeting

Steven W. Tyacke

Continuing its tradition of professional excellence, the Western Chapter has announced the Program for its Fifth Annual Meeting to be held on February 24, 2006. The event will kick off with a reception the preceding evening of February 23 for the benefit of the Charitable Foundation of the Energy Bar Association. A wine raffle will be held at this event and will be a festive prelude to the Annual Meeting.

The Annual Meeting Program is entitled, "Building Up the Western Infrastructure For Meeting the Demand and Increasing Reliability." A Keynote address will be presented by Commissioner Suedeen Kelly.

The first panel on the program will examine the real impact of the Energy Policy Act of 2005 on the Western region. This panel will be comprised of national experts to discuss whether the federal legislation represents a comprehensive national energy plan sufficient for the Western Region or merely presents piecemeal measures, which still leaves much reliability, market and delivery risk management in the hands of the regional stakeholders.

The second panel will examine "Coping with Natural Disasters and Supply Disruptions: Contingencies, Storage, Alternate Sourcing." There are significant new generation additions announced and under construction in order to meet the Western subregional load forecasts. However, state and federal regulators continue to be concerned about the possibility of blackouts and the robustness of the regional high voltage transmission grid. The tremendous size of the Western geographical area and the regional differences involved make this a particularly interesting topic. Where the Pacific Northwest utilizes hydroelectric resources for more than 60 percent of its capacity, Southern California has one of the largest concentrations of new natural gas generation in the nation. This makes this discussion very important given this capacity diversity.

Afternoon speaker panels will address "How State Regulators are Dealing with Skyrocketing Energy Costs." Many factors have converged which have resulted in increased fuel prices for energy generation. These include, among others, declining natural gas production as a result of Hurricane Katrina, OPEC oil pricing, and colder than normal winter weather. Together these circumstances greatly contribute to increased energy market clearing prices in the Western region. Renewable energy standards

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## EBA Midwest Chapter's Ninth Annual Meeting: EPACT and Energy Regulation in the Midwest – What's Happening?

Leslie P. Recht

The Midwest Chapter of the Energy Bar Association is planning its Ninth Annual Midwest Energy Conference, to be held on March 1-2, 2006 at the Palmer House Hilton in Chicago, Illinois. This conference will provide an opportunity for energy practitioners to hear about the latest developments in both federal and state energy regulation directly from experts and state and federal regulators. The conference will focus on the impacts in the Midwest of the Energy Policy Act of 2005 and related FERC rulemakings. Panels will discuss the current status of the Midwest ISO, PJM and SPP and proposals for EROs, as well as current rate design developments. Conference organizers have confirmed a distinguished group of speakers, with a keynote address by FERC Commissioner Suedeen 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 energy practitioners. The panels will include presentations by several state utility commissioners and chairs.

**Conference will focus on impact in the Midwest of EPAct 2005.**

The Midwest Chapter's annual business meeting and cocktail reception will be held the evening of March 1, 2006, as a fundraiser for the Energy Bar Association's Charitable Foundation. Donations will be gratefully accepted for this charitable event. As of press time, the reception's sponsored are: Defrees & Fiske LLC; Offices of Freddi L. Greenberg; Posinelli Shalton Welte Suelhaus PC; Foley & Lardner LLP; Gonzalez Saggio & Harlan LLP; Commonwealth Edison Company; Sonnenschein, Nath & Rosenthal LLP; Constellation Energy Group; and Blackwell Sanders Peper Martin LLP.

*Ms. Recht is the President of the EBA Midwest Chapter.*

## Commissioner Brownell's Interview continued

they disagree on a particular matter, and there has never been an instance of Commissioners not speaking to each other after voting their separate ways, as she indicated she has seen happen at other commissions. For example, Commissioner Brownell stated that there was a great awareness within the industry that she and former Chairman Pat Wood, III "are close friends," to the point that many people are unaware that she dissented many times from orders that the Chairman supported. The differences were never a source of personal conflict, and she stated that this has been true of all the FERC Commissioners.

As to the change in Chairmanship, Commissioner Brownell expressed the view that each Chairman has a vision of what they want to accomplish. In Pat Wood's case, according to Commissioner Brownell, he wanted to continue with the market evolution approach that began in 1992 with federal legislation. She said that he wanted to open markets, including LNG, which she described as "very important." He also wanted to deal with the California energy crisis and combat the bad image that Brownell stated California Governor Gray Davis, III was "very, very adept" at depicting for FERC. Commissioner Brownell stated that FERC was not well known to the public (as it has since become), and that Chairman Wood was instrumental, with the assistance of the other Commissioners, in going to California frequently and for extended periods to let the public know what FERC was actually doing to assist with the mess out there that California created.

But the Commissioner philosophically observed that different times require different approaches, and that Chairman Joseph T. Kelliher has a different style than does Chairman Wood that is equally effective. She commented on the current Chairman's

attributes as an "historian and very, very fine attorney." While she stated that Chairman

**Kelliher is a "very, very fine attorney."**

Kelliher shares Chairman Wood's vision of markets, she said that he comes to the job with a different perspective and approach. She said that it has been "wonderful" to have had this opportunity to serve with two such Chairmen, both of whom she described as "intellectual giants" with "huge integrity" and "enormous passion."

She discounted any notion that



Chairman Kelliher's appointments of a new General Counsel, and a new Director of the Office of Market Oversight and Investigations, and his intention to name a new Solicitor point to any fundamental change in policy, since policy is set by the Commissioners, but rather reflects an historic tradition for Chairmen to name their own team once they assume office. And she added that it is good to bring in new people to take a fresh look at issues. In a way, the history-driven Chairman reminds Brownell of Doris Kearns Goodwin's description of Abraham Lincoln, who even went so far as to bring his political foes into his Cabinet pre-

cisely to make sure that he heard all points of view before making a decision. At the same time, Commissioner Brownell expressed how "lucky" the Commission is that former General Counsel Cynthia A. Marlette has agreed to remain to oversee issuance of rule-makings required by the Energy Policy Act of 2005.

Being reminded she served as a State Commissioner at the Pennsylvania Public Utility Commission prior to being appointed to the FERC, Commissioner Brownell expressed the view that at both the state and federal commissions, there is a common responsibility to protect the public interest and the customer. In fulfilling that obligation,

she was quick to note that the customer and the public are to be protected in many ways in addition to lowering prices, such as improving the value of services through the achievement of greater efficiencies, and ensuring reliability through securing supply and infrastructure. Both state and federal regulatory agencies, according to the Commissioner, need to be ever changing as the industries that they regulate change, and as technology changes; otherwise they become "irrelevant." She further explained

that a State Commissioner often may deal with entities that have very small service franchise territories while a FERC Commissioner deals with large regional organizations. She also observed that a State Commissioner deals with a variety of business sectors, including telephone companies, water companies, and even taxicabs (and she jokingly stated she would like to write a book about the need to restructure the taxicab industry), while a FERC Commissioner has a more narrow energy sector to deal with, albeit on a larger scale.

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# Around the World and Back to FERC: An Interview with Former Commissioner Charles A. Trabandt

Adrienne E. Clair

Perhaps former Commissioner Charles A. Trabandt has gone farther than any other FERC Commissioner since leaving his post at the FERC – at least geographically, that is. After serving as a Commissioner from 1985 to 1993, Trabandt held the position of Managing Director for the Global Energy and Power Group in Investment Banking at Merrill Lynch and Company in New York until 2001. During his tenure with Merrill Lynch, Trabandt’s work took him around the globe including work leading the first sovereign bond deals in Lebanon and Jordan, which were crucial for revitalization of the economies of both countries. Trabandt’s engagements also included Russia, the Middle East and South Africa, and he participated in U.S. Cabinet Trade Missions to China, India, and Pakistan. Recently, I caught up with Trabandt, now a Vice President with CRA International, to reflect on his term at the Commission and find out what he’s been up to lately. Turns out that for Trabandt, it all comes back to the FERC.

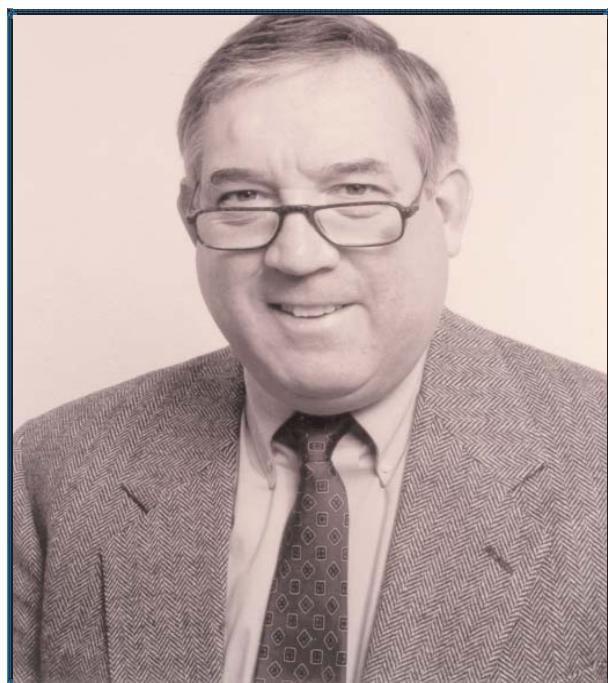
Trabandt’s fond memories of his time as a Commissioner are based upon the accomplishments of the Commission both in orders adopted by the Commission and in the Commission’s decision at times to refrain from taking action. Trabandt’s most notable memory of his term is the unanimous Supreme Court decision in *Mobil Oil Exploration v. United Distribution*, 498 U.S. 211 (1991), in which the Supreme Court upheld Order No. 451 – the order in which the Commission set a ceiling price for gas, adopted the “Good Faith Negotiation” procedures, and declined to address take-or-pay contracts. The victory was significant, in Trabandt’s view, because Order No. 636 would not have been possible if Order No. 451 had not been upheld.

**“Vigorous debate” took place among the Commissioners both publicly and privately.**

Trabandt also remarked on his satisfaction that the Commission decided in 1988 not to adopt proposed rules that attempted to restructure the electric industry from a vertically integrated structure to one focused on independent power producers. He believes that the rules would have been premature at that time and the better course was to defer to President Bush’s (41) National Energy Policy Review and what became the Energy Policy Act of 2002.

The Commission’s work in the natural gas industry during Trabandt’s term as a Commissioner involved orders that Trabandt characterizes as “highly controversial and extremely contentious.” Trabandt recalls Order Nos. 451 and 436, which led to Order No. 636, as orders that were subject to broad opposition and involved numerous court challenges and remand orders by the Circuit Courts. Notwithstanding the challenges, he believes the Commission achieved its goals in these orders and did a fair job of acknowledging and addressing concerns of various sectors along the way. As an example, Trabandt recalls there were concerns expressed in the late 1980’s that Canadian imports were given more favorable treatment than domestically-produced gas. The Commission addressed this concern with the straight fixed variable rate design adopted in Order No. 636. Trabandt says that the “vigorous debate” that took place among the Commissioners both publicly and privately was worthwhile given the “good product” that resulted in the form of such landmark orders.

In light of Trabandt’s extensive experience on Capitol Hill, having served as Chief Counsel and Minority Staff Counsel for the Senate Committee on Energy and Natural Resources, as well as Minority Staff Counsel for the House Committee on Science and Technology, I asked Trabandt to comment on Congress’ recent increased engagement in the FERC’s actions and authority in the wake of the Western electricity market crisis. In Trabandt’s view, Congress’ involvement is neither new nor surprising. He recalls that during his term, Congress was very involved in “constructive oversight” of the Commission, and that the Commissioners frequently testified before the House and Senate Committees. Trabandt remarked that having worked for



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# A Tribute to Mike Duffy:

## Spearheaded EBA/SGA Joint Broadcasts

Marcia C. Hooks

Michael A. Duffy (Mike), who was the driving force behind the many Southern Gas Association (SGA) and Energy Bar Association (EBA) joint live television broadcasts, died after unanticipated heart surgery on Sunday, October 23, 2005. Mike was founder and President of the Corporate Telelink Network (CTN), a subsidiary of SGA. He brought tremendous enthusiasm and energy to all his many endeavors including his 10 years in developing and airing the joint EBA/CTN broadcasts.

He was born in Portsmouth, Ohio, and graduated from high school in Texhoma, Oklahoma. Mike was an educator and an accomplished musician. He received an Eastern Star Scholarship, earned BA degrees at Midwest Christian College and Southern Nazarene University, and received a Masters of Music Education degree from the University of Oklahoma. He was a professor and department chairman at Midwest for 7 years and professor and department chairman of music education at Puget Sound Christian College in Edmond, Washington from 1975 to 1981. When Mike lived in Houston, he was also active in the United Way and continued his love for music through his activities with the Houston Symphony Chorus. While in Dallas he was a church soloist and he was very active with the Dallas Symphony Orchestra, having served on the Board of Governors, Executive Committee and as Tenor Section leader. He continued to be a contributor and Stradivarius patron of the Symphony Association.

Mike began his career in the energy industry in 1982, when he joined United Energy Resources, Inc. in Houston, Texas, as manager of training and development, and later he became coordinator of technical services for United Gas Pipeline. After joining SGA in 1987, Mike found his niche as the founder of CTN, the Energy network. Under Mike's leadership, from a small beginning with a

handful of gas distribution and pipeline companies participating, the network which conducts broadcasts, web casts, web conferences management programs and other video services, grew to include companies throughout the natural gas industry.

Starting in 1995, Mike and Joel Zipp, for-

**17 joint SGA/EBA broadcasts over the last 10 years.**



mer EBA President and a partner with Bracewell & Giuliani, LLP, collaborated on the first joint EBA/CTN broadcast entitled, "From Tariffs To Trade Practices-Antitrust & Other Laws of Competition." These joint broadcasts, which aired live from the professional television studio of Reuters International in Washington, DC, featured a panel of diverse energy industry experts who responded impromptu to a barrage of questions from a moderator on the topic at hand and also were interactive broadcasts that allowed the audience to ask the panelists questions.

The 17 joint broadcasts have been very informative and well received by the industry and have covered a range of controversial and timely energy topics over the last 10 years. Other broadcast topics included, (1) The

FERC's Policy Statement Pricing Flexibility for Interstate Pipeline Capacity (March 1996), (2) LDCs Come out Swinging-With Marketing Affiliates Bare Knuckles Competition in the Unbundled Battlefield of the Market (January 1998); (3) Summer of 2000 Deja vu of 1976-1977? (October 2000); and most recently, (4) Importation of LNG: Safety, Security & Reliability (September 2005).

Marty Ruegsegger, an attorney with Piedmont Natural Gas and a member of SGA and EBA, expressed this about Mike at his funeral on October 27, 2005:

*Mike Duffy was a husband, father, grandfather and a great friend to many in the natural gas industry and the distance learning community. Mike was a man of extraordinary character, integrity and decency. Mike had more energy than any other person I've ever known. He was legendary in his work habits in literally creating from scratch an unparalleled education long distance network focused upon the energy business. Many know of his outside interest that included his love for classical music, particularly his contributions to the oratorio music organizations, both his time and his talents. And he still had time to read over 200 books a year and stay atop of work events—he could tell you early in the morning the newspaper headlines since he had been up since 3 am watching Fox News and preparing for the day's activities. Mike was a perfect friend who never spoke poorly of others – what a legacy to leave all of us. Mike will be missed by his family and his many friends.*

Mike was an active member of Valley View Christian and Stonebriar Community churches and was a board member of Pioneer Bible Translators. Mike is survived by his wife, Chris, son and daughter-in law, Darin and Jackie, and a granddaughter, Trinity. Contributions may be made in Mike's name to the Pioneer Bible Translators, 7500 West Camp Wisdom Rd., Dallas, Texas 75236.

**Ms. Hooks is an EBA Board Member.**

## EBA-Northeast Chapter Activities

On October 31, 2005, the Northeast Chapter hosted a luncheon discussion of capacity markets in PJM and ISO-NE via a videoconference in New York and Washington, D.C. Kathleen Carrigan, President of the EBA-Northeast Chapter, introduced the program from Washington with brief remarks about the Northeast Chapter and its recent activities. She expressed gratitude to Glen Thomas and Blank Rome for hosting the lunch and the speakers. Commissioner Allen Freifeld, Maryland Public Service Commission, started the session with remarks about recent declines in the PJM reserve margins and load growth projections, which have led to concerns about reliability, even assuming weather is in normal ranges. He expressed the hope that the capacity market would give a forward pricing signal and a forward commitment to capacity payments necessary to produce those revenues. The Commissioner was followed by Scott Miller, PJM's Executive Director, Market Applications, who compared the capacity markets in PJM, New England and New York.

Raymond Hepper, ISO-NE's Vice President and Assistant General Counsel, spoke about the New England capacity market. John Reese, Director of Economic Development and Policy Coordinator, New York Public Service Commission, spoke about the New York capacity market. Each speaker also addressed the political considerations that have affected the shape and timing of various capacity markets.

Many thanks to Blank Rome and our speakers in Washington and New York. On March 9, 2006, the Chapter will sponsor a program at the Marriott Marquis, Times Square, 1535 Broadway (at 45th and 46th Streets), New York City, titled "What Does It Take to Attract New Generation and Transmission Investment in the Northeast Markets?" FERC Chairman Joseph T. Kelliher will deliver the keynote address. This program should be of interest to owners of equity or debt of electric assets and all companies involved in the Northeastern United States. There will be three sessions, with each panel having participants from the investment community, the existing market, and selected regulators. The generation investment panel will discuss what it takes to attract generation investment in the northeast markets. The transmission investment panel will discuss what it takes to attract transmission investment in the northeast markets. To conclude, Doug Kimmelman, President of Energy Capital Partners, will deliver his observations based on the panelists' remarks and dialogues.

## CFEBA Helping With Fuel Costs

*A. Karen Hill*

In light of predictions of high energy prices and a cold winter, the Charitable Foundation of the Energy Bar Association has focused on helping the poor meet fuel costs this winter. CFEBA contributed \$7500 to Aid to Distressed Families of Appalachian Counties, \$7500 to the Energy Share Program administered by Arlingtonians Meeting Emergency Needs (AMEN), which matched gifts dollar-for-dollar, \$7500 to NJ Shares, and \$7500 to SERVE, all for fuel assistance or food warehouse.

**The CFEBA has instituted a pilot project with the Northeast Chapter.**

In addition, the CFEBA has instituted a pilot project with the Northeast Chapter of the EBA, under the leadership of Fred Klein, liaison for that chapter to the CFEBA, seeking special contributions for regional relief efforts. This "Winter Warmth Campaign" has the goals of raising funds through the efforts of regional chapters and increasing the geographic diversity of charities benefiting from the generosity of our members.

Furthering these goals, the Western Chapter of the EBA is holding a fundraising cocktail reception on February 23, 2006, at the San Francisco Hyatt Regency, with The Honorable Suedeen G. Kelly invited as a special guest. Under the leadership of David Huard, the reception will be held in conjunction with the Annual Meeting of the Western Chapter, but attendance at the reception will not be limited to those attending the Annual Meeting.

The Midwest Chapter, also, is hosting a fundraising reception on March 1, 2006, in connection with its Annual Meeting at the Palmer House Hilton in Chicago, IL.

See the related articles on both meetings in this issue.

*Ms. Hill is a CFEBA Board Member.*

# Mogel Intern describes Summer Experience in DC

*Christina Deaton*

Last summer, Zach Hyden and I, Christina Deaton, were the lucky recipients of the William Mogel Honorary Internship. This internship afforded us the chance to live and work in Washington D.C. during the summer of 2005. Working and living in D.C. was certainly an experience we will never forget. It was Zach's first visit and my third to this magnificent city. Excited to begin our first day of work with the Environment and Public Works Committee (EPW), we decided to really experience D.C. by walking from Dupont Circle to the Senate Dirksen Building. On the map it looked like a quick twenty minute walk, but in reality, it was more like an hour. Thank goodness for D.C.'s cab service! Once we learned that things are much farther than they look on the map (and learned the Metro system) we were off to a great start.

As legal interns working for the Chairman Inhofe, we were immediately given responsibility on issues such as the Energy Bill, Transportation Bill, water infrastructure, labor concerns, ecoterrorism, product liability regarding e-waste, and the Environmental Protection Agency. Since Inhofe is chairman of the committee, he allowed us to participate in the hearing and granted us permission to sit with him during the hearings. This afforded us the amazing opportunity to interact with such esteemed Committee members as Senators Clinton, Obama, and Lieberman.

But, it was not all work and no play. Washington D.C. offered the perfect location to spend a summer. As legal interns we were fortunate to have access to various events around the city. During the summer, D.C. offered free tickets to various plays and operas for interns. We certainly took advantage of this at every opportunity. However, the greatest perk of the summer was the unrestricted access to explore the various floors of the Capitol. The perfect stress relief after working on the tedious Transportation Bill was to just walk around the Capitol building.

In addition to the incredible opportunities afforded to us through our positions on EPW, we were given the opportunity to engage with members of ELJ and the EBA. We were honored with a wonderful reception at the law firm of Jones Day and lunches with esteemed members of the ELJ. For Meredith May we give a special thank you. Her friendship and advice made D.C. a wonderful experience.

While we both felt that this summer internship was the greatest legal job of the summer, this experience would not have been possible without the assistance of the Energy Bar Association, the Energy Law Journal, and NELPI. When we first arrived in D.C., we quickly discovered that it is extremely expensive compared to Tulsa, Oklahoma. Therefore, for their assistance we are truly thankful.



**Mogel Interns Christina Deaton & Zach Hyden snap a photo with Senator Inhofe.**

# Commissioner Brownell's Interview **Continued**

## The "Mean Mother" of RTOs!

When asked whether she is satisfied that her self-described "theme song" of "making markets work" is being achieved, Commissioner Brownell candidly stated that there are days when she believes that progress is being made, but there are days when she is not satisfied with the pace of market reforms. "History will judge us harshly," declared Brownell. She clarified that FERC's legacy will be judged by how well it accomplishes the mission of achieving transparent, market-based energy pricing given the slower path that the nation determined should be followed to get there. It will not be FERC as an agency that will be harshly judged, she stated. Rather, she continued, the national decision not to take the direct course of separating businesses by function will be considered a mistake, after the passage of many more years and the expenditure of many more dollars than would have been necessary otherwise.

In areas where RTOs have been formed, she indicated that RTOs "are a step along

the way; they are good for what they are," but that RTOs are not to be ends in themselves, particularly given "excessive mitigation" of market pricing and inadequate transparency. She stated the belief that RTOs should evolve into strictly market exchanges, like a stock exchange, and that transmission companies should be stand-alone businesses with no favoritism to any particular generation affiliate. According to Commissioner Brownell, RTO CEOs that she talks to know that she has no favorites among the RTOs, exclaiming, "I'm the mean mother!" RTOs as they presently exist are simply not the final answer for her.

Not being content with the adequacy of RTOs as presently constituted, Commissioner Brownell was even more emphatic that areas of the country where there is no RTO are far behind where they need to be. She stated that there is no transparency of prices in these areas, and without transparencies there can be no open markets. She advocated the need to work aggressively to apply market rules more

broadly. While pointing out that energy markets have more rules than do financial markets "that are national, by the way," she reasoned that the lack of efficient markets is causing the electric infrastructure to be what she called "twenty years behind" where it should be, resulting in "lots of hidden costs." She said that the banking, telecom, and natural gas industry all were reformed more quickly than is the lagging electric industry. She stated that they each eventually reached a "tipping point" that has not yet been reached by the electricity sector, adding, "You don't need a ten-year test drive to know that something's not working."

"Pure" large independent transmission companies are the ultimate solution for Commissioner Brownell, and she cites filings by the Department of Justice and Federal Trade Commission as support. These entities will make decisions that are strictly in the best interest of the transmission sector, and then, the Commissioner maintains, proper siting and infrastructure investment decisions will be made. Urging the need to

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## Revelations of Nora Brownell

**Vowing no fear of any question, Commissioner Brownell eagerly took on the challenge of responding to these personal inquiries:**

**Her favorite expression? "We can do it."**

**Her least favorite expression? "One size fits all." ("I hope I never, ever, ever, ever hear it again!") (Brief-writers, take note!)**

**What turns her on? "Changing the world." (Anne Frank spoke inspiringly about it.)**

**What turns her off? "People who say no and people who don't think."**

**Sounds she likes? "A gavel coming down at a Committee Hearing."**

**Sounds she hates? "Loud noises."**

**The job she would most like to have? "A writer or producer on Broadway."**

**The job she would least like to have? "Turnpike toll collector." "Fish counter at a hydro project." "Anything that requires technical skills, because I would starve to death."**

**Her favorite curse words: "A range of truck-driver-like language, the product of many years in a convent school."**

**What she wants God to say to her at the Pearly Gate? "Welcome!"**

**Her favorite movies? "All the Harry Potter movies. The most recent one is the best." ("I have a list of movies that I would like to see.") (She would like to see *Pride and Prejudice*. She does not care to see *King Kong*.)**

## CFEBA Gala Great Success

Approximately 250 guests, including all three Commissioners, enjoyed the music, hors d'oeuvres, libations and lively company at the November 17, 2005 Third Annual Fundraising Gala hosted by the Charitable Foundation of the Energy Bar Association. Linda Walsh chaired the event, which raised over \$13,250 to support the CFEBA's charitable activities. Besides paying an entry fee, generous patrons bid on a raffle of a \$2000 American Express gift card, useable for a trip or purchase of the individual's choice. Andrea Wolfman was the lucky winner. A silent auction of three mixed cases of wine contributed by members of the Boards of the CFEBA, the EBA and the Energy Law Journal elicited some discerning bids, most especially by Judge Cowan. And the winning bid in the silent auction of a week long Florida getaway will make Roy Robertson's daughter and family happy next Fall.



**Stacy Brown, Gloria Halstead & Linda Breathitt smile for the camera.**



**Karen Sealy talks with University of Tulsa, Law Journal Student Staff, Matt Sunday, Christina Deaton & Zach Hyden.**



**Fred Berner, Rich Meyer, Rich Bonnifield & Linda Walsh share a photo op with Chairman Kelliher.**



**Derek Dyson, CFEBA President, and Foundation sponsored interns Nathan Stueve, Jennifer Hillman, and Megan Parish.**



**Jay Matson & Rich Lorenzo enjoy the evening festivities.**

**EBA Members enjoying the friendly atmosphere at the CFEBA Gala.**



**The Linder/Schneider/Silver Jazz Trio added a lively ambiance to the Gala featuring EBA's own Jon Schneider at jazz guitar.**



**Gunnar Birgisson, Joel Zipp and Steve Huntoon stop their mingling for an EBA photo.**



**Chairman Kelliher & Karen Hill share a light-hearted moment.**



**Commissioner Kelly laughs as Judge Young jokes around.**



**A crowd gathers anticipating the name of the CFEBA raffle winner.**



**Andrea Wolfman smiles as Lorna Wilson informs her that she is in fact the winner of the raffle.**

# Energy Law Journal Has New Editor-in-Chief and New Executive Editor

Gary E. Guy

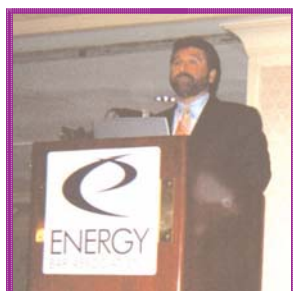
At its regularly scheduled November 2005 Board Meeting, the Energy Bar Association Board of Directors unanimously adopted a motion to ratify the EBA President's appointment of Robert S. Fleishman as Editor-in-Chief of the Energy Law Journal and the President's appointment of Harvey L. Reiter as the Executive Editor of the Energy Law Journal.

These changes were occasioned by the decision of Clinton A. Vince to step down as Editor-in-Chief after having completed the time of service that he had committed himself to when he assumed that position. The Board expressed its appreciation for the tremendous contribution that Mr. Vince has made to the ELJ as Editor-in-Chief, as well as through his writings for the Law Journal and many other contributions over the years. The Board agreed that the Law Journal has been very fortunate to have had the leadership of Mr. Vince, and previously William A. Mogel as the first Editor-in-Chief for approximately a quarter of a century.

The President's appointment of these individuals had been unanimously recommended to him by the Foundation of the Energy Law Journal Board of Directors. Mr. Fleishman had been serving as Executive Editor, and the FELJ Board considered him to be well-suited to advance to this new position. Mr. Reiter is a frequent contributor to the ELJ, as well as to other scholarly journals and treatises.

EBA President Frederic A. Berner, Jr. expressed his pleasure with the recommendations of the FELJ with respect to these two individuals, for unspecified terms. The entire Board joined Mr. Berner in praising Messrs. Fleishman and Reiter on agreeing to assume these important roles.

Meanwhile, the Fall volume of the Energy Law Journal, which had been described in advance of publication in the Fall issue of *EBA Update*, has been widely acclaimed. All members should have received a copy by mail, and hopefully are enjoying cutting-edge issues by FERC Commissioner Suedeen G. Kelly, United States Senator James M. Inhofe, FERC General Counsel John S. Moot, Judge Richard D. Cudahy of the United States Court of Appeals for the Seventh Circuit, attorneys Jeffrey McIntyre Gray, David G. Tewksbury, and Stephanie S. Lim, consultant James G. Bohn, attorney-consultant Darrell Blakeway, FERC Staffers Maria F. Vouras, Jennifer S. Amerkhail, and Carol Brotman White, and Capitol Hill Staffer Frank Fannon.



**"As the new Editor-in-Chief, I look forward to carrying on the fine tradition of scholarship established by my two predecessors, Bill Mogel and Clint Vince, and am truly honored by being asked to again serve the Association in a leadership role."  
Bob Fleishman**

## Energy Law Journal: Excerpts from Past Issues

### Ten Years Ago

"Section 203 of the FPA provides the FERC with significant authority to shape the future structure of the electric utility industry. The FERC should exercise this authority prudently, with due regard to the reality that competition works better than regulation. For the FERC, this means carefully selecting the type of regulation it pursues. Second guessing whether a particular merger makes good business sense or will create a more efficient firm are matters particularly ill-suited to the regulatory process. These decisions can generally be left to utility executives and shareholders. Competition will be more than adequate to discipline any mergers that do not live up to expectations."

John S. Moot, *A New FERC Policy for Electric Utility Mergers?*, 17 ELJ 139, 161 (1996).

### Twenty Years Ago

"Order No. 436 is the latest in a series of major regulatory initiatives undertaken by the Commission in actions that have impacted gas pricing, pipeline contracting provisions (take-or-pay and minimum bills), spot market sales, and transportation. The policy followed by the Commission reflects a profound faith in the free market to achieve the objective of efficient resource allocation at reasonable cost to consumers.

It is too early to tell how successful these efforts will be. It is possible that market restructuring will subject producers to oscillations in demand that are not consistent with the requirements of the production industry... Consumers also may again face curtailments or supply interruptions as LDCs reduce firm contract commitments to go shopping for cheaper gas. Pipelines and LDCs, operating in a competitive environment, will face the risk of lost earnings, and possibly even bankruptcy if their business judgments are poor.

It is also possible that the new approach will work. Most agree that the supply shortages experienced in the 1970s and the supply surplus of the 1980s are indications that the existing system was inadequate and that market restructuring was necessary. FERC will continue to regulate segments of the industry and will be available to respond to claims that market restructuring is not working as intended. The Commission's response ... shows how its pre-deregulation policy can be adjusted to accommodate more traditional concerns of public utility regulation."

John Wyeth Griggs, *Restructuring the Natural Gas Industry: Order No. 436 and other Regulatory Initiatives*, 7 ELJ 71, 72, 98 - 99 (1986).

## Trabandt Interview *Continued*

the Committees, he felt very comfortable passing along concerns of the Commissioners to Hill staffers.

As for Congress' recent involvement with the business of the FERC, Trabandt believes that EAct 2005 reflects Congress' attempt to arm the Commission with authority that has become necessary given the changing competitive nature of the energy industry and the significant need for increased investment in the transmission grid. One area of focus for Trabandt at CRA is reliability of the electric transmission grid. In his view, "FERC's recent NOPR on transmission incentives, as required by EAct 2005, is a significant step forward" toward ensuring adequate investment for expansion of the bulk transmission grid. Trabandt adds that "the DOE backstop citing authority and the DOE national corridor initiatives could be significant in the future if they are used and implemented effectively." He stresses that what is important is having all of the options available so that project sponsors "can formulate a viable financing package for projects by picking and choosing to obtain an adequate return on the investment."

As we enter into a new year, with the expectation of FERC's initiatives to implement the provisions of the EAct, I asked Trabandt to identify the top five issues or areas that should be the focus of the Commission's work in the near future. Here are Trabandt's top five for the FERC:

1. Issuance of a Final Rule addressing reliability and speedy implementation of such Rule in order to have Electric Reliability Organizations and national standards in place as soon as possible;

2. Implementation of incentives for transmission investment and other actions that will support increased investment and facilitate formation of Independent Transmission Companies;

3. Further progress on oversight of RTO costs, operations and market monitoring in order to increase RTO efficiency and to deliver the advertised benefits of RTOs (as Trabandt notes Chairman Kelliher has committed to do);

4. Conclude all of the cases and proceedings resulting from the Western electricity market crisis as required by EAct, so that the industry and the Western states can devote time, energy and resources on the future as opposed to the past; and

5. Manage PUHCA repeal and other new authorities provided by the EAct, such as market oversight and monitoring, in a manner that will facilitate new transmission investment and new business models for the electric and natural gas industries.

With Trabandt's experience in the global and national energy markets, not to mention his continued relationships with both the FERC and on the Hill, I did not dare bet against his recommendations. Instead, time will tell if he is still on the mark.

*Mrs. Clair is the Assistant Secretary of the EBA.*

## President's Message

### Continued

groups. Greater diversity has been achieved in a number of significant respects, and the Association has been the beneficiary of that diversity. At the same time, increased diversity through expanded outreach and chapter programs will continue to be a major objective of the Association.

**EBA Charity.** The Charitable Foundation of the Energy Bar Association, established just three years ago, has permitted EBA members to employ their considerable talents and resources for humanitarian objectives. The financial contributions of EBA members to the Charitable Foundation have been generous, and the Foundation's support of hurricane and tsunami disaster relief efforts has been timely and effective.

**EBA Scholarship.** The Energy Law Journal has continued to be a major contributor in the fulfillment of the EBA's charter purpose of "promoting the proper administration of laws relating to the production, development, conservation, delivery, consumption, and economic regulation of energy." The past year's issues

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**Trabandt and his children during his swearing in ceremony performed by Chief Judge Curtis Wagner.**

# Commissioner Trabandt Dissents (Forcefully)

"This approach raises hair splitting to a fine art. . . I decline to throw in the towel . . . and forcefully call to the attention of interested parties that what some thought provided great promise will, in the execution, most likely turn to dust." *Western Massachusetts Elec. Co.*, 61 FERC Para. 61,182, 61,666, 61,668 (1992).

"To me the nub of the matter lies in how to define the phrase 'holding the native load harmless.' One must ask the famous Henny Youngman question, 'compared to what?'" *Pennsylvania Elec. Co.*, 60 FERC Para. 61,034, 61,129 (1992).

"I am not prepared to concede . . . on the basis of a litigation strategy that might be uncharitably dubbed as "preemptive capitulation" (i.e., if you concede it at the outset, you can't lose it on appeal)." *Arkla Energy Resources*, 54 FERC Para. 61,011, 61,019 (1991).

"[T]hat is an absolutely astonishing result . . . very much akin to the theme of the film 'Back to the Future' or in the vernacular of that great American philosopher, Yogi Berra, 'deja vu all over again.' This order reminds the reader of . . . when the Commission staff argued that discrimination was like pornography -- it was impossible to define it, but you'd recognize it when you saw it. . . . The majority's new position here gives new meaning to Joseph Heller's classic 'Catch-22' . . . (i.e., you can't fly if you're crazy; but if you won't fly, you can't be crazy). The Yossarian-like parallel here for Anadarko is that you don't get an investigation unless you plead facts you can only get in an investigation." *Panhandle Eastern Pipe Line Co.*, 53 FERC Para. 61,098, 61,309-10 (1990).

"In the Congress, there is a saying that if it looks like a duck, walks like a duck, and quacks like a duck, in all likelihood it, in fact, is a duck. There is absolutely no doubt here that the instant order is a 'show cause' duck . . . . *United Gas Pipe Line Co.*, 47 FERC Para. 61,455, 62,412 (1989).

"[T]he procedural and substantive aspects of this case reflect a recurring approach of unabashed federal arrogance and inherent federal superiority which, in my judgment, have profound negative implications for the pending electric policy . . . . The Commission as 'Big Brother,' with yet another federal dictatorial fiat, has demonstrated again that there is really only one way to proceed -- the FERC way." *Industrial Cogenerators v. Florida PSC*, 43 FERC Para. 61,545, 62,355 (1988).

"[T]he Commission has exceeded its authority by imposing, as it were, a Section 206 equity reopener 'wolf' dressed up in the Section 205 conditioning clothing of a 'sheep.' This thinly veiled attempt to legitimize the Section 206 substantive result with the Section 205 conditioning form should fool no interested party, nor reviewing court, anymore so than does the wolf in the sheep's clothing." *Connecticut Light and Power Co. et al.*, 43 FERC Para. 61,508, 62, 273 (1988).

"[T]he Commission at this time appears to be adrift in a hostile sea of analytical ignorance and uncertainty, without a clear and certain course to resolution . . . at a particular point on our regulatory chart. As Gibran stated in *The Prophet*, 'If either your sails or your rudder be broken, you can but toss and drift, or else be held at a standstill in mid-sea.'" *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, 43 FERC Para. 61,234, 61,639 (1988).

"This order constitutes an engraved invitation from FERC to electric utilities to rush forward . . . . Having acted figuratively to let the utility-controlled QF horses out of the barn here, the Commission announces with some fanfare that we will later inquire generically whether the PURPA barn door should have been opened in the first instance." *Dominion Resources, Inc.* 43 FERC Para. 61,079, 61,255-6 (1988).

"[T]he majority seems to have attempted figuratively to split the Red Sea without the necessary Divinely blessed implement: to wit, the legal equivalent of the staff of Moses." *Orange and Rockland Utilities, Inc. et al.* 43 FERC Para. 61,067, 61,202 (1988).

"The memorandum tortuously winds its way through the applicable statutes, legislative history, Commission precedents, court cases, and staff analysis as it figuratively crawls inch by inch over the analytical equivalent of the proverbial mile of broken glass to reach the intended result." *U.S. Dep't of Energy – Bonneville Power Admin.*, 42 FERC Para. 61,032, 61,089 (1988).

## President's Message Continued

of the Journal have been truly outstanding and evidence the preeminence of the Journal as a scholarly forum. FERC Chairman Kelliher's article on market manipulation clearly promoted the enactment of the Energy Policy Act of 2005, and other articles by FERC Commissioner Kelly, U.S. Senator Inhofe, Judge Richard Cudahy, and others were equally illuminating and influential.

**EBA Chapters.** The Ninth Annual Midwest Conference will be convened in Chicago on March 1 and 2; the Fifth Annual Meeting of the Western Chapter will be held in San Francisco on February 23 and 24; and the Second Annual Meeting of the Northeast Chapter will be held in New York on March 9. In addition, the Southern Chapter of the EBA plans to hold a meeting later in 2006, and the local EBA chapters in Houston and New Orleans plan to host luncheon meetings from time to time. The dramatic expansion of EBA chapter activities over the past decade has provided members with new opportunities for professional development and has made the EBA a truly **national** bar association.

On behalf of the Association, I want to extend my thanks to the thousands of past and present members who have worked so hard for the past 60 years to make the EBA one of the best and most effective bar associations in the United States. Let's hope that we can continue to build on that success in the future.

Fred Berner

President

## CFEBA Plans Golf Outing Fundraiser for Spring

A. Karen Hill

On Friday, April 28, 2006, the day after the EBA Annual Meeting, the Charitable Foundation of the Energy Bar Association will host its Third Annual Fundraising Golf Tournament at Westfields Golf Club, Clifton, Virginia. As in the past, the Tournament will be a modified scramble and will begin with a 9 am shotgun start. Susan Moore and Evan Reese are co-chairs of the event. This event has been a great success, raising over \$12,000 last year from golfers and sponsors for the charitable endeavors of the CFEBA. Sponsorships at numerous levels from \$500 to \$1500 are being sought. The CFEBA's goal this year is to field at least 72 golfers and to grow the sponsorship beyond the 22 generous sponsors of last year's tournament. If you are interested in golfing at and/or sponsoring this enjoyable event, please contact Susan or Evan (202-298-1800), sam@vnf.com, or ecr@vnf.com.

## Commissioner Brownell Interview

### Continued

"push for innovation," she observed that, "Bill Gates wakes up every morning figuring out how to make Microsoft better." She also pointed to the United Kingdom as the model of a structurally reformed energy industry. But she stated that a policy decision was made in this country not to take that path in favor of a "one-step-at-a-time" approach towards a market-driven energy industry. Attributing the go-slow approach to the entrenched interest of monopolies to stay the way they are, Commissioner Brownell said that a lot of money has been wasted due to the inefficiencies of this slower process.

### Help on the Way from EPAAct 2005!

**"People know the rules for the next ten years; we know what the world will look like."**

On an upbeat note, Commissioner Brownell expressed enthusiastic support for the Energy Policy Act of 2005. As a result of this legislation, Brownell stated that "people

know the rules for the next ten years; we know what the world will look like." She stated that giving FERC greater authority over transmission siting was, "Absolutely necessary." She stated that naming FERC as the lead agency on construction approvals involving many other agencies removes confusion, provides for greater accountability, and makes the process less cumbersome. She pointed out that it has typically taken 7 years to get a hydro plant relicensed in part because of the lack of a clearly designated lead agency. Declaring that, "Congress did a good job," Commissioner Brownell praised the EPAAct for not giving specific directives because change takes place too fast for legislation to deal with specific solutions. She found that setting a course of action is a far superior approach because the law "creates a lot of certainty for the industry and investors" as to what policies FERC will be implementing, while at the same time leaving the specifics in the hands of the experts at FERC "who think about these issues 24 hours a day." Added Brownell: "We know the process. We know how things can get done."

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# Commissioner Brownell Interview Continued

She described the EAct's LNG provisions, clarifying FERC's role in granting import terminals and providing for a 6-month prefiling process, as resulting from consultation by Congress with FERC on the need to help dispel "very bad information about the depth and the substance and the breadth of the environmental review that we do." Commissioner Brownell stated that she welcomes this more streamlined procedure because it is important to "get the real problems on the table as early as you can." She confirmed that with both LNG and the electricity title of EAct, "Congress asked the experts and the outcome is very good."

As for the other statutory time lines, and massive number of rule-makings that the Commission has embarked upon in compliance with the EAct, Commissioner Brownell observed that no deadline has been missed – and no Christmas vacation is being taken by her! ("Last year, I was on an island in Belize.") She also gave an insight into how FERC is handling the comments flooding into the Commission. She provided assurances that the Staff is poring over them, that Commissioners read as many as they can, and that summaries are also prepared for the Commissioners. She stated that it is helpful for groups aligned on issues to file joint comments, but that it is not just the trade association comments that get attention. Instead, Commissioner Brownell stated that the Commissioners are looking for points where there is a consensus among many industry participants that something is either good or bad. According to the Commissioner, FERC is looking to see "where there is a complete surprise" and "dramatic differences," as well as "who disagrees with each other." She also explained that comments which simply appear to be protecting the parochial interest of the commenter receive less attention than comments that try to advance the ball by pointing out ways to achieve the goals of the Commission, the Administration, and the

Congress.

Nor is it true, contrary to popular belief, that once a NOPR is issued, it is carved in stone, according to Commissioner Brownell. She recalled being asked in amazement, "Why did you change it?" when a final rule differed from the proposed rule. Her answer is that the whole deliberative process would be useless if the agency had its mind made up when it issued a notice for comments. She said that the industry should be encouraged that every NOPR does not become a rule as soon as the comment period ends. In particular, the SMD NOPR was pointed to by



**She and her Staff get together at 6 or 7 in the evening to have "lively debates."**

Commissioner Brownell as a very constructive undertaking in that it focused attention on issues that need to be addressed, such as the consensus that we need demand side management, although "we still don't have it." She called it a learning experience at FERC, within the industry, and even overseas. She recalled hearing Europeans speaking about "SMD" and her asking them in disbelief, "Are you talking about our SMD?" She also spoke about a Wall Street figure who recently remarked to her that even critics of SMD admit in private that it is superior to the state that the energy business is now in.

## FERC Fan Club?

We asked Commissioner Brownell to give us a brief primer on the mysterious process by which decisions are made prior to the

Sunshine Act Meetings that take place live and in color on our computer screens. The good Commissioner began by stating that once FERC started to be carried on Webcast, she hoped that a FERC Fan Club would be started -- and she is still waiting. Anyone looking for a niche opportunity, here's your chance!

Seriously, Commissioner Brownell stated that while the three Commissioners are barred by law from meeting together to discuss how they are going to vote ahead of time, (1) the Staff meets and circulates memos, (2) there are formal Pre-Agenda Meetings of the Staff, (3) the personal Staffs of the Commissioners, who have considerable expertise in their own right, interact, and (4) the Commissioners talk one-on-one about matters. Calling her's the "night office," she relayed how she and her Staff get together at 6 or 7 in the evening to have "lively

debates" over cases, where disagreement is considered "healthy." Even though each of her personal Staff

members has expertise in a particular subject matter, Brownell explained that they divide the Agenda so that they each concentrate on a cross-section of issues, including those outside of their areas of specialization.

Declaring that she has changed her thinking somewhat about the best vehicle for effectuating decisions, either via a generic rule or a case-by-case approach, Commissioner Brownell carefully weighed the pros and cons of each. On the one hand, she stated that a generic rule causes a policy decision to be implemented more broadly and uniformly, and she came to the Commission with the view that rulemakings were superior avenues. Over time, however, Commissioner Brownell has been increasingly inclined to fashion general "parameters" in individual

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# Commissioner Brownell Interview **Continued**

cases that are clearly enough stated that they provide certainty within the industry as to what is expected of all similarly situated entities. In this way, she said it is possible to make the distinctions in details that may be warranted based on the unique facts presented in each situation to come before the Commission. The key is to have a uniformly applied set of principles that are clearly enunciated, and both methods of decision-making lend themselves to that outcome if properly handled, asserted Brownell.

The Commissioner also said that she knows of no case where politics has played a role in a decision. She explained that she might ask a colleague if they have considered a particular point, and another Commissioner may come to her to raise an issue. Ultimately, she said that a proposed order will emerge from these multiple layers of review and consultation. She was definite that “absolutely the demarcation is very clear” between the advisory Staff and the trial Staff, and added that a person who came with her from Pennsylvania eventually returned to the state to tout the ethical processes utilized in FERC’s decisionmaking. She also talked about how officially designated “non-decisional” Staffers never disclose information to the Commissioners

**Commissioners want to make sure that they “know every grotty little detail” before they make a finding of any violation.**

after participating in discussions with parties. She gave as an example that Staff members participated in the formation of MISO as non-decisional personnel in order to give much-needed guidance to the MISO participants without having them concerned that anything that was said between them would be disclosed or used to influence FERC’s rulings.

Commissioner Brownell also indicated that when votes are taken notationally, they undergo the same level of scrutiny as the orders that are presented at the Public Meetings. She stated that statutory deadlines and other contingencies make it imperative that certain items be circulated for notational voting instead of waiting for the next scheduled Public Meeting, which is now held only once a month. She stated that the notational orders can be very significant and that the External Affairs Office is careful to make sure that parties are aware of their issuance. When Enforcement Actions are before the Commission, she indicated that the matters are often noticed to be discussed in private session because the Commissioners want to make sure that they “know every grotty little detail” before they make a finding of any violation that could affect stock ratings and otherwise have severe repercussions, including penalties. It is essentially for the protection of company representatives under scrutiny and the companies that they work for that these precautions are taken, according to Brownell.

In that connection, we asked the Commissioner if she has any concerns that the new Standards of Conduct regulations may be interpreted and applied more harshly by future Commissions and Staffs than is the intent of those presently in positions of responsibility who actually promulgated these requirements. She responded that the Standards are not intended to be used by the agency to play “gotcha,” and that precedent will be set in cases going forward to make it clear that the rules will be fairly enforced and only those who knowingly commit prohibited actions are penalized. She expressed confidence that future Commissioners and Staffs will approach these rules in the same spirit, and stated that she has talked with Susan J. Court, the new Director of the OMOI, about this very subject and that she is approaching the matter in that same spirit as is the new General Counsel, John S. Moot.

She further indicated that informal discussions take place among Commissioners, the Solicitor’s Office and the General Counsel’s Office concerning how to go about pursuing pending judicial review, including whether to ask for voluntary remands. While memos are sometimes circulated on these strategic questions, she indicated that hallway discussions are more effective in reaching a judgment. Quoting an Indian tribal leader, Brownell observed, “Paper does not speak to me, people do!”

## **The Legacy of Commissioner Brownell**

When asked about whether she came to the Commission with a particular agenda, and what she would like her legacy to be, the outspoken but humble Commissioner stated that she came to the agency with no personal agenda other than carrying out the policies of the Administration that nominated her for this post to promote energy markets, and “it is so much a team effort it is hard to imagine a personal legacy.” Beyond that, Commissioner Brownell stated that she hopes to be remembered for working to (1) make FERC “more open, accessible, flexible, and responsive to change,” (2) “empower customers to make choices,” (3) “get our economics right to promote infrastructure investment in order to maintain our competitive edge in the world,” (4) “increase the security, efficiency, and reliability of energy,” and (5) “marry environmental and energy policy.” She said that she is focused on opening markets, providing for greater transparency, and insuring that an adequate electric and gas infrastructure is put in place to meet the needs of the next twenty years. Clearly, Commissioner Brownell is deeply motivated by a vision of the future that she is indefatigably striving to see achieved.

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

# Upcoming Events

## 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**

## Northeast Chapter Annual Meeting

**March 9, 2006**  
**New York Marriott Marquis Hotel**  
**New York, NY**

## Foundation of the Energy Law Journal Reception Honoring the Federal Energy Regulatory Commission's 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 Michele@eba-net.org.*

## Now is the Time for All Good EBA Members to Pay Their 2006 Dues

EBA's 2006 dues renewal notices went out to all members the latter part of December and should be paid by February 1, 2006. Payments made by a credit card (Visa/MasterCard/American Express) may be faxed to 202/833-5596 or you may pay online ([www.eba-net.org](http://www.eba-net.org)) by going to the member login bar and following the instructions. If you have not received a renewal, please contact [admin@eba-net.org](mailto:admin@eba-net.org) and request another form.

## Western Chapter Program Continued

have been adopted by five Western States, ranging from about 1 to 20 percent. Significant new transmission infrastructure will be required to transmit new wind generation to heavy Western load areas. The panel on Renewables will examine the real costs of renewable energy in the Western Region and whether nuclear power will need to be reintroduced for future adequacy, considering this Region's approximately 150,000 MW peak forecast needs in 2005.

Lastly, a panel is slated to address the ex parte rules applicable to lobbying agencies. This segment will provide MCLE Ethics credits and be very informative considering the often confusing and conflicting state and federal rules on this matter.

The Western Chapter's Fifth Annual Meeting will be relevant and informative, indicative of the Chapter's past record of planning and hosting Annual Meetings as a means to bolster attendance for the Western Chapter meeting and interest and membership in the Energy Bar Association.

*Mr. Tyacke is an EBA Board Member and Board Liaison to the Western Chapter.*

**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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