

President's Message



How is the Energy Bar Association providing value to you? By objective measures, the EBA is a very successful organization thanks to a dedicated, generous and collegial membership and an outstanding professional staff. Our membership numbers have been growing, and as of our 60th Annual Meeting we had over 2400 members. The EBA is in strong financial shape. The Energy Law Journal remains an industry standard-bearer for scholarly analyses on key policy and legal issues confronting the energy industry. Thanks to generosity of EBA members, our relatively new Charitable Foundation has provided much needed and appreciated financial support across the world for energy-related needs, and has made an immediate positive impact in the lives of others through various service projects. Are you personally participating in or benefiting from these successes?

Have you attended the EBA conferences? During the last year there were three national conferences and four chapter meetings. Speakers and panelists included Senator Pete Domenici (who received an EBA President's Award); the Chairman, Commissioners, Administrative Law

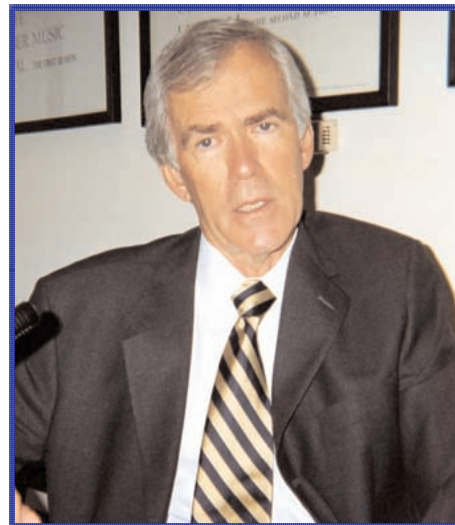
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United States Senator Jeff Bingaman Lauds EPAct, Including PUHCA Repeal; Calls on Administration to Expedite Implementation

Foresees Smooth Sailing for All Three FERC Nominees; Describes Effort to Get Commissioner Kelly Nominated; Touts Alternatives to ANWR Drilling; No Retreat on Renewables

Gary E. Guy and Channing D. Strother

In its continuing series of feature in-depth interviews with leading lawmakers, regulators, and decision-makers in the energy field, *EBA Update* sent its reporting entourage of Gary Guy and Channing Strother (aka "Germond and Witcover") to get the views of the ranking Democratic member of the Senate Energy and Natural Resources Committee, Senator Jeff Bingaman of New Mexico. The four-term veteran devoted a half-hour to this conversation, which can be seen on the EBA website, www.eba-net.org.



The Energy Policy Act of 2005: Pulling Together for the Country

The Senator, who is by no means completely pleased with the omnibus legislation enacted as the Energy Policy Act of 2005, nevertheless views it as an example of bipartisanship rising above politics. He was quick to state that EPAct "does not have everything in it that I wanted." However, he stated that it has "moved us in the right direction." In particular, he cited as a positive development the repeal of the Public Utility Holding Company Act. He believes that this action will "allow for the investment of funds to the electric infrastructure that had previously not been available for

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Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

“[T]he proposed repeal of PUHCA is an idea that also was conceived even before 1982. In fact, the idea might have been conceived in 1935, when the legislation was enacted with provisions that provide for state regulation of holding companies and that contemplate decreased federal regulation and increased state regulation. For this reason, the proposed repeal of PUHCA is consistent not with the New Federalism of the 104th Congress alone, but with the “old” federalism. In the past decade, this idea, with assistance from the U.S. Congress, the federal courts, and, in particular, the SEC, has gained significant momentum. PUHCA, it appears, is now ripe for repeal.”

James W. Moeller, *Requiem for the Public Utility Holding Company Act of 1935: The “Old” Federalism and State Regulation of Inter-State Holding Companies*, 17 ELJ 343, 346 (1996) (notes omitted).

Twenty Years Ago

“And what about the effect of the Commission’s regulatory changes on consumers? In general, these changes will tie consumers more directly to the competitive forces in the marketplace. In the present-day market, that effect should be beneficial. However, if the market swings back to a period of short supply, high demand and rising prices, consumers may be adversely affected. Depending on the severity of the impact on consumers and the philosophy of a future Administration and Congress, political pressures could create the possibility of a reimposition of the type of regulation that the Commission has been moving away from in Order Nos. 436 and 451.”

Charles H. Shoneman and Gerard R. McConnell, FERC Order No. 451: *Freedom (Almost) for Old Gas*, 7 ELJ 299, 332 (1986).

Cushion Gas: Gas placed in a storage reservoir that is not to be withdrawn but which remains in order to provide the necessary pressure to allow normal working gas to be cycled and withdrawn.

VOM – Volt Ohmmeter: A measuring device used for determining the voltage or the resistance of an electrical circuit, including in some models the current flow through components in electrical circuits.

Spark Spread: The price difference between energy used to produce electricity and the electricity. Basically, the cost of the natural gas or coal used to generate electricity is subtracted from the market price of electricity to yield the “spread.” These margins of profit guide traders who simultaneously purchase natural gas contracts and sell electricity contracts, or vice versa.

Many Doings at the Charitable Foundation of the Energy Bar Association

A. Karen Hill

Curt Moffatt and Rick Roberts Will Co-Chair Fundraising Committee

Paul Mohler, President of the Board of the CFEBA, announced that Curtis Moffatt and Rick Roberts will co-chair the Fundraising Committee for the coming year. “The Fundraising Committee is crucial to the ability of the CFEBA to fulfill its mission to engage in charitable projects,” Mr. Mohler said. “I know that Curt and Rick will bring substantial talent and ingenuity to carry on the enormously successful early efforts led by David Doot to establish the CFEBA as the charity of choice for energy lawyers.” Mr. Mohler stated that the CFEBA will build on what the successes of the last three years and is seeking to expand the active participation of EBA members. To that end, he promised to send an email to all members of EBA seeking involvement in CFEBA activities.

CFEBA Sponsors Successful Golf Tournament

The Third Annual Fundraising Golf Tournament, held in conjunction with the Energy Bar Association Annual Meeting on April 28, 2006 at Westfields Golf Club in Clifton, Virginia, raised a total of \$10,445.77 for the CFEBA. Under the organizing leadership of Susan Moore and Evan Reese, 53 players finished the course. Nineteen sponsors participated, donating revenues totaling \$9,500.

Intern Begins Summer Work at FERC

Gideon Wiginton began his 10-week internship at the FERC’s Office of Administrative Litigation and General Law. At the conclusion of his internship, Mr. Wiginton presented a report of his experience at FERC to the CFEBA Board on July 11. Susan Kelly chairs the Scholarship and Interns Committee and seeks new volunteers from the membership to help evaluate applications, select applicants, and coordinate with the Law Journal internship program.

Ms. Hill is a Board Director of the Charitable Foundation.



A Decade Later and Still Exceeding Expectations: An Interview with Former FERC Commissioner Vicky A. Bailey

Adrienne E. Clair

On this ten-year anniversary of the passage of Order No. 888, former Commissioner Vicky A. Bailey has fond and encouraging memories of her term with FERC. Bailey was nominated and re-nominated by President Clinton for a term that lasted from 1993 to 2000. In addition to Order No. 888, the Commission issued Order Nos. 2000 and 637 during Bailey's term. Never one to rest on her laurels, I recently caught up with Bailey to reflect on her term as a Commissioner and her continued commitment to energy issues since leaving the Commission. Just as expected, she has continued to hold positions of leadership that remind us why Bailey is held in such high regard.

Not surprisingly, Bailey recalls Order No. 888 as the Commission's most significant achievement during her term. Bailey proudly comments that "the watershed issues involved in Order No. 888 and the OASIS order – open access to transmission, same-time information, pushing the competitive arena at the wholesale level – all worked to foster a competitive marketplace that has and will continue to inure to the benefit of American citizens, and I am extremely proud to have been involved in that process." She added that the passage of Order No. 888 is a testament to the fact that the Commissioners and their staffs were very focused and ever-mindful of the enormity of their goal of creating a regime of open-access and non-discriminatory transmission service. Bailey also notes that Order No. 888 has "held up well" over time, and credits former FERC Chairwoman Betsy Moler for the leadership that created such a level of dedication and commitment on the part of the Commission to "just do it" in Order No. 888.

Is Bailey discouraged or concerned over the Commission's current efforts to reform the Order No. 888 Open Access Transmission Tariff? Not one bit. Instead, she commends as appropriate Chairman Kelliher's efforts to revisit the OATT to make sure that it meets today's needs in light of recent industry developments and abuses.

In the same vein as the other former Commissioners that have appeared in this series, Bailey was hard-pressed to identify any negative aspect of her term with the Commission. She recognized that



"It is essential that a Commissioner not feel obligated to join in the consensus"

the position that she deemed "the best job in the world" comes with many responsibilities. The independence of a Commissioner is an example of such a double-edged sword, according to Bailey. She comments that the level of independence enjoyed by the Commissioners is one of the positive aspects of the position, but that it can also create difficulty because the Commissioners must balance competing concerns in forming their positions, often serving as the lone dissenter on issues. "It is essential that a Commissioner not feel obligated to join in the consensus on an issue where they have strong opposition, so that the public knows fully what the Commission is thinking," says Bailey.

I asked Bailey whether she feels such independence exists today for the FERC Commissioners. She believes so, but expresses concern over the politicization of energy regulation. As a former Indiana Commissioner, Bailey realizes that there is a political element in the selection of both state and federal regulators. However, she is disturbed by situations – like those in Illinois and Maryland – where actions in the political arena have perhaps inappropriate implications in the regulatory regime. Bailey cautions that reasoned decision-making should be the standard and, having engaged in reasoned decision-making, regulators should not fear that they will "lose their job by doing their job." Instead, she urges, if regulators "push the pendulum too far in one direction," the judicial system is the recourse to try to shift the pendulum back.

Since leaving the Commission, Bailey first served as President of PSI Energy, Inc. (she says the opportunity to return to her roots – both geographically in her home state of Indiana and in terms of her entrepreneurial beginnings – were too good to pass up), and next accepted the position of Assistant Secretary for Policy and International Affairs at the U.S. Department of Energy, under the Bush Administration. Because Bailey assumed her DOE post in 2001, I asked her how events related to the September 11 terrorist attacks changed the scope of her responsibilities. Bailey characterizes September 11 as the "absolutely unthinkable" that happened to our country, and says that its impact was not to change the responsibilities of her office, but to shift the priorities of the Administration's goals as related to

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Energy Law Journal Awards Banquet Held in Tulsa

ELJ Editor-in-Chief Fleishman Keynote Speaker; Student Editorial Board, Dobie Langenkamp of NELPI, and Others Honored

The Energy Law Journal held its Annual Awards Banquet on April 18, 2006 in Tulsa. More than 130 attended. The Master of Ceremonies was Dean Robert Butkin, who is completing his first year as Dean, coming to the Tulsa University College of Law after his stint as Oklahoma State Treasurer.

Bob Fleishman, ELJ Editor-in-Chief, was keynote speaker. He addressed current developments in energy law. Harvey Reiter, ELJ Executive Editor; Stuart Conrad, ELJ Notes Editor; and Channing Strother, President of the Foundation of the Energy Law Journal, attended as representatives of the EBA/FELJ.

Among other things, the banquet honored Dobie Langenkamp, Tulsa Professor of Law and Director of the National Energy-Environment Law and Policy Institute ("NELPI") of the Tulsa Law School, who is retiring after many years of service to the school, to NELPI, and to the ELJ. Professor Langenkamp was presented awards, including, literally, a chair, and had the entire room alternatively laughing and moved with remembrances of his time at Tulsa. Mr. Fleishman read the inspiring remarks of William Mogel, who could not be present. Mr. Mogel was ELJ Editor-in-Chief for some 26 years, and had worked closely with Professor Langenkamp.



Back row, left to right: Stu Conrad, Bob Fleishman, Dean Robert Butkin, new NELPI Director Irma Russell, Harvey Reiter, Channing Strother. Front row: Chisum Cooke, Raegan Brummal, Erin Stackenwalt, Sean Hennessee, Matthew McGonagle, Jeremy Ward, Jahyme Brown.

Mogel summer interns Cooke and Oden will be working for the U.S. Senate Committee on Environment and Public Works this summer

Dean Butkin introduced the incoming Director of NELPI, Professor Irma Russell, of Memphis University, currently a visiting law professor at Pace University, who spoke briefly.

Messrs. Reiter and Strother presented awards to selected ELJ student editorial board members, and announced the annual William Mogel Washington, DC summer interns. Student Articles Editor Jeremy Ward was presented the first ever FELJ Award for Editorial Excellence, consisting of a plaque and a cash award. Outgoing student Editor-in-Chief Matthew Sunday was

given a cash award from the FELJ in appreciation for exceptional service. The Mogel summer interns are Chisum Cooke and Katie Oden, who this summer will be working for the U.S. Senate Committee on Environment and Public Works, which is chaired by Senator Inhofe of Oklahoma. Members of the outgoing ELJ Tulsa Law School student editorial board were presented with plaques by the FELJ. Others serving with Mr. Sunday were: Executive Articles Editor—Christina Deaton; Executive Notes & Comments Editor—Sean Hennessee; Notes & Comments

Editor—Bryan Harrington; Notes & Comments Editor—Matthew McGonagle; Notes & Comments Editor—Latisha Irwin; Articles Editors—Emmanuel Ayuk, Grant Ferris and Jeremy Ward; and Senior Staff—Rebecca Beal, Daniel Cupps, Jesse Fekkether, Grant Folkmann, Jonathan Fuchs, Keith Hennings, Zachary Hyden, Jaclynn Loney, Christopher Martin, Christopher McKean, Shane Regier, Erin Stackenwalt, Andrew Schlesinger, Keith Swift, Terry Tollette, Kristin Walters, Elizabeth Zeiders

and Tom Zeiders. Professor Marla Mansfield also spoke in honor of outgoing student ELJ members.

Mr. Sunday presented to ELJ student members the following awards: Outstanding Staff Member—Chisum Cooke; Outstanding Senior Staff Member—Erin Stackenwalt; Outstanding Student Note—Jahyme Brown; Outstanding Year-in-Review Member—Raegan Brummal; and the "Gomer" Award presented by ELJ student staff members to staff or editor who has made the most significant contribution to their development—Sean Hennessee. Matthew McGonagle also received recognition from the American Bar Association's Section on Natural Resources, Energy, and Environmental Law for his student managing editorship of this ABA section's 2005-06 volume "Year in Review."

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Senator Bingaman Interview Continued

that investment because of PUHCA.” He also sees EAct stimulating attention on alternative fuel production, energy production, increased research, and increased capital for new technologies.

One area of disappointment for this environmental leader of the Senate is that the final legislation did not contain the Renewable Portfolio Standards amendment that Senator Bingaman introduced, and twice successfully managed to get passed in the Senate. He attributed partisanship in the Administration and the House for the failure of this provision to win passage in the other body. But the Senator affirmed that the measure has been reintroduced in the current session of the Senate and predicted that if it is brought to a vote it will pass yet a third time. Under the Senator’s proposal, utilities will be required to have 10% of their power produced through renewable resources, such as wind, hydro, and biomass, by 2020. The Department of Energy’s Energy Information Administration has forecast that this measure will reduce costs to consumers in the tens of billions of dollars. There are also forecasts that hundreds of thousands of jobs will be created by this legislation. And many states, including New Mexico, were identified by Senator Bingaman as having enacted “substantially more ambitious” standards in terms of the requirements placed on utilities to utilize renewable sources of energy in their portfolio.

In discussing the refusal of the House to join the Senate in voting approval of renewable portfolio standards, Senator Bingaman observed that in the 24 years he has been in the Senate “the House has generally been more partisan in structure and orientation.” But putting aside the RPS exclusion from EAct, Senator Bingaman stated proudly that, “On

“the House has generally been more partisan”

occasion, we are able to pull together and do something on a bipartisan basis,” and he cited EAct as an example of Congress doing something “good for the country.” In the almost 12 months since its signing into law, EAct is “beginning to do what



we envisioned,” according to the Senator. He pointed out that the tax measures are largely self-implementing aside from some regulations. But in other areas, the Senator stated that many parts of the law still need to be adequately implemented. He asserted that he and other colleagues are “doing our best to encourage the Administration to move ahead more quickly on implementation.”

ANWR: There Are Better Ideas

As for another proposal that did not make it in the final passage of EAct, the Alaskan Natural Wildlife Refuge oil pipeline proposal, Senator Bingaman did not have the same regrets that he did concerning the absence of RPS. Indeed, he had quite the opposite opinion.

Senator Bingaman stated that it is “better that it was left out.” Maintaining that “opening ANWR to drilling is not a substantial part of the solution to our energy needs,” he advocated making a greater difference, and one that would be more of a long-term benefit, by increasing fuel efficiency standards, along with promotion of conservation. In the Senator’s view, a national determination has been made that the wildlife refuge “should be set aside and not drilled.” On the other hand, he described how most of the rest of the north slope of Alaska is open to drilling due to activities of Bruce Babbitt when he was Secretary of the Interior in the Clinton Administration, and even more so under actions of the current Administration. He vowed that, “It is not necessary to drill every single spot of the planet.”

Enron and its Aftermath

Another piece of legislation supported by Senator Bingaman, stemming from developments in the corporate energy world, was the Sarbanes-Oxley Act. Senator Bingaman, like the rest of country, viewed Enron as a company that deserved to be “held in very high regard.” But, then, he stated the “curtain began to be pulled back and the problems began to be obvious.” He called Enron’s demise a “tragedy for a great many people – employees, stockholders, others, particularly in the Houston area, and other parts of the world.” Passage of Sarbanes-Oxley is credited by Senator Bingaman for causing corporate executives to focus on their responsibilities to a greater extent than previously. However, he observed that, “Like a lot of major legislation, it probably needs some fine tuning as we get further down the road.”

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New EBA Pro Bono Program

The Energy Bar Association is pleased to announce that it will soon launch its first Pro Bono Program. At its April 19, 2006 meeting, the EBA Board of Directors unanimously approved a one-year pilot program. The program's mission is to facilitate the voluntary provision of free legal services requiring energy law expertise by EBA members, to advance humanitarian and charitable causes for clients that are financially constrained, and to provide opportunities for professional development for EBA members. An integral part of the program's mission is to honor EBA's apolitical status and, accordingly, to use the pro bono program to encourage members to provide service in broadly supported activities, but not adversarial proceedings. "EBA members will have the opportunity to make a positive difference in our field of expertise by serving pro bono clients on widely supported projects. At the same time, EBA will stay its historic non-partisan course," observed Immediate Past EBA President Fred Berner.

In implementing the Pro Bono Program, the EBA will not itself provide any legal services. Rather, it will electronically post eligible projects at the request of eligible clients. On a purely voluntary basis, EBA members and their firms may choose to provide services. The pro bono client and the practitioners volunteering to provide services will directly make all associated arrangements. The program's eligibility criteria will reinforce the non-adversarial nature of the program and limit the scope of the pro bono activity the EBA will facilitate, but the program will increase pro bono opportunities for EBA members while encouraging the broadest possible support for the program.

"The roll out of the pilot program is expected later this year"

The EBA Board Pro Bono Committee will administer the program with the assistance of the EBA staff and under the supervision of the EBA Board. EBA President David Doot enthusiastically endorsed the move: "EBA launched the Charitable Foundation and much good has come from the program, including our financial support of very worthy causes. The Board sees the pro bono program as another opportunity we energy practitioners have on the path of good corporate citizenship to help those in need." The roll out of the pilot program is expected later this year. The EBA Pro Bono Committee members, Stu Caplan, Derek Dyson, Walter Hall, Steve Huntoon, Paul Nordstrom, Doug Smith and Linda Walsh, are working on the necessary steps to implement the program. Stay tuned for further notices concerning the roll out of the program.

A First for the EBA – the EBA Renewable Energy Committee Blog

The EBA Renewable Energy Committee, under the leadership of Chair Mike Stosser and Vice Chairs Monica Schwebs and Bill Westerfield, has launched the EBA Renewable Energy Committee Blog (the "Blog") – a first for the EBA.

The Blog will serve as a forum for members of the EBA, enabling them to share information, news and commentary on current developments in the exciting and rapidly developing area of renewable/alternative energy. It will also function as a centralized data center for Renewable Energy Committee business; providing access to meeting minutes, member contacts and information on Renewable Energy Committee events, such as brown bags and panel discussions.

In the first instance, only Renewable Energy Committee members will have direct access to the Blog. Other EBA members and the public will be able to view the Blog, but will not be able to directly post or comment. However, we encourage participation from all other EBA members. If you are not a member of the Renewable Energy Committee, but would like to contribute either a posting or a comment, please e-mail the information to Lynn Fountain at lmfountain@dbh.com, the Blog's designated "Postmaster." She will ensure that all postings and comments are uploaded to the Blog. All questions regarding this new forum should be directed to her attention, as well.

We encourage everyone to post, not only summaries of new legal, policy or legislative developments in your areas of expertise, but also thought-provoking opinions and information regarding projects on which you or your clients are working. Our hope is to turn the Blog into a vital hub for all EBA members with an interest in renewable/alternative energy. We also hope this Blog is the first of many for the EBA.

The EBA Renewable Energy Committee Blog can be reached by clicking on the Blogs tab on the EBA homepage or by linking directly to <http://www.eba-net.org/blog/>.



EBA Mourns The Loss of Judge Harfeld

Sherry A. Quirk

Judge David I. Harfeld, of Chevy Chase, MD, passed away on May 7th from complications arising from adrenal cancer. Judge Harfeld served on the bench at the Federal Energy Regulatory Commission for 27 years. He is survived by his wife Doris, and his daughters Jennifer Harfeld, of Chicago, and Amy Harfeld, of New York City.

In addition to his family and many friends, his service was attended by his fellow Administrative Law Judges, senior personnel at FERC, including Commissioner Suede Kelly, and many practitioners of the energy bar, including a number of his former law clerks. His service celebrated and honored his unmitigated enthusiasm for life, his family, and his friends, and his joyous and irrepressible eccentricity.

Born in Richmond, VA in 1935 to Beatrice and Harry Harfeld, he grew up in Richmond and Baltimore, MD. Graduating from high school at age 15, he got his BA from the University of Richmond, and then obtained his JD from the University of Michigan Law School. He worked at the Interstate Commerce Commission in Washington DC, and married his beloved wife Doris while working at the ICC. From there, he became a partner at a transportation law firm in Chicago, IL. He moved with his family to Chevy Chase, MD in 1979 when he was appointed to the bench. He served as president of the American Bar Association's Conference of Administrative Law Judges for many years, and was an active member of the bar until his death. He was also a member of the Freemasons Lodge in Richmond, VA.

In addition to serving as a Federal Administrative Law Judge for 27 years, he was a life-long enthusiast of Broadway musical theatre. He acquired one of the most extensive collections of original cast Broadway recordings in the country. He hosted a program on NPR across the country entitled "Curtain Up!". The show focused on topics ranging from stars of the silver screen on Broadway to Broadway flops, to opera singers on Broadway. It was broadcast by dozens of public radio stations around the country. He also loved cruising, and traveled the world several times over on all of the major cruise lines.

Above all else, however, he was a loving, dedicated, and involved husband and father, and an interesting, loyal, and enthusiastic friend. He brightened any room he entered; uplifted any spirit he encountered; and believed that no occasion – not even an administrative hearing – was too somber to be fun. He will be sorely missed.

Ms. Quirk is an EBA Board member and was a law clerk for Judge Harfeld.



**"He brightened any room he entered;
uplifted any spirit he encountered"**

ENERGY BAR ASSOCIATION – HOUSTON CHAPTER

The Houston Chapter held a luncheon meeting on April 4, 2006 at the Hyatt Regency Hotel in Houston, Texas. The meeting was entitled "Energy Markets, Oversight, and Investigations" and was presented by Susan Court, Director of the Office of Enforcement, Federal Energy Regulatory Commission and David Miller, Partner, Jones Day. Ms. Court's presentation focused on the Energy Policy Act of 2005, and the FERC's substantially enhanced ability to oversee the natural gas and electricity markets. Mr. Miller discussed the CFTC's foray in the oversight of energy markets and its enforcement schemes and mechanisms. More than sixty people attended the luncheon, including lawyers from inside corporations and outside law firms. The Houston Chapter expects to hold additional luncheon meetings periodically throughout the year.

Pumped Storage Plant: A power plant in which water is pumped into a storage reservoir usually during off-peak periods to generate electricity for peak load use and also to provide reserve generating capacity.



Five Hundred Foot View from Our Trade Associations:

American Gas Association

EBA Update begins a new feature with this edition of canvassing trade associations for their top five bullet points of action items needed to be given priority over the immediately foreseeable future. We begin this new feature with the American Gas Association, which comprises the vast majority of local gas distribution companies in the nation. We caught up with AGA's Jeffrey M. Petrash, a long-time energy practitioner and CFEBA Treasurer, who was good enough to provide the following in response to our request:

The American Gas Association represents energy utilities that deliver natural gas. More than 68 million homes, businesses and power plants rely on natural gas, and it is the nation's fastest-growing major energy source. The tightening balance between natural gas supply and demand has put upward pressure on prices, and natural gas costs are now considerably more in the United States than in any other industrialized nation including the United Kingdom, China and Canada. AGA's top advocacy priorities for 2006 are:

1. Increasing natural gas supply by lifting the various bans on production of natural gas on the Outer Continental Shelf, making the review and approval process for drilling permits more efficient, and pursuing opportunities to import more natural gas from around the world;
2. Assisting natural gas consumers manage their energy costs by encouraging the wise use of energy and by increasing funds for the federal low-income home energy assistance program and by seeking more funding for RD&D programs that promote continued efficiency;
3. Ensuring continued safe and reliable natural gas service through the reauthorization of the Pipeline Safety Improvement Act in a fashion that provides consumers continued reliable service at reasonable cost;
4. Promoting adoption of innovative rate designs by state regulators that will assist in promoting energy efficiency and conservation to mitigate the effects of high and volatile natural gas prices on utilities and their customers; and
5. Increasing infrastructure investment to help build the pipelines and storage facilities needed for a growing market by encouraging more investment in energy utilities.

Energy Law Journal Awards Banquet continued

Mr. Sunday also announced and introduced the incoming members of the ELJ student editorial board.

Messrs. Fleishman, Reiter, Conrad, and Strother also met with the incoming student editorial board, and with Dean Butkin and Professor Russell to discuss the coming year's activities with respect to the ELJ, and how Tulsa and the FELJ/EBA can continue to enhance their working relationship, including making other professional growth opportunities available to ELJ student members.

The EBA, the FELJ, and the practitioner editorial board express their ongoing gratitude to the University, NELPI, and the law student members of the ELJ.



Channing Strother & Harvey Reiter present the editorial excellence award to Jeremy Ward.

Back row, left to right: Stu Conrad, Bryan Harrington, Irma Russell, Latisha Irwin, Dean Robert Butkin, Robert Fleishman, Harvey Reiter, Channing Strother, Prof. Marla Mansfield. Front row: Christina Deaton, Jeremy Ward, Sean Hennessee, Matthew Sunday & Matthew McGonagle.



EBA Members & guests came together at the The Foundation of the Energy Law Journal Reception honoring the FERC Administrative Law Judges on April 26 at the Renaissance Washington



Energy Bar Association's 60th Annual Meeting Luncheon and Dinner



Susan Court, Director of FERC's Office of Market Oversight and Investigations, chats with Jeffrey Petrash, Treasurer of the CFEBA, while enjoying a delightful lunch.



EBA Assistant Secretary Adrienne Clair & Assistant Treasurer Channing Strother.



Commissioner Suede Kelly & EBA President Dave Doot.



Senator Domenici captivated luncheon audience with his President's Award Acceptance Speech.



Commissioner Nora Brownell & EBA President Elect Mike Manning.



Chairman Kelliher, the dinner speaker for the evening, is joined at the head table by EBA Secretary Gary Guy.



New EBA President David Doot presents outgoing President Fred Berner with a plaque in recognition of his outstanding service to the Association.



EBA Members wind down at a lovely reception as the 60th Annual Meeting comes to a close



EBA members Antoine Cobb & Gopal Swaminathan



Former EBA President Steve Huntoon & CFEBA Board Member Linda Walsh



Former Program Co-Chair Mark Williams & Gordon Gooch



Commissioner Nora Brownell & past EBA President Shelia Hollis



Northeast Chapter Liaison to the CFEBA Fred Klein & EBA member Stephen Angle



Annual Meeting Speaker Montina Cole & EBA Vice President Donna Attanasio



EBA members Bernie Foster, Gordon Pennington & Jim McKinney



Former Commissioner Bailey Interview Continued

energy issues. Bailey's time with DOE taught her that "energy policy is inextricably linked with foreign policy", as evidenced by the geopolitics of oil and natural gas. The post-September 11 focus of the Bush Administration is counterterrorism and relationships with other nations. In keeping with this focus, Bailey's work for DOE (and specifically as an advisor to former DOE Secretary Spencer Abraham) involved partnering with neighbors in Canada and Mexico, as well as developing and strengthening relationships with counterparts and allies in Russia, India, Africa and the Middle East.

In our lifetime, will we see an end to our dependence on foreign oil? Not likely, according to Bailey. She comments that "energy is a global commodity and prices are set in the global market" and that "for the foreseeable future, proven reserves of conventional oil will likely be located in areas that are politically and geographically complex, so the United States will need to access supplies in all areas of the globe."

One of Bailey's pillars is the development of technology and research for alternative fuel sources, emissions reduction, and other developments that will benefit end-use customers. She notes that DOE is largely a technology and research agency, not primarily a policy agency. During her term with DOE, the focus of the Bush Administration included such technological advancements as nuclear energy, carbon sequestration for emissions-free power plants, hydrogen vehicles, and fusion. "Technology is key", she says, "but it must progress with a



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Commissioner Bailey Dissents (Plain Speakingly)

I am very wary of sitting here in Washington, D.C., and acting as a central planner with a large map of the utility grid on my wall, with a magic marker at my disposal. . . . I am exceedingly uncomfortable dictating to utilities how best to configure the industry in order to best take advantage of competitive opportunities, or how best to alleviate concern for unfair competitive advantages." *Regional Transmission Organizations*, 85 FERC Para. 61,304, (1998).

"In response to several of my questions, Chairman Hoecker responded that . . . he did not think the critical issues . . . should be decided . . . on who holds contracts for capacity. Well, what does today's order say? Despite statements made . . . that it should not matter who holds the contracts to decide these issues. . . . it appears that the issue of who will hold the contracts for capacity is important to deciding the difficult issues in this case." *Independence Pipeline Co.*, 89 FERC Para. 61,283, 61,885 (1999).

"[T]oday's order states simply that the Commission has changed its mind. . . . I, however, perceive no compelling reason to change my mind. . . . I might have been willing to cast a different vote if the majority had done precisely what the Commission promised to do in earlier orders But today's order sidesteps the issue This omission confounds me." *California ISO Corp.*, 89 FERC Para. 61,169, 61,512 (1999).

"My strong preference is, whenever possible, to allow market forces to determine market prices. Events of the last two summers have demonstrated that this process can be messy. . . . Experience has taught me that 'temporary' price caps, once placed into effect, and despite the best of intentions, have a tendency to become more permanent fixtures. . . . I do not see good cause to justify such a cavalier attitude toward application of unauthorized emergency procedures." *ISO New England, Inc.*, 88 FERC Para. 61,316, 61,972-73 (1999).

"I am reluctant to upset a settlement (especially one directed by the Commission) merely because it did not win unanimous consent of all participants. . . . I am concerned that the Commission is not particularly receptive to flexibility or innovation in the design and administration of ISO governing and voting structures." *Central Hudson Gas & Elec. Corp.*, 87 FERC Para 61,135, 61,547 (1999).

"I do not find this result to be in the public interest, and I do not believe that the license issued today signifies a balanced evaluation of the issues presented. These conditions, which we have been told will basically bankrupt the Cushman Project and force Tacoma to take it out of service, are, in my view, grossly disproportionate to the environmental impacts of continued operation. I reject the notion that our decision represents any kind of compromise. . . . This Commission is all too aware of the competitive forces shaping the industry today. Indeed, this restructuring is being driven in large measure by the conscious choices of the Federal Energy Regulatory Commission. . . . The City cannot afford to increase its exposure to stranded costs as a result of high-cost generation resources, and cannot accept a license for Cushman that would send them in the direction of raising the cost of producing power from this project several million dollars per year above competitive market rates. Tacoma cannot make itself non-competitive with alternative sources of energy." *City of Tacoma, Washington*, 84 FERC Para. 61,107, 61,602-03 (1998).



Wi-Fi Access Now Available at the Federal Energy Regulatory Commission

Steven W. Tyacke

On June 15, 2006 Chairman Kelliher announced that the second floor public areas in the Federal Energy Regulatory Commission's building at 888 First Street NE have been equipped with telecommunications equipment. The Commission announced that wireless broadband internet service is now available on the second floor hearing rooms and Commission Meeting Room. The wireless access will also be available from the Sunrise Café area in the Commission's building.

Initially, high speed internet services are accessible through Verizon, Sprint, T-Mobile and Velocita cellular providers. Nextel is expected to be available by press time and Cingular will be available by mid-July according to the Commission. This wireless access is provided independent of FERC and is controlled by the respective cellular providers. The use of this service will require the purchase of a wireless air card and data service plan from one of the aforementioned vendors.

As announced by Chief Judge Curtis Wagner, Jr. as a part of his announcements at the ALJ Reception preceding the EBA Annual Meeting Meeting in April, the EBA Board and its Communications Committee had been working with Commission representatives to advance this initiative. EBA's then President-Elect David Doot and other EBA board members had previously contacted Judge Wagner to discuss and collaborate with the Commission to determine how this wireless access might be made available to EBA members and other practitioners at the Commission to facilitate communications during and from Commission proceedings. The EBA Board felt this would be beneficial to the membership for settlement conferences, hearings, meetings and other business conducted at the Commission's facilities. However security and integrity of the Commission's existing network was a primary criteria for any access service.

The broadband access network now in service at the Commission will fulfill these goals and criteria and make inexpensive broadband service widely available to up to approximately 250 simultaneous users at the Commission. This wireless access will provide another technological tool for EBA members to access information and communicate via the wireless access service in order to better serve their clients. EBA practitioners as well as members of the public will now be able to use their laptop computers to access information and also communicate with others within the Commission's second floor areas. Initial wireless access service performance testing in the Commission's meeting rooms, hearing rooms, public areas as well as the Sunrise Café have demonstrated strong signals and can be used with laptop computers as well as Blackberry. and other personal communication devices.

EBA members who are interested in wireless access should procure a card for their laptops from computer dealers and sign up for the service on their cellular phone providers. The Energy Bar Association will be providing additional information on establishing a wireless access service agreement. EBA members may also contact the Commission about this new service. Questions on an existing account or cellular services should be directed to the carriers.

In addition to Judge Wagner, the EBA's representatives worked with Messrs. Tom Herlihy and Emory Gargon, who were responsible for successfully managing, expediting and implementing the project for the Commission's IT Department.

Mr. Tyacke is a former EBA Board Member and Chair of the EBA Wi-Fi Task Force.

EBA 2005 Strategic Plan Highlighted in Annual Report of the President

As one of his last official acts as President of the Energy Bar Association, our Immediate Past President, Frederic G. Berner, Jr., presented his Annual Report at the Annual Business Meeting that was held on April 27, 2006 in conjunction with the Sixtieth Annual Meeting. He covered many topics of interest. The following excerpt is worthy of particular note:

"The EBA's 2005 Strategic Plan, which was circulated to all members in February 2006, builds on the Association's past record of success and implements measures to enhance our programs and services. First and foremost, the Strategic Plan adopts an expanded, more inclusive statement of the EBA's mission:

The mission of the Association is to promote the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations, and policies.

In addition, the Strategic Plan reflects a renewed commitment to improve services to our members. Among the goals established in the Strategic Plan are the presentation of an annual EBA primer on a topic of interest, more extensive coverage of emerging state and regional issues of importance, an expansion of relationships with other industry organizations and bar associations, and a survey of members' opinions and perceptions regarding the Association's programs and services."



Senator Bingaman Interview Continued

Gasoline: A World-Wide Market

As to the public's consternation over record-high gasoline prices, Senator Bingaman offered reassurance that, "A great deal can be done over a reasonable time frame to try to reduce demand for imported oil and gasoline." He explained that "we waste much more energy in this country than any other country in the world." While conceding that "we cannot legislate lower gas prices," the Senator maintained that there is a lot that we can do to improve the situation, and to reduce the increase in the price of gasoline. Ultimately, however, he stated that the "whole world made a judgment that gasoline is a commodity to be sold on a world market." For that reason, he concluded that supply and demand will make the determination on gasoline prices. Clearly, demand is where the Senator sees that the American side of the equation needs improving.

LNG: It Has a Role to Play

Based on the projections that demand in the United States will continue to exceed supply, Senator Bingaman advocated measures to reduce dependence on foreign sources of supply but also recognized that such dependence cannot be avoided completely. He called LNG importation a necessary part of the supply mix, and the siting of LNG terminals along the coast an environmentally sound and safe way to proceed in many instances.

Electricity Infrastructure: FERC is Doing it Right!

Apart from the measures taken in EPAct, such as PUHCA repeal and other forms of incentives through tax provisions and guidance to FERC, Senator Bingaman was upbeat that "FERC is doing a good job in trying to move toward a more robust national grid and more capacity" in electric transmission and generation. The Senator called increasing reliability in electric transmission a long-term project, "not a one-year job and then it's over with."

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At Leisure With Jeff Bingaman

EBA Update could not resist asking the Distinguished Gentleman from New Mexico some of our lighter-side questions, and he good naturedly obliged us with the following:

The last book he read, and when? Just over the weekend, *The One Percent Doctrine* by Ron Suskind ("An inside the U.S. government look at the deliberations and machinations that led to the war in Iraq.").

His favorite recent movie? *Il Postino*, subtitled *Neruda's Postman* ("A very touching story about this man in a small village in Italy and his growing friendship with Pablo Neruda over a period of time.").

What he would most like to do if he stopped being a United States Senator? Go back to practicing law ("I have limited ambitions perhaps.").

What he does in his spare time? Travel with his wife (Central America every year or two; Mexico every year or two; "India last year was fascinating"; Japan, China, and Korea) ("I recommend to any person who can to just pack up and take off.").



Senator Bingaman Interview Continued

Bring on Those FERC Nominees!

For that reason, among others, Senator Bingaman is very much on top of the FERC nomination and confirmation processes. He stated that the Senate Energy and Natural Resources Committee completed its confirmation hearings on President Bush's nominees Philip D. Moeller and Jon B. Wellinghoff, and unanimously voted in favor of both. He stated that he sees no reason why the more recent Administration submission of Marc L. Spitzer will not receive a similar favorable reaction. (All three nominees have since been unanimously confirmed by the Senate.) Concerning the fact that all three nominees are from the West, as is sitting Commissioner Sudeen G. Kelly, Senator Bingaman remarked that that is a "good thing," and "I am glad to see that happen."

And as readers of *EBA Update* are well aware, Senator Bingaman and Commissioner Kelly both were closely associated with each other in New Mexico, where the Senator was formerly the Attorney General. Ms. Kelly served in that office under Mr. Bingaman before his election to the Senate and her elevation to the New Mexico Public Service Commission, which she eventually chaired. We asked Senator Bingaman about his backing of Commissioner Kelly to the FERC. He explained that the minority party is reserved two of the five seats at the FERC. Following the customary practice of the President consulting with the leader of the minority party in the Senate, who at that time was Thomas A. Daschle, Senator Bingaman stated that he was then contacted by his party's leader since he is the ranking Democrat on the Energy and Natural Resources Committee. Senator Bingaman stated that he "did do all I could to get her appointed" and that he still does "strongly support her." He recalled that he urged Senator Daschle to recommend Ms. Kelly to the President, and that

once this occurred President Bush acceded. Indeed, Senator Bingaman called Ms. Kelly "extremely well qualified," and an "excellent choice," and stated that this was "clear to the President and to everyone else."

Upbringing Amidst Science and Politics

Another common thread between Commissioner Kelly and Senator Bingaman is that they both had an early exposure to the world of science and chose not to pursue it for themselves. As reported in the last issue of *EBA Update*, Commissioner Kelly actually majored in chemistry, but turned to the law instead, following an unpleasant lab experiment. Senator Bingaman's father, John (also the name of Senator Bingaman's son), taught chemistry at Western New Mexico University in Silver City, where the Senator was reared, and chaired the Science Department there. Senator Bingaman stated that while he was always interested in science, he never considered it a career path, but instead made the same decision as did Commissioner Kelly to attend law school and practice law, as they both did successfully.

The Senator summed things up for himself by stating that "one thing led to another and I ended up running for political office." While not following in his father's footsteps, the Senator does come from political stock in that his uncle was a delegate to the 1940 Democratic National Convention. In response to the comment that he has been very successful in politics, the good Senator responded, "So far," adding that, "Every day is a new day in politics." (Reports are that he is the prohibitive favorite for a fifth term this coming November.) The New Mexico power axis continues!

President's Message Continued

Judges and senior staff of the Federal Energy Regulatory Commission; state utility regulators and policy makers; senior officers of companies active in the energy industry; leading consultants in the field; and distinguished members of our Energy Bar. These EBA programs were available to you at a fraction of the cost charged by commercial conference organizers. I hope you were among the 1365 attendees at these events who were able to take advantage of these learning and networking opportunities. If you were, I hope that you found the experiences worthwhile and valuable.

In addition to these conferences, there were over a dozen brownbag or luncheon conferences in the last twelve months, hosted by ten EBA Committees and Chapters. These conferences present us each with a concentrated, dedicated hour or two to explore in person and by phone, informally and in detail, cutting edge topics with our colleagues who share a common interest and are directly influencing debate on those topics. I hope you were among the many members who participated on the Committees and Chapters organizing those brown bags, were able to take advantage of them, and agree that your time was well spent.

Have you had the chance to review the EBA newsletters or visit the EBA website? The newsletters and website are for you as an EBA member, and contain great information about what the EBA is doing for you, as well as interviews that provide us all helpful insights from policy leaders in our industry. You will read in this newsletter of the very recently enhanced wireless access in the FERC headquarters in Washington, which your EBA representatives helped to make happen.

I have the honor as your EBA President of serving you with an outstanding leadership team that you have elected. Our efforts this year will be guided by the 2005 Strategic Plan

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Upcoming Events

Mid-Year Meeting

November 2, 2006
Hilton Washington
Washington, D.C.

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

November 2, 2006
Hilton Washington
Washington, D.C.

FERC 101: FERC Practice Primer

November 3, 2006
Hilton Washington
Washington, D.C.

Western Chapter Annual Meeting

February 22-23, 2007
Hyatt Regency San Francisco
San Francisco, CA

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

Transmission Organization: Defined in the Energy Policy Act of 2005 § 1241 as "a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the [Federal Energy Regulatory] Commission for the operation of transmission facilities."

Pumped Storage Plant: A power plant in which water is pumped into a storage reservoir usually during off-peak periods to generate electricity for peak load use and also to provide reserve generating capacity.

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 approximately 2300 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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President's Message

Continued

which you can find at http://www.eba-net.org/strategic_plan2005.php. We want, need, and have an active plan to gather your feedback. One of my goals this year is for each of you to conclude (as I hope you have in years past) that you have derived great value from your investment of time, energy and money in the EBA. You are our valued members, and speaking personally and on behalf of fellow Directors and Officers, we are all dedicated to ensuring that you find the EBA a worthwhile and valuable organization.

David Doot

President, Energy Bar Association

Bailey Interview

Continued

commercial focus." Bailey believes that if research and technology are not commercialized in some way, they cannot help the consumer and, therefore, do not advance the very goals for which they are created.

Most recently, Bailey has drawn from her public service experience, entrepreneurial spirit, and energy expertise in forming Anderson Stratton International, a firm that Bailey describes as her portfolio, encompassing her membership on several corporate boards (including Battelle, Cheniere, and Equitable Resources), her work as a strategic consultant, and her partnership in a joint venture, BHMM Energy Services, LLC, that provides energy facilities management services for the Indianapolis Airport Authority. Ever mindful of the expectation that she use her accomplishments to help others, Bailey says that one of her goals in creating Anderson Stratton is to increase minority involvement in the business side of energy supply.

Here again, Bailey has surpassed expectations and for that, we can all be proud.

