

President's Message

Your EBA colleagues have been busy this summer creating additional opportunities for all of us to enhance our knowledge and practices in the energy field. We all will have the opportunity on November 2 at the Mid-Year Meeting to hear from the three new FERC Commissioners that were sworn in over the summer. Attendees also will have the opportunity to hear about recent evolutions in the area of corporate compliance and public policy debates regarding how best to address climate change issues, encourage natural gas storage development, site new transmission, and encourage the development of renewable energy (to be moderated by Commissioner Kelly). In addition, one of the last concurrent sessions of the Mid-Year Meeting, which will qualify for ethics CLE credit, will feature the

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Survey of EBA Members to be Launched

The Energy Bar Association and its two sister organizations, the Foundation of the Energy Law Journal and the Charitable Foundation of the Energy Bar Association are very excited about launching an internet survey of the EBA membership. The survey will be emailed in mid-October to all EBA members, and may be followed up with telephone or personal interviews with some members to clarify and expand on survey results as appropriate.

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FERC General Counsel John Moot Moves to Increase Court Victories, Infuses Agency with Scholarly Approach; A Kelliher Alter Ego

Reveals How Career Change Came About and Terms of Engagement; Thorough Preparation, Clear Thinking, and Balanced Lifestyle are His Hallmarks

Gary E. Guy & Channing D. Strother

In its continuing series of feature in-depth interviews with leading energy law-makers, regulators, and decision-makers, *EBA Update* reporters Gary Guy and Channing Strother (aka "Brady and Mankiewicz") are pleased to bring you an interview with Federal Energy Regulatory Commission General Counsel John S. Moot, the video of which is available for viewing on the EBA website, www.eba-net.org.

Mr Moot appeared suddenly out of nowhere, it seemed, to greet us after we were escorted up to the waiting area outside of his office. It was easy to see why FERC Chairman Joseph T. Kelliher would want Mr. Moot to come into his Administration. Besides having

an excellent reputation, Mr. Moot is pleasant and charming. What is not quite easy to see at first are the attractions of the job to Mr. Moot, as it required him to give up a partnership with reputedly one of the more lucrative law firms, and subjected him to certain restrictions on what he can do for awhile upon leaving government service. Naturally, we asked him how it was that he became General Counsel, and how life-altering a change it has been for him. He gave us the full, candid, exclusive, inside story. And he exuded great enthusiasm for taking on the mission!



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News from the Charitable Foundation of the Energy Bar Association

A. Karen Hill

CFEBA Fundraising Gala to Highlight Regional Charitable Activities

The CFEBA Fourth Annual Fundraising Gala, scheduled for November 2, 2006, in conjunction with the EBA Annual Mid-Year Meeting, will feature a regional theme this year to highlight the work of the regional chapters to expand the impact of the CFEBA charitable donations. The Northeast Chapter raised funds for low income heating assistance; the Midwest Chapter raised funds for the Illinois Low Income Home Energy Assistance Program ("LIHEAP"); the New Orleans Chapter donated work and funds to Katrina victim assistance; and the Western Chapter raised funds to sponsor energy efficient capital investment in local schools.

CFEBA Fundraising Gala

When: November 2, at 5:30 pm

Where: The Hilton Washington

The CFEBA has invited as honored guests to the Gala the Honorable Joseph Kelliher, who has agreed to come and give brief remarks, the Honorable Suedeen Kelly, the Honorable Philip Moeller, the Honorable Marc Spitzer, the Honorable Jon Wellinghoff. The Gala will again feature live music, cocktails and hors d'oeuvres. A \$1500 prize will be raffled along with second, third and fourth prizes. A silent auction will feature fine wine and other gifts. Tickets to the event are \$100 for non-government guests and \$50 for government employees. Last year the Gala raised \$13,247 for CFEBA charitable activities.

The Gala planning committee is soliciting gift items, event tickets and vacation packages from EBA members for the silent auction. In addition, the committee is soliciting sponsors of the event – sponsors donating \$2000 will receive four free tickets to the event. If you would like to sign up a sponsor or donate something for the silent auction, please notify one of the following committee members: Linda Walsh, Donna Attanasio, Lodi White, Sarah Adams, or Karen Hill.

CFEBA-Sponsored FERC Intern Enjoyed Successful Summer

Gideon Wiginton, a law student at American University, participated in the FERC summer intern program, and was sponsored by the CFEBA. His experience is summarized in his report, below. A highlight of his work at FERC was in the Solicitor's Office, which is the division of the Office of General Counsel that represents the

Commission in the Courts of Appeals. The Solicitor, Robert Solomon, wrote a letter of commendation about Gideon and his work, saying that Gideon was "an active and vital member of the Solicitor's Office" who performed reliably with skill, dedication, composure, and sensitivity to deadlines. Solicitor Solomon also praised Gideon's demeanor and said that the Solicitor's Office would miss his valuable and pleasant participation in its work.

CFEBA Participation Sought

The CFEBA Board is seeking more active participation from the membership on its committees. A full list of the CFEBA committees and their Chairs are available in the Charitable Foundation section of the EBA web site. If you are interested in participating on any of these committees, please feel free to contact CFEBA President Paul Mohler, Vice President Linda Walsh, or the listed Chairs of the committee(s) you would like to contribute to. All are welcome

Charitable Service Project Needs Volunteers on October 14

The CFEBA has scheduled a Habitat for Humanity build day along with a park renovation project for October 14. With the assistance of Marlo Brown, EBA staff, the CFEBA is soliciting participation from all EBA members. Thirty volunteers have signed up, but more are needed. If you are interested in volunteering for this project, please contact Bill Booth.

CFEBA also is developing a list of volunteer organizations that could use EBA member assistance for shorter periods, such as two hour blocks during the week, rather than eight hours on a Saturday for a Habitat for Humanity project. These include so far House of Ruth, Martha's Table, McKenna's Wagon, Community of Hope, National Alliance to End Homelessness, Washington Center for the Aging, Miriam's Kitchen, Horton's Kids, and the American Hospice Foundation. This list as well as contact people at the organizations and on the CFEBA Board will be published soon on the EBA website. In the meantime, if you are interested in volunteering at any of these organizations, please contact Bill Booth for more details.

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



Chungba Primary School Sends Their Appreciation for Donation Made by Charitable Foundation

3 October 2006

Re: Report on Grant to Shenpen Fund/Machik

On behalf of the children, teachers and staff at the Ruth Walter Chungba Primary School (CPS) and the staff at Machik (formerly called Shenpen Fund), I wish to express our deep gratitude to all at the CFEBA. Your generous contribution of \$10,000 greatly helped to meet the energy needs of the community at the school.

The purpose of the grant was to help meet the energy needs for education in a remote Tibetan mountain community. I am pleased to report that on our annual monitoring trip to Tibet the purpose of the grant was successfully met. Specifically, two large and powerful generators were purchased, installed and put to immediate use during power outages. Also, eight large solar panels were purchased, installed and are now in use at the CPS.

There are now over 260 children and over 28 teachers and staff at the CPS. They are all beneficiaries of this work that provide vital back up power from the generators and essential lighting in the classrooms and dormitories during the darkest hours. The panels will also save in electricity into the future. The entire community is deeply grateful. We at Machik are especially grateful for the educational value of the solar panels as the children and community can learn more the critical importance of clean and sustainable energy.

Sincerely,

Losang Rabgey, PhD
Executive Director
Machik (formerly called Shenpen Fund)



A Preview of the November 2006 Energy Law Journal

Energy Law Journal Editor-in Chief Bob Fleishman reports that the upcoming issue, due for release in early November, will contain several diverse articles. "Book 27:2 should be of interest to a wide variety of attorneys and other professionals," Fleishman said. There will be a major article concerning market manipulation in the wake of the Energy Policy Act of 2005. Two others will address important issues regarding long-term natural gas contracts, a third provides insights into state authority over, and litigation concerning, LNG siting, and addresses other eminent domain issues. On the power side, we will have an article dealing with the rise of renewable portfolio standards and the reluctance of Congress to impose a set of federal standards, as well as an international piece exploring German perspectives on the evolving European electricity markets. Finally, the issue will contain the first report by EBA's Nuclear Regulation Committee.

Intangible Development Costs: Certain costs of drilling production wells and preparing them for production, such as expenditures for labor, fuel, power, materials, supplies, tool rental, and repairs of drilling equipment in connection with drilling and equipping productive wells (but not tangible costs such as for pipe, tanks, and pump) that can sometimes, under certain circumstances, be capitalized and recovered through cost depletion, or written off as a current expense.

Transformer: An electromagnetic device for changing the voltage of alternating current electricity.



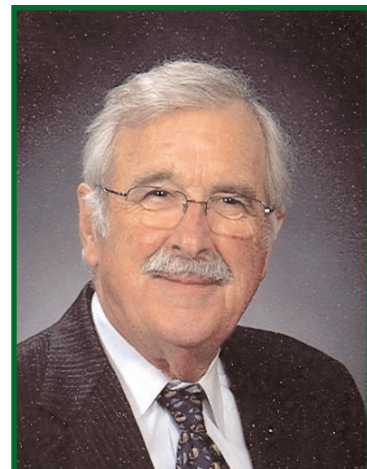
First Time's the Charm: A Conversation With a Member of the Inaugural Commission

Adrienne E. Clair

George R. Hall served on the inaugural Commission of the FERC, his term during 1978-1981 followed the FPC's replacement with the FERC in 1977. For this installment of our series, I recently discussed with Hall his memories of serving on the Commission and whether there are any lessons or practices of the first Commission that have endured the test of time.

Although Hall recalls the overall significance of the Commission's achievements during his term, including rate cases, addressing the impacts of inflation, and the creation of the Gas Research Institute – an achievement on which Hall was the lead Commissioner – he says that the work of implementing the National Energy Policy Act of 1978 was perhaps the most noteworthy of his term. “With the passage of NEPA, FERC was given the responsibility of implementing the Natural Gas Policy Act and the Public Utilities Regulatory Policy Act”, Hall recalls, “When I look back on my career at the FERC, what I recall with pleasure is the opportunity to be part of the restructuring of two major industries.”

**“Contention was wild”
implementing NEPA**



Did the Commission achieve its goals during his term? Hall believes that it did. In his opinion, NEPA broke through gridlocks that had existed for a very long time, and former FERC Chairman Charles B. Curtis made the work of implementing the NGPA and PURPA a priority for the Commission. I asked Hall how this initial FERC Commission tackled the work of implementing NGPA and PURPA, and whether there were any lessons to be learned from that experience. He says that the initial Commission was very unusual in that it was a consensus Commission. According to Hall, “the Chairman and the Commissioners worked hard to maintain a consensus style of operation, which meant that in key cases the individual Commissioners could act as project managers so that they were not only acting as quasi-judicial decision makers, they worked with Staff task forces in a creative, oversight role that was very unusual for a regulatory commission and was very satisfying.”

Does that mean contention was absent from the Commission during Hall's term? Absolutely not. He says that when it came to implementing the National Energy Policy Act, “contention was wild.” However, the Commission's manner of addressing the contention was to spend a lot of time with the parties involved in an attempt to reach consensus in the pre-NOPR process. The Commission began a process of on-the-record, non-litigated meetings with stakeholders, where the Staff would discuss their thoughts in order to help narrow the scope of contention. Although he agreed that this process may have delayed the timing of issuing NOPRs, Hall comments that “the issues that the Commission was dealing with at that time were new, with huge consequences, so the pre-NOPR process made

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Journal To Put Articles on Line

This fall a new feature will be added to the EBA website. The result of a project begun over the summer, past and current volumes of the *Energy Law Journal* will be available on line to anyone with an internet connection. The Journal plans full-featured access to all of its volumes, from Volume 1 to the present. Hypertext links will allow users to do content searches or to download and print individual articles. The Foundation of the Energy Law Journal is excited about this project and is confident that EBA members will find it a valuable tool. More details will be announced as the project nears completion.

Arbitrage: The simultaneous purchase and sale of (1) different commodities, (2) different delivery months of the same commodity, or (3) grades of the same commodity in the same delivery month, all for the purpose of realizing a profit on the price differential.

Incremental Pricing: As used in the Natural Gas Policy Act of 1978, the pricing of certain new gas acquisition costs as a surcharge rendered to designated end uses of gas by certain industrial facilities.



Interview with FERC General Counsel continued

Young Mr. Moot and His Accidental Route to Energy Law

First, however, we asked Mr. Moot to briefly give us his background before coming to the fore at the FERC. He obliged by telling us that he was born and raised in Rochester, is “an avid Red Sox fan” (and has the office memorabilia to prove it), attended St. Lawrence University in northern New York, majoring in political science, worked for two years while deciding whether to attend graduate business school or law school, and then resolved the matter by entering American University School of Law in 1985. Of the wisdom of that choice, he has come to have no doubts whatsoever. He tells friends, “I am not sure I would have been good at anything else.” He added that, as an American Law grad, he has formed a contingent with Chairman Kelliher and Deputy General Counsel Cindy Marlette with which to combat the University of West Virginia contingent at the FERC comprised of long-time Senior Staffers Dan Larcamp and Mark Robinson.

Oddly enough, his very first summer internship stamped Mr. Moot quite innocently as an energy practitioner. He explained that he worked on environmental matters, concerning the Clean Air and Clean Water Acts, at the American Petroleum Institute. Then, when he applied for summer associate positions with law firms, they assumed from his resume that he belonged in energy law, a field in which he had had no experience or particular inclination. However, as luck would have it, Mr. Moot discovered that he could integrate his fondness for economics and public policy through the practice of energy regulation. It was a natural fit for him after all and he has stuck with it!

Verner Lippfert employed him for four years representing public power and state regulatory clients in electric matters, and then Skadden Arps brought him on, initially to represent small utilities and merchant generators, followed by larger utilities that later came to the firm, again in the electric area. Consequently, although he stated that he is not as well versed in gas pipeline matters, an area in which he is “challenged,” he has represented a broad cross section of electric clients over the years.

Power Lunch: Chairman Kelliher Wants You

Were they buddies? Not by a long shot. They were acquaintances. “I had known the Chairman for a while, but we did not go way back, and did not know each other extremely well,” stated Moot. Having discussed issues “from time to time,” Mr. Moot

“Inside I felt that this is just a great opportunity”

recounted that the two “set up lunch after he became Chairman to get together.” It was then that our interviewee’s life changed completely. Chairman Kelliher, without having given any advance indication, asked, “Would you like to be my General Counsel?” Mr. Moot told us of his mixture of emotions, including being “surprised” and “flattered.” “I certainly had never expected to leave private practice and come to the FERC,” he declared. He did not jump at the offer. He “had to mull it over for quite some time because it was a big change” and “I’ve got young kids” (10, 13, and 15, two girls and

a boy in the middle). But all the while he knew that “inside I felt that this is just a great opportunity” and told himself, “I’ve got to give this serious consideration.” He called it an “absolute honor.”

Paramount for the Chairman, according to what he told Mr. Moot, was that the Energy Policy Act of 2005 made it essential that there be someone “strong on the substance” to help with “the heavy lifting.” Mr. Moot

clearly had such a grasp, having written extensively for legal publications, including the *Energy Law Journal*, of which he holds the record as the most frequent contributor. When informed of that distinction by us, he laughingly responded that such a badge of honor might indicate “a bit of lunacy.” Also, what Mr. Moot called the “greatest irony,” was that when Mr. Kelliher tapped him for the top lawyer job at the FERC, Moot had just submitted to the *ELJ* an article of the need for Order No. 888 revisions, the topic that the Chairman had made his “main priority.”

Among other pressing matters before the FERC is that of mergers. As readers of *EBA Update* are aware from our excerpts from 10- and 20-year *ELJ* articles, Mr. Moot has written extensively on that topic as well. He recalled for us his recommendation in one of his three merger articles that the Commission eliminate certain

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Interview with FERC General Counsel **continued**

issues it was then considering for inclusion in its Merger Policy Statement and instead “streamline its focus on what really matters most to the consumer – competition, rates, and regulation,” rather than arguments arising out of “longstanding disputes between parties” where there is no real “nexus” to a proposed merger. He again showed modesty in stating that his article should not be considered the reason for the absence of the extraneous issues he had challenged once the Policy Statement was issued.

As our readers also know, Chairman Kelliher informed us when we interviewed him that he was drawn to John Moot in large part because of his thoughtful writings. Now that Mr. Moot is General Counsel, he is approaching issues in a balanced way just like he did when he wrote his many articles on his own, without using associates so that he would be able to learn more on the topics. As he explained, he has been motivated to write in order to remove himself from the “limiting” atmosphere of litigation, explore all sides to an issue and ask if there is a sound policy result that can be reached. He always had to be “careful in wording so that clients would not be running out the door.” But for Moot, private practice was more rewarding when he could succeed in a transactional matter that left everyone satisfied than in a litigation matter even when he won a favorable decision.

In “mulling” the question of whether to accept or not to accept the General Counsel post, Mr. Moot had further discussions with the Chairman. One of the first questions he recalled asking was, “Is Cindy staying?” He explained that he did not want a “mass exodus” of senior FERC Staffers leaving just as he would be coming in, and he wanted then General Counsel Cynthia A. Marlette to remain in order to stem any such tide. He knew two things about the FERC from his long tenure as a private practitioner before the agency. First, there are good people there. Second, it is a place where people get along with each other and like to work. He wanted those factors to continue. That matter was cleared up to his satisfaction. Of Ms. Marlette, now Principal Deputy General Counsel, Mr. Moot states that “She’s absolutely terrific!” He continued that Ms. Marlette “is a tremendous asset” for three reasons: (1) she was General Counsel for a number of years; (2) she was “a leader within OGC for 20 years;” and (3) she was the “Czarina” as head of the EPAAct “implementation team.” “I could not

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John Moot on the Couch

How Would He Spend Any Additional Spare Time? Travel more. (You cannot plan trips when in private practice.) Coach more. Read more novels. Play more golf. (Golf score reflects very little golf is being played now.)

Favorite Movie? Doesn’t go to movies much. (Add that to the list above.) (Not much like Chairman Kelliher in this category!)

Recent Book? *Killer Angels*, about the Battle of Gettysburg. (Back to resembling the esteemed Chairman!)

Favorite Book Genre? Classics. (Hemingway, *Old Man and the Sea*; Read before you file your next brief!)

Personal Motto? It’s good to be lucky; it’s better to be prepared! (Hemingway said something similar that is framed in the office, but Moot is even shorter and crisper.)

Favorite Sound? Classical music.

Least Favorite Sound? A horn honking.

Least Favorite Word? “Pre-boarding.”

Biggest Turn-On? Intellectual and athletic challenges.

Biggest Turn-Off? People that make things simpler than they are. (Brief-writers?)

Walter Mitty Fantasy Occupation? Teaching. Running a business “as a non-lawyer.”

Job Least Like To Have? One that does not provide intellectual challenge. He has compassion for those who are stuck in such jobs. “It can’t be fun.”

Desire Upon Reaching Heaven? To be greeted by Carl Ystrimski and Ted Williams. To be told “I lived a decent life.”



Interview with FERC General Counsel **Continued**

do my job without her," he maintains.

Also, before agreeing to take on the appointment, Mr. Moot informed the Chairman of his involvement with his children's sports activities, serving as an "official Assistant Coach" on his daughter's JV soccer team at George Mason High School in Falls Church, Virginia, where he specializes in coaching the goalie, the position that he played in school athletics. He has also coached basketball and, to a lesser extent, helped out with baseball. With the commitment to his children on the playing fields, Mr. Moot informed the Chairman that there will be days when he has to leave at 5 o'clock and the response he got was, "That's fine."

Having satisfied himself as to the working conditions, John Moot said, Good-bye Skadden Arps, Hello FERC!

Advising The Commission

The Office of General Counsel, explained Mr. Moot, is comprised of the Advisory Legal Staff, i.e., non-trial attorneys who, among other things, take a case after the Initial Decision has been issued and advise the Commission on how to decide the case, as well as the 10 or fewer attorneys in the Solicitor's Office who then defend the Commission's actions in the Courts of Appeal. ("One of the benefits of getting out of private practice is that I have no relation to trials any more.") He stated that the parties contending before the FERC get a clean slate in terms of the Commission's review of what has gone on before in the docketed proceedings, because there is no statutory standard of deference as there is when a Court of Appeals receives a case from a District Court at the federal level. That being said, Mr. Moot pointed out that the Commission has respect for the Administrative Law Judges and the time

and effort that they put into a case, and therefore does not "overturn them willy nilly." Chairman Kelliher, a lawyer himself, informed Mr. Moot that he wanted him to be mindful of judicial review when advising the Commission on its course of action. According to Mr. Moot, the Chairman's approach to good government is also the most successful means of winning on appeal. Specifically, he assured us that, "Certainly one of the Chairman's priorities in his approach to leading the Commission is to make sure that an Order is based on the evidence, consistent with the law, and clearly articulated." He indicated that the small Solicitor's Office within OGC is not involved in every Commission decision but



that it is consulted on many rehearing requests and "large cases where there is a question about the state of the record." Also, he stated that the Solicitor's Office is helpful at the "programmatic level" in briefing new OGC attorneys on what the appellate courts are "looking for" in Commission decisions.

In addition, Mr. Moot explained that inter-disciplinary teams are put together to work on Orders and Rulemakings, just as they are among the trial staff. He pointed out that a "front office director" works to see that these team efforts work as "seamlessly as possible" in developing recommendations

that are then run up to the Commissioners. He indicated that the decision-making process is "fluid" in that each case is handled a little bit differently within the parameters of exchanges of emails, different office staff meetings to attempt to reach compromise resolutions, and one-on-one informal discussions among Commissioners. He informed us that "on important Orders we almost always get revisions" from the Commission Offices on draft Orders.

Aside from these energy matters on which the Office of General Counsel advises, it handles general legal matters, such as labor law, hiring practices, Freedom of Information Act requests, Critical Energy Infrastructure Information related requests, and ethical issues. Mr. Moot indicated that he relies heavily on the General Administrative Law Division headed up by Larry Crocker on these matters, and added that Mr. Crocker is the designated Ethics Officer at the agency.

Restrictions on a General Counsel from Private Practice

Having represented clients before the FERC, Mr. Moot indicated that he faces two restrictions on advising the Commission on how to decide cases that involve his former clients. First, if Mr. Moot represented the client in the matter before the Commission, he must recuse himself for all time. Second, if any former client comes before the Commission on a matter for which Mr. Moot did not participate on its behalf, he still must recuse himself for a period of one year. When asked about restrictions on his ability to practice before the FERC upon leaving his post, Mr. Moot replied that he has not focused on those aspects because he is not thinking about leaving the job, but

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Interview with FERC General Counsel **Continued**

that he is generally aware of similar one-year restrictions on representing clients before the Commission.

EPAAct and Beyond: What Now?

Many statutory deadlines facing the FERC under EPAAct of 2005 have come and gone, with the Commission having complied with all of them during the Kelliher Administration. Mr. Moot expressed pride in the agency's "terrific" record in achieving these milestones. But he also stated that there is more to be done than having met deadlines. He sees the implementation of the rules put into place as the next item of business. He also indicated that revisions may be in order based on experience to be derived. Always mindful of the need to be able to see all sides of an issue, Mr. Moot stated that, "Sometimes there are no right choices, just differences of opinion." He called the rulemaking proceedings "open by definition" and indicated that he made efforts to be accessible and speak with people around the country. However, much like his recommendation to revise Order No. 888 long after its implementation, a view that placed him clearly on the same wave length as the Chairman before he even dreamt of becoming General Counsel, Mr. Moot was quite clear that policy matters are always subject to improvement in light of changed circumstances or further information.

In line with that point, Mr. Moot told us of a job description that he sees for himself in addition to that of being the Commission's chief legal advisor. That is, he sees himself as responsible for counseling the Chairman and Commission on matters that "are not just pure legal issues." It is in this role of Counselor that the scholarly General Counsel clearly stands out as a man from the same basic mold as Chairman Kelliher. Both are well-read, studious, and thoughtful, as is evident from our interviews with them and with others, such as then-Commissioner Brownell, who described the Chairman in such terms. Mr. Moot told us that his obligation is to provide "sober judgment," "good decisions," and an ability to "think things through." Another facet of Mr. Moot's self-described job is to be a "good leader to the Office of General Counsel." It is not a role that he claims to have perfected. He volunteered that, "I am still learning on the job."

But it is evident that these attributes of a good General Counsel are the character traits that drove Mr. Moot to find frustrating the litigiousness of client representation and seek some solace through the solo researching and writing of logical, dispassionate legal analyses in the *Energy Law Journal*. That is a commitment of time and effort without monetary compensation that Mr. Moot under-

took for many years, and which caught the attention of an equally scholarly-natured energy professional who became Chairman of the FERC. The two are made for each other.

Energy Practitioners: Dispense With Diatribes; Get Out Hemingway!

Where then does that leave those of us who apply our trade at the Kelliher Commission on behalf of our clients? Mr. Moot made it clear that he is looking for tight, coherent reasoning that avoids extremes and recognizes the nuances; and his boss must be assumed to be of the same opinion after having hand picked him and actively recruited him. According to General Counsel Moot, regardless of how we view our practices, we are really engaged in "administrative regulation" with many pleadings submitted in proceedings for which there is no established time to pursue settlement. He indicated that the Administrative Law Judges may build in settlement conference time in their procedural schedule, but that for valid *ex parte* reasons the Commission cannot effectuate settlement negotiations but only provide resources via the Office of Dispute Resolution to the extent that parties request such assistance. He bemoaned the fact that fewer cases are settled than should be the case. He stated that too often attorneys write longwinded, extremist rhetoric rather than advise their clients that they will be more successful by acknowledging the soundness of opposing views and affirmatively suggesting compromise solutions. He criticized those that are motivated by the feeling that it is "fun to litigate," insist that their view "came down as the 11th Commandment," and deprecate the harder task of searching for the more moderate solution that recognizes competing

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"Sometimes there are no right choices; just differences of opinion."



Summer Internship in the FERC Office of General Counsel

Gideon Wiginton, CFEBA-Sponsored Summer Intern

I would like to express my sincere thanks to the members of the Board of the Charitable Foundation for sponsoring my internship at FERC this past summer. I would also like to thank you for inviting me to attend the July Board meeting and for the wonderful reception at Jones Day. It was a pleasure meeting everyone. My experience at FERC was better than I had hoped, and I am more confident than ever in my decision to practice energy law.

Over the course of the summer, I split my time between the Office of the Solicitor and the Office of General and Administrative Law. In the Office of the Solicitor, I had the opportunity to deal with energy and administrative law issues. I became familiar with sections of the Federal Power Act and the Natural Gas Act and discovered the process for appealing Commission orders in federal courts of appeal. In GAL, I observed many of the day to day applications of administrative law, such as FOIA and CEII requests, learned the process through which the Commission issues orders, and researched issues involving internal agency operations. The career attorneys in both offices were always willing to answer questions, discuss research strategies, and review and offer helpful criticism of my work product.

"I am more confident than ever in my decision to practice energy law."

Office of the Solicitor

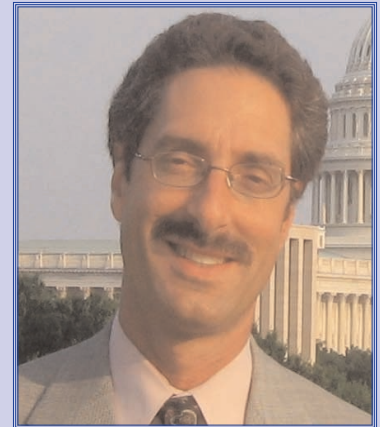
I had the opportunity to work with four of the staff attorneys in the Solicitor's office on a variety of projects and issues. For each assignment, I reviewed the Commission's orders and opposing brief and met with career attorneys which helped to structure my research and organize my work product. Through this process I also discovered the types of regulations and decisions issued by the Commission. My first assignment was to research the legislative history of §202(a) of the Federal Power Act. In my next project, I outlined cases involving application of the Commission's primary function jurisdictional test for distinguishing natural gas gathering from transportation. Through this research, I learned the history of the development of the test, its elements, and observed how the Commission has applied it.

The litigation and administrative law experience that I gained in the Solicitor's office were also an important part of my summer at FERC. One of my most interesting and rewarding assignments was drafting a motion to dismiss for the Ninth Circuit. I met with the career attorney assigned to the case and the Solicitor to discuss the issues, performed research and drafted the motion, and then received feedback on my work. Later in the summer, I had the opportunity to draft the standard of review section for a brief filed in the D.C. Circuit. I also researched several issues of administrative law, including the obligation of federal agencies to explain policy shifts made through adjudication, standing to challenge FERC accounting orders, and grounds for seeking appellate stay of an agency decision.

My experience in the Solicitor's office allowed me to view a sample of the areas subject to Commission regulation and the issues that arise in appeals of Commission

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President's Message Continued



FERC General Counsel and a senior officer of the Attorneys' Liability Assurance Society (ALAS) who will explore together a variety of liability and ethical situations confronting energy practitioners. Other presenters at the Mid-Year Meeting include senior representatives of NERC, the Commodities Futures Trading Commission, DOE, the Natural Resources Defense Council and numerous industry leaders. The day following the Mid-Year Meeting, Chairman Kelliher will introduce a primer for practitioners who would like additional familiarity with the FERC and its processes. I hope you have signed up for these events. If not, you can do so online at <http://www.eba-net.org/events.php>.

Also in connection with the Mid-Year Meeting, the Charitable Foundation of the Energy Bar Association will be hosting its 4th Annual Gala the evening of November 2. This is a great opportunity to network with the FERC Chairman, other Commissioners and staff who are able to attend, and many of your fellow members. It is also for an extremely worthwhile cause, with the proceeds raised from this event enabling the CFEBA to continue making energy-related grants to organizations that are making a difference in the communities in which we practice.

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NEW MEMBER PROFILE

With this issue, EBA Update begins a series spotlighting new members of the Energy Bar Association for the purpose of showing the diversity of our membership, and the attractions of our organization for energy attorneys and other professionals

Jennifer L. Hong

Among the new members joining the Energy Bar Association this summer is Janet M. Audunson, professional engineer and attorney. She is a relatively newly-minted attorney, and sees both the EBA generally and the Northeast Chapter of the EBA as valuable resources for her to be involved with as she moves into the legal realm of an industry in which she has worked as a non-attorney professional for decades.

Specifically, Janet has more than 25 years of experience in hydroelectric and fossil-fueled generation. For over 20 of those 25 years, Janet worked at Niagara Mohawk, culminating in the position of Director of Hydro Generation and Engineering from 1994-99. Upon the sale of the utility's hydroelectric generation facilities in 1999 to Orion Power New York, Janet became the General Manager for all of Orion Power New York's operations in New York. In this capacity, she was active in the New York Independent System Operator governance structure, serving as Vice-Chair of the NYISO Budget, Standards and Performance Subcommittee and as a Member Company Representative on the NYISO Management Committee and the NYISO Operating Committee.

Determined to embark on a new challenge in the energy industry, Janet enrolled in Syracuse University College of Law, where she graduated in 2005. Janet is in the Syracuse, NY office of Hiscock & Barclay, LLP a team of 175 attorneys with offices in five locations throughout New York State.

Although well connected with the energy industry generally from her prior career, Janet saw joining EBA as a unique opportunity to specifically connect with attorneys practicing in the energy area. Additionally, EBA offered an opportunity to stay current with the latest developments in the energy legal practice area through EBA-sponsored events, including continuing education programs, as well as through the *Energy Law Journal*. Janet is looking forward to becoming active in the Northeast Chapter of EBA.

As to the importance of membership in worthwhile organizations, Janet can speak from experience. She is a Member of the Board of Directors and Executive Board Secretary for the Hydro Research Foundation and an Advisory Member of the Board of Directors for the National Hydropower Association, as well as a former Member of the Board of Directors for the Greater Syracuse

Chamber of Commerce. Janet is also a member of the New York State Bar Association and the Women's Bar Association of New York.

In addition to pursuing a challenging career, Janet enjoys challenges in her free time, including kayaking, downhill skiing, and improving her golf skills.

We welcome Janet to the EBA and look forward to her contributions!

Ms. Hong, a long-time EBA member, practices law in D.C. with the firm of Paul, Hastings, Janofsky & Walker LLP.



Janet M. Audunson, professional engineer, attorney & new EBA member.



Summer Internship Continued

orders. Working with the career attorneys in the Solicitor's office introduced me to appellate procedure and gave me valuable suggestions for further developing my research and legal writing skills.

Gideon Wiginton at the reception honoring the Mogel & CFEBA Interns.



Office of General and Administrative Law

In the General and Administrative Law section I worked with five staff attorneys on a wide variety of legal issues, including requests for information and sensitive issues germane to the Commission's internal operations. The GAL handles requests for Critical Energy Infrastructure Information and I drafted several Notice and Comment Letters and Commission Orders in response to CEII requests. In preparing the orders, I performed background checks on requesters and reviewed the submitter comment letters, the requested material, and previous CEII orders. Also, I worked with GAL attorneys and experts in the Office of Energy Markets and Reliability on the early stages of implementation of the National Infrastructure Protection Plan at the Commission. The Department of Homeland Security released the NIPP in June pursuant to a Presidential Directive to establish a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks. I researched the history of the plan and summarized the Commission's potential responsibilities and obligations under the Energy Sector Specific Plan being drafted by the Department of Energy. As part of the NIPP team, I participated in interoffice meetings between GAL and OEMR.

Much of my experience in GAL was centered on internal agency matters. I researched and wrote memoranda on violations of the Privacy Act with regard to submission of information to Congress, the penalties for Privacy Act violations, and issues arising under the Freedom of Information Act. In the area of employment law, I reviewed and summarized pleadings filed by opposing counsel in an employment discrimination suit and drafted a memorandum summarizing a recent Supreme Court opinion on the anti-retaliation provision of Title VII.

Working in GAL allowed me to gain insight on the Commission's internal operations and the procedures the Commission follows in responding to requests for various types of information.

FERC's Summer Internship Program Events

FERC's summer internship program also provides opportunities for the interns to learn about the various offices and their functions. Throughout the summer I attended several presentations on various topics including the roles and responsibilities of the primary offices of the Commission, how to draft Commission orders, and an introduction to the Office of Enforcement and the Market Monitoring Center. I also participated in a futures trading simulation put on by the internship office. The FERC internship program concluded with the presentation of certificates of service by Chairman Kelliher and Commissioners Spitzer and Wellinghoff.

President's Message Continued

Check your inbox for the second issue of the 27th volume of the *Energy Law Journal*. This publication explores issues relating to energy market regulation, the environment, renewable portfolio standards, and developments in LNG natural gas market and enhanced eminent domain authority for the FERC.

On the Chapter and Committee fronts, the Northeast Chapter co-sponsored a very successful conference in Boston that attracted over 400 attendees. The Southern Chapter hosted a breakfast meeting October 6th. Other Chapters are in various stages of planning their yearly activities and many of the EBA Committees are gearing up for brown bag lunches.

The continued great success of the EBA, *ELJ*, and the CFEBA in meeting your needs and expectations depends on your involvement and feedback. As you will read in this newsletter, you will receive shortly an electronic survey seeking your feedback and insights. We urge you to complete the survey and we look forward to reporting the results of that effort later this year. As always, if any of you have feedback, ideas for improving the organizations, or a desire to become more involved in the EBA, the Foundation of the *ELJ*, or the CFEBA, please let our Administrator, Lorna Johnston Wilson, know and she will connect you with the right person.

We look forward to seeing you all in Washington on November 2 and 3.

David Doot
President, Energy Bar Association



Commissioner Hall Dissents (Judiciously)

“A formal on-the-record adjudication should be for the purpose of establishing a sound basis for public decisionmaking, not to provide private parties with a ploy to pursue private ends. . . . [M]ore drilling, not on-the-record questioning and cross-examination, is required before additional information about reserves is available. . . . It should not be difficult to develop a rational and reasonable condition that would provide the necessary consumer protection if resolution among the interested parties rather than confrontation is the goal. . . . I would prefer the Commission seek alternative avenues to reach a decision even if it means exploring the frontiers of its legal authority. . . . All of this would be of academic interest except for one thing. Our society is in peril.” *Trailblazer Pipeline Co.*, 12 FERC Para. 61,291, 61,664-65 (1980).

“The majority grounds its denial of waiver of overrun penalties on high principles In the abstract, who can argue? The problem is that abstract principles have to be applied in real life situations. Application of these principles in this case produces a result that, I believe, justifies use of the Commission’s discretion to excuse the overrun penalty charges.” *Central Florida Gas Corp.*, 14 FERC Para. 61,080, 61,144 (1981).

“The majority order seeks to justify sustaining the untimely issuance by reasoning that the September 21 order had in fact been approved by the Commission in its public meeting on the previous day, and that the subsequent delay in issuing the order was due to ‘inadvertent clerical error.’ This rationale cannot be squared with the Commission’s clear pronouncement in a recent order that the ‘Commission acts officially only through its orders issued by the Secretary.’ For this reason, the suspension in this docket should be vacated, and this rate proceeding should go forward under the authority of Section 206 of the Federal Power Act, pursuant to which the finally approved rate will be effective prospectively.” *Florida Power & Light Co.*, 6 FERC Para. 61,206, 61,516 (1979).

“[T]he record reveals a lack of any evidence of anticompetitive dangers from denying the petition, as well as a lack of discussion of antitrust dangers from granting the petition. The antitrust stature of this case is thus clearly distinguishable from the dangers the FPC perceived [A]ny purported antitrust considerations must be regarded as makeweights insufficient to tip the scales in favor of use of that plant. In conclusion, the release of sulfur dioxide emissions from the Abo plant will disserve the public; the pollution of clean air constitutes a public loss.” *Cities Service Oil Co.*, 6 FERC Para. 61,142, 61,260 (1979).

“[Bonus] payments are, in effect a sharing of expected profits with the U.S. Treasury. . . . It now appears that the Applicants misforecast, but it does not follow that this Commission’s regulatory action should salvage that business decision. The purpose of the optional certification procedure should be to provide an incentive to producers to develop high-cost gas reserves, not to provide relief to producers who overpaid for the right to drill a property.” *American Natural Gas Production Co.*, 5 FERC Para. 61,205, 61,011, 61,457 (1978).

Commissioner Hall Interview

Continued

a lot of sense in those circumstances.” He believes subsequent Commissions followed this practice of informal meetings and processes, which had been rare under the FPC.

Despite the consensus operation of the five Commissioners, Hall acknowledges that serving as a FERC Commissioner was not without difficulty. The thing that was most hard, he recalls, was “the feeling that you had to abide scrupulously by the rules of due process, the Sunshine Act, and administrative law requirements.” Having previously served in the Carter White House on energy issues, where he felt free to have private conversations with industry members and other stakeholders, Hall said that the rules against *ex parte* communications (with which he does not take issue), can leave the Commissioners feeling “frozen off from the real world.” He said that it took time to adjust to the need to be careful in having conversations with various staffers or giving speeches on issues that may be pending before the Commission.

Since leaving the FERC, Hall worked as an economist and consultant with both Charles River Associates (now CRA International) and PHB Hagler Bailly (now PA Consulting). He says that the chief difference between serving as a FERC Commissioner and a consultant is that of making a decision as opposed to making an input. “As a Commissioner, you know the entire background, what the issues were, and you make a decision and that’s it. As a consultant, you give a piece of testimony on a part of the issue and then go away without knowing or determining the impact or the final resolution.” Most of his work as a consultant dealt with

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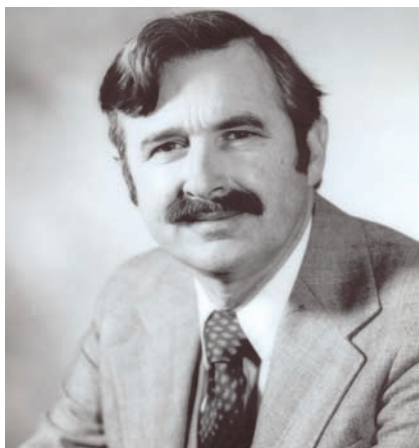
Commissioner Hall

Interview Continued

competition in the natural gas and electric industries. Hall's work involved both international restructuring issues in India, Pakistan, the Philippines and New Zealand, as well as retail natural gas and electric restructuring.

When asked whether, in retrospect, he still believes that competition has a beneficial impact on prices, Hall comments that "this does not necessarily mean that prices will be lower than they've been in the past, but competition generally does a better job than monopoly or traditional regulation in promoting efficient and low prices." He adds that one of the problems we have had with restructuring in the United States is that there has been partial restructuring of markets. According to Hall, "we are trying to maintain a combined regulation plus competitive market structure and that is very hard to do. It is much easier to have either total competition as there exists in some countries or total regulation as we had prior to the 1970s." Another complication against competition, he says, is that competitive markets do not just "happen." Instead, acceptable market behavior must be specified, market participants must operate by those rules, and there must be sufficient rules to ensure that people are abiding by the rules of the market. He notes that in the U.S., there has not been enough attention paid to these issues, as the events of the past decade demonstrate.

Since retiring from CRA International in 2002, Hall spends his time focusing far less on competition, and more on traveling with his wife, Florence, and visiting their grandchildren.



Ms. Clair is the Assistant Secretary of the EBA.

Survey of EBA Members

Continued

The internet survey is designed to assess members' views about the EBA, the FELJ and the CFEBA, to ascertain how these organizations can better serve the members. The survey, which can be easily and quickly completed, will specifically seek EBA members' feedback concerning key activities and events, such as the EBA Annual and Mid-Year Conferences, the semi-annual *Energy Law Journal*, the CFEBA fund raising activities, and the quarterly EBA Newsletter.

This survey is the product of a concerted effort among your elected and appointed leaders to improve the coordination among, and services of the EBA, FELJ and CFEBA. The efforts were led by a Survey Committee, which was chaired by Marcia Hooks, and the final survey instrument reflects thoughtful input and involvement of the Boards of Directors of all three organizations. The following members have served on the Survey Committee: Dave Doot, President of EBA; Robert Fleishman, Editor-in-Chief of the *ELJ*; Marcia Hooks, Member of the EBA Board of Directors and Chair of the Survey Committee; Paul Mohler, President of the CFEBA; Laura Schepis, Secretary of the FELJ; Channing Strother, Jr., President of the FELJ and Assistant Treasurer of the EBA; Robert Weishaar, Member of the EBA Board of Directors and Chairman of the Membership Committee; and Lorna Wilson, EBA's Administrator. Various members of the EBA's, the FELJ's and the CFEBA's Board of Directors also provided valuable input to the Survey Committee.

To assist in this endeavor, the Survey Committee engaged BTI Consulting Company, which is a leading marketing research company located in Wellesley, Massachusetts. BTI's President, Michael Rynowecer, and Marcie L. Shunk, a Principal of BTI, are spearheading BTI's efforts on behalf of EBA. Each of them have more than twenty years of experience in conducting market research, with a particular emphasis on providing such services for law firms. If you would like more information about BTI, you may visit the company's website at www.bticonsulting.com.

BTI will receive and analyze the data from the internet survey responses. After reviewing the internet survey preliminary results, BTI plans to validate, confirm and clarify those results as appropriate through telephone interviews, focus groups and/or one-on-one interviews of EBA members. BTI will prepare a report of its findings, including recommendations on how the EBA, the FELJ and the CFEBA can enhance the quality of their services. The final survey results will be posted on the EBA website – www.eba-net.org.

The EBA, CFEBA and FELJ urge you to respond to the survey. We need your feedback to better serve you.



In Memory of EBA Member Tony Ketcham

John T. “Tony” Ketcham took a nap after a dialysis treatment on September 26, 2006, and stepped into history. Tony will be remembered as a devoted husband to his wife Bette and a loving father to his daughters Joan, Jennifer, and Ann. To many EBA members, Tony will be remembered for his years working in the Office of the General Counsel at the Department of Energy. To the rest of us, Tony will always be the senior partner of McGee & Ketcham, one of the best Natural Gas Act law firms of the 1970s and 1980s.

Born in 1937 and admitted to the bar in 1961, Tony represented natural gas companies before the FERC, and its predecessor the FPC, from the law firm that bore his name and that of another long-time natural gas lawyer, Charlie McGee. Many of you will remember Tony as the face at FERC of his former pipeline client, Algonquin Gas Transmission.

I met Tony in 1980 when I became a first-year associate at McGee & Ketcham. Practicing before FERC (FPC) in the 60s, 70s and 80s required an institutional memory; there were no digests of decisions, no FERC website, and no computer search engines. Tony had an old typewriter sitting beside his desk and whenever he read an interesting order, Tony added yet another paragraph to his notes (by my last count six volumes) of relevant Commission/Court decisions. I quickly learned that Tony’s notes were the essential research tool for the entire firm.

Tony could be pretty adamant about his opinions, but those opinions were always supported by hours of preparation. He never bluffed or shot from the hip.

Tony’s law firm was more than a place to work; it was a family. Every employee’s birthday deserved a party and Tony was there with a smile that would light up the room. At holiday parties held at Tony’s or another partner’s home, Tony played his ukulele, Jim Eisenhower played his clarinet, and the rest of us (including current and former EBA members Bob Haggerty, Phil Jordan, Joe McShalley, Ted Gerarden, Cameron Graham, George Weber, and Roger Smith), sang along with whatever they chose to play.

Tony was not bashful about his religion; he enjoyed talking about his faith as a Christian and asking you about your own beliefs. At Tony’s funeral service on September 30, a packed room heard one person after another rise to speak of how Tony had enriched their spiritual lives. Tony’s family has requested that contributions in Tony’s memory be made to Young Life Ministries’ Lake Champlain Campaign, a Christian ministry that Tony actively supported.



Phil Lookadoo, Partner

Thelen Reid & Priest, LLP

New Report by the Energy ADR Forum to be Presented at December 8 Session Hosted by EBA’s ADR Committee

Over three years in the making, a new report by the Energy ADR Forum will be discussed at a session sponsored by the EBA’s ADR Committee on December 8, 2006, in the Washington D.C. offices of Covington & Burling.

According to Bob Fleishman, Project Director and Co-Chair of the Forum, “the report offers practical advice for energy industry participants who wish to benefit from fresh approaches for conflict resolution and difficult decision-making.”

In the multi-billion dollar energy arena, the economic stakes of regulatory decisions and business dealings—and the cost of regulatory or judicial delay—are enormous. More and more, stakeholders in fast-paced, competitive energy markets find that better and quicker decisions are increasingly crucial—qualities that burdensome litigation and other adversarial processes often fail to provide.

Given regulatory and market trends, public agency and private industry leaders—as well as capital markets—require, and should demand, improvements in the way conflicts over regulatory and private energy dealings are resolved.

To promote this result, the Center for the Advancement of Energy Markets established an exceedingly broad-based Energy ADR Forum comprised of suppliers, customers, regulators, policymakers, law firms, dispute resolution service providers, and energy companies and others involved with energy production, transmission, distribution, and regulatory activities.

Details about the session will be circulated soon.



Mogel Intern Program Rewarding for Tulsa Students

In its second year, the William Mogel Honorary Internship Program, co-sponsored by the Foundation of the Energy Law Journal and the National Energy-Environment Law & Policy Institute at the University of Tulsa, continues to be successful. The program brings two rising third-year student editors from the *Energy Law Journal* to Washington D.C. for the summer to intern at the Senate Committee on Environment and Public Works. Channing Strother, FELJ President said, "The intern program is valuable, as a recruiting tool for the Journal and for the substantive experiences the interns have working behind the scenes in Congress."

Intern Chisum Cooke said, "I learned more than I ever could have imagined, and I know this experience will be invaluable to me as I move forward." Chisum was able to work on a range of pending legislation this summer, including the Oil Pollution Act and the Coastal Barriers Resources Act. He also contributed to the Committee's review of engineering reports concerning the failure of the New Orleans levee system. And, he saw first-hand how the Committee gathers information through public hearings when he helped prepare Committee Chairman James Inhofe (R-OK) for a hearing on the Stafford Act.

Fellow intern Katie Oden got to tackle some different issues during her stint with the Committee. She performed significant research on Superfund and CERCLA. She also had the opportunity to learn how agriculture and environment issues converge when she analyzed proposed regulations on large cattle farm waste disposal. Finally, a large portion of her summer was spent researching issues relating to cost-overruns in large scale highway transportation construction projects.

The interns' summer experience was rounded out by having the opportunity to meet notable figures from Congress and the Judiciary, including Sen. Barack Obama (D-IL) and Chief Justice John Roberts. Katie and Chisum also had several chances to take in key historical sights, such as the Capitol Dome, that really brought Washington D.C. to life.



From left to right: Harvey Reiter, Gideon Wiginton, Chisum Cooke, Katie Oden, Channing Strother & Debra Palmer



Derek Dyson & Earle O'Donnell



David Doot, Carolyn Thompson & Karen Hill

Five Hundred Foot View from Our Trade Associations

Second In A Series

Edison Electric Institute, www.eei.org

Edison Electric Institute (EEI) is the association of United States shareholder-owned electric companies, international affiliates, and industry associates worldwide. EEI's U.S. members serve 97 percent of the ultimate customers in the shareholder owned segment of the industry, and 71 percent of all electric utility ultimate customers in the nation. They generate almost 60 percent of the electricity produced by U.S. electric generators.

America's dynamic economy continues to fuel a growing demand for electricity. In 1950, 14 percent of energy consumed in the U.S. was used to produce electricity. By 1970, that fraction increased to 24 percent, and today electricity accounts for 39 percent of total primary energy usage. With the country expected to be using close to 50-percent more electricity in 2030 than it does today, this percentage will certainly continue to grow.

This remarkable growth in the demand for electricity is creating a number of challenges for nation's electric utility industry. Among them are the need for:

1. Investing in a new generation of "baseload" power plants—those that run continuously to meet the country's minimum, or base, demand, as well as the transmission and distribution infrastructure to deliver it.
2. Increasing the supply and diversity of the nation's available energy resources for generating electricity.
3. Expanding the industry's investments to protect the environment, and advocating for a multi-pollutant blueprint.
4. Pursuing voluntary actions to reduce, avoid, and sequester greenhouse gas emissions, including participating in the newly formed Asia-Pacific Partnership on Clean Development and Climate to develop global solutions for the climate issue.
5. Leading an effort driven by our member companies to re-invent the role energy efficiency plays within our industry.
6. Continuing to work with FERC on implementing the Energy Policy Act of 2005 to achieve what Congress intended—a more vibrant and resilient electric power industry in the future.

—EEI—

Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

"Distrust of the DCF methodology is understandable. 'Fanciful' valuation, based upon DCF analyses, have jaundiced jurists' perspectives, and such examples of 'Cinderella valuation' have been encountered often enough in the literature. The principle is too flexible, and thus too fragile, in practice – the scullery maid too readily can be fobbed off as the princess. However, litmus tests are available for verifying the credibility of DCF valuations. First and foremost is the adjusted NBV – any difference must be proven: the adjusted book value is the best and quickest 'reality check' on a DCF value in those instances of a going concern with an existing verifiable balance sheet. However, the 'glass slipper' tests of rate of return compared with discount rate, and income before and after the taking will identify the real princess."

Thomas R. Stauffer, *Valuation of Assets in International Takings*, 17 ELJ 459, 487-88 (1996).

Twenty Years Ago

"In the days when the FERC would consider and rule upon practically all important business conduct in the energy area, antitrust actions were rarely instituted. Now, those feeling harmed by certain business decisions by energy companies who, in the past, may have asked the FERC for relief or who now do ask the FERC for relief and are rebuffed, are increasingly initiating private antitrust actions over the questioned practices.

A problem faced by many energy attorneys is that they feel insecure in the antitrust field of law and, while comfortable in advising clients on the FERC considerations of particular matters, are uncertain as to whether there also may be antitrust aspects to the particular situations that also need to be considered. Additionally, if there are antitrust issues, the energy attorney has to decide how those issues should be approached. For these attorneys, David Hjelmfelt's book will prove very helpful."

James A. Calderwood, reviewing *Antitrust & Regulated Industries*, by David C. Hjelmfelt, 7 ELJ 391 (1986).



New EBA President's Inaugural Committee Luncheon



Sheila Tipton, Chris O'Hara, Rick Smead & Harvey Reiter stop chatting to smile for the camera.



Monica Gonzalez & Chris Lyons pose for the *EBA Update* photographer.



Perhaps carrying future EBA members, Diane Neal, Andrea Kearney & Meredith Joilvert are glowing moms-to-be.



Gerald Garfield & Ellen Ginsburg talk about their plans for the Nuclear Regulation Committee.



William Lavarco & Gunnar Birgisson share their ideas about the Environmental Protection & Regulation Committee.



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

Annual Meeting

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

Trended Original Cost: A means of converting original cost into its equivalent reproduction cost if it were new by employing various price indexes that express actual investment costs as current dollars.

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

ABOUT THE ENERGY BAR ASSOCIATION: EBA is a non-profit voluntary association of attorneys, non-attorney professionals and law students whose mission is to promote the professional excellence and ethical integrity 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 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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Interview with FERC General Counsel continued

rights and legitimate interests. And, as for the art of advocacy, he admonished, "For all you young lawyers, read Hemingway and learn how to write crisp, clear, short sentences. This is good legal writing." For us old lawyers, Mr. Moot no doubt decided, What's the use?

Summing Up: "Fun Run"

All in all, he has described his tenure as General Counsel as a "fun run" that is extremely challenging and keeping him very busy. He stated his admiration for other Senior Staffers who have been at this for 10 years or more attempting to sort through the issues to find solutions that can be clearly explained and fairly implemented. He maintains that, "I will no doubt write more articles," although not necessarily while serving as General Counsel, and reminded us that he did agree to stay on as Articles Editor of the *Energy Law Journal*. He admitted to having a "little of a pent-up teacher in me," adding "my mother was a teacher." "I find it challenging and fun" to pursue solutions through the self-learning intellectual exercise of writing. It is much like the role of Intellectual Counselor to the Chairman that he is now performing under the more mundane title of General Counsel.

Mr. Guy is the Secretary of the EBA & Mr. Strother is the Assistant Treasurer of the EBA, as well as President of the FELJ.

