

President's Message



The Boards begin 2007 with a review of the initial results of our members' survey. As discussed in my last letter to members, the EBA, the Foundation of the Energy Law Journal (ELJ) and the Charitable Foundation of the Energy Bar Association (CFEBA) commissioned an online survey with members to gauge member satisfaction, boost participation and assess the value of EBA's offerings. Nearly 300 EBA members responded, providing us with candid feedback, insightful commentary and detailed recommendations for how we can make the EBA, the ELJ, and the CFEBA stronger and better. Final results will be posted. The preliminary survey results identify key values of networking and education that our members perceive from the EBA--values we are dedicated to enhance.

Perhaps our greatest networking tools are our national and regional conferences and various gala events of the Foundation of the ELJ and the CFEBA. The 2006 Mid-Year Meeting in November was a huge success with over 430

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FERC Commissioner Marc Spitzer Calls Enforcement Priority No. 1; Wants to Implement EAct on Reliability

Inheriting Rehnquist Files in Private Practice Gives Him a Long Term View on His Own Writings; His Sharp Legal Mind Is Resistant to Political Concerns

Gary E. Guy and Channing D. Strother

The New Year began for *EBA Update* reporters Gary Guy and Channing Strother (aka "Joseph and Stewart Alsop") with an exclusive interview with President Bush's newly-minted FERC Commissioner Marc L. Spitzer. The near-60 degree January day was more like Spitzer's Arizona weather than that of D.C., and his cool, calm demeanor while we commandeered his Offices with our video equipment, recorders, and flashbulb cameras shows his forbearance and graciousness. While this article hits the highlights, the unexpurgated video of our newsworthy meeting is on the EBA web site, www.eba-net.org.



From Philadelphia Roots to Arizona Law, Politics, and Regulation

The trappings of his life are displayed throughout his office, with memorabilia from Philadelphia, where Marc Spitzer was born and raised, and Arizona where his meteoric career catapulted him in

FERC's direction. Commissioner Spitzer informed us that his mother took a two-hour train ride to D.C. to be with his family over the holidays, and that he considers himself to be home again in the East. It turns out, he told us, that even as a boy in Philadelphia he was made aware of the need for elec-

tric transmission reliability when he experienced a blackout in 1966 at the age of 9.

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EBA Delegate to the American Bar Association, Barbara A. Heffernan, Reports on Annual Meeting

On behalf of the EBA, I attended the House of Delegates Meeting of the ABA on August 7 and 8, 2006. The agenda included only one item that may directly impact members of the EBA who practice before the Federal Energy Regulatory Commission. It arose out of the Energy Policy Act of 2005, which gives the FERC increased enforcement authority that is modeled on the Securities & Exchange Commission. While the SEC apparently routinely requires entities that are being investigated to waive attorney-client privilege as a condition of being deemed to have cooperated with the government's investigation, the FERC has not yet addressed this issue. A resolution was passed by the House of Delegates that urges the SEC and "other relevant organizations to adopt standards, policies, practices and procedures and take other appropriate steps to ensure that attorney-client privilege and work product protections are preserved throughout the audit process." This message was reiterated by the ABA's President on September 12, 2006 in her remarks to the Senate Judiciary Committee. This resolution may prove helpful in procuring a change in the way that the SEC proceeds and may also discourage the FERC from following a similar course.

Some of the other highlights of the meeting included the passage of resolutions: (1) urging all state and local bar associations to work with national and state bar examiners, law schools and universities to address significant problems facing minorities; (2) encouraging law firms to consider alternatives to mandatory minimum billing requirements and to use compensation systems that reward attorneys based on factors in addition to the number of hours billed to clients; (3) urging federal and state courts to adopt consistent rules to govern the scope of required disclosures for discovery of testifying experts and their reports and that draft reports and communications relating to the experts report be protected from discovery; and (4) opposing as contrary to the rule of law and our constitutional system of separation of powers, a President's issuance of a signing statement to claim the authority or state the intention to disregard or decline to enforce all or part of a law he/she has signed, or to interpret such a law in a manner inconsistent with the clear intent of Congress.

Ms. Heffernan is a former President of the Energy Bar Association.

Ring-Fencing: Structural and financial arrangements of utilities requiring regulatory approval by which they, and therefore their ratepayers, are protected from risks facing their subsidiaries, given impetus as a result of repeal of the Public Utility Holding Company Act of 1935 through enactment of Section 1263 of the Energy Policy Act of 2005.

Standby Service: Service provided by a permanent connection that is not normally used but is available as a substitute or addition to the usual source of supply.

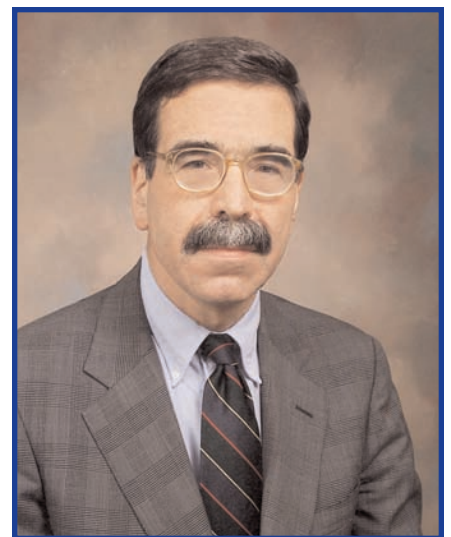
Nick Fels Ends Long Tenure As ELJ Articles Editor

Nicholas Fels recently announced that he is stepping down from the practitioner editorial board of the *Energy Law Journal*.

He became an Articles Editor of the *Journal* soon after its founding in 1980. Nick published an article in the first issue of the *Journal*, "Beyond the Stopwatch: Determining Appellate Venue on Review of FERC Orders," and another in 2001, "Lessons From the California 'Apocalypse': Jurisdiction Over Electric Utilities," with Frank R. Lindh.

His work on, and guidance to, the *Journal* have been invaluable and lasting. We express our heartfelt gratitude for his immense contributions to this important part of the Energy Bar Association.

We also welcome Jay Morrison to the *Journal* as a new Articles Editor.



Energy Law Journal Update

The Foundation of the *Energy Law Journal* is pleased to provide the following update:

Channing D. Strother, Jr.

- The Journal is published jointly by the EBA through the FELJ and the National Energy-Environmental Law and Policy Institute (“NELPI”) of the University of Tulsa College of Law. Through NELPI, the law school implements extensive programs in energy, environmental, and natural resource law and policy. In the spring, Dobie Langenkamp retired as Tulsa law professor and long-time NELPI Director, and was honored at the annual Tulsa Journal banquet, as reported in the summer issue of this newsletter.
- Irma Russell became the new NELPI Director and a Tulsa law professor in early September.
- Marla Mansfield has also stepped down as long-time faculty advisor to the student editorial board of the Journal. Professor Russell has also agreed to take on that role, at least for the time being.
- We feel very fortunate to have Professor Russell in these positions, and look forward to meeting with both her and Tulsa Law Dean Robert Butkin in Washington in the Spring.
- The Journal’s student Editor-in-Chief, Andrew Butcher, and Leslie Dubois, a student editor whose comment, “Curiosity and Carbon: Examining the Future of Carbon Sequestration and the Accompanying Jurisdictional Issues as Outlined in the Indian Energy Title of the 2005 Energy Policy Act,” was published in the latest issue of the Journal, traveled to Washington from Tulsa and attended the EBA Mid-Year Meeting.
- On the practitioner editorial board side, after serving for three Journal issues as Administrative Editor, Meredith May Jolivert has stepped down. We are very grateful for her excellent service to the Journal.
- We welcome Grace Soderberg to the practitioner editorial board as the Journal’s new Administrative Editor.
- In the Fall, Editor-in-Chief, Bob Fleishman, and Practitioner Notes Editor, Stu Conrad, traveled to Tulsa to work with the new student editorial board.
- Plans are underway for the annual FELJ Reception Honoring the Commission Administrative Law Judges, to be held the evening before the start of the EBA Annual Meeting in April 2007.
- Finally, the latest issue of the Journal went on-line on the EBA web site in November. All past issues of the Journal, have now been converted to electronic format, and will soon be available in full-text at no charge on the EBA web site, perhaps before this newsletter is distributed.

Mr. Strother is the President of the Foundation of the *Energy Law Journal*.

Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

“Although natural gas has been too regulated for too long for anyone to have much idea about this market’s natural tendencies, concentration has increased after deregulation. The industry seems to be witnessing the emergence of dominant companies that will have the power and knowledge to compete nationally and internationally, like Enron and The Williams Companies. As renewed market pressure generates better performance measures, we will be able to tell whether these companies are more competitive or simply better at amassing power.”

John Burrit McArthur, *Anti-Trust in the New [De]Regulated Natural Gas Industry*, 18 ELJ 1, 75-6 (1997).

Twenty Years Ago

“Requests for admissions are an underutilized discovery device. Parties frequently know what they want to prove and expect that documentary evidence will support their claims. Requests for admissions place the onus on the responding parties to admit or to be prepared to come forward with contrary information. Since the request for admissions as a device itself was not expressly provided for in the rules, its use in the past has depended upon the willingness of the Commission’s administrative law judges not only to permit its use, but to encourage it. The new rules should greatly enhance the usefulness of the request for admissions as a discovery device.”

Harvey L. Reiter, *The FERC’s New Rules of Discovery: A Welcomed Approach*, 8 ELJ 35, 58 (1987).

EBA Flashback

With this article we begin a series of reminiscences about the EBA from past Presidents of the Association. For our first interview, we sought out Steve Herman, who was our President in 1992-93, and who first became a member in the early 1970's.

Steve has a B.S. in Economics from Wharton School of Finance and Commerce at the University of Pennsylvania, and an LL.B. from the University of Virginia Law School. After serving as a partner at Kirkland & Ellis and then Latham & Watkins in Washington, D.C., Steve served as Senior Vice President and General Counsel for PG&E National Energy Group, then senior counsel for Goldman Sachs in power asset investment management activities. He is now a Managing Director at Energy Capital Partners, a private equity firm founded in May 2005 to invest in North American energy infrastructure. In November 2006, Energy Capital acquired 15 power plants from Northeast Utilities with 1400 MW of capacity for \$1.34 billion.

To conduct the interview we went to Darrell Blakeway, Executive Director of Perennial Energy Consulting, Inc., which provides consulting services for renewable energy and energy efficiency development, and a recent co-author of an article in the *Energy Law Journal*. Darrell left the FERC in 2004 after 25 years of service in various legal offices of the Commission.

Q: How did you get into energy law?

A: In the early 1970's I started out with Kirkland & Ellis in Washington, D.C. As a new associate, I was assigned to assist industrial customers cope with what we thought would be a "temporary" natural gas shortage. I was sent to the Federal Power Commission to become involved in pipeline gas allocation procedures, then called "curtailment" of service. At that time, interstate pipelines principally provided gas under bundled sale-for-resale service to local distribution companies. Industrial consumers were the leaders in pushing for competition through the right to procure gas supplies in the production areas and to use the pipelines solely for transportation.

When PURPA was enacted in 1978, Congress viewed the statute as an energy conservation measure; it didn't realize it was introducing electricity competition; the law proved to be a great boon, because a QF (Qualified Facility) was exempted from most state and federal utility regulation. My practice grew to include electric matters, in which I represented energy intensive industrials concerned about controlling costs in light of international competitive pressures. As opportunities related to competition began to develop in

the '80's and early 90's, my practice broadened into transactional and finance work, with the growth of the independent power sector.

Q: How did you view the Association in your early days of practice?

A: Frankly, I viewed the group (known then as the "Federal Power Bar Association") as an old boys' network, primarily for lawyers representing pipelines and utilities. My reference to the Association being principally made up of male members is confirmed by a New York Times article in May 1976 that noted 400 lawyers in attendance at the Annual Meeting included "about a dozen women." At that time, most of my clients were industrial consumers; I did not fit this mold; we were challenging existing ways of doing business. I questioned whether utility lawyers would welcome upstarts into the Association. Contrary to what I

expected, the leaders of the Federal Power Bar Association at that time, including Dave Ward, Bill Harkaway, Tom Brosnan, and Dick Solomon, reached out to me and others, and encouraged me and other "outsiders" not only to join but to become active in the Association.

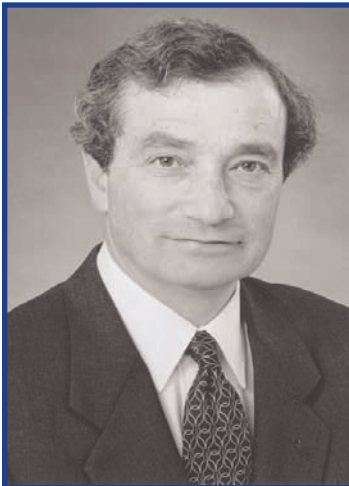
Q: How do you view the changing character of membership in EBA over the years?

A: It is interesting to turn to the tab the EBA directory that lists affiliation by firm, organization and company names. There is now a broad cross section of stakeholders – law firms throughout the US (nearly all of the members used to be Washington, D.C.), all types of energy companies, and lawyers from public entities, FERC, state PUCs, non-profits and law schools. There are over 150 non-lawyer professionals. We have law students who are members. Many members practice principally before the FERC and state commissions, but a substantial portion of our members have varied interests. The Association's makeup is quite different than it was in the 1970's -- a much broader, diverse membership and leadership.

Q: What is your view of the Association today?

A: I am extremely proud to be a member of EBA. Given the importance of energy in our economy, energy law has developed into an important legal field, and an important legal specialty, and has presented us all with exciting professional opportunities. EBA has facilitated this development by sponsoring top notch educational programs that have added to our professional expertise and opened up new client opportunities. There is no hornbook or treatise

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Herman Interview Continued

tise on energy law, where our ever changing practice is collected. EBA and its programs are the only consistently reliable source for legal research and education. I would like to pay special tribute to Bill Mogel and the Tulsa University Law School team, who have been instrumental in making the *Energy Law Journal* a

first class legal journal covering important subjects that other publications do not address. The recent organization of our Charitable Foundation provides an important means for us to give back to the community. I thank EBA's leadership for looking beyond our immediate practice interests.

Q: What are your observations on the management of the Association?

A: I believe the association has consistently been well-managed. We have stayed within budget and delivered value to the membership. The Board has managed expenditures prudently, and dues have been kept at a reasonable level. Lorna Wilson, Marlo Brown and Michele Duehring have been instrumental in providing leadership and keeping us on track. EBA is fortunate to have their management skills and dedication.

I also want to note that during Bob Fleishman's tenure as President (1999-2000), the Association began for the first time to focus on long-term planning, and active innovation. Bob led the Board in initiating a long-range planning process, which was something entirely new for the Association. There was a survey of the membership about its needs and concerns. There was a push to continue to broaden our membership outside the DC beltway as evidenced by the elimination of the word "Federal" from our name. Important innovations have been derived from the planning process. This forward-looking environment has and will continue to allow us to

take advantage of new technology, stay focused on what is important to the members, and remind us of our broader community obligations. We now have a useful web site. We now have a Renewable Energy Committee with its own blog, to facilitate on-going dialogue.

Q. Has the relationship with the Commission and its Staff changed?

A. I remember when FEBA was viewed as an industry group so that the Commissioners and the Staff felt that it was prudent to hold the Association at a distance. In fact, that New York Times article in 1976 on our Annual Meeting characterized our gathering as a "party" and quoted a member's comment about the "constant confrontation" between practicing lawyers and the Commission Staff. Today, our extremely diverse membership and a strong emphasis on education have created an environment where FERC Commissioners and Staff are comfortable in actively participating. I note that over 80 FERC Staff are EBA members. Moreover, the opportunity for interchange and dialogue with the Chair and Commissioners has enhanced our educational programs. The recent appearance of the three new Commissioners Moeller, Spitzer and Wellinghoff at our 2006 Mid-Year Meeting where they discussed their backgrounds and interests was a wonderful session. Chairman Kelliher and Commissioner Kelly have been generous with their time when asked to participate in EBA programs.

Q. Steve, thank you for taking the time to discuss your impressions.

A. Darrell, I appreciate the opportunity to reminisce about EBA.

FEBA was viewed as an industry group. Now over 80 FERC Staff are EBA members.

President's Message Continued

attending. The feedback we have received has been generally positive, with some good ideas for future conferences. The CFEBA also hosted a highly successful Fundraising Gala the evening following the Mid-Year Meeting, which is reported in greater detail in this newsletter. Mark your calendars, if you've not already done so, for our Annual Meeting on April 25, preceded on April 24 by the FELJ reception for the FERC Administrative Law Judges and followed on April 26 by the CFEBA Fourth Annual Charity Golf Tournament, both of which are discussed in this issue.

Regionally, the New Orleans Chapter held a meeting last October, discussing insurance for the energy industry in the wake of Hurricanes Katrina and Rita. Presentations from that meeting are planned to be featured in the next ELJ. The Houston Chapter, which met last April, is planning to meet in the near future and expanding its Board and active members. The Western Chapter is completing plans for its annual chapter meeting in San Francisco on February 23, with a reception on February 22 for the benefit of the CFEBA. The Midwest Chapter, which met in October to discuss the dispute resolution provisions under the Midwest ISO tariff, is planning a Chapter meeting for March 7 in St. Louis. A full-day meeting of the Northeast Chapter is being planned for NYC in early April.

Educationally, the most recent ELJ is now available to members electronically at http://www.eba-net.org/journal_vol27-2206.php, with plans to put all back issues on line shortly. Also, there were numerous EBA brown bag lunch meetings. A well-attended Northeast Chapter brown bag in Washington on December 6 explored the implications of the change of power in Congress from the last election. On

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“One Good Thing Leads to Another,” a Conversation with Commissioner Santa

Adrienne E. Clair

Recently, I met with Interstate Natural Gas Association of America (INGAA) President, former Commissioner Donald F. Santa, Jr., and asked him to reflect on his term with the Commission from 1993 to 1997.

Although his youthful appearance initially caused “humorous confusion” – one of his staffers was addressed as “Commissioner Santa” early on in the Commissioner’s term -- Santa said that his appointment to the Commission at a relatively young age was part of a career in which he has been “terribly lucky.” Santa was at a loss to identify a single most notable memory of his term with the Commission. Instead, he said that the Commission on which he served was unique because there were four new Commissioners, all of whom were confirmed and began their terms in the same time frame. Santa believes the unique aspect of commencing their terms together contributed to the collegiality and cohesiveness that made the position both personally gratifying and led to what Santa refers to as the “good policy making” of the Commission. Taking into account the limitations of the Sunshine Act, which Santa calls “good government run amuck” because it has had the unintended consequence of limiting efficient decision making, he said there was frequently conversation between the Commissioners and that collegiality provided for a relationship among the Commissioners that was beneficial to the end result.

Santa cites the relentless pace of the workload as the most difficult aspect of serving as a Commissioner. Although the difficulty was tempered to a large extent by the Commissioner’s staff, it nevertheless

prevented Santa from delving as deeply into issues as he preferred. Santa added that he agrees with former Commissioner Hall that the rules prohibiting *ex parte* communications required a difficult adjustment. Having served on the Hill as the majority counsel to the U.S. Senate Committee on Energy and Natural Resources, Santa was accustomed to an open door policy of gathering as much



guidance as possible before advising the Committee. When asked whether the FERC rules should perhaps be revisited, Santa remarked that perhaps the FERC could achieve a balance that would allow the Commissioners to gain insight on an informal basis while still protecting the integrity of the Commission’s decision making process.

Overall, Santa feels that the Commission “did well” in terms of achieving its goals in the industries it regulates. On the gas side, Santa said that the Commission’s decision to not revise the

policies of Order No. 636 that had been adopted by the Allday Commission sent the important message that the Commissioners would be “responsible regulators” in implementing Order No. 636. With respect to hydroelectric and oil pipeline issues, Santa said that because those areas are not part of the “steady diet” of the Commissioners, he was more inclined to go along with the Staff recommendations. Still, he notes that the legislative provisions authorizing FERC to implement incentive rates for oil pipelines is interesting because those rules have stood the test of time.

The passage of Order No. 888 is perhaps the most significant development of the Commission during Santa’s term. Santa proudly commented that Order No. 888 was a “major achievement” in terms of the scope of the rule, the fact that it represents reasoned decision making (as evidenced by the fact that it was upheld by the Supreme Court), and in terms of his belief that the Commission struck the right balance politically in the rule. Santa added that the Energy Policy Act of 1992, while significant, was an incremental step upon which the FERC built through the issuance of Order No. 888.

In retrospect, Santa says that “none of [the Commissioners] appreciated the tiger we had by the tail with electric restructuring.” While the Commission had not tackled the interplay between retail and wholesale markets, he doubts that in Order No. 888 the Commission could have prevented future problems. Santa notes that in the wake of the California electricity market crisis, it became more difficult for the FERC and the states to work together, and that “Gray Davis did his best to make sure

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A Conversation with Commissioner Santa *Continued*

that did not happen.”

Santa doesn't take either the current Commission's rulemaking proceeding on reforming the Order No. 888 OATT or the provisions of the Energy Policy Act of 2005 as a criticism of the work achieved during his term. Given the changes that have occurred in the industry, including the maturation of electric power markets, development of ISOs and RTOs, and understanding implementation of the Order No. 888 OATT, there's a good case to be made for the current review. Santa further adds that after the California crisis, "the Commission was being criticized on all sides. Congress gave the FERC greater authority rather than clipping its wings." He says the additional authority provided to FERC in EAct of 2005 has given the Commission the proper tools so that the Commission can set policy for itself.

One aspect of EAct of 2005 with which Santa expressed disappointment is the due process provisions related to increased civil penalties under the FERC's governing statutes. While the FPA and NGPA set forth the process by which the FERC can assess civil penalties under those statutes and allow for *de novo* review in a federal District Court, no such process or review is provided for assessment of civil penalties under the NGA. Although he believes the absence of such provisions is an unfortunate result of hurried legislative drafting to complete EAct in the final days of the Congress and comments that he is certain the Commission will honor due process rights, Santa nevertheless expressed concern over the absence of such due process safeguards.

How will a Democratically-controlled Congress affect energy policy? Santa thinks there is probably a mind to revisit tax provisions that have benefited the oil industry and added his hope that Congress

remembers that the tax relief measures benefit not just the household names, but also independent power producers. He also expects that the 110th Congress will in some way continue the dialogue on renewable portfolio standards and climate change.

I asked Santa whether he recalls the same level of Congressional involvement in matters under the jurisdiction of the Commission during his term as currently exists. Santa said that during his term, the Commissioners enjoyed a sort of "extended honeymoon" in their relationship with

"Discontent with restructuring may be due to the political deals and false expectations."

Congress. He credits this honeymoon period to three conditions. First, the regional gas wars that marked the mid-80s through early 1990s were over by the time he arrived at the Commission. Second, Santa says that there were no major events in the marketplace during his term that would have "provoked the ire of Congress." Finally, he says that because three of the five Commissioners were former Hill staffers, members of Congressional Committees that were charged with review of the FERC knew the Commissioners and may have afforded the Commission some benefit of the doubt.

As a Monday-morning quarterback, I asked Santa about a statement he made years ago in which he said that in order to achieve competitive markets for electricity, there will need to be a model that shows benefits to producers and consumers. He admits that at the consumer level, there is no doubt that the benefits of restructuring have been questioned. However, he adds that some of the discontent with restructuring may be due to the political deals

that were cut in order to sell the policies that created false expectations for consumers. As an example, Santa cites the recent problems in Maryland, where the state commission came under fire as Constellation sought to implement rate increases upon the expiration of rate caps. "What got lost in that instance," says Santa, "is how much of that result was due to a failure of competition and how much was the result of the inputs into the deregulation model." While admitting that hindsight is 20/20, Santa questions whether the states jumped into retail competition too quickly and instead would have been better to first let wholesale market restructuring mature. On a national basis, Santa admits that it is "tough to make an unequivocal case that electric restructuring has been a success," but nevertheless believes that restructuring was the right thing to do.

Currently, Santa's focus is on the natural gas pipeline industry. As President of INGAA, Santa says he does "a little bit of everything," while crediting his staff with handling the day-to-day issues that affect the association's membership. On the policy front, Santa said that while the pipeline industry appreciates the fact that the Commission realized the Administrative Law Judge's decision on return on equity in the Kern River Pipeline case was "outside the bounds of what is needed to attract capital," the return that the Commission adopted is still significantly below the norm. He added that there remain unanswered questions regarding defining appropriate proxy groups. Santa says that INGAA also remains interested in how the Commission will resolve standards of conduct issues given the D.C. Circuit opinion vacating the Commission's orders on pipeline standards of conduct.

Ms. Clair is the Assistant Secretary of the EBA.

Commissioner Santa Dissents (Discerningly)

"[T]he lack of interventions challenging the Applicant's competitive analysis is telling. It is, to us, akin to Sherlock Holmes and the dog that didn't bark. Why have we not heard from the competitors that would be harmed if, in fact, the proposed BG&E-PEPCO combination would have adverse consequences?" *Baltimore Gas and Elec. Co. & Potomac Elec. Power Co.*, 76 FERC Para. 61,111, 61,579 (1996).

"A reasoned commitment to the bargain struck by the parties to all contracts we regulate (not just those we 'like') will demonstrate that we are committed to reliance on bilateral contracts as the cornerstone of the evolving competitive market. . . . Shareholders did not take the risk that this Commission would search under rocks and behind trees for ambiguities." *City of Bedford, Virginia*, Opinion No. 387, 66 FERC Para. 61,186, 61,409 and 61,411 (1994).

"The Commission should not be in the business of insuring, in all instances, the economic viability of QFs. QFs are an important part of the electric utility industry, and Congress has charged that we must administer a program of certifying such projects. Congress did not intend, however, that the Commission insure QFs against all risk. I fear that the majority's order leads the Commission in that direction and that, ultimately, the Commission will find itself at the bottom of the slippery slope." *Dagget Leasing Corp.*, 64 FERC Para. 61,148, 62,182 (1993).

"Who is protected by the Commission's OCS policy? This is a relevant question, because, at its core, the Natural Gas Act is a consumer protection statute. In the restructured natural gas industry, the price of natural gas is set in the market at the city gate, or a market hub, not in the field. Consequently, isn't the OCS pipeline issue, reduced to its essence, an issue of netback? That is, how do producers and transporters allocate the slice of the pie that remains after downstream transportation charges have been deducted. . . . [I]t is regrettable that in the OCS Policy Statement, the Commission did not take advantage of the opportunity to wipe the slate clean and formulate a policy more consistent with the contemporary natural gas market and the economics of OCS development." *Discovery Producers Services, LLC*, 78 FERC Para. 61,194, 61,849 and 61,850 (1997).

"Petacalco has clarified that the coal handling facility in question is dedicated solely to this plant, and exists only to shovel coal into a boiler, so as to make steam and generate electricity. Based on Petacalco's clarification, I have trouble conceiving of this integral part of the plant as separate from the generation and selling of electricity. Accordingly, I would grant reconsideration in this case, and EWG status to Petacalco, because in my view Petacalco owns part of an eligible facility." *Desarrollo Petacalco, S. De R.L.De C.V.*, 67 FERC Para. 61,403, 62,370 (1994).

"The net effect . . . is to render the Commission a toothless tiger for purposes of remedying the possible anticompetitive effects of El Paso's alleged misfunctionalization of facilities. What happens if the magnitude of the refunctionalization problem exceeds what can be done using the remedies that we have suggested in this order? In sum, the Commission was too quick to cede its Section 5 remedial authority without first ascertaining the magnitude of GPM's problem. The Commission could have approved the settlement without compromising its remedial authority." *El Paso Natural Gas Co.*, 80 FERC Para. 61,084, 61,297 (1997).



Commissioner Spitzer Interview Continued

Before going to Arizona, Mr. Spitzer graduated from the University of Michigan Law School in 1982. He pointed out the irony that in private practice for 24 years, he has specialized in representing taxpayers in litigation against the federal government in the form of the Internal Revenue Service, and now here he is part of the federal government. (His tax background has been useful to him in FERC ratemaking issues, including the tax consequences of various corporate forms.) He further noted that his previous government experience gave him a state perspective, in terms of being a four-term member of the Arizona State Senate, where he was Majority Leader, and an elected regulator on the Arizona Corporation Commission, where he was Chairman. Coming off his six-year term at the state agency, he was sworn in as a FERC Commissioner in the fall of 2006, following a quick nomination approval process by the United States Senate.

Politics Ends at FERC's Edge

While winning elections as a Republican, Commissioner Spitzer obviously has an appeal across party lines. In part, he attributes that to his support for demand response, energy efficiency, renewable energy portfolio standards, and his concern about greenhouse gas emissions. He was quick to point out that his personal clean energy leanings are unrelated to his duties at the FERC, but still speculated that his predilections were probably viewed favorably by Democratic members of the Senate. He also explained that he made the customary courtesy calls on the Democratic Senators.

Moreover, Commissioner Spitzer expressed being "pleasantly surprised" to

find that what was true at the Arizona Corporation Commission is also true at the FERC in terms of the lack of partisan bickering. He said that he chaired an all-Republican five-member Commission, and that the Commissioners "fought like cats and dogs, with 3 to 2 decisions." But the debate was always on the merits, and had nothing to do with party affiliations. As Spitzer put it, "The problems are difficult



enough without politics to intrude." He states that no one that he knows in the FERC building is motivated by politics. He gave as an example an honest difference of opinion over the arcane standard of review for ordering energy contract reformation under the Supreme Court's *Mobile-Sierra* doctrine. He stated that the five Commissioners may have five different interpretations as to whether and when to apply a just and reasonable standard or the higher public interest standard. But he predicted that the Commission could still reach the same result in a 5-0 vote even if they use different reasoning. He gave his view that the public interest standard is not inviolable and that he might well approve a contract revision under that standard while a colleague might also approve the same change using the just and reasonable standard of review. He stated that while Commissioners have issued separate opinions on this matter,

and more attention may well be given to this topic given a recent Ninth Circuit reversal of FERC, each Commissioner is applying legal analyses and not political dogma. He declared that the FERC has a tradition of rendering decisions without regard to politics and that this tradition will continue.

It's Not State v. Federal: Its Low-Cost v. High-Cost Regions

Not only does Commissioner Spitzer see partisan politics as largely irrelevant to FERC decision-making; he also calls "over-stated" the popular fascination with the "fact that four out of five FERC Commissioners are from the West." He maintains that all five Commissioners are interested in cases emanating from all regions of the country. Although thought of as an Arizonan, he pointed to his familiarity with the East as a Philadelphia native, and added that he sees himself as having been appointed to a "national position," and he has a national outlook. He observed that, at least up to this point, he has done most of his official business travel in the South, followed by the Northeast. Moreover, he states that for the most part the agency is applying the law to a factual record, with the particular locality having little to do with the outcome "in most cases."

Nor does he see states being unduly encroached upon by federal preemption in the FERC area. For example, he stated that while National Interest Electric Transmission Corridors that EPAct 2005 allows to be designated for federal siting by the FERC may seem like federal encroachment on state jurisdiction, it is necessary in the limited types of instances provided for by the statute. He recalled that in 2003, when he was the Arizona Corporation
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Commissioner Spitzer Interview Continued

Commission Chairman, he signed an order implementing backstop siting authority from FERC as a secondary remedy after the state option had been exhausted. He stated that his state agency supported federal backstop authority as a proper balance when, for example, there is a failure of interstate agreements to allow bulk power lines to traverse hundreds of miles to get power to load, as is sometimes necessary in the West. While Arizona biannual studies have resulted in proper siting within Arizona, he recognized in 2003 that there were instances where federal action was still needed elsewhere where lines were not being built. The key to the Arizona model, according to Commissioner Spitzer, is that the applicant first comes to Arizona to make its case. Only if an appropriate record has been made and all state remedies have been exhausted, should the applicant come to FERC as a last resort to obtain siting approval.

He called it very understandable that no one wants bulk power lines in the neighborhood, but cautioned against states shirking their responsibility to make the tough calls by relying on FERC as a "scapegoat" to make an unpopular siting decision through backstop authority. The Commissioner has found that state tribunals are "fair and judicial." Also, he reasoned that some proposed lines should be

rejected or rerouted in order to accommodate such things as valuable archeological sites, or otherwise adhere to safety, environmental, economic, health, welfare, and aesthetic concerns.

Nor, in his opinion, should rules be applied across-the-board in all regions. He pointed out that vegetation management is different in a pine forest in the West than in Ohio, for example, thereby requiring conclusions to be based on engineering rather than politics.

Commissioner Spitzer calls himself a proponent of states rights in the sense that retail unbundling should be decided at the state level based on the best interests of each state. He observed that low-cost states in the South tend to prefer the traditional vertically integrated model while high-cost states prefer retail restructuring. He professed the belief that the federal government should not intrude in the retail regulatory regimes of the individual states, but rather should carry out its role of advancing wholesale markets that are robust, vibrant, and free from manipulation, and provide just and reasonable rates. He stated that this has been the mission of the FERC since 1992, when Congress enacted legislation that had bipartisan support and which has been reaffirmed through successive

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Cautions against states relying on FERC as a "scapegoat."

Inner Thoughts of Marc Spitzer

How Would He Spend Any Additional Spare Time? "Playing ball with the kid." Also, going to more Civil War battlefields with the family, and continuing his search for good Mexican food. ("Some are too gringo, not spicy enough.")

Favorite Movie? *The Producers* (the Zero Mostel and Gene Wilder original).

Bedside Table Reading? *Mornings on Horseback*, ("I love Teddy Roosevelt."). Also, fond of Churchill, and looking forward to reading autographed copy of John McCain's *Faith of My Fathers*.

Personal Mottos? "Never surrender!" "Bully!" (Churchill and TR).

Favorite Sound? Ocean.

Least Favorite Sound? Motorcycles.

Favorite Word? "Gratuitous."

Least Favorite Word? "Can't."

Biggest Turn-On? Challenge.

Biggest Turn-Off? Arrogance.

Walter Mitty Fantasy Occupation? History Professor.

Job Least Like To Have? A Domestic Relations lawyer. ("This will get me into trouble.")

What He Hopes to Hear Upon Reaching Heaven? "What kept you?"



Commissioner Spitzer Interview Continued

Congresses and Administrations.

Staffing Up and Hitting the Ground Running

As the third of three sitting Commissioners when he was sworn in, Commissioner Spitzer pointed out that he had to be immediately available to form a quorum. He explained that “doing triage on notational voting” was arranged in part by him voting over the internet from Arizona. He added that, with the volume of requests for speaking engagements, many time-sensitive notational voting items, and appellate cases with records predating his tenure being remanded “like a boomerang,” his job has “exceeded expectations in terms of challenge.”

To deal with all this, the Commissioner told us that he staffed his office with “the best and the brightest” out of a large applicant pool, utilizing talent from Arizona and from the Commission. He brought with him as a legal advisor his former Chief of Staff from the Arizona Commission, Philip Dion. He hired two FERC Staffers, Martin Kirkwood and Monique Watson, both of whom have private practice experience. Kristine Bailey, who schedules the Commissioner’s appointments, has been at the FERC for 18 years. He is very dependent on her because of the large volume of speaking requests, and regrets that he “can’t be in two places at one time.” Next month, the Commissioner indicated that he will be curtailing a visit that he has been requested to make to Las Vegas (noting, “I am a non-gambler”) in order to accommodate a request that he speak at an EBA Western Chapter event in San Francisco. Also, the Commissioner is pleased with Tiffany Gray, who handles his notational voting system, a sizable undertaking since the Commission formal meetings occur only once a month and many items need to be acted upon between those meetings.

According to Commissioner Spitzer,

not only his Staff but the FERC Staff generally have exceeded his expectations. He had the highest praise for the young people who want to come to D.C., despite the high cost-of-living, to work for the people of the United States. He declared that, “My hat’s off to them,” in referring both to the young and to the long term employees, all of whom he found to be deeply motivated. He reiterated his praise for the “high caliber of folks here.”



He recalled agonizing over the wording of his first dissent.

Writing for Posterity; Achieving Justice

In terms of decision-making, the Commissioner very much approaches his job as a judge rendering a legal decision based on a hearing and a factual record summarized by the Initial Decision. He culls through the record, aged as it may be, and is concerned that the reasoning be elucidated clearly enough that it will make sense decades later when the decision is applied in similar circumstances. This is not an abstract notion for Commissioner Spitzer. He explained that as a lawyer in a firm where a young William Rehnquist once practiced before moving on to the Nixon

Administration Department of Justice and eventually the United States Supreme Court, he handled an active case file in which Mr. Rehnquist left legal memoranda and notes twenty years earlier. Seeing how these writings need to stand up to the test of time in his own practice, Commissioner Spitzer told us that he is very concerned about how his own writings will appear in twenty years. For that reason, he stated that he is very precise about “semi-colons and commas.” In particular, he recalled agonizing over the wording of his first dissent issued just last month.

Nor does Commissioner Spitzer view himself as completely detached from his predecessors or Congress in his role as a FERC Commissioner. He spoke of his belief in *stare decisis*, the need to be respectful of precedent, and of his sense of responsibility to faithfully implement Congressional intent, for example, in terms of the Energy Policy Act of 2005. All of these considerations came to play for Commissioner Spitzer in his vote on rehearing requests of Order No. 679, providing for new transmission incentives, which was promulgated before Spitzer was sworn in. He indicated that he gave deference to precedent and Congressional intent, as well as his own sense of “just and reasonable” ratemaking, the standard set in the Federal Power Act (and, of course, the Natural Gas Act) as he voted on Order No. 679-A, granting in part and denying in part requests for rehearing of that Final Rule. He explained that Order No. 679 was not only a decision by the FERC; it was undertaken in compliance with the EPA Act directive that FERC act within a year’s time to promulgate a rule with respect to such incentives. In making “just and reasonable” determinations, Commissioner Spitzer stated that he looks to see that “justice adheres to this decision.” He observed that most of governmental decision-making consists of “balancing competing interests.”

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Commissioner Spitzer Interview Continued

By the same token, Commissioner Spitzer jokingly recalled his advice to Chairman Kelliher not to count it as a loss when a Court remanded a FERC decision largely on the basis of a dissent written by Mr. Kelliher.

He is, moreover, a proponent of the Sunshine Act method of decision-making whereby a quorum of Commissioners cannot meet to discuss a matter before the Commission except in open session before the public, as occurs the third Thursday of each month under the Kelliher Administration. Indeed, Commissioner Spitzer stated that the Arizona open meeting law does not allow even two Commissioners to discuss pending matters, and in that respect is even more restrictive than the federal law. He reasoned that the legislative formulation, under which legislators confer in private over pending bills, is different from the judicial process that is more applicable to FERC, with prohibitions against *ex parte* communications and consideration of extra-record material. For Commissioner Spitzer, the Sunshine Act works well as a model for deciding rate cases based on a factual record adduced through due process. “The public must have confidence in decision-making,” explains Commissioner Spitzer, and the safeguards under which the FERC operates are necessary in order to promote that objective.

Maintaining Public Confidence: Carrot and Stick Approach

This brings up the Commissioner’s view of his primary responsibility. The most important consideration for Commissioner Spitzer is the point that he makes in virtually every speech, whether to sophisticated industry groups or Rotary Clubs. It is that FERC enforcement and penalty authority in EAct be applied in a way that gives the public “faith and confidence in the system.” According to

Commissioner Spitzer, with wholesale competition there has been a policy since 1992 by both parties to move from a pure cost-of-service approach, which he sees as often an accounting function, to a regulatory framework of assuring that mutual obligations are lived up to by competitors. It is essential, from Mr. Spitzer’s perspective, that market participants cannot abuse the marketplace through manipulation. In order to prevent that, the Commissioner points to the need for enforcement that has to be fair, and the imposition of sanctions when there is an appropriate record. He foresees cases at the FERC moving “through the pipeline” of investigations, settlement agreements, and litigation.

He foresees investigations, settlement agreements, and litigation.

Without such oversight and enforcement, the move to an open access, competitive environment is incomplete for Commissioner Spitzer. Using a “carrot and stick” analogy, he called the incentives for transmission investment, to cause transmission to be more robust and to enhance the reliability of the grid, a “carrot.” He called the new penalty authority granted to the FERC a “stick.”

EAct Implementation: Reliability

Much of the unfinished business of EAct 2005 for Commissioner Spitzer lies in the area of wholesale reliability of infrastructure. He said that reliability has long been a concern, pre-dating restructuring, and at the retail level as well. A notable example of the latter, according to Commissioner Spitzer, is the local distribution problem experienced last summer in Queens. While the states are in charge of maintaining resource adequacy, the Commissioner stated that FERC’s role is to

see that various fuels can compete on the merits, based on price and other factors, by providing the bulk transmission grid and interstate pipeline infrastructure to deliver supply. He noted that nuclear power, renewables, coal, and natural gas, including LNG, are all among the acceptable menu of options that EAct has promoted through the recodification and expansion of prior law. He cautioned against the “coronation of one resource as the winner.” Rather, he stated that FERC must provide the possibility of their being accepted and transported to combined cycle plants and otherwise make them accessible to markets. He maintained that the state commissions and markets, not the FERC, should ultimately determine the fuel of choice at any particular location.

For example, the Commissioner recounted that the FERC’s jurisdiction over LNG, both as adjudicated and as codified in EAct 2005, is solely to address public safety. He vowed that, “I will not vote for a plant if it is not safe.” He pointed out that the factual record that he reviews on LNG cases involves safety, not economics. However, whether an LNG project that he and a majority of his colleagues find to be safe should ultimately move forward is a matter for the marketplace to decide. As the Commissioner put it, “That will winnow out, and many projects will not be built as a matter of supply and demand.”

For Commissioner Spitzer, the work of the Commission is “intellectually challenging” and is “greatly important to the national economy.” He conveys a deep sense of responsibility to the country to discharge his duties on the basis of the merits and to demonstrate to the public that it is being properly served. His willingness to discuss these matters with us at great length is no doubt intended to help further these laudable objectives.

President's Message

Continued

December 7, Commissioner Spitzer provided remarks and responded to questions at a lunch meeting of the Electric Regulation Committee. The following day, the ADR Committee hosted a brown bag meeting at which members received and discussed a comprehensive report on the use of alternative dispute resolution to resolve energy issues, with another meeting planned for January 23. On December 13, the Nuclear Regulation Committee hosted a brown bag lunch meeting at the Nuclear Energy Institute offices, where members heard about and discussed the implications of the Katrina disaster for the nuclear sector of the industry. Most of the Committee brown bag conferences were available for participation by telephone, and many members took advantage of this teleconference capability. If you have not already done so, we urge you to visit the EBA web site for additional information. We flag for your particular attention the new EBA calendar, on which information about upcoming events is posted. As always, we welcome and encourage members to become as active as they are able in regional and national activities, and very much appreciate your suggestions and feedback.

On behalf of the EBA Board, we wish each of you a very happy, healthy and prosperous 2007.

David T. Doot
EBA President



EBA President, Dave Doot presents Ben Stone with the first State Regulatory Practitioner Award at the Mid-Year Meeting Luncheon.

NRECA: FROM WW II TO TODAY

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

The National Rural Electric Cooperative Association (NRECA) is the national service organization dedicated to representing the national interests of cooperative electric utilities and the consumers they serve. The NRECA Board of Directors oversees the association's activities and consists of 47 members, one from each state in which there is an electric distribution cooperative. The chief spokesman for the nation's electric cooperatives is NRECA Chief Executive Officer Glenn English.

Founded in 1942, NRECA was organized specifically to overcome World War II shortages of electric construction materials, to obtain insurance coverage for newly constructed rural electric cooperatives, and to mitigate wholesale power problems. Since those early days, NRECA has been an advocate for consumer-owned cooperatives on energy and operational issues as well as rural community and economic development.

The association provides national leadership and member assistance through legislative representation before the U.S. Congress and the Executive Branch; representation in legal and regulatory proceedings affecting electric service and the environment; communication; education and consulting for cooperative directors, managers and employees; energy, environmental, and information research and technology; training and conferences; and insurance, employee benefits and financial services.

NRECA's more than 900 member cooperatives serve 39 million people in 47 states. Most of the 864 distribution systems are consumer-owned cooperatives; some are public power districts. NRECA membership includes other organizations formed by these local utilities: generation and transmission cooperatives for power supply, statewide and regional trade and service associations, supply and manufacturing cooperatives, data processing cooperatives and employee credit unions.

American Option: An options contract exercisable at any time prior to its expiration date (rather than only on the expiration date, i.e., a "European Option").

Keogh Doctrine: A protection for regulated companies against antitrust damage claims of ratepayers who challenge approved rates as anti-competitive.

Nunc Pro Tunc: "Now for then." This is when legal effect of a ruling is made retroactive to the time when it should have been provided for but for inadvertence or mistake.

Charitable Foundation of the Energy Bar Association Activities

CFEBA Gala Raises Over \$34,600 for Charity-

A. Karen Hill

At its Fourth Annual Fundraising Gala, the Charitable Foundation of the Energy Bar Association ("CFEBA") net contributions totaled \$34,609 from ticket sales, sponsorships, the raffle and silent auction. The CFEBA used the Gala as the occasion to present energy-related grants totaling \$27,500 to three charitable organizations. Linda Walsh chaired the Gala Committee.

Held in conjunction with the Energy Bar Association Mid-Year Meeting in Washington, D.C., on November 2, 2006, the Fundraising Gala is one of the CFEBA's key fundraising events, supplementing funds raised through the CFEBA annual campaigns. Attendees included the FERC Chairman and Commissioners, FERC Administrative Law Judges, and State regulators (and even some Redskins cheerleaders appeared momentarily to the delight of those who stayed until the end). The recent Gala featured a raffle of gift cards totaling \$2,000 and a silent auction of 31 different items, including an array of wines and gift baskets, weekend retreats, event tickets, and vacation spots. Donna Attanasio managed the silent auction.

The raffle and auction raised over \$3000. The generous sponsorships and ticket sales netted \$31,500, for a total net profit of \$34,609. Sponsors included: Alston & Bird; Baker Botts, Covington & Burling; Day, Berry & Howard; Duke Energy, Duncan, Weinberg, Genzer & Pembroke; Exelon Corporation; Heller Ehrman; Hunton & Williams; Latham & Watkins; Preston Gates & Ellis; Skadden, Arps, Slate, Meagher & Flom; Steptoe & Johnson; Stinson Morrison Hecker; and Van Ness Feldman.

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Gopal Swaminathan & Joe Fagan



President of the New Orleans Chapter, Stacy Brown & Midwest Chapter President, Dave Hennen chat with Program Co-Chair Freddi Greenberg at the CFEBA Gala.



Jon Schneider & his jazz group were a delight for Gala attendees.



A silent auction helped raise funds at the Gala by offering attendees 31 beautiful assorted gift baskets to bid on.

CFEBA Activities Continued

The three charitable organizations honored at the Gala with grants included the following: a \$10,000 grant to the Phoenix Society, for a program for burned utility or gas pipeline workers; a \$10,000 grant for solar panels and a generator to power the Chungba Primary School, which educates children in an isolated mountain community in southeastern Tibet; and a \$7,500 grant to SERVE, Inc., which provides temporary shelter and counseling to the homeless and emergency food to families in Prince William County, Virginia, for energy-related bills at the organization's facilities.

CFEBA Asks EBA Members to Contribute Along With Renewing Dues –

CFEBA President Paul Mohler sent a holiday letter to the EBA membership on December 20, 2006 thanking the membership for its generous support of the CFEBA and requesting EBA members to consider adding a contribution to the CFEBA along with EBA dues. CFEBA is a volunteer organization with minimal overhead expenses, all of which it expects to be covered by a grant donated for that purpose. Therefore, all donations will be put to work for energy-related purposes at the charities we support. The President's letter also notes that the CFEBA is exploring ways to expand and diversify its programs and to target donations to reflect the diverse locations and interests of EBA members. Rich Meyer chairs the Charitable Contributions Committee which would be delighted to receive additional suggestions for charitable organizations and projects for consideration by the CFEBA Board.

The President's letter expressed the appreciation of the Board of Directors of the CFEBA to the many Energy Bar Association members and others who have contributed so generously to the Foundation. These contributions directly enable the CFEBA to provide grants and to engage in other worthwhile charitable causes.

Golfers—Save the Date: CFEBA's Fourth Annual Golf Outing Plans Underway-

The 2007 CFEBA Golf Tournament is planned for Thursday, April 26, 2007, the day after the EBA Annual meeting, at Westfields Golf Club in Clifton, Virginia. The event will be a modified scramble format, with a 9:00 AM shotgun start. Past golf tournaments have been most enjoyable and have netted the CFEBA more than \$25,000. Please consider participating. Sponsors, volunteers, and golfers are all welcome. Contact Susan Moore or Evan Reese (202/298-1917 or ecr@vnf.com) of Van Ness Feldman, who co-chair this year's committee, for more information. Start planning your foursomes now for this exciting event!

Ms. Hill is a CFEBA Board Director.



Tonja Wicks & Denise Cameron stop chatting to pose for the camera.



State Regulatory Practitioner Award winner, Ben Stone of Balch & Bingham, receives a standing ovation as he holds the Louisville Slugger that was presented to him.



Curt Moffatt & Bob Fleishman smile for the EBA photographer.



Scholarship Recipients, Jared Roy & Eduardo Anaya were both awarded \$3,000 from the CFEBA to help defray the costs of their internships during the Fall 2006 semester at the American Council on Renewable Energy & Environmental Protection Agency.

Charitable Foundation of the Energy Bar Association Fourth Annual Gala

EBA colleagues mingle at the CFEBA's key fundraising event



EBA Loses Shining Star in Passing of Jay Lukens

Best known to his fellow Energy Bar Association members as a man of many hats, Dr. Jay P. Lukens, Founder of Lukens Energy Group, passed away October 1 at his home in Houston. Jay founded LEG in 1999 and it became a part of Black & Veatch in 2005. Jay also served as Senior Vice President of Black & Veatch Enterprise Management Solutions, where he was called upon as an expert in natural gas markets with more than 20 years of diverse corporate and consulting experience. Jay's partner, Dan Ives, has often found himself asking "What would Jay do?", a tribute to Jay's strong intellect and his approach to problem-solving.

But long before Jay started his own consulting group, attorneys participating in Transcontinental Gas Pipe Line's restructuring and rate cases arising from the transition to open access may have wondered about Jay's youthful appearance when he first appeared on the scene in the mid-1980s. Looks can be deceiving. It did not take long for everyone to determine that Jay had a plan for the pipeline and that he would succeed. From 1985 to 1995, he was a Senior Executive with Transco, where he had direct responsibility for strategic planning, federal regulatory affairs, and business development. It was in this role that he first became active in the Energy Bar and a friend and colleague to many of its members.

In addition, prior to founding LEG, Jay was a Principal and Managing Director of the Economics Resource Group, Inc. Clearly, he was a man of great accomplishments in a relatively brief time span.

Jay received his Ph.D. in Economics in 1981 from Texas A&M University and a B.A. in Economics from Eckerd College. He served on the Board of Trustees of Eckerd College, and was proud to be an active member of the Energy Bar Association until health curtailed his activities in 2005.

Most importantly, Jay was greatly devoted to his wife, Susan, and their children Clinton, Ashley, and Walker (as well as to various family dogs). He will be especially remembered for his intellect, candor, and sense of humor.



Upcoming Events

Western Chapter Annual Meeting **February 22-23, 2007**
Hyatt Regency
San Francisco, CA

Midwest Chapter Annual Meeting **March 7, 2007**
Chase Park Plaza
St. Louis, MO

**Foundation of the Energy Law
Journal Reception Honoring the
Federal Energy Regulatory
Commission's Administrative Law
Judges** **April 24, 2007**
Capital Hilton
Washington, D.C.

Sixty-First Annual Meeting **April 25, 2007**
Capital Hilton
Washington, D.C.

**For up-to-date information on EBA meetings and
events, please visit our online calendar @
<http://www.eba-net.org/calendar.php>**

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

Alternative Dispute Resolution Event Coming Soon

The ADR Committee will be hosting a brown bag from 12-2 PM ET in New York City on January 23, 2007, titled "Energy and Alternative Dispute Resolution: What Every Energy Professional Should Know." The program will be held at Heller Ehrman LLP at 7 Times Square, 40th floor. Speakers at this exciting, outside-the-beltway, event include representatives from the major arbitration organizations, FERC, and the Energy ADR Forum. EBA members are cordially invited to attend in person or via teleconference. There is a nominal \$20 fee. Additional information and registration forms are available at the EBA web site. New York CLE credits will be available for those who attend the live program in New York City.

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 2400 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.

Energy Bar Association, 1020 19th St., N.W., Suite 525, Washington, D.C. 20036,
Tel: 202/223-5625, Fax: 202/833-5596, E-mail: Michele@eba-net.org,
website: www.eba-net.org © 2007 Energy Bar Association



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