



EBA Update

Fall 2016

In This Issue

- ERC Office of Administrative Litigation Director Nils Nichols Holds Forth in Latest Interview
- President's Message
- Executive Director's Message
- EBA's What's Ahead
 1. Calendar of Events
 2. Membership Renewal Time
 3. Save The Date for the Energy Bar Association's Book Club Selection for Winter 2016: Lights Out by Ted Koppel
- Are You Taking Advantage of One of the Most Important Resources Available to You? Do You Need Additional CLE Credits for the Year?
- Energy Elite Gather at EBA's 2016 Mid-Year Energy Forum
- The 2016 Mid-Year Energy Forum Photos
- Media Coverage of EBA's Mid-Year Energy Forum
- Energy Law Journal: Excerpts from Past Issues
- EBA Launches New Social Media Channels to Enhance Information Sharing and Engagement for Members
- Preeminent Energy Lawyer Robert Fleishman Receives 2016 Paul E. Nordstrom Service Award
- Sandra Mattavous-Frye, the People's Council for the District of Columbia, Receives 2016 State Practitioners Award
- Opportunities and Influence of Women in Energy Industry Growing
- EBA's Work on Energy Law Education Garner International Recognition
- Chapter Updates
- CFEBA News: CFEBA Helps Transform Lives in El Beni, Bolivia
- CFEBA News: Mid-Year Energy Forum Attendees Lift Glasses in Support
- FELJ News: Morrison Discusses Capacity Markets
- FELJ News: 2016 FELJ Mogel Intern Chase Snodgrass Recounts Summer to Remember

ERC Office of Administrative Litigation Director Nils Nichols Holds Forth in Latest Interview

He Explains Workings of his Office under Chairman Bay

By Gary Guy and David Connolly



(Pictured from left to right: FERC Director of the Office of Administrative Litigation Nils Nichols, EBA Board Member David Connolly and FELJ Vice President Gary Guy)

Running the trial lawyers shop at FERC is a hectic business. But Nils Nichols, Director of the Office of Administrative Litigation (OAL), was kind enough to set aside time recently with newshounds Gary E. Guy and David Martin Connolly (aka “John Charles Daly and Cameron Swayze”). Here's the recap.

Director Three Times Over

“Director” seems to be the title Mr. Nichols was born to have. First, he was Director of FERC’s Dispute Resolution Service. Then he was Director of its Division of Pipeline Regulation (both gas and oil) within the Office of Energy Market Regulation. Today, he is Director Nichols again.

When not holding the title “Director” he has also served as a “Legal advisor” for two FERC Chairmen, James Hoecker and Joseph Kelliher.

Other titles Mr. Nichols has held include “Partner” at Conner & Wetterhahn, P.C. where he represented investor-owned electric utilities, and “Author,” of the NEPA Caselaw Digest, published by the American Bar Association. You could also call him “Witness,” for providing testimony before the U.S. Senate Committee on Energy and Natural Resources about FERC's jurisdiction of crude and refined oil products, not regulating the pricing of the commodity or its storage, but only its transportation. His written testimony is a tutorial on the finer points of FERC jurisdictional authority over the transport of propane. And, he also had a distinguished start to his impressive legal career serving as a law clerk at the West Virginia Supreme Court of Appeals.

Having performed so many roles, he jokes that, “I have a hard time keeping a job.”

Director Nichols summarizes his jobs as falling into either of two categories: As an advocate, which he calls very gratifying, and although it does not require taking into account differing views, he finds to it be more gratifying if you do; and a quasi-judicial position, such as he holds now, where has a responsibility to get to the right result.

The latter he finds to be tougher because of the demands it places to take everything into account.

Destined for an Energy and Environment Career

Mr. Nichols picked up his expertise in environmental law and natural gas pipeline certificates when he served in FERC's Office of General Counsel beginning in 1990. His interest, however, began during his youth. His West Virginia roots are strong, and he holds a law degree from West Virginia University. He grew up on a farm and was always fascinated with protecting natural resources. He still owns West Virginia “farms” and gets back to them whenever he can. His interest in energy stemmed from its impact on the environment as well as energy’s fundamental influence on his native state's economy. In the 1960s and 1970s, when he was coming of age, statutes like the Environmental Policy Act were being adopted. Mr. Nichols followed these developments with great interest along with bankruptcy and taxes, although majoring in history and English.

Before joining FERC, Director Nichols worked at a D.C. environmental and electric energy firm. His expressed intention in moving onto FERC was to specialize in environmental law, particularly as it relates to the natural gas certificate program and environmental impact statements and how alternatives should be considered from a socio-economic standpoint. For his own edification and to be sure he was properly advising the Commission on such matters, he researched the court cases that made the body of law on NEPA, a 30-50 word statute that relies on such cases to fully develop its full meaning, and compiled his own written digest of those decisions. He then expanded that into a book for the benefit of others. Eventually, he gravitated into oil matters, “a difficult program to learn.” Today, Mr. Nichols oversees trials regarding every matter of FERC's jurisdiction.

Marked for Leadership

FERC Chairman Norman Bay selected Mr. Nichols this spring to fill the vacancy as head of FERCs’ trial lawyers upon the retirement of Ted Gerarden. OAL consists of both a Legal Division led by John Kroeger with four Branch Chiefs and a Technical Division led by Linda Patterson with five Branch Chiefs. “At the end of the day, there is not a great divide between lawyers and technical people at the Commission.” His Staff is “engaged in compiling a factual record,” whether through a paper hearing or a trial. And then Staff apply the statutes, regulations, and precedent to each set of facts, he explains. He calls FERC's technical staff “masters of our precedent” because they participated in developing it.

“There is not a great divide between lawyers and technical people.” Some of the latter are “masters of precedent” that they helped set.

Director Nichols points out that “the demographics of FERC are not unlike the demographics of the energy industry as a whole” in the context of retirements of many experienced professionals. He recalls being mentored when he first came to FERC by seasoned practitioners. The late Maynard Ugol, who was a senior advisory staff member and opinion writer at FERC, and before that at the New York Public Service Commission, was chief among them. Mr. Nichols wondered how the agency would function when Ugol retired, but was “astonished” at how quickly the bright, new people that are brought into FERC catch onto the arcana and end up carrying on a major part of the workload quite well. “There have been many Maynard Ugols here who have done incredible work for many years and then moved on.” But the newcomers keep replenishing and renewing the Commission to great effect,” he tells us. And of course, he is the top dog from which they will be acquiring their long-term expertise, a fact that he humbly omitted to point out to us.

The Inner Workings of OAL



There is a distinct separation between FERC's trial staff and advisory staff, Mr. Nichols notes. For example, OAL is completely apart from the Office of General Counsel (OGC). Director Nichols reports directly to Chairman Bay. OAL has no involvement with an initial application or complaint unless the Commission sets the matter for hearing or settlement negotiations. Nor does OAL handle a case at the post-FERC decision order stage if the matter goes up on judicial appeal. That is handled by the Solicitor's Office within OGC.

Once OAL's jurisdiction is triggered by issuance of an order establishing hearing and settlement procedures, Director Nichols, with inputs from Kroeger and Patterson, puts together a team with the right set of skills. The bulk of the cases are electric, followed by gas and oil, with rarely a hydro matter. Gas cases are almost always rate-related because the gas certificate cases can be handled on a paper record. The Office of Energy Projects processes those cases because “time is of the essence” in putting together a project with financing commitments.

“A high percentage of our cases settle,” Mr. Nichols states. “This is a wonderful thing in the sense that when you go into litigation it is very difficult to predict the outcome.” He believes that FERC has a record of reaching “good” settlements that comport with its statutory responsibilities and prior rulings.

“When I was in law school, I struggled with the concept of due process,” and looked in up in Black's Law Dictionary. He finds terms such as “public interest” nebulous and “a loaded word that means different

things to different people.” From his perspective as Director, OAL's responsibility is to arrive at “the right, fair, result” within the parameters of FERC precedent.

Due process: Getting the “right, fair, result” within the parameters of FERC precedent. It is not OAL's place to set new precedent.

“Stare decisis” is a term that means a lot to Director Nichols as he would not deviate from a prior result unless a good reason could be offered for doing so. “It is not OAL's place to set new precedent; that is the Commission's job.” Trial Staff is aided by the institutional knowledge expressed in voluminous FERC orders that provide detailed reasons for the results the Commission previously reached. The term “rule of law” means more to him now than when he was younger, he reflects.

He describes the evolution in the law through FERC cases as the product of a “constant dialogue between the Commission and the parties that come before it.” That dialogue usually takes place in on-the-record filings. For example, in the setting Commission policy, Mr. Nichols notes FERC is influenced by innovative ideas that will be presented in a filing that protects the interests of all parties to a proceeding. “The Commission is not a monolith entity that hides behind the 888 building,” he mused. “It is a living organism.”

The Commission is not a monolith entity that hides behind the 888 building. It is a living organism.

Since assignments comes to OAL through a Commission order, Director Nichols explains that it is rare for individual parties to reach out to OAL for consultation in contrast to pre-filing meetings with FERC's Advisory Staff. Once the matter is transformed into a contested on-the-record proceeding, Advisory Staff can no longer be consulted on an ex parte basis, and that is when the trial lawyers, who are not covered under those rules, can interact with litigants.

OAL “is an exciting area to work in” where Staff has a high degree of autonomy. Each member of OAL is entrusted with discretion on how to reach a desired result. “They can each rightly take credit and pride in their own work product.”

Thoughts about the EBA and Energy Practice

EBA “provides a great deal of education to folks throughout the energy world,” Mr. Nichols observes. He views this training function to be a necessary service because “you can never know enough” in this

constantly changing area. He also credits the “networking component” of the EBA as valuable in that “deep and wide knowledge about what you are trying to do will get you the right result.”

His advice to one young person, his daughter, was ‘Yes’, when she asked if “energy will be around in 20 years.” He assured her that it will be around far longer than that. “Energy is one of the fundamental building blocks of our society,” he continues, “and highly relevant to the leading issues of the day, including global warming. At the end of the day we cannot do without it.”

His further advice to young professionals is to “take risks, jump in and particularly don’t be afraid to fail” because you improve by doing. Using himself as an example, Mr. Nichols regrets having passed up many early speaking opportunities because he sees how important it is to exchange ideas and information to achieve optimum results. In fact, he admits to having “learned a lot more from my failures than from my successes.”

From our standpoint, we know of no such failures on the part of this accomplished, but humble, public servant. He has given us all a real eye-opener on the inner workings of FERC. This insight should give us great confidence that those who work there are of high caliber and aim to shoot straight to achieve the public good, with Director Nils Nichols as Exhibit No. 1.

Numerous Nils Nichols Niceties



Movies he can watch over and over again: *Casablanca*, and Disney’s *Aristocats*.

Favorite TV Show or Series: None, I prefer to read.

Currently reading: Robert Caro’s trilogy on Lyndon Johnson, having finished William Manchester’s multi-volume biography of Winston Churchill. He sees similarities in these two larger than life figures, with LBJ turning out to be “a lot more of a character than I ever suspected.”

E-reader or Book reader: Definitely an old fashioned Luddite, as his friends call him. Put his Kindle away and reads the hard copies.

Favorite vacation spot: Italy. Both because of its scenery and food.

Favorite exercise: Walking. He just walked across England approximately 200 miles looking at wonderful scenery and not worrying about what museum he is supposed to go see or cultural things he should be doing as a tourist.

Night owl or Early Riser: Started life as a night owl; has become an early riser out of necessity. Expects to revert back once he reaches retirement. Exception, he is eager to get up early when he is at the farm.

Guiding principle: "Don't be afraid to try things, don't be afraid to fail."

Favorite holidays: Christmas and Thanksgiving.

Favorite Thanksgiving Dinner side dish: Candied sweet potatoes.

Favorite dessert: Rice pudding.

First car owned: An old Volkswagen. Paid \$75 for it.

His pet: An elderly cat.

Fantasy Job: Head up a private equity concern in the energy sector, deciding where to invest money and nurture companies. (Hmmm, who knows?)

President's Message



As we hit the halfway mark in the 2016-2017 program year, the Energy Bar Association (EBA) is entering a phase of self-examination.

EBA's Board of Directors will be conducting a Strategic Planning session in November to update our long-term strategic goals and initiatives. Your inputs will count as the Member Needs Assessment we conducted this spring will guide the process. Input we receive from EBA's Regional Chapters, task forces and committees will also steer our planning. The Board will thoughtfully consider all of the information we have received and use it to develop strategies that enhance EBA's mission of providing superior educational programming, networking opportunities and information resources that promote the professional excellence and ethical integrity of our members in the practice, administration, and development of energy laws, regulations and policies.

EBA's Spotlight on Diversity is also well under way. The 2016 Mid-Year Energy Forum featured a number of sessions devoted to issues of inclusion including: a general session panel on diversity with an array of outstanding energy sector leaders, a luncheon presentation by Charlie Berardesco, General Counsel of NERC who is a passionate advocate for diversity, a panel on ethical considerations related to diversity, and a Women in Energy Breakfast. In addition, EBA established a Diversity Task Force and is diligently working to ensure all EBA opportunities are open and available to all members. We hope you find this programming valuable and enriching.

Our Mid-Year Energy Forum was a tremendous success. I am consistently impressed by all the work EBA's staff and volunteers do to make our programming great. This is a terrific community. Many devote significant time to planning events and supporting the Association. Through the work of our volunteers, led by the Professional Education Council, we were able to assemble an impressive array of high-quality programming for this year's Forum. I am grateful to them for their Herculean effort, and to all who participated and attended.



Emma Hand
EBA President
Partner, Dentons

Executive Director's Message



"EBA is a community of connections."

As I met, spoke with and observed attendees of the Energy Bar Association's (EBA) 2016 Mid-Year Energy Forum in early October, it struck me how much enthusiasm and "energy" was on

display from participants. The Mid-Year Energy Forum was just the latest example of the amazing opportunities members of EBA have to connect or reconnect with one another to discuss subjects in which they are passionate and issues that affect their practices and the larger global community. As EBA's Executive Director since 2012, I have had the privilege of witnessing similar scenes many times.

EBA is a community of connections - an amazing collection of energy attorneys, policy and technical specialists, students and academics. Through EBA, members have the opportunity to dialogue with policymakers, share insights with colleagues, establish themselves as thought leaders, and access the most up-to-date educational materials. There are few other places where this is possible.

Each member of EBA makes the whole Association stronger. But that is only possible through the active involvement of our membership. Continue to stay involved as it enriches EBA's community and enriches your experiences with EBA. Membership renewals begin in November. Look for your renewal statements and continue to enjoy the benefits of being a vital member of a vibrant organization. And, I will continue to look forward to seeing you at EBA conferences!



Lisa A. Levine, CAE
Executive Director

EBA's What's Ahead

1. EBA Calendar of Events

October 2016

10/24

[EBA CO-SPONSORED EVENT: IMPLICATIONS FOR CALIFORNIA'S ENERGY FUTURE](#)

ELSAS Presents

Community Choice: Implications for California's Energy Future

Who controls energy? Join in a panel of experts discussing the recent trend toward community control and its implication for the future of energy—locally, in California, and beyond. Hosted by the USF School of Law's Environmental Law Student and Alumni Society.

November 2016

11/02

EBA ENERGIZER: ORDER NO. 1000- FIVE-YEAR CHECKUP

Five years after the Federal Energy Regulatory Commission issued Order No. 1000, transmission owners and developers have begun vying for opportunities to expand the nation's transmission system. Has competition for the right to construct and own transmission projects evolved in the way envisioned by Order No. 1000?

11/03 to 11/04



2016 EBA PRIMER SERIES: AN INTRODUCTION TO FEDERAL REGULATION OF THE NATURAL GAS INDUSTRY

Taught by industry practitioners and regulators from the Federal Energy Regulatory Commission, the goal of this primer is to provide an overview of the federal regulation of the natural gas industry by the FERC.

11/03



NEW ORLEANS CHAPTER NETWORKING RECEPTION

Please join the EBA New Orleans Chapter Serving Louisiana (NOLA) for a networking reception immediately following the EBA Primer program. All are welcome and you do not need to attend the Primer to attend the reception.

11/07

THIRD ANNUAL CANADIAN FORUM

Join the Northeast Chapter for the EBA Third Annual Canadian Forum on November 7, 2016 at the National Club, in Toronto, Canada. This is a full day program that will explore key issues in the energy markets on energy regulation, market rules, competitive transmission and customer-owned generation.

11/17

EBA ENERGIZER: SECTION 205 FILINGS - WHAT TO EXPECT

This program will provide an overview of the different types of 205/206 filings and what the essential evidentiary showing standards are for filers/applicants or intervenors. This program will also touch upon important regulatory timing considerations and procedural aspects that regulatory attorneys must understand, plan, and manage for their clients.

January 2017

01/19 to 01/20



2017 EBA PRIMER SERIES: ELECTRICITY RELIABILITY

In this program, participants will receive an introduction to the regulatory regime governing electric reliability in the United States.

February 2017

02/23 to 02/24

2017 WESTERN CHAPTER ANNUAL MEETING



SAVE THE DATE! This event will be held at the Palace Hotel San Francisco, 2 New Montgomery Street, in San Francisco. Stay tuned for further details.

March 2017

03/06 to 03/07



2017 MIDWEST CHAPTER ANNUAL MEETING

Save the Date! This event will be held at the InterContinental in Milwaukee. Stay tuned for additional details.

April 2017

04/03 to 04/04

2017 EBA ANNUAL MEETING & CONFERENCE

October 2017

10/17 to 10/18

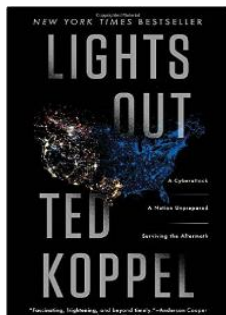
2017 EBA MID-YEAR ENERGY FORUM

2. Membership Renewal Time is Coming Soon

The [renewal](#) period for membership with the Energy Bar Association (EBA) is days away and fast approaching. As you already know, being part of EBA gives you access to an exclusive club of prominent and powerful insiders in all aspects of the energy field. Attorneys, policymakers, technical experts and the media all converge at EBA events to discuss and debate issues and trends that impact you and your clients. Where else can you discuss matters of personal interest with policymakers that make or implement laws and regulations of concern to you? Where else can you exchange ideas with peers and counterparts, many world-renown for their expertise on energy law? Where else can you receive live and on-demand training that gives you real-time information and knowledge on issues that impact your practice, and where you may also earned Continuing Legal Education credits.

The Energy Bar Association provides all that to you and more. You know the value of membership with EBA. [Renew yours today.](#)

3. Save The Date for the Energy Bar Association's Book Club Selection for Winter 2016: Lights Out by Ted Koppel



Imagine a blackout lasting not days, but weeks or months. Tens of millions of people over several states are affected. There is no running water, no sewage, no refrigeration or light. Food and medical supplies are dwindling. Devices we rely on have gone dark. Banks no longer function, looting is widespread, and law and order are being tested as never before. It isn't just a scenario, says Ted Koppel, the former anchor of Nightline in his recent publication, *Lights Out: A Cyberattack, a Nation Unprepared, Surviving the Aftermath*.

Jonathan D. Schneider, Partner at Stinson Leonard Street LLP, will lead a discussion of *Lights Out* on Thursday, December 8, 2016, 6:30 PM – 8:00 PM, at Hunton & Williams LLP, 2200 Pennsylvania Avenue, NW, Washington, DC 20037. The event is free but limited to the first 30 people that register. To register, contact EBABCModerator@gmail.com. Join the online [EBA Book Club](#) forum (free registration required).

Are You Taking Advantage of One of the Most Important Resources Available to You? Do You Need Additional CLE Credits for the Year?



The Energy Bar Association's (EBA) [On-Demand Programs](#) provide you content from subject matter experts on a range of energy industry issues relevant to you and your practice. EBA, in partnership with West LegalEdCenter, has developed a library of on-demand program recordings for purchase, download and to listen to when you it meets your busy schedule. Many programs include Continuing Legal Education (CLE) credits.

EBA members receive a discount on all orders. By accessing and registering for programs via [EBA's On-Demand Programs](#), you will enjoy your member savings. Some of the on-demand programs available to you include:

- [Mastering Your First \(or Next\) State Public Utility Commission Hearing](#)
- [Breaking the Rules and Changing the Game: Will Shale Gas Rock the World?](#)
- [My Best and Worst Experiences Facing the Appeals Court Judges: Lessons from Real World Experiences](#)

Visit EBA's [On-Demand Programs](#) to access all the programming available as well as CLE credits and discounts.

Energy Elite Gather at EBA's 2016 Mid-Year Energy Forum



(Pictured from left to right: FERC Commissioner Cheryl LaFleur, Colette Honorable and former FERC Commissioner Tony Clark)

Hundreds of influential attorneys, federal and state officials, activists and journalists in the energy and environmental industries gathered at the Energy Bar Association's (EBA) [2016 Mid-Year Energy Forum](#) on October 5 and 6, 2016 at the Renaissance Hotel in Washington, DC.

The Mid-Year Energy Forum featured events with Federal Energy Regulatory Commission (FERC) Commissioners Cheryl LaFleur and Colette Honorable, former FERC Commissioners Tony Clark, Vicky Bailey, Marc Spitzer and Phil Moehler, FERC Acting Chief Administrative Law Judge Carmen Cintron, former Assistant Energy Secretary Robert Gee as well as numerous federal and state regulatory officials. In addition, there was the Honorable Judge Curtis L. Wagner, Jr. Reception for FERC's Administrative Law Judges as well as presentations of the prestigious Paul E. Nordstrom Service Award to preeminent energy attorney Robert (Bob) Fleishman and the State Regulatory Practitioners Award to Sandra Mattavous-Frye, the People's Counsel for the District of Columbia.

Policy event sessions enjoyed by attendees over two days included panels on grid modernization, cross-border energy disputes, the recent expansion of the California Independent System Operator's (CAISO) Energy Imbalance Market, environmental challenges for natural gas infrastructure projects, the impact of tribal consultations on FERC's gas pipeline certification process, an analysis of the current wave of energy industry bankruptcies and restructurings, an overview of state-level progress on carbon reduction goals in the aftermath of the Supreme Court's stay of the Clean Power Plan, the potential state and federal regulatory impact of the massive Aliso Canyon natural gas leak on storage facility operators across the nation, the future of competitive transmission development, and the impact of expanding drone usage on utilities.

The Mid-Year Energy Forum Photos

Visit EBA's [Flickr](#) page to view more photos from the Mid-Year Energy Forum.













Visit EBA's [Flickr](#) page to view more photos from the Mid-Year Energy Forum.

Media Coverage of EBA's Mid-Year Energy Forum

The news industry was ensconced in panel sessions during both days EBA's Mid-Year Energy Forum. RTO Insider, a key industry outlet, provided [in-depth coverage](#) in its October 11, 2016 edition. RTO Insider covered the opening general session on diversity and overcoming racial and gender bias, a debate between distributed versus utility-scale solar generation, and discussions about the expansion of the Western Energy Imbalance Market, the Supreme Court's stay on the Clean Power Plan and FERC's Order 1000.

The Foster Report provided in-depth coverage of Forum proceedings as well with articles on the [Indian tribal consultation process](#) with FERC and industry pipeline builders, industry perspectives on the impact of the [Aliso Canyon leak](#) on underground storage operators and the [environmental challenges](#) of natural gas infrastructure projects. EnergyWire also [covered](#) the tribal consultation process. S&P Global Market Intelligence focused on [former FERC Commissioner Tony Clark's](#) concerns about the politicization of the regulatory process of energy pipelines and infrastructure projects. Argus Media monitored the Aliso Canyon discussion and [noted](#) federal regulators were looking to issue new rules regarding underground gas storage. The Washington Informer covered the [2016 State Regulatory Practitioner Award](#) presentation to Sandra Mattavous-Frye, the People's Counsel for the District of Columbia.

EBA Launches New Social Media Channels to Enhance Information Sharing and Engagement for Members

Did you miss EBA's Mid-Year Energy Forum?

While hundreds of energy attorneys and policymakers were networking, training and sharing information at the 2016 Mid-Year Energy Forum, EBA was documenting proceedings for

attendees who could not get to all the events and for those who were not able to make it this year. Please visit EBA's [Flickr](#) page to view photos from the Mid-Year Energy Forum. See a photo you like from this event or a future event? Let us know and we'll be happy to share it with you. EBA also launched a new Twitter channel. [Follow us](#). You may also be interested in viewing our Twitter coverage of the [Mid-Year Energy Forum](#).

Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

"The legal theories used by federal enforcement agencies in reaction to the debacle in the western markets are largely untested in the courts. Private litigation, especially under state antitrust laws, has not been resolved. Criminal prosecution is a new development in this realm. Because so many of the enforcement and private cases have been settled or arbitrated, there have been few reports of decided cases. Now come the new FERC rules. While patterned after a rule under the securities laws that has an enormous judicial gloss, it is uncertain how their precedents will be applied by FERC or by the courts. Beyond the substantive issues lie procedural and strategic considerations that any participant in the energy markets who becomes the subject of an enforcement inquiry must take into account."

Allan Horwich, *Warnings to the Unwary: Multi-Jurisdictional Federal Enforcement of Manipulation and Deception in the Energy Markets After the Energy Policy Act of 2005*, 27 ELJ 363, 421-2 (2006)

Twenty Years Ago

"A merger analysis must look forward, but with the knowledge that policies to ensure competitive conditions in today's markets will not necessarily do so in tomorrow's markets. Merger policy that operates under such uncertainty can best anticipate the unknown by first identifying the assets utilities can use to block new competition and determining how a merger will affect the gains from using them. Those assets are in transmission and not in generation. A merger is more likely to harm competition because of its effects on transmission than its effects on energy markets. Open access protects both competition in existing markets and competition to reshape markets by introducing new products and trading institutions. The single most relevant market for both types of competition is the market for rights to use transmission."

Robert J. Michaels, *Market Power in Electric Utility Mergers: Access, Energy, and the Guidelines*, 17 ELJ 401, 424 (1996)

Thirty Years Ago

“Order No. 451 will create problems as well as opportunities for the producing segment of the industry. For instance, the order may have an adverse effect on the development of new gas reserves, particularly by small producers who thrived under the NGPA. Increased old gas prices cause should, as the Commission predicts, provide older, larger producers with an incentive to maximize the recovery of old gas. If, however, increases in old gas prices cause the price of new gas to fall, producers of new gas may have neither the incentives nor the financial resources to explore for and develop additional reserves of new gas. Such a phenomenon, were it to occur, could cause severe adverse repercussions for the entire industry in the years to come.”

Charles H. Shoneman and Gerard R. McConnell, *FERC Order No. 451: Free (Almost) for Old Gas*, 7 ELJ 299, 329 (1986)

Preeminent Energy Lawyer Robert Fleishman Receives 2016 Paul E. Nordstrom Service Award



(Pictured from left to right: FELJ President Lisa Gast, ELJ Editor-in-Chief Robert Fleishman, EBA President Emma Hand and CFEBA President Jane Rueger)

Robert (Bob) Fleishman, a distinguished energy regulatory attorney with Morrison & Foerster and the long-term editor of the Energy Law Journal (ELJ) received the Energy Bar Association’s (EBA) 2016 Paul E. Nordstrom Service Award during EBA's Mid-Year Energy Forum. The award recognizes exemplary long-term public service to the community through EBA, the Charitable Foundation of Energy Bar Association (CFEBA), or the Foundation of the Energy Law Journal (FELJ). Fleishman was presented the award by Emma Hand, President of EBA’s Board of Directors.

Fleishman, a former EBA President and ELJ's Editor-In-Chief since 2006, was visibly moved as he discussed his personal friendship with and deep respect for Nordstrom. “Paul Nordstrom was

beloved by energy lawyers for his service, his bravery, and his vision,” he said. “I am deeply honored to receive this award.”

Fleishman's pro bono activities include building a community microgrid composed of natural gas and renewable generation sources and energy storage for schools, businesses, and low and moderate income residents of the East Village neighborhood in New York City that was devastated by Superstorm Sandy. He is a former president of the Grassroots Crisis Intervention Center in Howard County, Maryland, a 24-hour crisis intervention center, shelter for the homeless, and suicide hotline, as well as the Community Mediation Program in Baltimore providing free mediation services, teaching conflict resolution skills, mobilizing volunteer community mediators, and educating the public to reduce violence and interpersonal conflict.

Sandra Mattavous-Frye, the People’s Council for the District of Columbia, Receives 2016 State Practitioners Award



(Pictured from left to right: EBA President Emma Hand and Sandra Mattavous-Frye, the People's Counsel for the District of Columbia)

Sandra Mattavous-Frye, the People's Counsel for the District of Columbia, was presented with the 2016 State Regulatory Practitioner Award during the Energy Bar Association's (EBA) 2016 Mid-Year Energy Forum. Mattavous-Frye is serving her second term as the People's Counsel after she was reappointed by DC Mayor Muriel Bowser in 2015. She was originally appointed by DC Mayor Vincent Gray in 2011.

"Much has changed since I began my career journey over 30 years ago," Mattavous-Frye said in accepting the award. "The energy industry has evolved from a staid, single track business model to a diverse, robust and dynamic melting pot of technology and policy-driven energy options."

However, my guiding principle that consumers must have a place at the table in the regulatory process has not changed nor my belief that ratepayers are entitled to just and reasonable rates and reliable service. This recognition as the recipient of the EBA's State Regulatory Practitioner Award is validation that the Office of the People's Counsel is meeting its mission to advocate, educate and protect utility consumers in the District of Columbia."

Emma Hand, President of EBA's Board of Directors, presented the award to Mattavous-Frye, and praised her for "leading the Office of the People's Council's work to protect District utility ratepayers in cases such as the PHI/Exelon merger, the city's powerline undergrounding initiative to reduce storm-related outages, and investigations into Verizon's delivery of services."

Opportunities and Influence of Women in Energy Industry Growing



(Pictured: Dominion Energy Senior Vice President Anne Bomar)

The influence of women is growing in the energy industry according to Anne Bomar, Senior Vice President of Dominion Energy. Bomar cited her own rise through the ranks of Dominion as an example of what women can accomplish in the field of energy law as she spoke before a sold-out audience at the Energy Bar Association's (EBA) Mid-Year Forum's inaugural Women in Energy Breakfast.

"This is a transformative time in our industry," Bomar said. "We are witnessing the potential for a generational shift in the policies, laws and regulations that govern our energy infrastructure. These changes represent challenging new issues to resolve. But times of change are also points of opportunity, especially for those of us who may bring fresh ideas to the table."

Bomar said tremendous opportunities await women who can show they are capable of taking leadership positions in an industry traditionally dominated by men. "Become an expert on the latest process changes," she suggested. "Study up on emerging policies ... these are real opportunities for you to close the experience gap. Your fresh, unbiased perspective may serve as an advantage. However, expertise alone is not enough. Engagement is also required, if you expect to be a valued contributor. Be willing to 'call it like you see it' - diplomatically."

Bomar believes a more inclusive work environment will help everyone. "In a more diverse, more open environment," she said "we are exposed to the points that matter for a wider range of stakeholders. These multiple perspectives need to be understood, and factored in to the decision at hand."

EBA would like to thank McGuire Woods LLP who sponsored the breakfast.

EBA's Work on Energy Law Education Garners International Recognition

Energy Bar Association (EBA) members are well aware of its impact on energy law education in the United States. However, [A Review of Energy Law in the UK](#), an article in the October 5, 2016 edition of the *Journal of World Energy Law and Business* discusses EBA's influence in the United Kingdom.

The Journal article focuses on the impact of an EBA Ad Hoc Committee on Energy Law Education report, "[Energy Law Education in the U.S.: An Overview and Recommendations](#)," originally published in the Energy Law Journal. The Journal noted the report demonstrates the scale and ambition of energy law education in the U.S. and provided comparisons with the U.K. The Journal observed more universities than ever are recruiting for positions in energy law, and that there are also more academic and practitioner events focusing on energy law.

"It is great to see this EBA effort gain meaningful traction on the international stage," said Immediate Past EBA President Rich Meyer. "It is important for EBA's sound work to be relied upon in a meaningful way."

The EBA committee report was led by Donna Attanasio, Professor and Senior Law Advisor for Energy Programs at the George Washington University Law School, and a former EBA President. The Energy Law Journal, with 3,000 subscribers from the U.S. and around the world, is the energy industry's preeminent academic publication with contributions from internationally known academics, practitioners and senior government policymakers and judges.



(Pictured from left to right: Former EBA presidents Sheila Hollis and Adrienne Clair, EBA's ABA Delegate, attend the American Bar Association's 2016 Meeting.)

Chapter Updates

New Orleans Chapter



(Pictured; Attendees of the New Orleans Chapter event with FERC Commissioner Honorable, center of front row.)

The Energy Bar Association's (EBA) New Orleans Chapter hosted the Federal Energy Regulatory Commission's Commissioner Colette Honorable at a breakfast on August 11 in Phelps Dunbar's New Orleans office. Commissioner Honorable engaged attendees on a broad range of energy topics. In attendance were Louisiana Public Service Commission Commissioners Eric Skrmetta

and Lambert Boissiere, representatives from the New Orleans City Council Utilities Regulatory Office and electric utilities as well as private practitioners and academics.

The chapter will be hosting an EBA Primer Series: [An Introduction to Federal Regulation of the Natural Gas Industry](#) on November 3-4 in New Orleans. A reception for Primer attendees will held on November 3. The chapter is also developing a course with Loyola Law School to help it law students gain a fuller understanding of the energy law.

Midwest Chapter

The Oil and Liquids Committee of the Energy Bar Association's (EBA) Midwest Chapter, in coordination with EBA's New Orleans Chapter, hosted an EBA Energizer via webcast on oil market developments and the challenges faced by oil pipelines on October 18. Panelists David Coburn of Steptoe & Johnson and Arshia Javaherian of Enbridge in Chicago, and Daniel Sanborn of Kinder Morgan and Professor Eric Smith of the Tulane University Energy Institute in New Orleans discussed market developments driving oil pipeline and terminal projects and challenges companies face. Elizabeth Zembruski moderated the discussion from Chicago.

The Midwest Chapter is in the process of finalizing an event that will review the Federal Energy Regulatory Commission's (FERC) Order No. 1000. Tentatively planned for November 2, the session will analyze the order five years after implementation as transmission owners and developers vie for opportunities to expand the nation's transmission system. Panelists will examine whether competition for the right to construct and own transmission projects has evolved in the way FERC originally envisioned and what the future of competitive transmission development in the Midwest looks like. Panelists will review their experience with the competitive solicitations that have been conducted to date, discussing what has worked, what has not, and how the process can be improved.

Planning by the chapter is also underway for annual chapter meeting to be held in Milwaukee in March.

CFEBA News: CFEBA Helps Transform Lives in El Beni, Bolivia

The Charitable Foundation of the Energy Bar Association (CFEBA) is pleased to announce that its Board of Directors awarded a \$150,000 grant to the National Rural Electrification Association International Foundation (NRECA International Foundation) on August 2, 2016. This grant is the largest single grant awarded by the CFEBA to date.

The NRECA International Foundation used these funds to design, purchase and construct an electric distribution system to provide electricity to 560 families in rural El Beni, Bolivia. With the support of the CFEBA, NRECA International purchased the necessary materiel to construct 36 miles of primary and secondary power lines to connect these families. Lineman from

Arkansas, Missouri and Oklahoma volunteered their time and expertise to ensure that the power lines and connections were installed properly, thus ensuring that these hard to reach families have access to safe, affordable and reliable energy.

This project has left a mark on hundreds of Bolivian families as well as the volunteers who assisted us to transform this plan into reality.

"Now, the children can read their lessons at night, we can pump water and have a small refrigerator to preserve food," one local woman said.

The team of 15 volunteer linemen from Missouri and Oklahoma learned quickly upon arrival to improvise and think out of the box, when their job to bring electric power to a pair of communities; El Torito and Dos de Junio seemed to be in jeopardy. Their tools and small equipment were stuck in Customs and didn't arrive for six days. After a rapid assessment of the situation, the team determined what they could do with what they had. After their tools arrived and the final hook-ups were completed, 361 families saw their first light bulbs illuminate the darkness in their very rudimentary homes.

One of our volunteers reported that, "it was like what rural Missourians must have experienced when the first co-op lines went in around the 1930s. The young men and boys cheered when the lights went on. The women wept."

Power transforms the lives and livelihoods of people and the communities in which they live. Ultimately, the villages CFEBA and NRECA served can anticipate higher incomes, reductions in poverty and an overall improvement in quality of life. Appliances, both agricultural and domestic, will make them more productive. They will have greater access to local markets and be able to diversify their sources of income.

At the same time, their children will benefit from better educational outcomes thanks to more available time to study after sunset, enhanced and comfortable learning environments featuring sufficient light to read and write, greater access to radio and television programming, and parents who will have more time to assist their children during study time.

Women, too, will prosper thanks to safe and reliable electricity. Studies have repeatedly shown that electrification contributes to an overall improvement in women's socioeconomic status. It enhances their mobility, participation in the community and household financial decisions, knowledge of gender and health issues and ability to devote time to things other than household chores.

"The CFEBA works hard to identify worthy energy-related charities where our grants can make a real difference in peoples' lives," said CFEBA President, Jane Rueger. "Every individual EBA member, firm and corporation can be a part of that. We hope that as more people see and hear about what we do, our grants will continue to grow."



CFEBA News: Mid-Year Energy Forum Attendees Lift Glasses in Support



Attendees to this year's EBA Mid-Year Energy Forum demonstrated their ongoing commitment to the Charitable Foundation of EBA (CFEBA) by raising over \$3,300 in donations.

The funds were raised through a "Wine Pull" at a dinner event featuring FERC Commissioner Colette Honorable on October 5. Donors purchased \$30 tickets to select a mystery bottle of red or white wine that they enjoyed with their meals. Diners were also treated to an entertaining evening with Commissioner Honorable, who demonstrated her acting and singing talents to an audience of energy regulators, attorneys and practitioners.

CFEBA is a non-profit organization that donates funds to energy-related projects. Recent CFEBA grants helped fund a National Rural Electric Cooperative Association International effort to provide electricity to families in rural El Beni, Bolivia, and to aid Global Solace, Inc. with installation of a solar electrical system at a school in Anse d'Hainault, Haiti.

To date, CFEBA has contributed more than \$1.25 million to more than 50 energy initiatives.

FELJ News: Morrison Discusses Capacity Markets



(Pictured from left to right: NRECA Vice President of Regulatory Affairs and FELJ Editor Harvey Reiter discusses Morrison's recent article during a FELJ Author Talk.)

Jay Morrison, the National Rural Electric Cooperative Association's (NRECA) Vice President of Regulatory Affairs discussed his recent Foundation of the Energy Law Journal (FELJ) article, Capacity Markets: A Path Back to Resource Adequacy with FELJ Editor Harvey Reiter during a recent EBA webinar. Morrison believes that while centralized capacity market constructs are a useful tool for enabling efficient short-term capacity transactions, they do have shortcomings. Morrison discussed what steps FERC should consider to address these challenges. Read Morrison's article [here](#).

FELJ News: 2016 FELJ Mogel Intern Chase Snodgrass Recounts Summer to Remember



(Pictured: FELJ Intern Charles Snodgrass)

The Foundation of the Energy Law Journal (FELJ) was pleased to sponsor Chase Snodgrass for an internship with Congressman Markwayne Mullin (R-OK) this summer. FELJ's William Mogel Internship Program sponsors student members of the Energy Bar Association (EBA) for energy-related policy opportunities in Washington, DC. Congressman Mullin is a member of the House Energy and Commerce Committee and was named by House Speaker Paul Ryan as a conferee to help reconcile differences between the House and Senate on energy legislation in May.

Snodgrass noted the internship provided with him with a unique opportunity to deepen his knowledge and understanding of energy law and policy. During his internship in Washington, he was also able to attend EBA's annual meetings where he had a chance to meet Mogel and other influential actors in the energy law field.

"I will never forget the summer I spent in Washington," Snodgrass said. "I am extremely grateful for the FELJ's support and to all those who helped make it happen. Now let's just hope Congress can agree on some bipartisan energy policies!"

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.