

FERC Chairman Kevin McIntyre Charges Full Steam Ahead

[He Tells of Challenges and Opportunities Facing the Agency](#)



Chairman Kevin McIntyre of the Federal Energy Regulatory Commission generously granted an hour-length interview with the *EBA Update* inquisitorial squad Gary Guy and David Martin Connelly (aka “Neil Sheehan and Peter Arnett”). Here is a recap.

A Known Commodity in the Energy Bar

Chairman McIntyre was in a very good mood, and had already been in and out of several Monday meetings, including an EBA Leadership briefing, by the time we had our afternoon visit. We both have known the Chairman for many years as fellow practitioners and active EBA members. As our readers are aware, Chairman McIntyre has been ubiquitous at the agency for the last approximately 30 years, having represented clients throughout various industry sectors, including natural gas, conventional electricity, oil, hydropower, wind power and other renewable resources, and energy marketing and trading – even co-authoring an Electric Power Purchasing Handbook. Members have come across him in administrative and appellate litigation, compliance and enforcement matters, and corporate transactions.

Having given up his position as co-leader of the Global Energy Practice at Jones Day to serve as the new FERC Chairman, it appears that he will be remaining in his new post well past the next Presidential election, as the Senate confirmed him simultaneously to not only complete a term expiring June 30, 2018 but also to a full term expiring June 30, 2023. That should be good news to his wife Jennifer and their three children, as D.C. has been their home during his three-decade legal career, not to mention his being a graduate of Georgetown University Law Center, where he has been an active Law Alumni Board Chairman and Law Annual Fund Chairman (but doing his undergraduate studies on the opposite coast at San Diego University). We could not wait to have at our familiar, most distinguished newsmaker.

Who is this Man?

Shame on you if you are a FERC practitioner and EBA member and don’t know him. He has been ubiquitous in the energy field.

Not that he planned it that way. In fact, as to his ultimate specialization in energy law, he confesses that he “stumbled blindly into it.” He first received a political science degree and then pursued a law degree. As a second-year law student, young McIntyre perused Georgetown Law Career Services’ 1986 collection of brochures on various cities’ law firms, only to find all firms described in terms that were all but identical. Each brochure professed that the firm cared deeply about the career advancement of its associates, and each firm claimed to practice essentially every field of law. This made it all but impossible to distinguish one firm from another.

Ultimately, he went on some interviews and made his choice strictly based on the personalities he liked the best. And, unsurprisingly, the firm he chose ended up being Thelen Reid and Priest. Many nice and talented energy lawyers worked at that esteemed, now-dissolved firm. They included former (F)EBA President Dick Merriman, Peyton Bowman, Phil Lookadoo, John McGrane, Bob Waters, and Mac Norton. And we all learned from the great two-volume energy law treatise by firm co-founder A.J.G. Priest.

Eventually, after working at the firm awhile, summer associate McIntyre discovered that little by little, when he when he wasn’t paying attention, he had become an energy law practitioner by accident. A Reid & Priest partner assigned him to a Panhandle Eastern Pipe Line general rate case, Docket No. RP88-262, presided over by Administrative Law Judge Bruce Birchman. The voluminous pleadings, testimony, and transcripts “ruined my eyes.”

His first FERC case “ruined my eyes.”

But he was hooked, stuck with it, and 30 years later he is now the head of the very agency where he first started attending hearings while still in law school.

What’s it Like and How Did He Get There?

“Leading this wonderful agency as Chairman is an enormous challenge and lots of fun,” he tells us. That said, he never sought the Office and never expected to hold it. Quite the opposite: “I was happy laboring in the private sector vineyard.” And he even misses his clients, something we can well understand.

However, he received the call and concluded, “I’m a knucklehead if I don’t consider this opportunity. He was not politically active but was known by those who were, and benefited from their recommendation. He sees the Chairmanship as a way of “making a contribution to our Nation’s law and energy policy.”

But he does have some constraints on his participation in deciding certain matters before the agency because of his representation and that of his firm on behalf of entities in FERC proceedings. He is quite accepting of this and leaves the recusal decisions entirely up to the designated ethics professionals whom he keeps “on speed dial.”

While there is “no pat answer” as to when to recuse oneself, he describes the practice to be that executive branch officials must sign an individual letter agreement with the Office of Government Ethics regarding recusals and that he is also subject to the Office of Government

Ethics Standards of Conduct Regulations, the Commission’s rules and a separate Trump Administration ethics pledge.

He follows these requirements cheerfully because, as he told us, he is “very much a ‘rule of law’ guy.”



Staffing Up

He is not one to bother about rearranging things that are working well, at least personnel-wise. The Chairman is quite pleased with the FERC Staff as it was upon his arrival. He praises General Counsel James Dandy for doing a “bang-up job.” In fact, he has not exercised his discretion to replace any Office heads because he finds himself pleased with them all. “The people who are in place are doing a good job; it’s going great!”, is how he sums it up. He finds the spirit to be high, and the dedication and quality of the work to also be at the top of the charts, and he likes the smiling faces he sees in the building.

The fact that an independent survey ranks FERC as the No. 1 mid-size Federal agency in terms of employee job satisfaction does not surprise him in the slightest because he knows “the employees care about the mission.” In addition, at FERC, “people care about each other. The warmth of the place is heartening.”

FERC Staff “care about this place” and “care about each other.”

Productivity High in the McIntyre Administration

Despite his outward calm, the Chairman is leading an agency that is engaged in a whirlwind of activity. Sworn in on December 7th, he was faced with a two-day deadline to act on a Department of Energy grid resiliency initiative of monumental significance to the energy industry. He claims his first courageous act as Chairman was to request of Energy Secretary Perry a 30-day extension, which was readily granted. He believes the agency carried out a proper review and “feels very good about where we came out.” While he generally does not follow the press coverage of FERC’s actions “unless it is pointed out,” in this instance he describes as “nonsense” the stories suggesting that the DOE proposal had amounted to an improper intervention by the Secretary into the workings of an agency that is supposed to be

independent. He maintains that the matter “proceeded on the basis of law.” He stays focused on doing his job and leaves it to FERC’s “great office of external affairs” to respond to the press.



He also led his agency in taking swift action in response to the December 2017 enactment by Congress of the Federal corporate tax rate reduction. In response, FERC opened generic inquiries and case-specific show cause proceedings. He jokingly said this new tax law was “foisted upon us.” (He makes for great copy with his colorful expressions that flow from his easygoing demeanor.) But he was very cognizant that stakeholders wanted “swift action” on flowing through reduced taxes in rates and he was firm in taking “efficient action” through multiple processes that are going forward.

Undaunted by these fast-moving events that were thrust upon him, Chairman McIntyre launched initiatives of his own quickly upon taking Office. For example, he instituted an inquiry into the Commission’s natural gas pipeline certification policy statement. The reason he chose to raise an examination in this area is to seek ways to streamline and make more transparent and predictable the pipeline construction certificate process. He is calling for a “robust examination” in recognition of a “general clamoring for significant investments in new infrastructure — particularly natural gas pipelines and facilities for the export of liquefied natural gas (LNG) — to address needs triggered by the enormous gas production increases made possible by fracking. He is concerned that “yesterday’s model is not addressing today’s problems.”

Certain press accounts are “nonsense” and FERC acts because “yesterday’s model is not addressing today’s problems.”

Public Interest-Minded Commissioners, Doing Good

As with the response to the DOE resilience proposal and the swift reaction to the Congressional tax law change, the pipeline certificate process review is being handled solely

with the “public interest as the goal.” Chairman McIntyre states that this is the approach taken by all the Commissioners. He calls his colleagues “well educated” and “thoughtful.” More than that, “they have my respect and I learn from them every day. We work it out in a collegial manner.” They maintain a good relationship by keeping up the custom of having a brown bag lunch where they discuss everything and anything except work. And the General Counsel joins them just to make sure.

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In terms of FERC interactions with other entities, he finds that Court reviews are well handled by the Office of the Solicitor, Bob Solomon, who is “great” at his job, and that Capitol Hill oversight is also working well. He has testified before Committees on how the grid performed during a cold snap and finds that both Houses “take oversight seriously and ask good questions on legitimate issues.”

He is also pleased with jurisdictional roles between FERC and the state agencies. There “is a lot going on” in this area, he tells us, with “tricky territory” to traverse. Chairman McIntyre respects states’ authority to make resource decisions that are within their jurisdiction, but he also notes that FERC has an obligation to make sure that wholesale rates are just and reasonable and not unduly discriminatory.

Chairman McIntyre also has international relationships to handle. He spoke at Cancun, Mexico and met with both his Mexican host and other world regulators. He found them to be “fascinated with the U.S.” and it was a great responsibility for him to be representing FERC as a model for them.

Of course, NERC is an organization which FERC oversees and interacts with constantly. The good Chairman describes the relationship between the two entities as “great and getting better!” He is highly complimentary of both the recent interim President and CEO (who has returned to his former executive titles, including General Counsel) Charlie Berardesco as well as the newly installed NERC head, Jim Robb. He observed that he is sure that Charlie is relieved, after having done a good job in that interim period, and that Jim is a great choice going forward.

Finally, there is the relationship with the Energy Bar Association to consider. The Chairman is a long-time active leader of our Association, as we all know. He has been very helpful to us as Chairman with speaking engagements, meetings, and, of course, interviews. Of his meeting with the new Officer Corps at the EBA, Chairman McIntyre praises the “dedication to excellence” and the betterment of the profession and the industry.

We can truthfully say the same about him as well.



Chairman Chit Chat

Favorite DC Area Restaurant: El Paso Café in Arlington.

Most admired public figure: Ronald Reagan.

Favorite season and why: Fall; loves fall weather, particularly in D.C.

Favorite pizza topping: Sausage.

Secret to work/life balance: “Listen to your spouse.”

Something learned from parents: Familial love, hard work, personal responsibility and faith.

Best advice ever received (from his wife Jenny): “Live every day with joy.”

Most challenging aspect of transitioning to public service: “Having people open the door for me.”

Favorite dessert: Bananas foster.

Who most influenced him during childhood: His parents.

Who most influences him now: His wife.

Advice on energy law: “Cut no corners, and dedicate yourself to thoroughness, to thoughtfulness, and, in all matters, big and small, to excellence.”

Favorite type of music: Classical.

Hire somebody or do it yourself: “Given time, do it myself. But I am increasingly having to compromise on that principle.”

Favorite sport to watch and to participate in: In both cases, baseball.

Mountains or beach: Beach.

Most important lesson for your kids: “Be honest, work hard, serve others, remember where you came from, and be thankful for your many blessings.”