



Long-Time FERC Commissioner Cheryl A. LaFleur Gives Farewell Interview To EBA, Covering Past, Present, and Future

Former Chairman Led Agency Through Turbulent Times

Approaching the end of her nearly decade-long tenure on the 11th floor of the Federal Energy Regulatory Commission as a Commissioner, Acting Chairman, and Chairman, Cheryl A. LaFleur graciously granted EBA our third exclusive interview with her over this time period. Your scribes Gary E. Guy and David Martin Connelly (aka “Edward R. Murrow and David Halberstam”) were thrilled but saddened to be visiting with her about her imminent departure from her post at the end of August. Here, now, is an account of her recollections of times past, and observations and insights concerning the challenges ahead.

A Roller Coaster Ride

While Bill Massey holds the record of being on the Commission for 11 ½ years, Cheryl LaFleur and Phil Moeller are just about equal with “nine and change” as Ms. LaFleur calls it. And, of course, she served as Chairman for more than the weekend that Mr. Massey can claim, so that evens the score among these three heavy hitters.

She estimates that the Commission has had more than ten configurations during her service, all with “a slightly different center of gravity.” And she herself has been holding different titles, sort of an on-again and off-again Chairmanship. Only she can use the phrase, as she did with us, “Well, when I was Acting the first time....” She says those that oversee such matters in the federal government had requested that she not make senior staff changes until the naming of a permanent Chairman and so she served from November 2014 through July 2015, a lengthy period, in which more and more vacancies created by high level retirements were filled with lots of “interim” appointments. Then she was given the Chairman gavel for an 8½ month prescribed term (or “stint” as she calls it) leading up to Norman Bay’s preset designation as Chairman effective April 15, 2015, and she used the first couple of those months “cleaning up the senior staff vacancies.” Other than the withholding of appointments in her initial top slot reign, she had all the full powers of the Chairmanship. And then she came back into the Chairmanship again, even having to deal

with a lack of a quorum for a period when Chairman Bay unexpectedly resigned in January 2017 until Kevin McIntyre was nominated, confirmed, and sworn in as President Trump's pick.

While her initial appointment to FERC was a surprise to everyone including her, there was a *battle royale* of sorts when she was up for renomination in 2014. She recalls an above-the-fold article in *The Wall Street Journal* in which Senator Harry Reid spoke against her being Chairman. This impressed her long-time friends that she was so prominent that a high-powered Senator would criticize her in the newspaper – giving her sudden celebrity status in their eyes.

No Senator had backed her when she was first nominated, but the New England delegation supported her confirmation once the White House sent up her name, and many Senators, including the powerful Lisa Murkowski, very much wanted her to be named Chairman if even for a shortened term, before President Obama's selection of Mr. Bay for the position would take effect. In 2014, both her renomination and whether she or Norman Bay, a first-term nominee, would be Chairman were open questions. And, as with many things involving Congress, all things became possible through compromise, with both being confirmed and both serving time as Chairman. She adds that they are friends, which is unsurprising since she was agreeable to remain on the Commission after giving up the Chairmanship to him. And she then went on to serve up to the present time with great distinction. She calls the April 2015 transfer of power "awkward" and "hard." However, she had previously been a Commissioner and "kept remembering how much I loved" that role, and she had new Staffers coming in that June who never were with her as Chairman and would never know how that had been while serving her going forward, so she eagerly went back to her former office and "kind of rebooted." She is "happy I did because look at everything I would have missed!"



Stepping down as Chairman/remaining as Commissioner: "Happy I did because look at everything I would have missed!"

So, she is unique in terms of her status (with only Chairman Martin Allday having stayed once Betsy Mohler moved up to Chairman but that was for only the remaining month or so of his term, not the four years of additional service rendered by Commissioner LaFleur).

Handling All These Transitions; Portable Office Relocations

She both preceded and succeeded Norman Bay in 2015 and 2017, respectively. With no expectation that President Trump would make her Chairman, she just took her papers and computer with her to the Chairman's Office so she could "scoot" back again when the incoming Chairman arrived.

When she was renominated in 2014, she had sought the second term, and this last winter 2018, she was "open" to serving yet a third term. She said, "I do love the place, and goodness knows, we have interesting issues, and a lot of them ahead of us!" She tells us she was informed that another nomination was unlikely. Rather than leave her fate to be officially announced by others, she decided to herself announce in the end of January that she would leave at the expiration of her current term, so that she had time to "get used to the idea." Although she said she is "very sad to be leaving FERC because I am so fond of the place," she is over "mourning the third term" and has "moved on."

We expressed our own regrets at her leaving and observed how genuine tears had been shed by admirers at her last Commission Meeting – and unashamedly professed how much we will be missing her clam chowder at the FERC end-of-the-year holiday party. She laughed at the latter remark and explained that she wanted to serve something from her native New England. She first considered lobster rolls until she discovered how largely attended this annual event is and how that makes it prohibitively expensive to serve that delicacy. Her husband informed her that the aroma of the chowder wafted all the way into the elevators coming up to the top floor of the building.

No "mourning a third term."

The Worst of Times (And Surprisingly It Was NOT the Lack of a Quorum)

Her busiest period during her two terms was when she first stepped up as Acting Chairman when Jon Wellinghoff unexpectedly left in November 2013, with her having less than an hour's notice before the commencement of a Commission Meeting that she was to be Acting Chairman. She credits Senior Staff with showing her how to be Chairman and what rules were in place to perform that function. She said, "I was just sort of settling in as Acting Chairman [in November 2013] ... when in January [2014] they nominated Norman Bay to be Chairman and I didn't have a Chief of Staff since I didn't know how long I was going to be Chairman." She had three Advisors and two Administrative professionals within her Office. She was trying to get all the paperwork submitted to be renominated and reconfirmed and prepare testimony, all while running the Commission, and "we had that whole incident with *The Wall Street Journal* and the nine substations and the physical security standard." There was a lot going on from January through March 2014 with her suddenly placed in charge, short-handed, and her future status in doubt. "I am proud that we kept the normal work" flowing. It was not until she "became the real Chairman" in the fall of 2014 with a Chief of Staff and full complement of staffers that she realized how "luxurious" it is to be fully staffed.

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One Woman Making a Difference

Describing when she first came to the Commission in 2010, Commissioner LaFleur stated, "I thought I could add value on reliability because I had an operating background, so I jumped right in on reliability with both feet." Even though she was new to the Commission, in recognition of her leadership in this area, Chairman Wellinghoff asked her to Chair several reliability technical conferences. Consequently, her placement on the Commission made a distinct difference through her work on geomagnetic disturbances and physical security by her "personal spearheading on the issue." She was very involved in NERC meetings and made sure she was "fully guiding" that part of FERC's responsibility.

Commissioner LaFleur also had a major impact on the disposition through the appellate process of Order No. 745, the demand response order that was issued in 2011 under Chairman Wellinghoff's leadership as a "huge champion of demand response." She is proud that at that time she worked successfully with Commissioner Marc Spitzer to negotiate a compromise on the net benefits test to obtain four votes for issuance of the order. And she was glad to see the future fruits of those negotiations when Order No. 745 was upheld at the Supreme Court in that the net benefits test was a factor in both the oral argument and in the opinion.

Specifically, when she was Chairman and FERC received a "bad order" from the D.C. Circuit vacating and remanding Order No. 745, she worked with a bipartisan four-member Commission (with Commissioner Spitzer having left by then), and she managed to get a consensus on taking up a Supreme Court appeal, working with Commissioner Phillip Moeller, who had voted against the Order originally, and Commissioner Tony Clark, who was critical of the Order on jurisdictional grounds. She successfully negotiated for a petition for a writ of *certiorari* to the Supreme Court that was ultimately successful. Commissioner LaFleur stated, "While I was not the father or the mother of Order No. 745, I played a critical role at that stage." The Supreme Court not only upheld the Commission on the issue raised in the petition but even upheld the Commission on the issue of compensation that had not been raised in the petition by the agreement she reached with Commissioner Moeller. She believes this order is and will "make a difference for electricity customers."



She also identified her less high-profile added-value role on cost allocation issues, including the Seventh Circuit remand of PJM's pre-Order No. 1000 cost allocation methodology. She said that the Commission could not reach a majority view for a long time

on how to decide the case based on Judge Posner's opinion. She dissented (strongly by the standards of that time, although not in comparison with more current dissents) from the order that was voted out, calling instead for a "hybrid" cost allocation using partly a regional cost allocation and partly a flow-based distribution factor (or DFAX) approach.

Subsequently, after a second remand from the Seventh Circuit, her proposal, which she "dug out" from a couple places in the record, crediting legendary Pennsylvania Consumer Advocate Sonny Popowski in particular, "became what the PJM stakeholders agreed on and filed, solving both that case and the Order No. 1000 filing." She called herself a "super-satisfied energy geek" about that outcome.

She is a "super-satisfied energy geek" after her digging in the record in her dissent ended up being adopted after the majority decision was vacated and remanded.

Finally, on the continuing saga of pipeline LNG review, she has been advocating a different way of looking at the need for pipelines relative to the cost and impact. She has been pushing for years for a more fulsome look at greenhouse gas combustion impacts downstream. She says there have been "ups and downs" on that issue but she has played a major part in the developing story that has not yet been finally written and which will go on.

This latter issue began to emerge when Norman Bay was Chairman in 2016, as more climate comments started to be filed at FERC. She started out as a lonely voice, first tentatively in speeches before natural gas audiences, and internally both with Chairman Bay and Commissioner Colette Honorable, to try to focus more on environmental impact statements and climate concerns. Now it is such a high-profile matter that all Commissioners are deeply involved in the search for a solution, but she was a leader in getting the effort underway and on FERC's radar screen. She sees Commissioners Glick and McNamee as among those who will continue to move in this area, along with Chairman Chatterjee for whom this issue is his "top priority."

How Things Have Changed; What She Hates to Leave Behind

She sees a level of dissension of a different dimension now than earlier in her time at FERC. The tone of dissents is more legal rather than policy-oriented and written as alternative orders, as complete, fully footnoted stand-alone decisions. She said, “We are still collegial and like each other and have meals together.” However, the prevailing climate-driven issues that arise in both infrastructure and market cases seem to “be less prone to compromise” with “more polarization.” She finds this undesirable on a multi-member Commission. She recalls that Commissioner Suedeen Kelly dissented numerous times on *Mobile-Sierra* as a discrete drawing of a line on a fine legal point, but without the same level of disagreement of fundamentals. She believes that “the canyon of disagreement is getting deeper.” For that matter, she observes that the city is “rather polarized right now.” But the climate issue is uniquely a driver of strong and differing views, she finds. She concluded, “We don’t have a national consensus or a national direction.”

Today’s climate-driven issues are “less prone to compromise.”

The Commissioner has also witnessed an increase in public citizen protesting at the agency. Landowners have historically demonstrated against construction projects, such as a proposed substation in New York early in her first term. The protestors usually would hold up signs but otherwise not be disruptive. Now, she has seen an escalation wherein the opposition is less localized but instead based on national and even international debates on how to address climate change and concerns about fossil utilization. The social media and internet allow a greater network of coordinated protests. While saying that “we have an excellent energy press,” she observes that “the newspapers of general circulation” are less well versed in the technicalities and nuances, and this can lead to more alarm than is warranted by some protestors as to the issues and decisions involved.

As to disappointments, she would like to have been Chairman for a longer period and been able to drive more changes, particularly concerning adaptation of the markets. She wishes she would be able to continue to move ahead on two issues in particular: how we assess the need for pipelines and the climate impact, the churning issue she discussed above, and the related impact of state initiatives on large regional markets. She says the lack of national policy on climate change is resulting in states and even cities and

corporations coming forth with their own policies. The regional markets must take these forces into consideration and that is a big item for the Commission to resolve that she would have liked to have continued to tackle.

On the other hand, she philosophically points out what a colleague said to her about the regulatory process being like a river that keeps flowing so that if she stayed to resolve these pending issues, there would be another one just getting underway so that you can never arrange to have everything “buttoned up” when you leave.

What Does the Future Hold for Our Departing Commissioner?

What does the future hold for Cheryl LaFleur? She sees former Commissioners as a group that cares about the agency and its independence regardless of whether they are gainfully employed in any aspect of the energy field. She expects to also be involved in helping the agency, not as a paid consultant, but “as a friend.”



Being a part of non-profits and her community “has been part of my ethos for a long time.” She was heavily involved in those kinds of worthy causes before coming to FERC, and expects to continue to do so, but cannot determine if they will be the exact same organizations or different energy non-profits that she has a greater familiarity with now than she did prior to her role at FERC and which she regards “as an important sector of our society that I hope to contribute to.”

Commissioner LaFleur stated, “I want to thank the Energy Bar for being very welcoming to me. When I first came to town, a lot of people came to see me.” One of the former female FERC Commissioners organized a lunch for her and other women who served in the capacity so that she would feel like a welcome member of a community. As someone who had never lived in D.C. and had no circle of friends in the city, this was much appreciated by Commissioner LaFleur.

The Energy Bar has an
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She added, “The Energy Bar contributes directly to the quality of our work. By the clarity and force of the comments they put in in their dockets and the timeliness of their work, we are blessed with a very good bar; we are much better off by having an energy bar than if we had random people practicing in a case or two because they have an expertise that contributes to the quality of our work. And I do expect to remain a member of EBA!” And giving her new email address to the EBA is on her list of things to do as soon as she goes onto the outside.

We are grateful to Cheryl LaFleur for her service to our country, and her selfless devotion to EBA activities, and as a frequent speaker and attendee at so many of our functions, and we look forward to her continuing active involvement in our association. Who knows, maybe we can even auction off her clam chowder at a future CFEBBA fundraiser! Now there is a continuing legacy all can support!

Lightning Round with LaFleur

Favorite holiday:	Christmas, with cards and family (with her birthday the day before).
Favorite TV show of all time:	<i>Friends</i> .
Favorite music:	Classic rock and rock, like the Beatles.
Favorite thing about DC:	It is very airy, love flying in at night, seeing all the monuments lit up.
Favorite D.C. restaurant:	La Perla, 26 th and Pennsylvania Ave. NW.
Favorite Boston attraction:	Museum of Fine Arts.
Faneuil Hall v. Top of the Hub:	Top of the Hub because you can see the whole city.
Fenway v. Foxboro v. TD Garden:	Foxboro.
Most influential in childhood:	My Dad, and my high school Latin teacher who pushed me to go to a good college.
Most admired public figures:	Eleanor Roosevelt and Barack Obama.
Best advice ever received:	Leadership is about how you make others feel about their role, being a mirror for the organization to see the good everyone is doing.
My dream car:	One with a driver.
Most surprising personal fact:	Watches <i>Dancing with the Stars</i> and follows all the media.
Hidden talent:	Can do the Sunday <i>New York Times</i> crossword puzzle in pen in one sitting.
Item to take to a desert island:	Photo album.
Advice to EBA:	Take advantage of opportunities to strengthen relationships.
What will be missed most at FERC:	Definitely the people.
Greatest accomplishment:	Having a successful career, raising a family, and being married 40 plus years.