

IN THIS ISSUE

President's Message	2
CFEBA Update	3
Houston Chapter Update	6
Excerpts from Past ELJ Issues	7
Western Chapter Update	7
Judge's Corner	8
Excerpts from Past <i>ELJ</i> Issues	11
EBA Committees at Work	12
EBA Cimmittee Updates	13
Primer Series Highlights	14
FELJ Update	15
First Canadian Program Recap	16
Mid-Year Conference	17
EBA Bookclub Club Newsflash	19
Upcoming Events	20

New FERC Commissioner, Chairman-to-be, Norman C. Bay Gives Insights on His Approach Going Forward

Former FERC Enforcement Director on Fast Track to April 15 Top Spot

Gary E. Guy and Channing D. Strother

Having had the good fortune to interview Norman Bay in the Fall 2009 issue of *EBA Update*, when he was a newly minted Director of the Office of Enforcement at FERC, it was a thrill for Gary Guy and Channing Strother (aka "Hughes Rudd and Bruce Morton") in the second week of September to be permitted to sit down with him one-on-one in his Commissioner Offices. His bookcase was bare and his moving boxes were still piled up around his desk, so new has been his elevation to this high post. We here proudly set forth our account of our memorable second interview with Mr. Bay in five years.

Beckoned to Come to FERC

Mr. Bay's impressive background as a Harvard Law honors graduate, Law Professor, international claims tribunal lawyer, and federal prosecutor singled out for commendation by the judiciary, are all recounted in the EBA Fall 2009 newsletter. He first surfaced on the FERC scene at that time by virtue of his appointment by then-Chairman Jon



Wellinghoff as Director of Enforcement, succeeding William Hederman and Susan Court, for whom he expressed much appreciation in this latest interview. We asked him to explain the origins of that appointment as well as his most recent nomination. He verified something that we had already discovered in an EBA newsletter interview with then-outgoing FERC Commissioner Suedeem Kelly. Namely, she first suggested him to Chairman Wellinghoff to lead Enforcement. She did that after having asked him if he would have any interest in coming to FERC. And he looked into FERC's activities before giving her a positive response. He was very impressed by the importance of FERC to the

continued on page 15



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 excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies. Established in 1946 as the Federal Power Bar Association, the Association generally was focused on those lawyers practicing energy regulatory law at the federal level. In 1977, the organization changed its name to the Federal Energy Bar Association to reflect the name change of the Federal Energy Regulatory Commission. Today, the Energy Bar Association is an international, non-profit association of attorneys, non-attorney professionals and law students active in all areas of energy law. It has over 2500 members, throughout the United States, Canada and Internationally with seven formal chapters in Houston, New Orleans, Midwest, Southern, Western; Northeast and Rocky Mountain regions of the U.S.

Energy Bar Association, 2000 M St., N.W., Suite 715, Washington, D.C. 20036, Tel: 202/223-5625, Fax: 202/833-5596, E-mail: Michele@eba-net.org, website: www.eba-net.org

© 2014 Energy Bar Association

President's Message Jason F. Leif

As I near the halfway point of my term as Energy Bar Association President, I remain excited about the many opportunities that the EBA makes available to its members. Every day presents a new idea or opportunity that a member has identified that no one had considered before. Every time that I see a new program proposed, it reminds me that the EBA is not an organization that is telling its members what they should want. It is an organization whose activities are driven by its membership.

I hesitate to single out any one event or experience as an example, since it could suggest that somehow I am not mentioning something equally exciting. But, I can't help myself. Recently, I attended the EBA's first event outside the United States. During the last year, Gordon Kaiser, one of our Canadian members—and now one of our EBA Board members—worked with the Northeast Chapter leadership to expand the reach of the Northeast Chapter into Ontario, Quebec, and the Maritime Provinces of Canada. With that done, Gordon led the effort to organize EBA's first Canada program, which we held in Toronto in September. The purpose of the program was to identify issues that our Canadian members (and potential new members in Canada) might want the EBA to cover. Speakers from the U.S., Canada, and the U.K. addressed market manipulation enforcement and oversight from the perspective of U.S. and Canadian regulators and defense; key energy policy issues in Canada; and trends in Canadian and international arbitration. And, like all good EBA events, it included plenty of time for networking at the end of the meeting. As we talked about the possibility of



expanding our membership and reach in Canada, the conversation of the day was: "What can the EBA do for you?"

I would ask the same question to each of our members. What can the EBA do for you? We try our best to present programming that meets the needs of all of our members. We do that by asking for input into the planning of our Mid-Year and Annual Meetings by sending surveys out to the membership. We open our program planning to anyone who will take the time to present ideas. We try our best to cover all of the topics that interest our membership through our larger meetings, our Chapter events, and our committee events. Please do not hesitate to share ideas with anyone in the organization. We are always looking to broaden the level of participation and to gather topics for each of our meetings throughout the year.

By the time that you see this message, we will be getting close to our Mid-Year Meeting & Conference in Washington, D.C., which takes place on November 4 and 5 at the Renaissance Hotel. Our Program Committee Chairs and Program Committee have done a great job putting together a varied program that should be appealing to our members. Many of the panels were based on suggestions that our members submitted.

continued on page 15

Charitable Foundation of the Energy Bar Association Update

Marcia Hooks

Commissioner's Reception A Great Success

A grand time was had by all who attended the Commissioners' Reception held on Monday, October 6, 2014 at Mio's Restaurant in Washington, DC to benefit the Charitable Foundation of the Energy Bar Association. The well attended event, which was organized by the EBA Young Lawyers and State Commission Practice and Regulation Committees, proved to be a great opportunity for energy attorneys and professionals to meet and talk with a number of State Commissioners and FERC Commissioner Norman Bay. The attendees also donated some great wines and other items that will be auctioned at the upcoming CFEBA Gala that will be held next month. As colleagues networked, they were able to feast upon complimentary hors d'oeuvres, listen to great music provided by Andre Fox and enjoy an open bar, all thanks to the generosity of the event sponsors, **Duncan Weinberg, Genzer, & Pembroke, P.C., Pierce Atwood LLP, Stinson Leonard Street LLP and Van Ness Feldman, LLP**. For more information on the CFEBA Gala, please visit: <http://www.cfeba.org/get-involved/fundraising-events>

continued on page 4



CFEBA Update

CFEBA Update, continued from page 3

Make Plans to Attend the CFEBA 12th Annual Gala

You will not want to miss another great networking event and an opportunity to help the CFEBA to continue to successfully provide funds for its many worthwhile energy-related charitable grants. Please mark your calendar for the CFEBA's 12th Annual Gala-Silent Auction that will be held in conjunction with this year's EBA Mid-Year Meeting, on Tuesday, November 4, 2014, starting at 5:30 pm at the Renaissance Hotel in downtown Washington, DC.

Light Up The Night is this year's Gala theme, because part of the proceeds will be donated to We-CareSolar, a non-profit, which assembles medical Solar Care Suitcases in the United States! The unique mobile energy unit is the ingenuity of an American couple, Dr. Laura Stachel, an obstetrician, and her husband, Hal Aronson, a solar expert. Solar Suitcases were used initially to provide light for child birth deliveries in Nigeria, where Dr. Stachel observed women dying because there was a lack of reliable electricity or none at all —meaning women were turned away.



The basic 35-pound compact solar suitcase includes two LED lights, two solar panels, two headlamps and chargers. It runs up to 30 hours per charge and now is used for other procedures in medical facilities around the world, Tibet, Philippines, Mexico, Nicaragua and several African countries. It powers not only critical lighting, but also mobile communications and medical devices. In an August 8, 2014 article, the *Wall Street Journal* quoted Margaret Chan, the Director General of the World Health Organization, praising the Solar Care Suitcase as “sunshine saving lives.”

To learn more about the medical solar suitcases and attending the Gala, please visit the CFEBA web site at ***Light Up the Night*** or <http://www.cfeba.org/node/189>



CFEBA Interns Reflect on Their Summer Work Experience



**Bobby Goldfin,
Federal Energy
Regulatory Commission**

This summer I had the great fortune of being sponsored by the Charitable Foundation of the Energy Bar Association (CFEBA) while interning at the Federal Energy Regulatory Commission (FERC) in the Office of the General Counsel. My time at FERC was a crash-course on the operational logistics of the agency and the various aspects of regulation within FERC's jurisdiction. I was given a variety of assignments including drafting orders, conducting research, preparing memoranda and reviewing filings made to FERC. Over the course of ten weeks, I worked on both issues that I had experienced with regarding electricity and reliability, as well as topics that were novel to me concerning oil and gas. As a result of this internship, I gained a better understanding of some of the emerging debates in energy law which I will use in my future education and publications.

My summer internship immersed me into energy law as if being thrown into a pool in order to learn how to swim. To illustrate this point, my first assignment was to research and create a memorandum analyzing FERC's jurisdiction over matters affecting wholesale rates, specifically in response to the D.C. Court of Appeals' decision vacating Order No. 745. Prior to coming to FERC I had little familiarity with that order and had never fully considered the limitations on FERC's

continued on page 5

CFEBA Update, continued from page 4

jurisdiction. However, this assignment peaked my interest and led me to work as a research assistant on a related matter also concerning FERC's jurisdictional authority.

The internship introduced me to other areas of energy law with which I had no prior experience. One assignment was to draft an order approving an oil company's consolidation of pipelines. Another example was drafting an order approving of a company's petition for exemption from requirements pursuant to the Public Utility Regulatory Policies Act if they met the standard of the somewhat ambiguous "non-traditional utility" exception. A third assignment allowed me to apply my knowledge of the Public Utility Holding Company Act but also exposed me to a paradox wherein I had to approve of renewable energy companies' self-certifications as Exempted Wholesale Generators as defined by the Act despite it having been largely "repealed."

Some of my other assignments were more aligned with my experience as an intern at the North American Electric Reliability Corporation (NERC). For instance, I was assigned research and writing projects for a reliability standard conditionally approved of during my internship, and on a matter concerning NERC's budget approval. I was also able to experience team projects involving reliability issues by attending a meeting with Canadian provincial authorities, and two meetings for reliability concerns due to compliance with the Environmental Protection Agency's Mercury and Air Toxic Standards – one with a state agency and the other with a Regional Entity.

Through FERC's internship program, I learned in detail what each division of the agency was responsible for and created new relationships which I will foster throughout my career. FERC offered weekly brown-bag lunches with leaders throughout the agency who gave informal presentations on their division's duties. I met with each of the FERC Commissioners, the General Counsel and numerous heads of departments, who not only answered my questions on disputed topics in energy law and the industry, but also spoke about their unique career paths that led them to gain their expertise and current functional roles. Additionally, because I met these individuals through the lunches I was able to later schedule individual meetings with many of these experts outside of my internship to further develop personal connections and receive advice.

Overall, my experience this summer was enriched by the generous support of the CFEBA. The CFEBA allowed me to spend this summer focused solely on acquiring knowledge without the pressure of finding additional resources to financially support myself or incur the stress of increasing my already-considerable student loans. I am thankful for their support.

Laurie Thomas, Minnesota Public Utilities Commission

My name is Laurie Thomas and I am entering my third year at William Mitchell College of Law in St. Paul, Minnesota. This summer I worked as a legal intern for the Minnesota Public Utilities Commission (PUC), researching and writing on the changing regulatory models that are developing in various states. The PUC was able to offer me this position due to a grant provided by the Charitable Foundation for the Energy Bar Association. Before my time at the PUC I had not worked in the energy industry but had heard briefly about some of the concerns involved in regulating investor-owned utilities, balancing energy demand with environmental concerns, and weighing consumer needs and demands against the financial viability of utilities. These challenges led me to seek out opportunities in the energy industry that ultimately brought me to the PUC.



During my time at the commission I had the opportunity to learn more about the energy industry in general, and to begin exploring the challenges facing state and federal regulators. As part of my internship I attended commission hearings on contested and non-contested dockets. I also participated in staff meetings, observed meetings held by various industry stakeholders, attended industry events, met with regulators from other states, and sat in on a legislative committee hearing. I also assisted with some statute interpretation.

The bulk of my work focused on researching challenges faced by regulators and utilities as generation and storage technologies change, energy efficiency measures and technologies advance, and environmental pressures increase. While many state regulators began addressing these concerns several decades ago, a small group of states has recently taken a less traditional approach to meeting these challenges. These approaches range from small shifts in economic incentives for utilities to larger systematic changes.

continued on page 12

EBA Houston Chapter Update

EBA Houston Chapter Discusses Ethical Considerations in Responding to FERC Investigations

Mosby G. Perrow

What should a company do when the Federal Energy Regulatory Commission's Enforcement Staff come calling? The Houston Chapter of the Energy Bar Association sponsored a panel that addressed this question along with ethical considerations in responding to FERC investigations.

Held on July 22, 2014 at Jones Day, the panel was moderated by Jones Day's Mosby Perrow and included as panelists Lauren Rosenblatt, former Branch Chief in the Division of Investigations with FERC's Office of Enforcement, and Sheila Hollis, a partner with Duane Morris, along with Jones Day's Kevin McIntyre.

Over 80 people attended the event by phone or in person, with over half attending in person.

According to Ms. Rosenblatt, FERC is focused on activities that involve public harm in three principal areas: market manipulation, reliability violations, and violations of FERC approved tariffs and regulations. Ms. Rosenblatt explained that companies may hear from FERC Enforcement Staff through an informal inquiry, a preliminary investigation, or a formal investigation. She stressed that non-responsiveness can be a factor leading the Staff to elevate a given matter from an informal inquiry to a formal investigation – and that such non-responsive conduct often includes asserted inabilities to understand or to recall factual matters that are central to the business activities at issue.

A carefully considered and comprehensive plan for responding to the FERC Enforcement Staff can help avoid such missteps, said Mr. McIntyre. Focusing on the first 72 hours after FERC Staff contact, Mr. McIntyre said that a company must take immediate steps to preserve documents, to protect privileged and other confidential information, and to ensure that the right people – both subject matter experts and internal “fact witnesses” – are lined up to manage and to assist in responding to the inquiry or investigation. When preparing a response for submittal to the FERC Staff, being quick, he said, is a fine objective, but any response must be appropriately vetted to ensure accuracy, completeness and thoughtfulness, even if that means taking a bit longer.

Ms. Hollis, who served as the first Director of Enforcement at FERC, described some of the historic underpinnings of FERC's current enforcement regime and their relevance now. FERC's power to impose large civil penalties means high stakes to the jurisdictional regulatory players, large and small, Ms. Hollis said. Noting that FERC's next chairman, Commissioner Norman Bay, previously served as FERC's Chief Enforcement Officer, Ms. Hollis predicted that enforcement activities likely would only increase, potentially reaching into a variety of jurisdictional arenas. She advised even greater emphasis on development and reinforcement of a culture of compliance and heightened awareness of regulatory risks moving forward. Further, she said, the growing level of sophistication and commitment to enforcement under a “new” Commission and across a number of agencies, including the Commodity Futures Trading Commission, Securities and Exchange Commission and the Department of Justice, requires close adherence to the highest standards for corporate activity.



Energy Law Journal: Excerpts from Past Issues

All Prior issues of the Journal are available at www.FELJ.org

Ten Years Ago

“Power flows according to the laws of physics along the path, or paths of least resistance, often in all directions at once over the interconnection. Hence the contract path is not relevant to real time dispatch and reliability. A traditional system of access based on the gas market model does not take into account a number of critical factors – power system physics, the unpredictable events on electricity networks that change the predicted power flows, and the decisions the system operator must make in real time to match generation and loads. The contract path fiction also distorts market decisions because contracting parties whose grid usages create congestion do not pay the congestion costs they impose on the market. Transmission providers operating under such a system do not have a market-based methodology for recovering the cost of economic redispatch.”

William L. Massey, Robert S. Fleishman, and Mary J. Doyle, *Reliability-Based Competition in Wholesale Electricity: Legal and Policy Perspectives*, 25 ELJ 319, 346 (2004)

Twenty Years Ago

“Traditionally, utilities and regulators have largely ignored loop flows and treated transmission transactions as if electricity flowed in accordance with the simple path designated in a contract. This tendency to ignore the reality of transmission for contractual and regulatory purposes worked tolerably well in the past because (1) provision of transmission services for third parties required only a modest

proportion of total capacity; and (2) transmission owning utilities (TOUs) relied on a variety of informal cooperative mechanisms to keep the loop flow problem within reasonable bounds.”

Richard J. Pearce, Jr., *The State of the Transition to Competitive Markets in Natural Gas and Electricity*, 15 ELJ 323, 339 (1994)

Thirty Years Ago

“There are also purely physical reasons why many distributors cannot compete with pipelines for their local markets. By definition, local distribution companies are located wholly within a particular state and, as a result, may lack the geographical advantage enjoyed by interstate pipelines. For example, the distributor’s facilities may be far remote from any natural gas producing area. In order to move gas into their service territory, distributors must arrange for transportation with the same pipelines with which they are expected to compete for producer sales. To make matters worse, they will probably be dwarfed by the market power of the major pipelines in bidding for favorable purchase terms.”

J. Richard Tiano and Richard P. Bonnifield, *The Impact on Gas Distribution Companies of Federally Approved Special Marketing Programs*, 5 ELJ 287, 305 (1984)

Western Chapter Update

Pamela J. Anderson

The Western Chapter held a luncheon featuring California Public Utilities Commissioner, Michael Picker on September 17. Over 25 people participated in the lunch which was held in a roundtable format to foster discussion. Commissioner Picker talked about his background and some of the progressive renewable energy programs he initiated previously when he was involved with the Sacramento Municipal Utilities District. He talked about the challenges that arise from doing business as usual at the California Public Utilities Commission, and areas needing improvement over the long term. He also discussed the importance of improving the regulatory framework in California to support innovation and technology.

The Western Chapter also had a change in leadership. Tara Kaushik, partner at Holland & Knight in San Francisco has been appointed Vice-President. Carl Fink, BluePlanetLaw, the former Vice-President and a long-time board member, had requested to refocus his involvement with the Chapter through our planning committee. With regard to planning, the Western Chapter is currently planning its annual meeting which will be held March 5-6, 2015. As in past years, the annual meeting will be held at the Hyatt Embarcadero in San Francisco. Please mark your calendar for this program which is not to be missed!

JUDGE'S CORNER

The FERC Practice & Administrative Law Judges Committee proudly presents United States Nuclear Regulatory Commission Administrative Law Judge William J. Froehlich to our ever-popular "Judge's Corner" series.

Judge Froehlich is well known to the Energy Bar, having served in a number of key leadership positions at FERC for 32 years before assuming his current judicial position at the NRC six years ago. At FERC, he was, among other things, Director of the Office of Administrative Litigation, Special Counsel to the Office of Enforcement, Assistant General Counsel for Gas and Oil Litigation, and Director of the Fi-

nanacial Regulation Division. Many EBA members interacted with him through his oversight of the FERC Trial Staff in the adjudication of natural gas, oil pipeline, and electric utility rate cases. He also was involved in proceedings involving LNG imports, pipeline certificates, and trading scheme prosecutions stemming from the Enron demise.

In addition, he was a FERC and United States representative in China and Eastern Europe, lecturing regulators on administrative law, privatizing state-owned industries, public utility ratemaking, and developing independent regulatory structures. He

still is in lecture mode, as an Adjunct Professor of Administrative Law at George Mason University.

His Honor was appointed a full-time legal member of the Atomic Safety and Licensing Board Panel at the NRC in March 2008. In that capacity, Judge Froehlich has conducted on-site hearings at nuclear facilities throughout the country. He continues his contacts with FERC practitioners and we are proud that he has kept up with his EBA membership and involvement.

Accordingly, we herewith present Judge Froehlich for the following enlightening discourse:

The Honorable William J. Froehlich

Administrative Judge, U.S. Nuclear Regulatory Commission

Having worked at both FERC and NRC, I often find that my judicial colleagues and energy-law practitioners are interested in the differences and similarities between the two agencies. The short answer is this: although both agencies share the overarching goal of regulating energy providers, NRC has a more specialized mission and a unique set of scientists and engineers who serve as technical judges. For the longer answer, read on. My column today is adapted from a talk I gave in April 2011 before the Energy Bar Association, Nuclear Regulation Committee and the FERC Practice and ALJ Committees.

First, the similarities. Both FERC and NRC are independent regulatory commissions that grew out of older administrative agencies. FERC has its roots in the Federal Water Power Act which created the Federal Power Commission in the 1920's. It became the FERC we know today on January 1, 1978, after passage of the Department of Energy Organization Act of 1977.

The NRC began as the Atomic Energy Commission (created by the Atomic Energy Act of 1946 and later amended by the Atomic Energy Act of 1954), an agency tasked with the dual goals of both promoting and regulating nuclear power. Congress decided to split these functions in the Energy Reorganization Act of 1974, and on January 19, 1975, the NRC was born.

As the names suggest, the two agencies regulate nationally important sources of energy. FERC's authority covers the majority of the Nation's power supply—its wholesale electric, natural gas, hydroelectric, and oil pipeline industries. Congress gave FERC authority over the transmission and wholesale cost of electricity and natural gas in interstate commerce, as well as the transportation of oil by pipeline in interstate commerce. FERC ensures that the rates, terms, and conditions for wholesale and transmission are just and reasonable. Meanwhile, the NRC regulates all aspects of the Na-



tion's civilian use of nuclear materials, ranging from commercial power plants to nuclear medicine. Its statutory goals are to protect public health and safety, promote the common defense and security, and protect the environment. Within this specific area, NRC regulates a wide range of activities, beginning with the processing of uranium ore and ending in the disposal of radioactive waste. At each step of the nuclear fuel cycle—extraction of the uranium from ore, conversion of the uranium into a form suitable for enrichment, enrichment of the uranium to a level and type suitable for nuclear fuel, fabrication of uranium into fuel assemblies for use in reactors, and the ultimate disposal of spent nuclear fuel—the NRC licenses and inspects facilities to ensure the safe use of nuclear materials. The NRC also participates in interna-

continued on page 9

Judge's Corner, continued from page 8

	FERC	NRC
Budget	\$304 million (2013)	\$1.1 billion (2014)
Employees	1,450	3,830
Headquarters	Washington, DC	Rockville, MD
Regional Offices	New York, NY	King of Prussia, PA
	Duluth, GA	Atlanta, GA
	Chicago, IL	Lisle, IL
	Portland, OR	Arlington, TX
	San Francisco, CA	

tional work that is integral to the agency's mandate to protect public safety and security.

The agencies differ, however, in the type of judges appointed to hold hearings. FERC uses Administrative Law Judges, who become ALJs through a rigorous testing and interview process run by the Office of Personnel Management under 5 U.S.C. § 3105. They may move between federal agencies, and most FERC ALJs began their careers as ALJs at the Social Security Administration or at Health and Human Services (Medicare). NRC judges are not ALJs. They are Administrative Judges appointed under Section 191 of the Atomic Energy Act, as amended in 1962. Under this Act, NRC has both Technical Judges (typically scientists and engineers) and Legal Judges. These Judges are merit-based appointments and required by statute to be "persons of recognized stature in the nuclear field" (for the Technical Judges) or "qualified in the conduct of administrative proceedings" (for the Legal Judges). Despite these differences, FERC ALJs and NRC Administrative Judges have the same salaries, powers to conduct evidentiary hearings, ability to settle cases, and other judicial responsibilities.

With respect to organizational structure, the main differences between the two agencies are the titles. FERC has a Chief ALJ and a Deputy Chief ALJ, while at the NRC we have a Chief Administrative Judge and two Associate Chief Administrative Judges (one Legal and one Technical). There are 15 ALJs (including the Chief and Deputy Chief) at FERC, and the judges wear robes at hearings. At the NRC there are 7 full-time Legal Judges (including the Chief and Associate Chief-Legal), 4 full-time Technical Judges (plus the Associate Chief-Technical), and 25 part-time technical judges. Thankfully, Administrative Judges at the NRC do not wear robes. Both FERC ALJs and NRC Administrative Judges have law clerks who serve two-year appointments. A FERC law clerk is shared among 2 or 3 ALJs. At NRC, law clerks are assigned to cases, not to individual judges.

Cases also differ in the number of judges presiding. Cases at FERC are assigned to a single presiding judge, although many cases settle with the assistance of a settlement judge. NRC has provision for the appointment of a settlement judge but this provision is rarely used. At the NRC, cases are assigned to a three-judge panel, usually two technical judges and one legal judge. At FERC, counsel for the parties conduct the cross-examination, while at the NRC the administrative judges conduct most of the cross-examination.

Almost all hearings at FERC are held in Washington, D.C., in one of the

seven hearing rooms at 888 First Street. The largest hearing room can seat 200 people. NRC has one hearing room in Rockville, Maryland, which seats 75. The Rockville hearing room is a state-of-the-art courtroom, with voice-activated digital video recording, display monitors for the parties and the public, tele/videoconferencing, and web-streaming systems that permit parties and witnesses to participate from multiple remote locations and members of the public to view proceedings over the Internet. Most NRC hearings, however, are not held in our Rockville hearing room but rather in local courthouses in communities near the affected regulated facilities. The entire digital court room infrastructure can be transported to any remote location. This includes a fully searchable audio-video transcript, simultaneous translation capability, web-streaming and the ability to digitize physical evidence using an "Elmo" device.

During my six years serving as an Administrative Judge at NRC, I've been pleased by the technical sophistication of our adjudicatory proceedings. All testimony, exhibits, briefs, motions and other pleadings are filed electronically. The NRC Secretary, who is referred to as SECY, serves all parties to a case with the materials filed with the agency. There are no paper filings nor are there any paper exhibits in the hearing room. During cross-examination the pre-filed exhibits are electronically displayed on large screens and can be highlighted and annotated by the witnesses and their counsel before being placed in the record. These electronic markings made during the hearing can then be incorporated into the digital record of the proceeding, which is accessible to the parties and the public.

continued on page 10

Although hearings at NRC and FERC are both subject to the Administrative Procedure Act, getting a hearing at the NRC is much more difficult than at FERC. Interested parties face a high regulatory bar before they are entitled to a hearing. Under 10 C.F.R. § 2.309(f)(1) parties must meet six requirements before they can adjudicate an issue (known in NRC parlance as a "contention"). Among other requirements, they must show a specific, genuine dispute with the applicant that is related to one of the environmental documents or the public health and safety. Proposed contentions must be supported by factual allegations or expert opinion. As a result, there are far fewer hearings held at the NRC than at FERC.

At NRC hearings, rulings on procedural motions are decided by the legal Administrative Judge, while the final decision on the merits is made by the three judge panel assigned to the case. Most decisions are unanimous, but an Administrative Judge who disagrees with the majority decision or its reasoning may issue a dissent or a concurrence. Just as at FERC, appeals from decisions of the Administrative Judges are to the Commission, with appeal rights to the U.S. Courts of Appeal.

In sum, there are subtle differences and many similarities in the conduct of administrative hearings at FERC and NRC, and I think both agencies can learn from each other as they work to ensure that all decisions are made in a timely, efficient, and equitable manner. Serving the public interest can be complicated, but it is a rewarding process. I feel fortunate to have worked at both agencies because the lawyers that appear before both the ALJs at FERC and the Administrative Judges at the NRC are some of the best litigators to be found anywhere.

EBA Committees at Work

Matthew R. Rudolphi

The Energy Bar Association committees are the lifeblood of the organization, providing an opportunity for members to network with fellow practitioners, stay up-to-date with new developments in their practice areas and give back to the organization. EBA's twenty-one member committees cover nineteen distinct subject matters including: Alternative Dispute Resolution; Competition and Antitrust; Compliance and Enforcement; Demand-Side Resources and Smart Grid; Electricity Regulation; Environmental Regulation; FERC Practice and Administrative Law Judges; Finance and Transactions; International Energy Law and Transactions; Judicial Review; Legislation; Natural Gas Regulation; Nuclear Regulation; Oil and Liquids Pipeline Regulation; Power Generation and Marketing; Professional Development, Education and Ethics; Renewable Energy; State Commission Practice and Regulation; and System Reliability and Planning. These committees conduct an average of two educational events a year focusing on their subject matter, provide a report to the Energy Law Journal on developments in their subject matter and assist in planning and conducting panels in their subject matter at the Mid-Year and Annual meetings. In addition, these subject matter member committees provide networking opportunities for members working in the same practice area.

Two other non-subject matter member committees round out the group of twenty-one. The Programs and Meetings Committee is responsible for the herculean task of planning and putting on the Mid-Year and Annual meetings, with input from the subject matter com-

mittees and the membership in general. The YLC sponsors a variety of programs aimed at educating law students and new practitioners and provides a forum for networking and integrating into the Energy Bar.

The EBA committees plan and carry out an average of 40 educational and networking events each year. Barely a week goes by that there is not at least one member committee event scheduled on the calendar. This October alone, the System Reliability and Planning Committee held a half-day program entitled NERC Compliance & Enforcement for Practitioners; the Electricity Regulation Committee and Natural Gas Regulation Committee held a reception in honor of Chairman Cheryl A. LaFleur; and the Natural Gas Regulation Committee and the State Commission Practice and Regulation Committee held a lunchtime event entitled Fracking Revisited - Current and Past Developments.

Committee membership is open to all EBA members. Members are asked to renew their membership at the beginning of each EBA organizational year, which begins immediately after the Annual Meeting in the Spring. Committee membership does not roll over from year to year. If you are interested in signing up for a committee mid-year, contact Mary Singletary at mary@eba-net.org or call 202-223-5625.

EBA Committees discuss *Global Arbitration & Alternative Dispute Resolution in International and Domestic Energy Infrastructure*

Llyr Rowlands

On Friday, 26th September 2014, the EBA's Alternative Dispute Resolution (ADR) and the International Energy Law & Transactions Committees co-hosted a brown bag lunch discussion at the Washington, D.C. offices of Hunton & Williams, LLP. A distinguished panel of practitioners was invited to discuss the topic: "Global Arbitration & Alternative Dispute Resolution in International and Domestic Energy Infrastructure."

Deborah M. Osborne, Chair of EBA's ADR Committee, began the discussion by giving some brief remarks about domestic energy ADR, its value, and success at FERC over a 15 year period. She then handed over proceedings to the discussion moderator, Mr. Salvador Rivera (a Program Team Leader at the World Bank). He emphasized the growing importance of ADR in the energy sector and the breadth of the topic. Then each of the three panelists provided their specific perspective on the topic.

Dr. Grigera Naón (Director of the International Commercial Arbitration Center of the Washington College of Law, American University) focused his comments on the pitfalls of joint operating agreements in the upstream oil and gas industry, drawing on his own experiences as an arbitrator. Kenneth Beale (Counsel at Wilmer Hale), continued the discussion with observations on 'an investor's perspective when arbitrating overseas energy disputes'. He cautioned against hurriedly drafted and ill-conceived dispute resolution provision in contract documents, which could render any future arbitration costly and potentially in-effective. Thereafter, he proceeded to discuss the comparative ease of enforcing 'arbitral awards' in foreign jurisdictions under the New York Convention compared to court judgments and touched on how to approach assertions of 'sovereign immunity' by state or parastatal entities.

Jay Range (Partner, Hunton & Williams) expanded on the challenges of drafting appropriate ADR clauses, with the goal of avoiding – as he aptly described it – a "litigation sandwich." He quoted an ADR Survey by the ABA Section of Public Utilities, Communications and Transportation Industries and Pepperdine University Straus Institute for Dispute Resolution, which showed how little time or resources are typically spent on drafting ADR clauses. He also discussed the specific nature of investment treaty disputes and the role played by ICSID and the Energy Charter Treaty. Finally, he drew on some lessons from his own experience as lead counsel to the United Republic of Tanzania and its wholly-owned electric supply company, TANESCO, in both commercial and investment treaty arbitrations at ICSID involving an independent power plant in Dar es Salaam, Tanzania.

Before closing this lively and informative discussion, the panel responded to several questions from the floor, particularly on the question of 'forum shopping' and adopting tiered ADR clauses, which may include mediation and arbitration.

EBA Committees Hold Program on FERC Investigations

On September 10th, the Compliance & Enforcement Committee partnered with the FERC Practice and Administrative Law Judge Committee to hold a successful program "Discovery Procedures in FERC Investigations – A 360° Evaluation." The program presented diverse perspectives amongst the industry, and was moderated by Robert Fleishman of Morrison & Foerster LLP. The lively three-person panel consisted of Brooksany Barrowes of Baker Botts L.L.P., John Estes of Skadden, Arps, Slate, Meagher & Flom LLP, and Geof Hobday, Attorney-Advisor, Office of Enforcement, Division of Investigations, Federal Energy Regulatory Commission. Over 60 EBA members registered for this event either in-person or via teleconference.

Watch for future educational programs -- visit
EBA Calendar of Events:
<http://www.eba-net.org/calendar>

EBA Primer Series: EBA and NHA Partner for Successful Hydropower Primer



As part of EBA's Primer Series, EBA and the National Hydropower Association partnered to present a primer on the hydropower industry. In mid-September, top legal and industry experts in the hydropower industry joined EBA and NHA in Boston, Massachusetts, to provide "An Introduction to Hydropower Law and Regulation."

Speakers included John Katz, Deputy Associate General Counsel at FERC, and Barbara Christin, Managing Attorney at FERC. Industry experts, John Devine, Vice President of HDR Engineering, Inc.; Chuck Sensiba and Julia Wood of the law firm of Van Ness Feldman; and Jim Hancock of the law firm of Balch & Bingham expertly described the mechanics and hydraulics of hydropower, the structure of the industry, and the complex array of governing statutes and regulations. Jeff Leahy, NHA's Deputy Executive Director, provided an overview of legal and regulatory issues facing the hydro industry today. The primer was capped off with a site visit to the Boott Hydroelectric Project in Lowell, MA.

By all accounts, the primer was well-received and a huge success.

EBA expresses its sincere appreciation to Jeff Leahy, Diane Lear, NHA's Director of Membership Services, and Francesca Blanco, NHA's Manager of Meeting and Events, for lending their expertise and enthusiastic organizational support to this exceptional program. EBA also thanks the JAMS Resolution Center for providing the venue, Enel Green Power for the on-site tour and to program sponsors, **Ballard Spahr LLP, Transmission Developers Inc., and Van Ness Feldman, LLP.**

Stay tuned for more information about EBA's Oil Pipeline Industry Primer, tentatively scheduled for January 2015 in Houston, Texas.

CFEBA Update, continued from page 5

While these challenges are continually changing and developing, my time with PUC has provided me with a basic working knowledge of the energy industry and its regulation. My conversations with regulatory staff have introduced me to the complexity involved with balancing industry, environment, and consumer concerns. Attending industry events and functions has highlighted how many stakeholders are involved in addressing these questions and the great variety of their concerns. Listening to legislative presentations and hearing presenters field questions from legislators has broadened my understanding of legislators roles in the regulatory process.

As I finish up my formal legal education and begin looking into career paths within the energy law sector, I will depend heavily on the general energy knowledge I have gained through this experience as a guide to help me choose a direction to pursue. The regulatory concerns I have become familiar with and the knowledge I have gained in that area will allow me to be a helpful sounding board for future employers looking to navigate the complex future of energy law or considering how to implement it. Regardless of the direction I take, I will be more prepared to dive into the challenge after being allowed the opportunity to dip my toes in the water.



FELJ Update

Win-Win Relationship with University of Tulsa

Linda Walsh

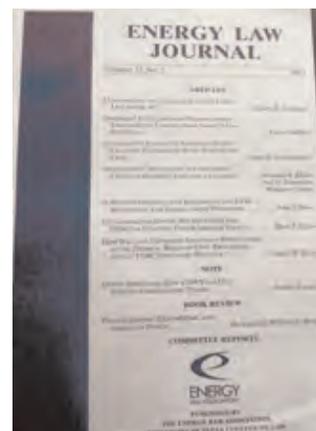
In this update we would like to focus on an aspect of the publication of the Energy Law Journal that may not be visible to many EBA members – the relationship with the University of Tulsa Law School. The ELJ would not be possible if it were not for the work of the student editors at the Law School. In 1986, then Editor-in-Chief Bill Mogel formed an alliance with the University of Tulsa Law School for the students to provide backup legal research and to edit the final product. In turn, the student editors are given an opportunity to write a Note for publication in the ELJ. In recent years, the Foundation has formed a deeper working relationship with the Law School.

In 2010, the FELJ, in conjunction with the faculty of the school, began providing workshops for the student editors at the beginning of each academic year. The workshops are designed to provide the student editors with an overview of basic regulatory concepts and terminology in the fields of energy, environmental, and natural resources law. ELJ Editors and other EBA members along with faculty from the Law School teach the workshop. The workshops have assisted the student editors in their education about the practice of energy law, provided them with a better understanding of the subject matter of the ELJ articles, and facilitated their research and editing work on behalf of the FELJ.

The FELJ also funds an internship for a University of Tulsa Law School student to spend a summer working in Washington, D.C. Our 2014 Mogel Intern was Blake Johnson, of Bixby, Oklahoma. Blake is a third-year law student at The University of Tulsa College of Law, as well as an articles editor with the Energy Law Journal. This summer Blake has been paired with Congressman Markwayne Mullin on the House Natural Resources Committee. Congressman Mullin represents the Second District of Oklahoma, covering nearly 1/3 of the state. The Mogel Internship is an unpaid internship, however the FELJ assists the student chosen by providing a stipend to help defray living expenses for the summer. Blake reported on a productive and successful three months, which gave him wide exposure to a variety of energy related projects.

The FELJ funds the publication of the ELJ. Our largest fundraising event has been the annual reception for the FERC Administrative Law Judges, held each year at the time of the EBA Annual Meeting. We hope you will remember to attend next Spring.

Since 1980, the *Energy Law Journal* has provided great value to the Energy Bar Association's members. The Journal provides in-depth analyses on current, salient issues affecting members and their clients and businesses and provides a forum for the exploration and understanding of new, cutting edge issues. The Journal is a benefit to EBA members and subscriptions are available to non-EBA members.



**ELJ articles
are
available
online at
FELJ.org**

EBA's First Canadian Program is a Success!

The Energy Bar Association held its first meeting outside the United States when the Northeast Chapter convened its First Annual Canadian event in Toronto, Canada, on September 19, 2014, at the National Club, a 120 year old institution in a historic building at the center of Canadas' financial district.

The program, titled "Explore Key U.S. Canadian Cross Border Energy Issues and Processes," addressed key issues and processes with important cross border implications - energy market manipulation, developments in energy arbitration, and significant challenges for energy regulators.

Gordon Kaiser, a member of EBA's Board of Directors, was the driving force behind this successful event attended by close to 60 people. Bob Fleishman of Morrison & Foerster and Louis Legault, the General Counsel of The Régie de l'énergie served as Co-Chairmen.

After Jason Leif, EBA's President, warmly welcomed all attendees, the first panel on market manipulation in Canadian and U.S. energy markets highlighted the perspective of the "prosecutors." It featured Glenn McDonald, Director, Market Assessment and Compliance, Independent Electricity System Operator, and Larry Gasteiger, Acting Director, Office of Enforcement, FERC, and was moderated by Glenn Zacher.

Next was a panel, moderated Mark Rodger, on the same topic but from the perspective of two well-regarded "defenders" - George Vegh from Toronto and Bob Fleishman from Washington, DC.

The luncheon speaker was Dr. Robert Skinner, Executive Fellow, School of Public Policy, University of Calgary, who discussed eloquently his views on "Canada and its Energy Discontents."

The afternoon session began with a panel on International Energy Arbitrations, moderated by J. William Rowley QC and featuring remarks by Matthew Kronby and David R. Haigh. The concluding panel on Domestic Energy Disputes highlighted the views of J. Brian Casey and Eric Van Loon, with Ernie Belyea serving as moderator.

Mary Anne Aldred, General Counsel of the Ontario Energy Board made final remarks and joined EBA President Jason Leif in thanking the delegates. The event concluded with a networking reception.

Thanks again to our Sponsors of this wonderful event:

Bennett Jones LLP

Blake, Cassels & Graydon LLP

Borden Ladner Gervais LLP

Energy Arbitration Chambers

Morrison & Foerster LLP



Bay , continued from page 1

country in overseeing the interstate sales and delivery of electricity and natural gas and its LNG and hydro certification, and oil pipeline regulation. Then he was interviewed by the Chairman and all of the Commissioners before being offered the Directorship.

Little wonder that Commissioner Kelly would have sought him out to come to FERC. Both have ties to New Mexico so she knew what he was doing there. She knew that he had made-to-order expertise in administrative law and due process. He was a Professor of Law at the University of New Mexico and was recognized for his excellence in teaching as the recipient of the Dickinson Professor of Law award. Among other things, he taught administrative law and constitutional law, subjects that obviously stand him in good stead as a FERC

Expects to “draw upon my experiences and the types of law that I taught, whether administrative or constitutional law.”

Commissioner as well as an Enforcement Director. Added to that were his responsibilities as the United States Attorney for the District of New Mexico. One of his roles was to take over the Wen Ho Lee case involving security breaches at the Los Alamos National Laboratory. While actions by that Office prior to his tenure were criticized by the trial judge, James Parker, Mr. Bay was himself lauded by Judge Parker as “outstanding” in

his handling of that case, and earned Judge Parker’s “highest regard.” Mr. Bay did not volunteer the aptness of this background but, when we suggested it must have been helpful to him at FERC, he did agree. Saying it was an “interesting” and “fair” point, he remarked that, “Throughout my time at FERC, I have been able to draw upon my experiences and the types of law that I taught, whether administrative law or constitutional law, and I suspect that as a Commissioner, I will continue to do the same.”

Desiring to Move Up at FERC

Interestingly, Mr. Bay had commented to us in that Fall 2009 interview that he saw the world of energy regulation rapidly changing. So much so that he pointed out: “Books on energy law that were written just a few years ago seem hopelessly out of date.” By contrast, the field that he was about to focus on as Enforcement Director was barely touched on if at all in those energy law treatises. As Mr. Bay said to us, presciently in 2009, “An energy lawyer in the twenty-first century has to understand the energy markets in which energy products are traded.”

It is probably because he possesses precisely this 21st century energy markets expertise after five years heading up anti-manipulation enforcement activities at FERC that the White House may have seen Mr. Bay as a logical choice for a vacancy on the full Commission. He told us that in early 2013, the White House asked him if he would care to name a position for which he would like to be considered in the second Obama Administration. His response was that he would like to be nominated as a

continued on page 16

President’s Message, continued from page 2

Again, we are trying to provide you with programming that meets your needs.

While you are thinking about what EBA can do for you...please also think about how you can help others. When you support the Charitable Foundation of EBA, you also support their important work of giving energy related grants to those organizations in need. Please sign up to attend the Charitable Foundation of the EBA’s 12th Annual Silent Auction and Gala. Light Up the Night is this year’s Silent Auction Gala theme as CFEBA seeks to provide medical solar suitcases, which are manufactured in the United States, to the most needy in the world in an effort to save lives of mothers and children during childbirth across the world, where there is no access to electricity. Due to lack of energy access, globally, an estimated 289,000 women die annually from complications from pregnancy and childbirth. CFEBA is asking all EBA members to help make the event a huge success by contributing items to the Silent Auction, attending the Gala, participating in the Silent Auction and encouraging colleagues to do so as well.

Thank you again for giving me the chance to serve as EBA President. I look forward to hearing your response to what EBA can do for you and to seeing you at the Mid-Year Meeting and the CFEBA Gala.

The confirmation process

“was more interesting than I thought it would be.”

FERC Commissioner. When we asked if he might have indicated alternative choices, he said that “FERC was at the top of my list.” As he expressed it, “It is a great honor to be a Commissioner.” He is “committed to doing the best job that I can as a Commissioner.” As to why, he explains that, “Every day you learn something new. Energy law is constantly changing as industries change and technology develops. That is one of the things that make this area so exciting.”

He also told us, “Honestly, I was surprised,” when we asked him point blank if he was surprised at the opposition that his nomination drew from some quarters when he was named to be Chairman of the agency. In a bit of understatement, he called the confirmation process “more interesting than I thought it would be.” He appeared to be content to leave it at that. He chose not to take us up on our invitation to make news by answering critics. Instead, he focused on the fact that many former Commissioners were very helpful to him in the confirmation process. This caused him to see that “people care about FERC as an institution and about energy law, particularly former Commissioners, who are very generous of their time and advice.”

He was also willing to acknowledge that there was merit to our leading questions when we suggested to him that his Admin/Con Law scholarship in teaching award and his cutting edge, laser-like focus on energy market development might explain why the Execu-

tive Branch viewed his request to be a Commissioner so favorably that they wanted him to take over as the Chairman. He also said that the “breadth of the work of the Office of Enforcement” helped prepare him to perform his duties as a Commissioner. He pointed out that it covers investigations, audits, accounting, market oversight, and analytics in surveillance of the markets.

At the same time, he went out of his way to praise the particular expertise that each of his colleagues brings to the Commission. He sees the diversity of the Commissioners’ talents as strengthening the agency. “All of our strengths come together given our respective backgrounds and experiences.” In particular, he expressed great respect for Chairman LaFleur and talked of how closely he worked with her when he was Director of the Office of Enforcement, adding that he “enjoys working with her now as a Commissioner.” And he pointed out that the FERC Staff is “outstanding” and “provides the Commission with a tremendous amount of support” coupled with the three “very smart, very knowledgeable, and very capable” advisors apiece that assist the individual Commissioners.

He also remarked on how he is now exposed to the “full range” of matters handled by the Commission, which exceed the focus he had previously, as broad as that was. He told us that he is “very much engaged in developing my own background and expertise with respect to those areas.” The “tremendous respect” he already had for the “great work” the Commission does has even grown as he sees up-close all that the Commission has on its plate.

Tackling the Job Day by Day



He is “very much engaged in digging into the issues” before the Commission. He “looks forward to reviewing the comments that the Commission receives and engaging in discussions with his colleagues on those matters.” So far, “It’s been tremendously exciting. And it’s also been a lot of fun to be exposed to the broader range of work.”

“It would be premature for me to entertain any thoughts as to what I might do as Chairman,” was his response to our question as to what he might do as Chairman. In particular, he was clear that he is not exercising an heir-presumptive role. For example, while Chairman LaFleur consults all of the Commissioners when major personnel decisions are being made, he stated that “it is her call and I very much respect her ability to choose the team that she wants to put in place.”

He also has put into place his own Staff. “I feel very lucky to have put together the team that I have.” His

“It is her [LaFleur’s] call and I very much respect her ability to choose the team that she wants to put in place.”

continued on page 17

Bay, continued from page 17

Advisors are: Tatyana Kramskaya, former Branch Chief in OMER-East with a focus on PJM; Janel Burdick, former Branch Chief in the Division of Analytics and Surveillance; and Bob Kennedy, who came from the Solicitor's Office. His Administrative Staff consists of Laura Vendetta and Benjamin Williams, both of whom previously worked for Commissioner Norris.

In leaving the Office of Enforcement, he expressed "a great deal of confidence" in its now Acting Director, Larry Gasteiger.

He told us that he began voting on notational orders as soon as he was sworn in on August 3rd. After a month of voting, he has found himself issuing one partial concurrence and dissent on a petition for declaratory order in which he took a more expansive interpretation of the Commission's Natural Gas Act jurisdiction. On everything else, he has been "part of a consensus" on all notational items issued by the Commission.

And he told us that he has a "number of different priorities." First, he intends to be "fair, thoughtful, and balanced in my decision-making process and to seek a consensus whenever possible." He sees consensus as providing greater regulatory certainty and greater comity on the Commission.

Second, he intends to "strive to call balls and strikes." By that, he intends to "decide matters based on the facts and the law." In that regard, when he reviews Initial Decisions and records, the test he applies is that he "has to be comfortable with the legal analysis and whether the Administrative Law Judge properly applied the law." He also looks for "evidentiary support for the factual findings." And he does this "within the context of

the issues that are raised by the parties to the proceeding." He does not do so *de novo*, but rather believes it is important to respect the principle of *stare decisis*." He elaborated that "Commission precedent should be followed" and that it is important to provide "regulatory certainty to market participants."

Third, "infrastructure, both electric and gas, is a priority." And, fourth, he intends to work to "drive greater efficiency" in the markets. He observed that the Commission has done a lot in the latter area. He gives the Commission praise for making sure that the markets "have integrity and that there is a level playing field for all market participants."

A fifth priority is the whole gamut of reliability in its broadest sense, including physical security and cybersecurity, and gas and electric coordination. All in all, he seems to be eager to dive in to just about everything and anything that comes his way.

Thoughts on Various Entities

Bay believes it is important to "have good lines of communication and collaborate with other agencies on issues that affect FERC." He is going to attend his first NARUC conference in November and calls it "very important" to maintain such communications with state commissions. The same holds true with both Houses of Congress and the relevant Committees. And, concerning the specialty press and trade press, he thinks they do a good job of covering FERC whereas the mainstream press has "more difficulty" in covering the agency because of the specialized nature of its work.

continued on page 18

Bay Side

What he reads:

Lots. "The Power Surge" by Michael Levi. He got an autographed copy of the book when the author came to speak at FERC. He is reading a multi-volume work of fiction, namely, Edward St. Aubyn's Patrick Melrose novels (a pentalogy). He likes "The Bone Clocks" and "Cloud Atlas" by David Mitchell because of Mitchell's use of complex, multiple narratives that jump back and forth in time.

What He Would Like to Do if He Had More Spare Time:

Bay does not have much free time, as he works six days a week and "carves out Sunday for reading." But he would like to do more fly fishing. He likes to get caught in the moment. The fish itself is not the point of the exercise. "Many men go fishing all their lives without knowing that it is not fish they are after." He attributes that quote to Thoreau, but has been told that it may be apocryphal. He would also like to do more cooking. "It is very relaxing and you get to enjoy the fruits of your work." He last made a Pan Asian Southwestern dish, with New Mexico green chili peppers and Japanese soy sauce. And he would like to do more running. He averages four to six miles per run.

Favorite Sound:

The sound made by pianos. His wife is a classical pianist.

Least Favorite Sound:

The sound of human distress.

Favorite Word or Phrase:

"Dinner's ready." Not so much because he can eat it as because he has finished cooking it.

Walter Mitty Dream Career:

Professional sports player, either a basketball player or soccer player.

Bay, continued from page 17

Thoughts on the Energy Bar

Commissioner Bay calls the energy bar “impressive.” He has found the practitioners to be “smart, engaged, and knowledgeable about FERC and its processes.” He has “enjoyed” his interactions with lawyers in FERC proceedings. He finds that there is a “collegiality” among the members of the energy bar. He attributes this to some extent to the fact that it is a fairly small bar relative to many other fields of practice. On behalf of the bar, we thanked him for agreeing to speak at the EBA Mid-Year Meeting and Conference in November. He laughed about having been assigned the “dreaded lunchtime” speaking slot.

For our part, we can’t wait to be with him again and hear his commentary, as well as the questions that you may bring to the event, Dear Reader.



2014 Mid-Year Meeting & Conference

Join your friends and colleagues for two-days of educational programming including CLE and outstanding networking opportunities on November 4 and 5 in Washington DC.

Is 2014 the beginning of major regulatory changes that will transform America’s energy industry? The Energy Bar Association’s 2014 Mid-Year Meeting & Conference will provide two full days of discussions examining this question. The first morning will focus on recent changes in the complicated relationship between state and federal agencies in their regulatory roles, including the D.C. Circuit’s recent decision raising dramatic questions about FERC’s authority over demand response programs. The second morning will focus on the evolving nature of the practice of energy law in 2014 and EPA’s major proposal to regulate carbon emissions from existing coal-fired power plants. Additional panels will focus on environmental review of natural gas pipeline construction, the operation of carbon trading markets, and the impact of FERC’s policies on the electric transmission industry.

- Keynote Speakers:
 - Vanessa Allen Sutherland**, Chief Counsel Pipeline and Hazardous Material Safety Administration
 - Norman C. Bay**, Commissioner, Federal Energy Regulatory Commission
 - Glen Boshart**, SNL Energy Report
- 14 Educational Sessions
- Numerous networking opportunities
- Two great special events:
 - Young Lawyers Committee Reception, Monday Nov. 3
 - CFEBA Gala and Silent Auction, Tuesday Nov 4th

The conference brochure and agenda are available to download at: <http://www.eba-net.org/sites/default/files/ebaBROCHUREfinal.pdf>

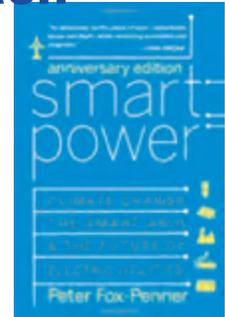
To Register visit: <http://www.eba-net.org/2014-mid-year-meeting-conference> or call EBA at (202) 223-5625.

Energy Bar Association Book Club Newsflash

Presenting the 4Q, 2014 EBA Book Club
Book of the Quarter:

Smart Power Anniversary Edition: Climate Change, the Smart Grid, and the Future of Electric Utilities

By Peter Fox-Penner



From the Book Jacket:

Few industries in the U.S. are as stuck in the past as our utilities are. In the face of growing challenges from climate change and the need for energy security, a system and a business model that each took more than a century to evolve must now be extensively retooled in the span of a few decades. Despite the need, many of the technologies and institutions needed are still being designed or tested. It is like rebuilding our entire airplane fleet, along with our runways and air traffic control system, while the planes are all up in the air filled with passengers.

In this accessible and insightful book, Peter Fox-Penner considers how utilities interact with customers and how the Smart Grid could revolutionize their relationship. Turning to the supply side, he considers the costs of, and tradeoffs between, large-scale power sources such as coal plants and small-scale power sources close to customers. Finally, he looks at how utilities can respond to all of these challenges and remain viable, while financing hundreds of billions of dollars of investment without much of an increase in sales.

Upon publication, *Smart Power* was praised as an instant classic on the future of energy utilities. This Anniversary Edition includes up-to-date assessments of the industry by such leading energy experts as Daniel Estes and Jim Rogers, as well as a new afterword from the author. Anyone who is interested in our energy future will appreciate the clear explanations and the in-depth analysis it offers.

Join EBA Book Club:

Every EBA Member is invited join for any or all quarterly sessions of the EBA Book Club. Let this be your inspiration to read industry-related literature at your own pace and discuss, ask questions, share perspectives and debate the book's themes and conclusions with other EBA Members.

The EBA Book Club has both virtual and physical platforms to interact with other members. Virtually, the EBA Book Club will meet under "Energy Bar Association Book Club" at Goodreads.com. Details follow:

Virtual EBA Book Club:

Please join the online EBA Book Club forum at www.goodreads.com (free registration required). Once you create an account, search for and join the Group "Energy Bar Association Book Club."

EBA Book Club Live:

!!! SAVE THE DATE !!!

On November 20, 2014, Wall Street Journal reporter and famed author of the 3Q, 2014 Book of the Quarter **Steven Mufson** will join us live to discuss **Keystone XL: Down the Line** and other energy news. Details to follow in *EBA Insights*!

If you have not yet read the 3Q Book, there is still time! It is a short eBook available for download at major online book stores.

Coming Attractions:

Look for the 1Q, 2015 Book of the Quarter in the next edition of EBA Update!

Book recommendations are welcome – please email any suggestions to the Book Club Moderator at: EBABC-Moderator@gmail.com.

Happy reading!

Upcoming EBA Events

Fracking Revisited -- Current and Past Developments

October 21, 2014, Dentons US LLP, Washington, DC

ISO/RTO Governance and ADR Issues and Models

October 22, 2014, Federal Energy Regulatory Commission
Washington, DC

Pre-Conference Reception hosted by the Young Lawyers Committee

November 3, 2014, DC Coast Restaurant, Washington, DC

Twelfth Annual Fundraising Gala & Silent Auction

November 4, 2014, Renaissance Hotel, Washington, DC

2014 Mid-Year Meeting & Conference

November 4-5, 2014, Renaissance Hotel, Washington, DC

EBA Reception for Commissioner Norman Bay

December 3, 2014, Jones Day, Washington, DC

Check the EBA Calendar for more information on any of these events or if you have any questions please contact Associate Administrator Michele L. Smith at 202.223.5625 or michele@eba-net.org.

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.

EBA Congratulates Michele Smith on her Tenth Year with EBA



Lisa Levine, Executive Director congratulates Michele (Duehring) Smith on her tenth anniversary with EBA. EBA has enjoyed the dedication and enthusiasm Michele has demonstrated during her tenure with EBA.