

EBA Update

Winter 2015

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Ohio PUC Vice Chairman Asim Z. Haque Shares Thoughts on Pressing Energy Issues

From Energy Practitioner to Energy Regulator, He Maintains His Specialized Focus



Gary E. Guy and Channing D. Strother

Taking advantage of the opportunity to interview him when he came to Washington, D.C. to speak at the Energy Bar Association Mid-Year Meeting, your scriveners Gary Guy and Channing Strother (aka "Charles Collingwood and Tom Pettit") met with Asim Z. Haque, Vice Chairman of the Public Utilities Commission of Ohio. The Commissioner graciously afforded us a lengthy morning interview at the offices of the National Association of Regulatory Commissioners before heading off to a mid-morning appointment at the Federal Energy Regulatory Commission (FERC), followed by an afternoon appearance on the Mid-Year Meeting first day panel on North American Electric Reliability Corporation issues, where he was one of four presenters. The uncut video of the interview can be seen at www.eba-net.org. You won't want to miss Haque tell of his stand-up comedian aspirations.

Meet Commissioner "Rising Star" Haque

Commissioner Haque is apolitical and a registered independent. He told us this on what happened to be election day, where the Governor John Kasich who appointed him to the PUCO, was being re-elected by a landslide, triggering predictions that he may be a Presidential candidate in 2016.

Like a former FERC Commissioner, Sudeen Kelly, Commissioner Haque, a son of a physicist father and a physician mother, majored in chemistry as an undergraduate (along with political science). A native Ohioan, he graduated *cum laude* and with department honors from Case Western Reserve University. He then took a turn away from the scientific leanings of his parents, and, again like Commissioner Kelly, took up the study of law

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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.

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President's Message Jason F. Leif

In early November, the Energy Bar Association hosted more than 500 people at the 2014 Mid-Year Meeting and Conference in Washington DC. The Conference provided two full days of programming examining issues around major regulatory changes that could be transformative to America's energy industry.

The conference kicked off with an introductory Session with Vanessa Allen Sutherland, Chief Counsel, Pipeline and Hazardous Materials Safety Administration (PHMSA) and the first general session focused 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.

Attendees enjoyed a variety of concurrent sessions covering topics such as: *Electric Power Supply Association v. FERC - the Future of Demand Response* to *Striking the Right Balance: Environmental Review of Natural Gas Infrastructure Projects* to name but two. During lunch, newly confirmed Federal Energy Regulatory Commissioner Norman C. Bay entertained and informed us on his experience of moving from the office of enforcement to the Commissioner seat and how his former experience will inform him as a Commissioner.

The second morning's general session focused 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 focused 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. During lunch, we heard a *Reporter's Perspective on How FERC Has Evolved* brought to us by Guest Speaker Glen M. Boshart, Industry Editor, *SNL Energy*.

During the conference, I had the pleasure of presenting the State Regulatory Practitioner Award to Charles Gray and the EBA and CFEBA conferred the Paul E. Nordstrom Service Award to Paul B. Mohler (more information on the awards is available at: <http://www.eba-net.org/about-us/awards>). Members also had a chance to enjoy special events including the ever popular, Pre-Conference Young Lawyers Committee Reception, New Member Reception and the Charitable Foundation of EBA's Gala & Silent Auction.

Many attended, much was accomplished but not without the tireless efforts of the EBA Meeting & Program Committee led by Dan Simon, Gary Guy, and Mosby Perrow. My sincere thanks goes to Dan, Gary, Mosby and all the volunteers who worked so hard to present us with an outstanding program.

Please remember to take a look at our EBA calendar for events throughout the United States in the coming months. And, don't forget to pencil in the 2015 EBA Annual Meeting & Conference on May 5-6 in Washington DC, where we will have another outstanding program filled with interesting topics.

EBA Board Approves Revisions to Committee Structure, Functions and Responsibilities

January 2015

At its January meeting, the Energy Bar Association (“EBA”) Board of Directors unanimously approved recommendations for revisions proposed by the EBA Board Task Force on Committees. The Board’s approval is the final step in a process that began last April with the formation of a Board Member group charged with reviewing the EBA Committee structure, functions and responsibilities.

Changes in the energy industry and overlap between and among existing EBA Committees prompted the comprehensive review. At the behest of EBA President, Jason Leif, the Task Force reviewed all aspects of the EBA Committee structure (e.g., membership trends, Committee performance, charter descriptions, etc.) with an objective of providing judicious recommendations for any desirable changes, and with the goal of ensuring that EBA Committees remain vibrant, function smoothly, and meet members' current and future needs. The Task Force consulted with the EBA Officers, Board Members and current Committee leadership in developing the final recommendations. The approved revisions will accomplish several identified goals.

First, common functions of Committees and Subcommittees, including annual succession planning responsibilities have been established.

Second, the Committee structure has been reorganized to avoid overlap and provide efficiencies. The functions of the previously independent Competition and Antitrust Committee have been incorporated and divided among the existing Compliance and Enforcement Committee, Electricity Committee, Natural Gas Committee, and Oil and Liquids Pipeline Committee. The functions of the previously independent Judicial Review Committee have been incorporated and divided among the existing FERC Practice Committee, State Practice Committee, and subject matter-specific Committees. Finally, the functions of the previously independent Professional Development, Education and Ethics Committee and Programs and Meetings Committee have been incorporated into the newly established Professional Education Council.

Third, a Subcommittee structure within the Electricity Committee has been established consisting of the Demand-Side Resources and Smart Grid Subcommittee, Nuclear Regulation Subcommittee, Power Generation and Marketing Subcommittee, and Renewable Energy Subcommittee.

Finally, two committees have been removed from the committee structure and redesignated as “Councils” to distinguish them from subject-matter and practice Committees and a third new Council has been approved. The Young Lawyers Committee will now be known as the Young Lawyers Council, the Programs and Meetings Committee will now be known as the Professional Education Council and a Retired Lawyers Council will be established.

The approved revisions will be placed into effect at the beginning of the 2015-2016 EBA organizational year.

Participation in EBA Committees and programs are key benefits of membership in the Association. These changes to the EBA Committee structure, functions and responsibilities are in furtherance of the Association's commitment to providing the membership with superior educational programming and opportunities.

Charitable Foundation of the Energy Bar Association (CFEBA) Update

Marcia Hooks

On Tuesday November 4th, the CFEBA held its Annual Fundraising Gala & Silent Auction, *Light Up the Night*, at the Renaissance DC Downtown Hotel. Over 200 guests attended and the silent auction alone raised \$10,000 and the Gala revenue brought in approximately \$50,000 for the CFEBA!

During the Gala, Paul B. Mohler was presented with the sixth Paul E. Nordstrom Service Award. This award was established by the EBA and the CFEBA in memory of Paul E. Nordstrom, a past president of the EBA and the first president of the CFEBA. The Paul E. Nordstrom Service Award honors EBA members who have demonstrated exemplary and significant service to the EBA and the community. The award was presented by CFEBA President Marcia C. Hooks at the Gala. The Friend of the CFEBA Award was presented to Susan N. Kelly for her generous contributions over the years. Fourteen firms were also presented awards for continuously giving to CFEBA for 5 or more years consecutively.

Guests enjoyed hors d'oeuvres and cocktails while bidding on a diverse array of silent auction items. Once again, "Team Sutherland" won the Team Competition with their 2 auction items, bringing in \$1065 total for the CFEBA. Thanks to all participating teams and those who supported the CFEBA by giving outstanding auction items or cash to purchase those items!



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CFEBA Update

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EBA Members' CFEBA Contributions Are Making A Positive Difference

During a ceremony on December 11, 2014, CFEBA Board Member Mark Kalpin presented a check in the amount of \$5,000 from the Charitable Foundation of the Energy Bar Association to the Dimock Community Health Center (Dimock Center) in Roxbury, Massachusetts. The grant will be used by the Dimock Center to purchase energy efficient windows at its Sewall Building.

The Dimock Center is a historical facility that dates back to 1862, when it was the New England Hospital for Women and Children. It is now a comprehensive non-profit health and human services center that annually serves more than 17,000 patients, including some of the most destitute residents of the Greater Boston area. The Center is renovating some of its older facilities, and noted in their application that the CFEBA's grant would help alleviate the cost of the renovation project and yield savings on operational expenses moving forward.

EBA members – you can know that your contributions are making a difference, and that recipients of CFEBA grants indeed appreciate your generosity, as expressed in a thank you letter from the Dimock Center:

Dear Charitable Foundation of the Energy Bar Association:

I am writing to express my sincerest gratitude to you for your support of the Dimock Center. Your gift of \$5000 is greatly appreciated. Your donation will support programs and services at Dimock that are the hallmark to our patient-centered care model.

Thank you again for your contribution. We are so grateful for your steadfast commitment to our community and all who live here. It is because of supporters like you that The Dimock Center can continue to be a leader in the communities we serve. Thank You!

*Warmest Regards,
Christina Alexia-Clark
Director of Development*

Additionally, Dr. Laura Stachel, the founder and Director of the very worthy non-profit WeCareSolar notified CFEBA as follows:

We received requests from the Ministry of Health of Sierra Leone for Solar Suitcases for maternal health care in areas affected by Ebola. We prepared Solar Suitcases for shipment to Sierra Leone in response to that request.

Because of EBA members, law firms and company supporters' generosity, CFEBA was able to provide \$10,000 to make solar suitcases available to provide electricity for medical procedures in Sierra Leone, a country that has been ravaged by Ebola.

These two examples show clearly that your dollars are making a positive difference in the lives of people here in the United States and abroad. CFEBA appreciates your continued support as we seek to honor other requests for pending grants and the summer internship program.

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Thank you to our 2014 CFEBA Annual Fundraising Campaign Donors

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Reflections of the CFEBA Hawaii PUC Internship

Kylie Wha Kyung Wager

This summer, the Charitable Foundation of the Energy Bar Association awarded me with a stipend to serve as a legal intern at the Public Utilities Commission (PUC), State of Hawai'i. Having focused on climate change and energy law and policy during law school, I was delighted to begin my legal career at the PUC. During the 10-week internship, I had the opportunity to work on several major PUC dockets affecting Hawai'i, a leader in renewable energy and energy efficiency.

Feed-in Tariff

Working on the Feed-in Tariff (FIT) program was one of my major assignments at the PUC. In 2008, the PUC opened a docket to investigate the implementation of a FIT program for Hawai'i. The FIT program established a set of standardized rates, terms, and conditions that the state's primary electricity utility would pay for renewable energy, based on the project size. In 2013, the PUC opened a docket to reexamine the FIT program. My task was to develop recommendations for determining the status of applications in the initial FIT program, taking into account comments submitted by state agencies, businesses, non-profit organizations, and other interest groups.

Na Pua Makani Wind Project

I also worked on the Na Pua Makani wind project, a 24-megawatt project proposed to be located in Kahuku, a community on O'ahu's famed North Shore. In December 2013, the Hawaiian Electric Company, Inc., submitted to the PUC an application seeking approval of a power purchase agreement for the project, among other things. The project, if approved, would contribute to attaining Hawai'i's renewable portfolio standard, but has drawn numerous concerns from Kahuku residents. My task was to summarize and analyze the record for this project.



Comcast – Time Warner Cable Merger

To gain experience with other regulatory issues under the PUC's jurisdiction, I also worked on a telecommunications project. I contributed to a Decision and Order approving, subject to several conditions, the indirect transfer of control of Time Warner Cable subsidiaries from Time Warner Cable to Comcast. The transaction was part of a \$45 billion, national merger agreement.

"In the Field"

Also during my internship, I was fortunate to join some of the PUC commissioners and staff on two site visits. First, I visited Hawai'i Gas, which supplies liquefied natural gas, synthetic natural gas, and propane to Hawai'i residential and commercial customers. Interestingly, Hawai'i Gas is the first, and currently the only, company in Hawai'i that "imports" liquefied natural gas. During the tour, I learned about shipping and handling procedures and witnessed the regasification process. Later, I visited AES Hawaii, the only coal-powered power plant in the state. The coal plant burns bituminous coal, but can also burn biomass. These site visits allowed me to experience energy on the ground.

Reflections

Working at the PUC exposed me to the unique issues facing Hawai'i as it transitions away from fossil fuels and toward renewable energy and energy efficiency. Although Hawai'i's renewable energy resources are abundant, mak-

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ing the best use of these resources is a challenge, considering Hawaii's "islanded" electricity grids and its unique cultural, environmental, and socio-economic landscape. Because of the state's progressive renewable energy and energy efficiency targets, the PUC is at the forefront of shaping clean energy law. Yet, like many other state agencies in Hawai'i, the PUC faces limited staff and resources. Overall, I gained a better understanding of the regulatory perspective for energy law and policy while working on several major projects. This experience will be invaluable to my career.

Biographical Information

Kylie Wha Kyung Wager currently serves as a law clerk for the Honorable Mark E. Recktenwald, Chief Justice of the Supreme Court, State of Hawai'i. She graduated from the University of Hawai'i at Mānoa – William S. Richardson School of Law in December 2013 and was admitted to the Hawai'i Bar in 2014. During law school, Ms. Wager served as an extern for the Honorable Richard R. Clifton, Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit. She also has worked for the Hawai'i Department of Land and Natural Resources, Earthjustice – Mid-Pacific, Blue Planet Foundation, and the Center for Island Climate Adaptation and Policy. After her clerkship with the Hawai'i Supreme Court, Ms. Wager hopes to continue developing a career in energy law and policy.

Energy Law Journal: Excerpts from Past Issues

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

Ten Years Ago

"Those who engage in market manipulation can have very creative minds. It is unlikely, given the speed of Congressional action, that an approach rooted in enactment of legislation to prohibit specific manipulative practices will be able to keep pace with the creativity of the rogues and scoundrels who stand to earn unjust profits from market manipulation. A better approach would be to establish a general prohibition of market manipulation and authorize the Commission to prohibit specific manipulative practices. . . . [T]hat is the approach taken to prohibit market manipulation in securities and commodities laws."

Joseph T. Kelliher, *Market Manipulation, Market Power, and the Authority of the Federal Energy Regulatory Commission*, 26 ELJ 1, 31 (2005)

Twenty Years Ago

"The regulation of international power transfers, in contrast to the reregulation of domestic power transfers, has remained static in the face of tremendous market changes. The present international power regulatory scheme was designed in a different time for a very different industry. It is a regulatory relic. It is encrusted with implementing policies whose historical origins are concerns of dubious contemporary relevance but which divert recognition and consideration from what ought to be the major concern of our time. This concern is the development of an economically efficient international power transfer market that internalizes, as much as possible, the environmental externalities that unavoidably accompany such development. To achieve this, market reform of the

regulatory scheme governing international power transfers is necessary."

Arturo Gandara, *United States-Mexico Electricity Transfers: Of Alien Electrons and the Migration of Undocumented Environmental Burdens*, 16 ELJ 1, 45 (1995)

Thirty Years Ago

"An important facet of discovery practice that practitioners often neglect is that these discovery devices are not mutually exclusive and can be employed seriatim to reinforce each other. In other words, it is perfectly proper to undertake discovery under one device for the purpose of determining what is discoverable under another. As an example, counsel in a recent case served data requests on an adverse party, seeking identification of the employee of that party who had custody of its records. When the response was received, counsel for the discovering party took depositions of the custodians, solely for the purpose of developing what records were kept, in what format they were kept, and where they were located. With this information in hand, counsel was able to frame a series of data requests and requests for inspection and copying the documents that would have elicited precisely the information his client needed with surgical precision and with great economy. If the case had gone to hearing (it was settled after the discovery phase concluded), there might also have been a request for admissions designed to 'lock in' the genuineness of the discovery material that was to be proffered as evidence."

Isaac D. Benkin, *More Ado About Prehearing Discovery at FERC*, 6 ELJ 1, 7 (1985)

Approved Special Marketing Programs, 5 ELJ 287, 305 (1984)

EBA Primer Series

Another Successful Primer!



Eighteen months ago the Energy Bar Association embarked on the development of a “primer” series focused on teaching core regulatory and legal concepts and basic industry fundamentals that every energy law practitioner must understand. The overall goal of the series is to provide attorneys new to a specific segment of the industry, a foundational understanding of the industry and how it is organized and regulated, so they can better approach, research, and evaluate the issues their clients face. This week we completed presentation of our fourth program: An Introduction to Federal Oil Pipeline Regulation held in Houston, TX. Many thanks to our Primer host and sponsor Vinson & Elkins, LLP.

Other primers offered include: Electricity and Electric Rate Regulations; An Introduction to FERC Regulation of Natural Gas Industry; An Introduction to Hydro Power and An Introduction to Federal Oil Pipeline Regulation. Handout material and recordings from the programs are available at: EBA online store at <http://www.eba-net.org/education/on-demand-programs>

Additional primers are in development. Check the EBA website for information in the future.



Speakers from the Oil primer enjoying dinner together.

EBA wishes to thank the sponsors of the 2014 Mid-Year Meeting and Conference



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EBA Committees

EBA ERC financial products event

Michael Blackwell, ACES Power Marketing

On January 14, 2015, EBA's Electric Regulatory Committee brought together an esteemed group of panelists and moderators to discuss the role of financial products in organized electricity markets. For the industry veterans in the room, this meeting offered a thought-provoking discourse on several critical issues currently facing the industry. For newcomers, it was an opportunity to hear from the experts in energy regulation and power system economics.

The first panel presented a discussion on the purpose of financial products in organized electric markets. Moderator, Greg Lawrence (Cadwalader, Wickersham & Taft LLP), offered an introductory explanation of virtual transactions and Financial Transmission Rights (FTRs), and posed several challenging questions to the panelists regarding the effectiveness of FERC enforcement rules. Panelist Andrew Stevens (DC Energy LLC) elaborated on the beneficial effects of convergence bidding and the role that financial participants play in improving market liquidity and price transparency. Harry Singh (Goldman Sachs) discussed the methods of uplift employed in various RTO/ISO markets, including fee structures, balancing operating reserve charges, negative balancing congestion, and real-time congestion uplift. Dr. William Hogan (Harvard University) provided a concise summary of the historical development of U.S. electricity markets and the crucial nature of financial products in successful market design.

The second panel addressed the role of regulators, operators, and market monitors in governing the use of financial products. Noha Sidhom (Inertia Power, LP) moderated the discussion, which included presentations by Commissioner Philip Moeller (FERC), Kevin Vannoy (Midcontinent Independent System Operator), and Dr. Joseph Bowring (Monitoring Analytics, LLC). Dr. Bowring noted his concern that the overuse of financial products may threaten the physical integrity of the grid, and emphasized the importance of clearly defined regulatory rules. Mr. Vannoy offered the perspective of a system operator and provided insight into the use of financial products in RTO/ISO operations. Commissioner Moeller focused his dialogue on the FERC enforcement process and his desire to implement a licensing requirement for traders in the electric power industry.

Aside from the panel discussions, the event was a great chance to reconnect with colleagues and make new connections. A special thanks to Cadwalader, Wickersham & Taft for hosting the event.



EBA Committees

Discuss Critical Infrastructure Physical & Cybersecurity: Electric Industry Issues & Insights Event

On December 9, 2014, the EBA Electric Regulation Committee and the System Reliability & Planning Committee co-sponsored a brown-bag seminar on Critical Infrastructure Physical & Cybersecurity: Electric Industry Issues & Insights. Government and industry representatives at the table shared their perspectives on, among other things, physical and cybersecurity initiatives currently underway, including NERC's Critical Infrastructure Protection (CIP) Version 5 standards, and the recently-approved CIP-014-1 (Physical Security) standard, as well as implementation efforts, complications and costs to industry. The session was moderated by Joel de-Jesus (Schiff Hardin LLP), who was joined by panelists H. Russell Frisby, Jr. (Stinson Leonard Street LLP), Nick Savage (FBI) and James Boone (Pepco Holdings, Inc.).

Watch for future educational programs -- visit

EBA Calendar of Events:

<http://www.eba-net.org/calendar>

EBA Committees

YLC Update

Delia Patterson and Gregory D. Jones

The Young Lawyers Committee plays a unique role in EBA by providing educational programming and networking opportunities geared toward newer members of the bar. One of the YLC's most popular events is the annual Mid-Year Meeting Reception, which took place on November 3, 2014, at DC Coast. Thanks to the generous donations of our sponsors (and the efforts of the YLC Mid-Year Reception Planning Subcommittee), the event was another rousing success, as many of the attendees stayed up to and beyond the end of the open bar. For those who attended, the Reception was a great way to kick off the Mid-Year Meeting and a good opportunity to see new and familiar faces around the energy bar.

The YLC also co-sponsored a panel presentation with the System Planning and Reliability Committee and the American Bar Association's (ABA) Section of Public Utility, Communications and Transportation Law, titled "NERC Compliance & Enforcement for Practitioners." The half-day session was held on October 2, 2014, at the George Washington University Law School and featured three panel discussions plus a networking reception. The discussion was designed for both new and seasoned NERC electric reliability practitioners and explored the roles of FERC, NERC, and the Regional Entities in reliability compliance and enforcement efforts. The panelists were a mix of regulators, regulated entities, and private practitioners who gave their views on a wide variety of reliability-related topics, including several ongoing and significant NERC initiatives (such as the Reliability Assurance Initiative), the perspective of industry on NERC regulation, and the role of the energy attorney in a reliability audit.

Student outreach also is an important part of the YLC's mission. Over the past several years, the YLC has visited law schools in the DC area and elsewhere in the country to provide our "Road Show" presentation. The EBA Road Show is presented by energy practitioners, who are typically members of the YLC, to current law school students to provide a brief introduction to the practice of energy law and the role of EBA in providing educational and networking opportunities to practicing lawyers and students alike. The Road Show is designed to inform students about the opportunities to work in the energy law field and encourage student participation in EBA and YLC events. The presentations tap into the diverse experiences of each of the presenters and give students a chance to meet and engage with people practicing in energy area, which is usually welcomed given the current legal market faced by new law school graduates. Students who attend these presentations oftentimes will show up at a YLC Happy Hour or larger event, such as the annual Summer Intern Reception.

Over the past few months, the YLC has continued to roll out the Road Show to local area schools, having visited Howard University and Georgetown University. Since the first presentation at American University in 2012, the Road Show has also visited Catholic University, George Washington University, and the University of Richmond (with several of these schools being visited two or more times). Plans are underway for several more presentations this spring.

If you missed out on the Mid-Year Reception or are just looking for a chance to mingle with the Young Lawyers, attend one of our monthly happy hours! They are usually held on the third Thursday of every month at various locations throughout downtown DC. The YLC Happy Hours are fun, laidback events that draw EBA members of all ages. Check the weekly EBA Insights email for the exact dates and locations.

EBA Welcomes Rachel Woodall



The Energy Bar Association is pleased to welcome Rachel Woodall to our staff. Rachel fills the newly created position of Manager, Communications and Membership Marketing. Rachel comes to EBA with more than 12 years of experience in marketing, media and public relations, strategic partnerships and grants writing. She is a graduate of Ball State University and most recently she served as Associate Product Marketing Manager for Salesforce: ExactTarget Marketing Cloud. Along with her family, she just moved to the Washington DC metro area from Indiana. Rachel will manage the association membership prospecting, recruitment and marketing efforts including publishing the EBA Update Quarterly Newsletter, the Annual Report, EBA Insights and messaging. Rachel will also assist with CFEBA and FELJ marketing efforts as time permits. Please welcome Rachel!

Her direct dial is: 202.499.5847

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(although he still likes to study graphs and charts relating to energy). He earned his law degree at The Ohio State University Moritz College of Law. He has actually lived all over Ohio, from Columbus, where he was born, to Cleveland, to Beaver Creek in Dayton, and now Springfield in western Ohio. His physician wife commutes to Dayton while he commutes to the Capitol in Columbus. Several times over the years, Super Lawyers Magazine has named him an Ohio Super Lawyers Rising Star.

He began lawyering at Ice Miller LLP, which some may recognize from its former name of Schottenstein, Zox & Dunn Co. LPA. He began his legal career with a combination of health law and the representation of public sector clients, such as municipalities, and their residents, businesses, trade associations, and competitive retailers in energy and utility matters before the Ohio Commission. “I got thrown into the deep end fairly early on,” he told us. American Electric Power had a major application pending, and he was given the file to handle for three like-minded clients. After six-plus years at that firm, he went in-house at Honda North America, Inc., where he expected to stay until retirement, still practicing in the energy field, and still appearing before the Ohio PUC among other things. Much to his surprise, he only remained in that job (that he “loved”) for 10 months. That is because Governor Kasich appointed him a Commissioner to fill an unexpected vacancy in 2013. He was selected out of a list of approximately 20 individuals, in large part because of his involvement in matters before the state agency, and his familiarity with its processes and personnel. He found that his interaction with

the Governor and his staff went well during the selection process, causing Kasich to “roll the dice” with his nomination, as it were. As a result of this prior experience, “I was able to jump into the role and hit the ground running.”

In fact, he has taken off like a rocket. He is now the Commission’s Vice Chairman, and he is on both the Gas Committee and the Critical Infrastructure Committee of National Association of Regulatory Utility Commissioners (NARUC). He is on the Board of Directors of the Mid-Atlantic Conference of Regulatory Utilities Commissioners. As if that is not enough, he serves on the Member Representative Committee of North American Electric Reliability Corporation (NERC).

In addition to these professional responsibilities, Commissioner Haque devotes himself to civic causes. He is President of the Board of Directors of the non-profit organization Community Research Partners. He is President of The Columbus Academy Alumni Board, and serves on the Academy’s Board of Trustees. Plus he is a graduate of the FBI Citizens Academy, and he has been a mentor in the Big Brothers/Big Sisters school-based mentor program. No wonder he was singled out early as a Rising Star!

Security of the Electric Grid and Its Attendant Cost Recovery

Given his NERC involvement and his participation in FERC technical conferences on grid security, we started by asking Commissioner Haque about his reaction to recent controversies surrounding apparent physical and cyber-attacks on the grid, and newspaper

depictions of facility locations and potential vulnerabilities. “This is going to be a very relevant area going forward in the utility space,” he observed, adding, “NERC does an excellent job protecting the grid” with the standards it develops, and FERC approves.

He stated that staying out in front of the evolving technological developments that arise with hacking is challenging for regulators. While relying heavily on the expertise of NERC and the

“NERC does an excellent job protecting the grid” and states need to develop “best practices” on cost recovery mechanisms.

industry, he commented that the role of state commissions in this space is being explored within NARUC and individual state agencies. “We all need to be conversant in this area,” he declared.

One area where he sees the regulators having a leading role is that of cost recovery for expenses relating to grid security. He wants to identify a compilation of “best practices” emerging out of the various state ratemaking methodologies. For the states, this is “tricky” because most efforts to protect against physical, cyber, and even geomagnetic threats are concerned with bulk power facilities within the jurisdiction of NERC and FERC. “Investments to protect the distribution system need to be recovered” subject to state commission review of prudence and subject to state prescriptions of proper rate mechanisms for inclusion of such costs. It is because of those state

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commission decisions that he says the state commissioners need to be educating themselves about the various security concerns and how best to tackle them. For instance, he queries if costs to provide security should fall within normal O&M or be given its own special category of cost recovery, perhaps through its own rider or tracker.

Defining the Job of a Modern Day State Commissioner

“There is the job we are tasked with doing and then there is the job that is outside of the job.” He explained this to mean that State Commissioners are well known as being economic regulators of utilities both in company-specific rate cases and in generic, judicial-type rulemakings. But, increasingly, State Commissioners, as with FERC Commissioners, are called upon to monitor what is going on in the market place in restructured states, such as Ohio, that have competitive markets. He observed that, for example, PJM Interconnection LLC has an independent market monitor, and the State Commissions must also be monitors of market forces at the distribution level. In addition, there are the security issues previously discussed and other matters, such as “EPA 111(d) rules and regulations that are outside of the typical regulator box” that State Commissioners must be on top of at all times. “We are looked to by not only stakeholders in the State but by other regulators in the State for our expertise level because of the impact of regulations [aside from those promulgated by the State Commission], and if we do not weigh in we are not doing our State and our consumers justice.”

Continuing on this theme, he observed that in all facets of life, such as telephones now storing data that require privacy protection, advances in energy services also pose new challenges for regulators beyond traditional ratemaking. “As the proliferation of new

“If we do not weigh in [on the impacts of other agency regulations, such as the EPA], we are not doing our State and our consumers justice.”

technologies increases so does the risk. If we want to offer more innovative products, and advance how energy is consumed in this country, which,” he believes, “people will really like, there is a challenge of safeguarding” against new risks.

This is something he and other regulators confront with the advent of smart meter technology. He acknowledges that there are privacy concerns, and therefore “opt-out” has to be an option for those that believe these concerns outweigh the benefits of utilizing this technological achievement. His conviction is that “as we transition and adapt, we have to be a little flexible.”

He concentrates on being “very diligent” in his job and reaching out to Commissioners across the country who he knows possess expertise on a specific issue. His fellow Ohio Commissioners are likewise diligent in their job performance, living up to the agency’s reputation for maintaining an active, leading role among State Commissions. The collegiality of the Ohio Commissioners allows for constructive dialogue, with very



few dissents on orders.

And he is impressed by the “large, very knowledgeable” Staff at the Ohio PUC.

The Vice Chairman finds that “folks on a national level and on a regional level are looking to see what we have to say on a myriad of issues.” This is because of the significance of Ohio in the energy sector. For example, Ohio has the sixth largest electric load of any State due mostly to the manufacturing that is located there. Also, Ohio has some pioneering electric security plan cases before it now, which is in part why he has been a speaker at FERC on the related cost recovery mechanisms. In addition, he finds that there is a lot of press coverage devoted to his agency given the large number of utilities that are regulated in Ohio. “These are nuanced areas and we welcome the coverage by the media,” he adds.

In carrying out the duties of State Commissioner, he has found NARUC to be very useful. “Without NARUC, we would be missing out on a lot.” First, NARUC provides training to newly minted Commissioners, who get to know each other, “like a pledge class.” It also provides speaking opportunities that allow Commissioners to get to know each other, and take advantage of each other’s disparate disciplines. Commissioner Haque knows who best to reach out to on specific matters because of the NARUC networking opportunities.

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Haque, continued from page 12

Finally, he recommends both the energy and the health field, in which he also practiced. He notes that these industries are “constantly evolving” and “you are not relying principally on precedent from 1824.” Instead, you are faced with new challenges every day, that call upon you to be not only legally proficient, but also be a “pseudo-economist, pseudo-analyst, and pseudo-lobbyist,” among other things. He calls this a “fascinating” opportunity for those who choose to pursue these “multi-disciplinary, fast-paced” fields of endeavor.

Ohio Attributes and Challenges



He calls his State “fortunate” to have the “wonderful natural resource under our soil” of shale gas, retrievable by fracking. “We are having to handle the transition from coal as our primary fuel source to natural gas,” of which he states there is an “abundance” in his State. He points to the downward trend in coal for fuel in Ohio from 87 percent to 66 percent and continuing to decline given environmental and other factors. Reliance on the coal fleet for base load is being phased out but the transition “has to be handled very intelligently and thus far we have been able to do that.” However, he believes EPA regulations “push us into a potentially dangerous spot based on the time frames that are mandated by at least a proposed rule.” So his characterization of plentiful natural gas as “fortunate”

is accompanied by his admonition that “a lot has to fall into place” to meet generation demands. “We cannot just order up new generation,” inasmuch as Ohio is a restructured State. In Ohio, the market, more than official edicts, is the key to having supply meet demand. For that reason, he states that “we are very vocal advocates within PJM to ensure that Ohio is well situated going forward.” In addition, he finds that “the FERC Commissioners are more than receptive” to him and his

Proposed EBA regulations “push us into a potentially dangerous spot based on the time frames.”

colleagues from Ohio and he is “very grateful that they have an openness” to conversing on matters outside particular FERC dockets.

It is no wonder that Commissioner Haque is a welcome and familiar presence at FERC, and throughout government and industry circles generally. He has amassed a wealth of knowledge and experience, which he is putting to good use in a whirlwind of activity. We will do well to keep our eyes on this continuing Rising Star.

Hacking into Haque

What He is Doing for Fun:

Watching and reading about sports. “I am a sports addict. I am a huge Cavs’ fan, and fully and emotionally engaged in LeBron’s return to Cleveland.”

What He Would Like to Do for

Even More Fun: “I am actually a really funny guy. In law school, I won the superlative of the Funniest Law Student. I have always wanted to prepare and appear on a

comedy stand-up night show. I tell my wife that I am going to do this. There is a Comedy Club in Ohio called *The Funny Bone*. One of these evenings [after leaving office] I am going to get up there and just knock ‘em dead, my career will take off, and who needs a law degree after that.” Told by us that FERC Commissioners give humorous after-dinner speeches at the EBA Annual Meeting, he immediately added: “Is that right? I am officially now campaigning to become a FERC Commissioner purely for that opportunity. I want you to know that President Obama or whoever your successor is.” [NOTE: You must watch the video to see the good Commissioner is at least half-jesting. But if he gives us a rendition, we will post it.]

What Non-Sports Material is on his Nightstand:

Trade publications. *A National Geographic* article on planets and extra-terrestrial life. *Playing for Pizza* by John Grisham.

Favorite Sound: A jump shot going through the hoop, snatching the net, without touching the hoop. He played center in school.

Least Favorite Sound: Sudden, loud sounds. And (said jokingly) the University of Michigan fight song.

Favorite Word: “Yes.” His doctor wife gets positive affirmations from patients whereas he is used to getting beat up as a lawyer.

Walter Mitty Dream Career other than Comedian:

Coach high school basketball and teach chemistry. “Who knows, maybe one day?”

What Makes Him Happy: When things are going well with family and close friends.

Wants to Have Said about Him: “Good work, well done.”

Energy Bar Association Book Club Newsflash

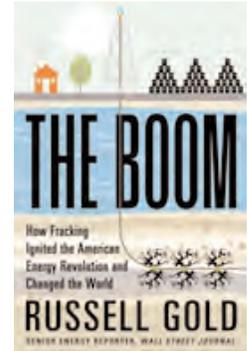
Presenting the 1Q, 2015 EBA Book Club

Book of the Quarter:

The Boom

**How Fracking Ignited the American Energy Revolution
and Changed the World**

By Russell Gold



From the Book Jacket:

One hundred wells a day. That is the number of wells that are drilled and hydraulically fractured – or fracked – every day in the United States.

In *The Boom*, Wall Street Journal reporter Russell Gold chronicles the rise of this once-obscure oilfield technology, a story that answers a critical question of our time: where will the energy come from to power the world – and what price will we have to pay for it. It is a commanding piece of journalism, an astounding study of human ingenuity, and an epic work of storytelling.

From his first visit to a “frack pad” in 2003, Gold chronicles the rise of fracking and how it touches all of our lives. Fracking has vociferous critics and fervent defenders, but these arguments obscure the true story of how fracking has become a fixture of the American landscape and global economy. This is the story that Gold tackles in *The Boom*, a book that will change the way you look at energy.

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:

!!! COMING SOON !!!

Dr. Peter Fox-Penner, Principal of The Brattle Group and author of the 4Q, 2014 Book of the Quarter will join us live to discuss Smart Power; Climate Change, The Smart Grid, & The Future of Electric Utilities (Anniversary Edition) and other industry issues. Details to follow in EBA Insights!

Coming Attractions:

Look for the 2Q, 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

Emerging Energy Issues: How 2014 Issues Will Shape 2015
February 3, 2015, ALSTON & BIRD LLP, Atlanta, GA

Overview of Air Regulations and Actions Affecting O&G Development in the Rocky Mountain Region
February 11, 2015 Teleseminar

Enforcers and Defenders Forum
March 3, 2015, George Washington University, Washington, DC

Fourteenth Annual Western Chapter Meeting
March 5-6, 2015, Hyatt Regency Hotel, San Francisco, CA

Eighteenth Annual Midwest Energy Conference
March 30-31, 2015, The Palmer House Hilton, Chicago, IL

2015 EBA Annual Meeting & Conference
May 5-6, 2015, Washington, DC

Check the EBA Calendar for more information on any of these events or if you have any questions please contact Manager, Chapter & Foundation Relations, 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.

**Mark Your
Calendar!**

EBA Annual Meeting & Conference

May 5-6, 2015
Washington, DC

The EBA Annual Meeting & Conference features twelve concurrent sessions, general sessions and numerous networking opportunities. The conference will be approved for 10-14 hours CLE credit plus one hour of ethics. We invite you to attend the conference and the reception hosted by the Foundation of the Energy Law Journal to honor the Administrative Law Judges. The ALJ Reception will be held on Tuesday evening, May 5th. Watch EBA's website and calendar for more information.

Interested in becoming an Energy Bar Association Conference Sponsor?

The Energy Bar Association's Annual Meeting & Conference hosts approximately 600 attendees including attorneys, non-attorney professionals, and students active in all areas of energy law, which include, antitrust, international energy transactions, legislation and regulatory reform, electric utility regulation, alternative dispute resolution, finance and transactions, and environment and public lands, to name just a few, at federal, state, and international levels. This meeting will bring together decision makers on key issues impacting energy law.

For information on sponsorships, please contact Lisa Levine at llevine@eba-net.org or 202-223-5625.