

# EBA Update

Summer 2013

## President's Message



**Adrienne E. Clair**

On behalf of the EBA Board of Directors and Staff, welcome to this Bar year! The year is off to an exciting start and I encourage each of you to renew or continue your participation in the organization. Last year, the EBA adopted a new Strategic Plan consistent with its core purpose of promoting professional excellence in the practice of energy law. We will continue this year to enhance the Association by focusing on four key goals: educational programming, networking opportunities, information resources and membership growth. As President of an Association which has for more than 60 years enjoyed increased diversity in the energy industry, areas of practice and membership, I look forward to participation in the EBA's continued success.

In the coming months, I hope that each of you will experience some of the enhancements being undertaken as part of our Strategic Plan. Our educational programming efforts continue to focus on programs of regional and national relevance, with subject matter experts and a diversity of viewpoints. To that end, I have already attended this year two Chapter Annual

*continued on page 11*

## NARUC President Jones Articulates Agenda of State Commissioners

### Cybersecurity and Coal Risk Assessments are Key Concerns

*Gary E. Guy and Channing D. Strother*



With the average tenure of a State Commissioner being 3 ½ years, Philip B. Jones is a seasoned veteran with 8 years and counting as a Commissioner on the Washington Utilities and Transportation Commission (WUTC). And he is not even half way through his second six-year term. What's more he is the leader of all State Commissioners as the President of the National Association of Regulatory Utility Commissioners (NARUC). His one-year term runs from November 2012 through November 2013. Just past the half way mark in the latter position, he is preparing his Mid-Year Report for the NARUC Summer Committee Meetings in Denver. Get your exclusive advance insights here first!

### Two Full Time Jobs; National Constituencies

NARUC's headquarters is in Washington, D.C., the opposite coast from the WUTC, and President Jones,

when duty calls, is a regular traveler to both spots. *EBA Update* interviewers Gary Guy and Channing Strother (aka "David Frost and David Susskind") spent more than an hour with the President in D.C. when he graciously fit us into breakfast before heading off to a full schedule.

Not having interviewed a sitting NARUC President before, we asked how it is to be both WUTC Commissioner Jones and NARUC President Jones at the same time. He explained that the NARUC positions are filled by various Commissioners as "volunteers." He said "you really do have to work two full-time jobs at once" and also account for the three-hour time difference in coordinating with the NARUC Staff. Essentially, he gets up earlier in the morning and works later at night. This happened to be his sixth day on the road at three cities. His nights have been spent catching up on emails. It sounded grueling to us as

*continued on page 12*

# Charitable Foundation of the Energy Bar Association Update

## CFEBA Will Celebrate its Eleventh Anniversary with its Annual Gala and Silent Auction

The CFEBA will host its Eleventh Annual Gala and Silent Auction on Wednesday, October 23, 2013 in conjunction with the EBA Mid-Year Conference at the Renaissance Hotel in Washington, DC. Funds raised at the Silent Auction will be used for energy-related charitable activities, as well as other community service projects targeting energy efficiency techniques.

Since its inception in 2002, the CFEBA has awarded more than \$1,250,000 to deserving national and international organizations. EBA members' participation is necessary to ensure a successful gala. To help in this worthwhile endeavor, members and their employers may contribute IN SEVERAL WAYS. They may PROVIDE CASH DONATIONS OR EVEN SPONSOR THE GALA. THEY MAY ALSO CONTRIBUTE SILENT AUCTION ITEMS.

Items the Gala Committee is currently requesting:

- \* **Everything Wine (wine, wine glasses, wine stoppers, etc.)**
- \* **Kennedy Center, Arena Stage or National Theatre tickets, etc.**
- \* **Gift Certificates to Restaurants**
- \* **Gourmet Cookware and Cook's Tools**

In addition, the CFEBA is excited about the Gala's fourth annual "Team Competition." The CFEBA encourages you to form a "Team," which will donate an item or basket of items to be auctioned. The Team that generates the highest winning bid for its silent auction entry will receive recognition in the EBA newsletter and bragging rights until next year's silent auction. It's a friendly competition between friends, law firms, and companies, and you have the added satisfaction of knowing that proceeds from your donation will be used to assist worthy organizations' energy-related activities. Day Pitney LLP won the Team Competition last year bringing in \$800 between their two Team auction items, with Van Ness Feldman LLP not far behind with \$785 in silent auction item revenue for the CFEBA.

The Gala Committee is always seeking new volunteers to help make the event a success. Please contact Michele Duehring if interested, or with any Gala related questions at (202) 223-5625 or email her at [michele@eba-net.org](mailto:michele@eba-net.org).



## Shop for a Cause. Shop for CFEBA!

The Charitable Foundation of the Energy Bar Association is participating in Macy's "Shop for a Cause" charity shopping event on August 24, 2013. Through this unique one-day-only shopping event created to support local charities' fundraising efforts, you can save money and help raise money for the CFEBA at the same time!

Please purchase \$5.00 shopping passes here for yourself, your staff, your family, and your friends and the CFEBA will keep 100% of the shopping pass proceeds. The shopping pass entitles the customer to exclusive discounts and savings (25% off regular, sale and clearance merchandise) at every Macy's store nationwide on Saturday, August 24th (over 800 locations in 45 states and DC). This is the perfect opportunity to purchase back-to-school clothes and household items, as well as silent auction items donations for the upcoming CFEBA Gala taking place on October 23, 2013. Since 2006, Macy's has helped charities raise more than \$46 million. Now it's your chance to be part of this monumental event by helping the CFEBA!

The CFEBA's sole mission is to engage in a wide variety of energy-related charitable activities, as well as other community service projects targeting energy efficiency techniques. The CFEBA relies upon tax-deductible contributions from EBA members, law firms, and businesses for its grant funds and the active participation of the EBA members for its service projects. Since its formation in 2002, the CFEBA has awarded over \$1.25 million to worthy organizations in furtherance of the CFEBA's charitable mission. Working together we can make a difference in the lives of others!

Please support the CFEBA, enjoy a day of spectacular discounts, entertainment and special events at Macy's and "Shop for a Cause"! It's a WIN-WIN!

**For more information on the  
CFEBA, please visit:  
[www.cfeba.org](http://www.cfeba.org)**



# Young Lawyers Remain Ever Energetic

*Young Lawyers Committee – Sandra Safro, Chair; Delia Patterson, Vice-Chair*

The 2013-2014 EBA year is off to a great start for the Young Lawyers Committee (YLC). In late April, the YLC teamed up with CFEBA to volunteer with Habitat for Humanity DC. YLC and other EBA members worked side-by-side with the new home owner to put up fencing, paint, build overhangs, and in other ways help finish off the house to prepare it for final inspection.

On April 23, 2013 the YLC sponsored a “Mini 101” brownbag on market-based rates under the Federal Power Act. Jane Rueger, Counsel, White & Case LLP and Julie Solomon, Principal, Navigant, joined forces to provide a comprehensive overview of the steps to apply for and maintain market-based rates, complete with an in-depth look at market power analyses. Rueger and Solomon also shared their own “lessons from the trenches” on tips and pitfalls of the market-based rate process. A copy of the presentation can be obtained here: <http://eba-net.org/docs/events/Rueger-EBA-YLC-Presentation.pptx>

On June 19th, YLC hosted the Fifth Annual Summer Intern Reception at One Lounge in Dupont Circle. Our over 80 registrants represented multiple law firms, associations, and agencies. The event provided summer interns with the opportunity to network with practitioners and learn more about EBA. The YLC would like to thank all of our sponsors, (listed to the right) without your generosity our events would not be possible.

The YLC continues to hold its monthly happy hours (typically on the third Thursday of each month, following the FERC Hearings), which give our members a chance to make new professional connections and maintain existing networks. The YLC has a robust list of programs for this year and we are looking forward to another great quarter! If you have programs that you would like to see or suggestions for events, please email Sandi Safro at [sandra.safro@klgates.com](mailto:sandra.safro@klgates.com) or Delia Patterson at [dpatterson@publicpower.org](mailto:dpatterson@publicpower.org).

## Fifth Annual Summer Intern Reception Sponsors

### Premium Sponsors:

Gibson Dunn & Crutcher LLP  
Hunton & Williams LLP  
Husch Blackwell LLP  
Sutherland, Asbill & Brennan LLP  
White & Case LLP

### Sponsors:

Akin, Gump, Strauss, Hauer  
& Feld, LLP  
DLA Piper LLP  
Jones Day  
K&L Gates LLP  
Perkins Coie LLP  
Stinson Morrison Hecker LLP  
Troutman Sanders LLP



**Pictured left to right: Julie Solomon and Jane Rueger.**



**YLC Committee Chair Sandra Safro, pictured far right, joins other CFEBA and YLC volunteers by putting on her hard hat for Habitat for Humanity.**



# Rocky Mountain Chapter Inaugural Annual Meeting

The Rocky Mountain Chapter held its First Annual Meeting in Denver, Colorado on June 21, 2013 in the offices of Patton Boggs, LLP. More than 45 persons attended the event which was also sponsored by Rothgerber, Johnson & Lyons LLP. The event represented an excellent beginning for the Chapter which was formed earlier this year.

As part of the event, a panel discussion on Interstate Electric Transmission Projects in the Rocky Mountain West occurred, with presenters who included Roxane Perruso, Vice President & General Counsel TransWest Express LLC; Van Wilgus, General Counsel SunZia Southwest Transmission Project and Tom Pankratz, Project Manager NorthWestern Energy vMountain States Transmission Intertie Project.

A second panel discussion concerning Natural Gas in the Rocky Mountain Region featured Paul Smith Director of Business Development, America's Natural Gas Alliance Natural Gas Production; Chris Castilian Government Relations Manager Anadarko Petroleum; Brent Backes General Counsel for DCP Midstream Midstream Pipelines; Greg Schnack Executive Director Governmental Relations with Denbury Resources Frank Prager, Vice President of Environmental Policy and Services Xcel Energy.

The next major event sponsored by the Rocky Mountain Chapter was a luncheon titled, *Meet the Commissioners*, held on July 21, 2013 at the Sheraton Denver Downtown Hotel. Approximately 50 EBA members and guests had the opportunity to meet the public utilities Commissioners for the five state Rocky Mountain Chapter in an informal atmosphere and learn more about the people who vote on regulatory matters. This Luncheon took place during the Summer Committee Meetings.

Our honored guests included: Commissioner John Norris (FERC); Chairman Ben Hall (NM); Commissioner Pam Patton (CO); Commissioner Bob Lake (MT); Chairman Al Minier (WY) and Commissioner Thad LeVar (UT).



**EBA Rocky Mountain Chapter Officers (left to right): Crystal J. McDonough, Gregory V. Johnson, Vicki M. Baldwin and Thomas J. Dougherty**

## Mark Your Calendar and Plan to Attend the 2013 Energy Bar Association's Mid-Year Conference

**October 23-24, 2013**

**Renaissance Hotel**

**999 Ninth Street, NW**

**Washington, D.C.**

Two full days of programming, numerous networking opportunities and a chance to support the Charitable Foundation of EBA.

A snapshot of sessions include:

President Obama's Climate Action Plan; Geopolitical Implications of Energy Discoveries in Unexpected Places by Unexpected Players; Revisiting Variable Energy Resources Integration; Overcoming Barriers to Build Natural Gas Pipeline Infrastructure; Avoiding Ethical Pitfalls Representing Energy Companies Before State Regulators; Financing New Generation, Transmission and Generation-related gas Infrastructure; Big Data and Cyber Security Concerns; Order No 1000 Update

Also plan to attend the CFEBA Fundraising Gala and Silent Auction on October 23, following the first day of programming (separate tickets required).

Make your hotel reservation online using this [hotel booking link](#).

Additional information will be available soon in the EBA Website, [www.EBA-Net.org](http://www.EBA-Net.org)



# Northeast Chapter Annual Meeting

The Northeast Chapter held its Annual Meeting on June 5, 2013 at the Newark Club, in Newark, NJ. This is the second year that the Chapter held its meeting outside of New York City and it was another great success with over 90 attendees. Subject matter experts spoke in depth on issues that are confronting the Northeast region, including Super Storm Sandy, FERC enforcement and compliance, natural gas pipelines and the demands of the electric industry, as well as planning the system to include wind. All of the panels featured lively discussion and exchange of ideas among the panelists, and attendees asked many great questions. Ralph Izzo, Chairman of the Board, President and CEO of Public Service Enterprise Group, delivered the morning keynote address and FERC Commissioner John R. Norris spoke during the luncheon program. Attendees gave the program content rave reviews and those materials can be accessed [here](#). Media from PJM Insider covered the afternoon Natural Gas Pipelines and the Demands of the Electric Industry and that article can be found [here](#).



# JUDGE'S CORNER

The FERC Practice & Administrative Law Judges Committee proudly presents Federal Energy Regulatory Commission Administrative Law Judge Philip C. Baten, our next "Judge's Corner" author.

Judge Baten has served as an ALJ since 2005, both at FERC and the Office of Medicare Hearings and Appeals at the Department of Health and Human Services. A Vietnam veteran, His Honor was a Captain in the United States Air Force and was awarded the Bronze Star.

He has extensive trial experience in both civil and criminal litigation as a private practitioner for approximately 23 years. He also held several administrative and analytical positions at Howard University.

His impressive academic credentials include graduating in the top 10 percent of his class from George Mason University Law School. And he has both Bachelor's and Masters' degrees in political science from Howard University.

We have appreciated his attendance at many EBA events, and note that he also belongs to the District of Columbia Bar, Federal Bar Association, and Washington Bar Association.

Here now is his latest contribution to our membership:

**By Guest Columnist,**

**The Honorable Philip C. Baten**

**Administrative Law Judge, Federal Energy Regulatory Commission**



Your invitation to write my inaugural article for this journal is a well-appreciated honor. While I came to FERC in June 2010, I continue to feel like the new kid on the block. The complexities of utility have many facets. I must say that the professionalism of the Energy Bar makes my task easy, so I take this opportunity to thank all of the members of the bar for their dedication to utility law and especially their charitable patience when appearing before such a novice as myself. Also, I have come to know many of you personally through hearings, various bar meetings, and other functions. These contacts have enhanced my belief that the members of the Energy Bar are a highly dedicated and professional group of lawyers.

The totality of my prior legal practice and experience occurred in the common law courts. As a solo practitioner, I did little administrative litigation in the government agencies. The differences between the two forums are well known to lawyers and need no review here. As I am less versed in utility law, I cannot inform you on that subject.

However, I do hold certain judicial principles that you may have an interest to

know. No matter the forum, American jurisprudence emphasizes the duty of the lawyer to represent his client's interest zealously. This duty does not convey rights on the lawyer. Only the client has rights in the forum, and the lawyer's duty is to protect those rights. The judge also has a duty to protect the rights of all litigants in a proceeding. I am constantly on the alert to assure that my actions do not deprive the attorney of his duty to represent his client. For this reason, I take issue with certain procedures that seem cemented in litigation at FERC.

Rate cases are prevalent although I have not yet decided one. In my various conversations with some colleagues and others, the notion arises that a judge is looked to come up with his own numbers if the parties fail to prove their numbers. From my perspective, a judge must never divine a number that the parties had not vetted and for which the record provides no evidence. If the party with the burden of proof presents evidence that the rate of return should be 20 percent, and the intervenors present evidence that the rate of return should be 10 percent, the duty of the judge is to decide whether the former

had met his burden on the 20 percent. If not, then the case should terminate. Ample case law supports this result. If the judge is concerned about the time and expense of litigation, he could decide on the 10 percent figure since both sides in the litigation have vetted that number on the record. In either case, the attorneys had ample opportunity in the proceedings to represent the interest of their clients with respect to the 10 percent figure. But, let's say for the sake of argument that the judge conjures up 15 percent when he writes his decision. Here, no attorney had an opportunity to vet this number and therefore his duty to represent his client in the hearing and on the record was arrested. In other words, the attorneys would not have had an opportunity to challenge the validity of the judge's formulations and calculations, and the source of his data—to name a few problems. In short, the judge never took the witness stand to have his off-record results vetted by the parties with the help of their experts. Since judges do not have the burden of proof and are not required to submit to examination, they should never stray from the record in their fact-finding. This prin-

*continued on page 7*



## Judges Corner Continued

ciple, however, has its opponents among some colleagues.

Another FERC peculiarity that arises often in our hearings is the objection called “friendly cross-examination.” In lay circles, it is an oxymoron that would invoke a polite chortle. Assuming that I know its meaning, which may not be the case, this objection at the least imposes a constraint on the duty of the lawyer to represent his client. In my hearings various attorneys have raised this objection with great vigor. Again, I am concerned with any restraint on an attorney to represent his client’s version of the truth. If a lawyer feels compelled to examine any witness on a point, he should be free to do so. Limitations on these questions may be required when attempting, for example, to introduce new evidence beyond the prefiled testimony and exhibits. Needless to say that I do consider friendly cross-examination, and when I do allow the questions I will also consider any out of turn follow up questions which an opposing attorney may feel is warranted in light of any fact that was raised by the friendly cross. My goal is that every attorney has the broadest latitude to represent his client even if it means that we may spend an extra day or two in the hearing.

Because I want every attorney to have the greatest latitude to represent his client, as his duty requires, I am confused by the FERC tradition that discounts direct-examination. In my hearings, I have offered the parties the opportunity to present their witnesses under direct-examination. I make this offer in the hope that any complicated theories and charts will be better explained, and the theory of the case will be clarified. I am always surprised by the pushback to my offer of direct-examination. While the direct testimony is prefiled, and I do read it, I often do not glean from the written words the perspective that the offering attorney has in mind. Prefiled testimony presents a shotgun of facts. Some facts are relevant and some are not. I spend inordinate time and effort treading through the prefiled testimony and all the while asking myself “what does this mean” and “is this relevant.” Sometimes I realize that I had completely missed the point. The party with the burden of proof should always be concerned that the fact-finder has absolute clarity on the facts, issues, and theory of the case. Of course, the opposition’s role is to create as much obfuscation as possible. Direct-examination is the attorney’s best opportunity to identify for the judge those pertinent facts that support his theory of the case. If an attorney chooses to rely on the judge’s questionable ability to wade through disjointed and confused prefiled testimony, followed by the disjointed and confused cross-examination of the witness, then he does so at his peril. As one of my great professors would tell the class on the final day of exams, “If you confuse me, you lose.”

Just a final note. I do have one request of the bar. I separate the attorneys from the cases and I decide cases based only on my understanding of the facts and the law. My decisions in no way represent my opinion about the ability of the attorneys. Therefore, no one should take any decision as a rebuke or endorsement of any attorney. I know that this request is difficult. When I was practicing, I always took personally the decisions of judges, especially when they ruled against me. It is human nature. But, deep down in my soul I know that the old adage is true that in the end an attorney is no better than his case and no richer than his client.



## Energy Law Journal: Excerpts from Past Issues

### Ten Years Ago

“LNG was viewed as a high-cost source of natural gas in the early years of its importation in the U.S. This view changed during the periods of natural gas supply curtailment, when LNG was seen as necessary to augment an inadequate supply of domestic natural gas. Additionally, LNG was viewed as a largely seasonal source of natural gas to be utilized at times when users were willing to accommodate the higher prices. Recently, LNG has come to be viewed as more than just a peaking supply of natural gas. Proponents of new LNG projects assert that in the future LNG can be a competitively priced source of natural gas available to fill an increasing portion of the growing demand for natural gas in the U.S.”

Gearold L. Knowles, *Liquefied Natural Gas: Regulation in a Competitive Natural Gas Market*, 24 ELJ 293, 293-4 (2003)

### Twenty Years Ago

“Of all known sources of renewable energy, the ocean possesses the greatest power potential. To date this potential remains virtually untapped. This, however, is bound to change over the next decade. Technological progress in the development of ocean energy systems has steadily continued, even in the absence of the government grants and preferential tax treatment accorded to other renewable energy developers. Moreover, new policy directions, such as the removal of barriers to entry to both domestic and international utility markets by Energy Policy Act of 1992 and the Clinton Administration’s evident enthusiasm for renewables, should stimulate private investment in ocean energy projects.”

Carolyn Elefant, *Ocean Energy Development in the 1990s*, 14 ELJ 335, 335 (1993)

### Thirty Years Ago

“On balance, common carrier obligations, if imposed on all interstate and intrastate pipeline companies, should be mandated by Congress because it would give large consumers decisionmaking flexibility and an alternative to being captive of a single supplier for its fuel or raw material. Thus, common carriage would introduce new elements of competition into the natural gas industry. Common carriage contains certain risks and costs for the end-user of natural gas which seeks to establish contract carriage service, but it may yield favorable results. In practice, a common carriage requirement for natural gas pipelines may result in lower rates for certain consumers because pipelines may be compelled to reduce rates in order to deter customers from buying gas directly from producers.”

William A. Mogel and John P. Gregg, *Appropriateness of Imposing Common Carrier Status on Interstate Natural Gas Pipelines*, 4 ELJ 155, 186-7 (1983)

## HOT OF THE FERC PRESSES: OALJ AND ODR UNIFY

FERC Chairman John Wellinghoff announced on June 14, 2013 that the Dispute Resolution Service is joining the FERC Office of Administrative Law Judges! With the addition of the Dispute Resolution Service, the new office will be named Office of Administrative Law Judges and Dispute Resolution (OALJ-DR). Click [here](#) for the full News Release.

The transfer will provide a seamless process for the referral and early identification of issues and proceedings that lend themselves to consensual resolution and will allow for a continuum of progressive Alternative Dispute Resolution (ADR) options when considering complex, multidisciplinary energy initiatives facing the Commission and the nation. The new Division of Dispute Resolution brings a staff of experts in ADR which will lead to a more efficient utilization of FERC’s ADR process by industry participants in all areas of FERC jurisdiction. The synergies created by the unified ADR activities of both offices will better serve the Commission and the energy bar.



**EBA members and guests came together for a lovely rooftop reception held by the Foundation of the Energy Law Journal Honoring the FERC Administrative Law Judges on May 1<sup>st</sup> at White & Case LLP**



**Members and honored guests enjoy themselves at the Sixty-Seventh Annual Meeting Reception and Dinner  
May 2, 2013**



## President's Message Continued

Meetings; the Northeast Chapter and the first-ever annual meeting of the Rocky Mountain Chapter. Both programs offered timely discussions of issues relevant in their respective regions. Plans are underway for programs in the remaining five Chapter regions and I encourage everyone to take advantage of the opportunity to engage in energy issues with a more regional focus. The Association's Committees are also well underway with programs covering the landscape of energy issues. Each of our programs offers great networking opportunities, as do the more focused networking events sponsored by the Young Lawyers' Committee.

In furtherance of our goal to improve information resources, this summer we will unveil a redesigned website for the Association. The website redesign is the initial step in an effort to enhance and update both the format and the content of our website. In the coming weeks, please watch for notice of the redesigned website and provide us your feedback. We hope that the website remains a current and easily-navigated source of information on the Association, as well as the Foundation of the Energy Law Journal and Charitable Foundation.

The Association exists to serve its members and we are greatly appreciative of your participation. This year, the Association issued a call for topics so that each member has a vehicle to provide input to our Programs and Meetings Committee. Please continue to provide input on our programs; if there are topics or formats you would like to see, we welcome the feedback. If you have ideas how we can better serve the membership, please let us know. The Association staff and Board of Directors are but an email or phone call away. If you are pleased with us, please encourage your colleagues to attend an EBA program or, better yet, encourage them to join the EBA. Membership growth will help us to continue the diversity of topics, opinions, and members that benefit each of us in achieving professional excellence. I look forward to seeing as many of you as possible at an EBA event in the coming months.



**EBA President Adrienne Clair at the Annual Meeting with outgoing CFEBA President Bob Weishaar.**

## 2nd Annual Energy Enforcers and Defenders Forum a Big Success

*Compliance and Enforcement Committee - Andrea Wolfman, Chair; Keith Joseph Coyle, Vice-Chair In conjunction with the Georgetown University Law Center*

The Compliance and Enforcement Committee and Georgetown University Law Center held a very successful Second Annual *Energy Enforcers and Defenders* Forum on March 28, 2013. This was a special event designed for Commodity Futures Trading Commission (CFTC), Department of Transportation (DOT), Federal Energy Regulatory Commission (FERC), and North American Electric Reliability Corporation (NERC) staff and private practitioners. The forum began with a panel of energy enforcement officials on the enforcement processes used by FERC, CFTC, NERC, and Pipeline and Hazardous Materials Safety Administration (PHMSA), along with insight into hot topics and significant issues in the enforcement sphere. The panel was followed by an interactive skills development session titled "*Inside the Mind of an FBI Agent*," presented by a specialist in fraud investigations and forensic accounting, who was formerly a Supervisory Special Agent and Instructor at the FBI Academy. The Forum concluded with a networking cocktail reception. Over 100 people registered for the event and more than 40% of the attendees were from energy enforcement agencies.

The panelists were: Kathleen Banar, Chief Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission; Sonia Mendonca, Assistant General Counsel and Director of Enforcement, North American Electric Reliability Corporation; Larry Parkinson, Director, Division of Investigations, Office of Enforcement, Federal Energy Regulatory Commission; Vanessa Sutherland, Chief Counsel, Pipeline and Hazardous Materials Safety Administration, Department of Transportation; and Robert Fleishman, Covington & Burling LLP, moderated. The investigative techniques session was provided by John Hanson, Founder and Executive Director, Artifice Forensic Financial Services, Inc.



# Interview with NARUC President Jones *continued*

we sleepily downed our caffeinated coffee in our regular time zone. But President Jones appeared chipper and energetic.

Not that NARUC is without a wealth of talented, dedicated Commissioner-volunteers. NARUC has a Board of Directors of 30-plus members and an Executive Committee of six, with the President as the *de facto* CEO. There are five regions within NARUC, and they rotate the President among those regions.

The President is actually chosen three years before taking office as the Second Vice President, then moving up to First Vice President, and then assuming the Presidency. As President Jones explains, each region will elect from among their members who will go into the three-year cycle leading to President when that region's turn comes up. Sometimes, as in his own case, the election is contested with secret ballot. But after the region makes its pick, the full NARUC vote is unanimous in deference to that region's right to make its selection for that year.

The regional rotation is used chiefly because of the regional differences when it comes to energy regulation. Among the differences President Jones pointed to are organized and unorganized markets, and natural gas producing states and non-producing states. In terms of his own region, President Jones commented that he is from a vertically integrated area without an RTO and without retail choice. He referred to FERC's Order No. 1000 as an example of many instances when FERC announces that it is allowing for regional differences, but implementation of the order has raised eyebrows within the NARUC community. Another factor for the rotation is that there are well over 200 state Commissioners eligible for NARUC election, and it is more efficient to limit each annual election for the next in-line position to a smaller group of potential candidates.

The voting is decidedly not based on party affiliation. "NARUC is non-partisan and we try to keep the politics out of it," he tells us. He happens to be a Republican Commissioner on the Washington State Commission, and calls himself a "moderate."

The President is called upon to make appointments to NARUC Committees and other leadership responsibilities. He tells us that he makes his selection on the basis of achieving diver-

sity. "I like a variety of backgrounds; I don't want them all to be lawyers, electrical engineers, or business people." He likes gender balance. He likes Committee balance. For example, "the Gas Committee has become much more visible with the rise of shale gas." Traditionally, the Gas Committee was composed of the E&P states, Oklahoma and Texas, but now consists of consuming states as well as traditional production states. The Energy Resources

**"I want people to work. And I want people to advance the ball intellectually and policy-wise."**



**From left to right: Channing D. Strother, Jr., NARUC President Jones and Gary E. Guy**

and the Environment Committee is balanced across the regions as well. "I want people to work," he contends. "And I want people to advance the ball intellectually and policy-wise." Accordingly, he looks for people who do good work and who are committed.

Interestingly, President Jones told us that NARUC is involved in international activities, including Canada, Latin America, and Europe, with funding from USAID and the State Department. One of the activities that he finds especially useful is the interaction between NARUC and its sister association of Canadian Commissioners among its

various Provinces. NARUC leaders meet with European leaders annually as well. As President of NARUC, he represents all fifty states in these exchanges with foreign officials. This means he has to represent, for example, Texas, RTO regions, retail choice states, and traditionally regulated non-choice states in carrying out all of his official NARUC President functions. He jokes that some of the foreign representatives point out that his State has no RTO and has the Bonneville Power Administration as though that should be the basis for his views, and then he tells them that he is speaking to the areas of common agreement among all the regions within NARUC on the basis of resolutions on point adopted by vote of the organization.

## NARUC Consensus on Security Concerns

An area of agreement among the regions within NARUC is the need for the federal authorities to share cybersecurity threat information – actionable intelligence on vulnerabilities, such as "worms" and viruses – with State Commissions and utilities, and provide liability protection rules to utilities concerning cyberse-

*continued on page 13*



# Interview with NARUC President Jones *Continued*

curity. Consequently, cybersecurity is a chief topic for President Jones. He meets with White House, Cabinet level (including DHS, FBI), top military officials, and FERC (e.g., Joseph McClelland) and NERC representatives on this subject and testifies before Congress as to the need for stronger legislation for emergency authority and enhanced coordination on cybersecurity. "Gerry Cauley is doing a good job," he says of NERC's President. Physical security is also a top area of coordination of efforts between President Jones and FERC Chairman Jon Wellinghoff.

"Information sharing is critical," he warns. The Presidential Directive of February 2013 has improved the situation, and President Jones has seen indications that DOD is a good model for other agencies on how essential security information can be provided to utilities. He stated that NARUC staff conducts workshops on cyber security issues and how to form a cyber-team organization that has been given to Commissioners in 28 states. On

the federal level, he reported that NARUC is participating in the National Institute of Standards and Technology (NIST) process on developing a framework on dealing with cyber. He mentioned that DOE is also very involved in this

**"We need Congressional action but it is not happening in this polarized climate."**

effort at its Idaho Lab.

He calls this a matter of "national security" that needs federal action. As for Congressional action, he confides that, "I think we need it but it is not happening in this polarized climate."

Still, State commissions play a significant role, President Jones said. He asks rhetorically, "Do you want to throw out all the regulatory framework of the State Commissions that is in place and go to DHS to start a whole new regulatory

framework?" He calls it an educational 101 role he plays in explaining to Congressional staffers that the State Commissions are best equipped to be involved in security coordination. He says that staff members on Capitol Hill do not always see the benefit of working within the existing regulatory regimes by giving State Commissions access to security related intelligence by which to exercise security oversight responsibility along with existing rate and safety matters that the State Commissions already are in place to oversee.

In making this observation, he speaks from the perspective of one who was himself on Capitol Hill, as a senior legislative assistant to Senator Daniel J. Evans of Washington, advising him on energy policy issues before the Senate Energy and Natural Resources Committee, as well as international trade policy. (Those of us old enough to recall "Straight Arrow Dan" as a Governor before succeeding "Scoop" Jackson in the Senate will be glad to hear

*continued on page 14*

## Raw Data

**How to Spend Any Spare Time:** Golf. Go to lake home north of Spokane. Read Japanese and Chinese literature in original language. Play piano. Spend less time in an airplane.

**Favorite Authors:** David McCullough, Doris Kearns Goodwin (*Team of Rivals*), Northwest poets and novelists.

**Least Favorite Expression:** "Level the playing field."

**Favorite Sound:** Cascading water; waterfalls.

**Least Favorite Sound:** Screeching of chalk on a chalk board.

**What He Enjoys:** Cooking with his daughter and have a good meal with friends.

**What He Dislikes:** Hyper-partisanship and lack of civility in political dialogue.

**What Else He Might Have Liked To Do:** Act in a Shakespearian drama.

**How to be Remembered:** "He was a good man and a good friend, had great integrity, and always tried to do the right thing."

**Advice to Young People Interested in Energy:** Energy is a wonderful career path. Fertile legal issues are developing as the utility model undergoes change. Don't just study law. Study religion, and philosophy, and travel. Get an internship with legislative or regulatory body, law firm, or corporation. Broaden yourself and have fun.



# Interview with NARUC President Jones Continued

that he is still going strong at age 87.)

What we are left with is the President's Directive, state legislative authority, and FERC directives to NERC, and "this is the framework we are going to have to deal with for the foreseeable future." Specifically, he foresees more progress in the form of federal administrative agencies working with NARUC. The electric industry is devoted to this effort as well, he observes.

Another area where President Jones points to the lack of needed Congressional action is telecommunications. He maintains that technology has made the 1996 federal telecom legislation out of date. On both the telecom and cybersecurity areas, he says that "Congress has to get its act together."

## Coal Risk Assessment Methods a NARUC Priority

Various risk assessment methodologies for coal is another area of concentration for President Jones. He explained that EPA regulations require states to investigate risks of "externalities" associated with fossil fuels. With a combination of federal funding, NARUC is examining how best to measure for these risks. Among the items being examined are mercury standards that are being finalized by the EPA. At NARUC's Denver meeting this summer, the issue of coal ash and liquids as byproducts is going to be taken up, he told us. Whether or not CO<sub>2</sub> and greenhouse gas restrictions will be made applicable to existing plants or just new plants is also a looming issue to be decided by the EPA that NARUC is watching. The traditional combined cycle plant emission rate has been the benchmark standard of measurement for risks. For example, one thousand one hundred pounds per megawatt has been the Washington state standard by statute, with a change imminent pursuant to a review required every three years. EPA regulations may impose standards that differ from that of many states. Consequently, President Jones observes, "The last coal plant in the state of Washington will likely have to shut down by 2022."



**"The last coal plant in the state of Washington will likely have to shut down by 2022."**

## Not Your Grandfather's Utility Anymore

Asked about his thoughts concerning Smart Grid technology, President Jones stated he believes in "transactive energy" with more consumer understanding of price changes. In particular, he sees intelligent two-way communications via the grid as a way to promote distributed generation. But he urges caution in implementation, saying that there was too much of a rush for federal funding without knowing all the consequences. "The technology is maturing," in his view and becoming "more feasible."

Distributed generation is going to have a big impact on the utility model, he predicts. NARUC has been involved with utilities, National Association of State Utility Advocates (NASUCA) and others in a Critical Consumer Issues Forum (CCIF) to study incentive issues, business model issues, and consumer impacts surrounding distributed generation. As a result of this collaborative effort, the CCIF has recently published high level principles concerning what utilities will look like with the advent of distributed generation. He

**Goodbye to "the regulatory paradigm that was established way back in the 20s and 30s"**

**Hello to "creative and nimble" utilities.**

predicts that the utility construct will and should adapt by becoming more "creative and nimble" and move away from "the regulatory paradigm that was established way back in the 20s and 30s." As examples, he sees solar and other non-traditional energy sources making headway in Arizona and California, with the result that, while some utilities are resisting, others are "thinking more creatively."

## Getting Regulators Up To Speed

"There is regulatory risk, regulatory lag, political risk, construction cost overrun risk, and whole bucket of other risks." But, the good President reassures us, "regulators are up to the challenge. We spend a lot of time on training."

He described a training course given two times a year for new Commissioners at the NARUC conference room for about ten or 11 incoming Commissioners at a time. Veteran Commissioners, such as NARUC Committee Chairs, spend two days going over scenarios and potential pitfalls with the newcomers. They advise on what to do when various kinds of issues come up, such as decoupling,



## Interview with NARUC President Jones **continued**

pipeline safety, accelerated cost recovery, or requests from elected officials or special interest groups. The seminar covers politics, adjudications, and how to run a hearing. Those new Commissioners who are former legislators are cautioned as to how litigation cases cannot be resolved with phone calls as with legislation, or be decided by going outside the record for information. He points out that there are also lots of non-NARUC training programs, such as those offered to him when he became a Commissioner in 2005. And he reminds us of the National Regulatory Research Institute, NARUC's research arm, as a valuable tool for regulators.

Yes, But Who Is this Man?

Philip Jones got off to a promising start in life but not one that naturally led to where he is now. He grew up in the family clothing business. He graduated from Harvard specializing in the Japanese economy and lived in Japan for five years after obtaining his degree. While there, he became proficient in Japan's challenges being a largely energy dependent, importing state. Then things took off in a different direction.

In particular, "I got my baptism in energy as a staffer for Sen. Evans." The issues he tackled on the Hill included nuclear waste policy, Bonneville, hydro-electric power, and the Natural Gas Policy Act. When he left there, he opened his own consulting company, concentrating on energy and trade. But events took still another turn.

That family clothing concern of his brother's came to be so successful that our future President Jones agreed to head up its European operations for 5 years, stationed in Amsterdam. Life was good but again outside forces importuned him to alter his course.

He was approached about being a State Commissioner by a then sitting Commissioner on the WUTC who had also worked for Dan Evans, as legal advisor and Cabinet official when Evans was Governor. Richard Hemstad, who was being held over past his second term as the lone Republican on the three-person Commission, asked if Mr. Jones would take the slot if offered. He agreed, and Governor Christine Gregoire made the appointment.

In his Commissioner role, he tells us that he has "two masters," the Governor as the appointing authority, and the legislature, which delegates to the Commission the responsibility for determining what constitutes just and reasonable rates (hardly a fit subject for debating in a political forum). As to this second

"master," Commissioner Jones is in close contact with the legislature; advocating it to take action on certain matters and attempting to convince it not to act on others.

Perhaps because of the manner of his own selection, he characterizes his "bias" to be that the appointed Commissioner model is better than the elected Commissioner model. He offered up the opposing view that a Governor appointee is beholden to the Governor and the legislative body that approves a nomination while the elected Commissioner is closer to the people and is independent once in office. However, he believes that on balance independence is maintained either way.



### Summary Assessment of Regulation USA-Style

He tells us that the energy bar is very good in his home state. However, he believes that "we sometimes become too litigious," including the Consumer Advocate. That said, he recalled that when a previous WUTC Chairman put out a statement promoting settlements, too many "black box" settlements got filed whereby the Commissioners thought they were not getting enough information to evaluate the terms that were negotiated. So he is looking for a "happy medium."

In contrast, he states that one of the biggest challenges in meetings with representatives from Latin America and Eastern Europe is explaining the concept of regulatory independence whereby skilled lawyers present their opposing cases to facilitate an adjudicated decision on the merits. The notions of "rule of law, justice, and due process" are not readily understood by state-run enterprises that experience "a lot of corruption unfortunately." Coming back home from those places causes President Jones to conclude that "it may be litigious and tedious at times, arguing for an hour whether an exhibit should be admitted, but it works."

Because we are fortunate enough to have public servants of the caliber of President Jones it does indeed!

## Save the Date

*CFEBA Annual Gala and Silent Auction*

**October 23, 2013**



# ANNOUNCING: ENERGY BAR ASSOCIATION BOOK CLUB

We are excited to announce that the Energy Bar Association has formed a 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, at your own pace, industry-related literature 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 Bookclubit.com. The EBA Book Club will also meet in-person at an informal quarterly happy hour. Fast Facts to get started are located in the box below. Should you have any additional questions, please contact [EBABCModerator@gmail.com](mailto:EBABCModerator@gmail.com).

We will have our first in-person meeting, in the form of a happy hour mixer, on Thursday, September 10, 2013 at DC's PhilanthroPub, The Cause <http://www.causedc.org/>.

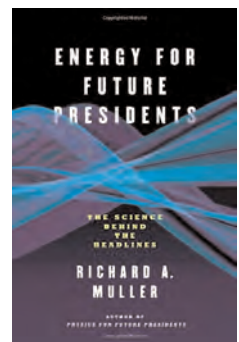
## 3Q 2013 EBA Book Club Book of the Quarter:

### Energy for Future Presidents: The Science Behind the Headlines

By Richard A. Muller

From the jacket:

**Policymakers and casual readers alike can benefit . . . eye-opening . . . sheds lots of light with little wasted heat."—Publishers Weekly**



The near meltdown of Fukushima, the upheavals in the Middle East, the BP oil spill, and the looming reality of global warming have reminded the president and all U.S. citizens that nothing has more impact on our lives than the supply and demand for energy. Its procurement dominates our economy and foreign policy more than any other factor. But the "energy question" is more confusing, contentious, and complicated than ever before. We need to know if nuclear power will ever really be safe. We need to know if solar and wind power will ever really be viable. And we desperately need to know if the natural gas deposits in Pennsylvania are a windfall of historic proportions or a false alarm that will create more problems than solutions. Richard A. Muller provides the answers in this must-read manual for our energy priorities now and in the coming years.

(Available in hard copy, e-Book, and audible formats. Note that EBA does not make any representations regarding the books selected for EBA Book Club.)

## Virtual EBA Book Club:

[www.Bookclubit.com](http://www.Bookclubit.com) (free registration required). Once you create an account, look for "Energy Bar Association Book Club" and request to join.

## EBA Book Club Live:

### Save the Date!

We will have our first in-person meeting, in the form of a happy hour mixer, on Thursday, September 10, 2013 at DC's PhilanthroPub, The Cause <http://www.causedc.org/>.

## Coming Attractions:

Look for the 4Q 2013 Book of the Quarter in the fall edition of *EBA Update*!

Book recommendations are welcome – please email any suggestions to the Book Club Moderator at: [EBABCModerator@gmail.com](mailto:EBABCModerator@gmail.com).



# Upcoming EBA Events

## Young Lawyers Happy Hour

**August 15, 2013  
Johnny's Half Shell  
Washington, D.C.**

## CFEBA Annual Fundraising Gala and Silent Auction

**October 23, 2013  
Renaissance Hotel  
Washington, D.C.**

## Mid-Year Meeting

**October 23-24, 2013  
Renaissance Hotel  
Washington, D.C.**

*Check the EBA Calendar for more information on any of these events or if you have any questions please contact Associate Administrator Michele Duehring at 202.223.5625 or [michele@eba-net.org](mailto:michele@eba-net.org).*

## EBA New Primer Series

### **Electricity and Electric Rate Regulations: An Introduction December 9-10, 2013 Brown Palace Hotel Denver, CO**

EBA is pleased to announce the debut of its first program in a series of national energy primers.

*Electricity and Electric Rate Regulations: An Introduction* is a program targeted to those new to the energy industry and those seasoned in energy law who seek a deeper understanding of the electricity market.

The program begins on Monday with a networking lunch at noon and program at 1:00pm through 5:00 pm, followed by a reception. Tuesday's programming is 8:00 am - noon.

EBA has a room block at the Brown Palace Hotel from Sunday-Wednesday for \$179 per night.

**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.

**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.

Energy Bar Association, 1990 M St., N.W., Suite 350, Washington, D.C. 20036,  
Tel: 202/223-5625, Fax: 202/833-5596, E-mail: [Michele@eba-net.org](mailto:Michele@eba-net.org),  
website: [www.eba-net.org](http://www.eba-net.org)

© 2013 Energy Bar Association

