

We are pleased to present the new and improved version of the EBA Update, a quarterly newsletter. We hope you enjoy this issue and we invite you to share it with your colleagues and friends. Don't keep EBA a secret!

EBA Update

Spring 2014

IN THIS ISSUE

President's Message	2
EBA Midwest Chapter Update	4
Judge's Corner	5
Excerpts from Past <i>ELJ</i> Issues	7
FPA Section 203: Practical Tips	7
ALJ Reception Pictures	8
Annual Meeting Dinner Highlights	9
Outgoing EBA President Adrienne Clair's Last Word	13
Running for a Cause	14
EBA Book Club	14
Wireless Technology In The Energy Industry	15
Upcoming Events	16

Rhode Island Commissioner Paul J. Roberti Voices Strong Convictions, Challenges Conventional Thinking

Registered Independent Appointee Has National Outlook on Energy

Gary E. Guy and Channing D. Strother

Sitting down for a Saturday afternoon lunch that ran until almost 4:30 with Rhode Island Public Utility Commissioner Paul J. Roberti while he was in D.C. for both NARUC and EBA programs at which he was a featured speaker and panelist, respectively, your correspondents Gary Guy and Channing Strother (aka "John Palmer and Ike Pappas") were provided so much insightful commentary that we can barely scratch the surface in this article.

We quickly saw that this Commissioner is well steeped in energy and his views know no political, industry, or regional bias. He is so motivated to do what he sees as being in the national interest that he bucks political correctness, challenges prevailing opinions, and engages in uphill fights to raise public awareness. So against stereo-type is Commissioner Roberti that he is a registered independent, and turned down the first Governor who offered to submit his name to the Rhode Island Senate for confirmation as a Commis-



Paul J. Roberti

sioner, and almost turned down the second Governor who asked to do so six years later. Perhaps the best way of encapsulating his intrepid approach to his responsibilities is to quote Richard Clarke, former White House national security advisor, who wrote to Commissioner Roberti, "May you continue to fight for the people of Rhode Island against all enemies."

Here is a spattering of what we learned in our fascinating encounter with this human dynamo of energy while he took time out on his return from Georgia (the country) on his way to Mexico, with a

continued on page 3



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

There are always things happening at the Energy Bar Association. But for me and many others, just because we have emails in our in-box and access to EBA's new and improved website, we don't necessarily focus on what EBA has to offer its membership. So, in my first EBA President's Message, I wanted to highlight five things that I think are great about the Energy Bar Association.

EBA is neutral turf where practitioners can come together. EBA is a place where practitioners can put away their litigation positions, put down their boxing gloves, and get to know each other outside an adversarial setting. We try our best to present all sides of issues and remain position neutral. We want everyone to be involved in our programming activities and to establish an organization where people on all sides of an issue can come together to further the practice of energy law.

There is a committee for everyone. EBA has twenty-one committees. The committee list has grown to cover the tried and true Electricity Regulation and Natural Gas Regulation Committees to newer committees, like the ADR, Compliance and Enforcement, and Young Lawyers Committees. These twenty-one committees put on educational programs, hold networking events, and publish annual reports in the Energy Law Journal. The only reason that the committees do anything at all is because EBA members join these committees and contribute to their activities. Don't miss out on the opportunities that committee membership can bring.



EBA is doing things inside and outside the Beltway. EBA is organized to meet the needs of all of its members; no matter where they live and practice. EBA has always met and continues to meet the needs of its Washington, D.C. members. EBA's seven regional Chapters ensure that EBA meets the needs of those outside the Beltway. Don't forget to look to the Chapters to learn about things that might be happening outside your area of the country.

The CFEBA is a testament to the values of yesterday's and today's EBA members. Each member of EBA is a member of the CFEBA. Past EBA leaders created this organization to ensure that EBA members could thank and help the communities that support their practices. Today the CFEBA engages in a variety of energy-related and general charitable activities. To me, simply the idea that EBA needed a sister organization like the CFEBA—and the efforts of EBA members to fund it and keep it going—speaks volumes to the nature of EBA and its members.

continued on page 3

Roberti , continued from page 1

stopover for events in Washington.

Litigating and Winning

Paul Roberti, native Rhode Islander, B.A. chemistry major from Holy Cross College, earned a J.D. from Suffolk University Law School, graduating Cum Laude. His grandmother was none too happy about his becoming a lawyer, and constantly harangued him to fight for the people and not special interests. He has taken her admonition to heart.

After one year at a law firm and a year clerkship with a Rhode Island Supreme Court Justice, he went to the Rhode Island Attorney General's Office. He told us he wanted to do jury trials but was asked to fill a niche nobody wanted by representing the public before the PUC for a two-year commitment starting in 1992. He not only agreed to take on the assignment, he vowed, "I will not leave until I master it." Consequently, he devoted the next 17 years dealing with public utilities, and rose to the position of Chief of the Regulatory Unit. (He is so accustomed to that role that, while he was in Washington to play himself as a Commissioner in an EBA Committee mock hearing program on "Mastering Your First (or Next) Hearing," he unexpectedly at the spur-of-the-moment volunteered to play the trial attorney when a snowstorm kept the original designee from being able to participate.)

Among other things, he worked on LNG siting, unbundling of the natural gas industry, restructuring of the electric industry, and cases involving telecom, ferries, and sewer industries. He became a rates, certificate, and NEPA expert. He worked for four Attorneys General, and each time he had to resubmit his resume and essentially be rehired. One of those Attorneys

General kept him despite the fact that Mr. Roberti's name was being mentioned as a possible candidate for Attorney General himself. The two worked so well together that "there is no LNG facility in Providence Harbor because of the work we did." The thinking was that the fix was in and the project would have gone forward had Assistant Attorney General Roberti not brought action to preclude grandfathering lower LNG standards that he argued would endanger the environment and cause practical problems such as bridge closures. By advocating this stance to federal authorities, he finally prevailed on then FERC Chairman Pat Wood to come to Rhode Island and confirm that current code requirements should be applicable. That became the death knell for the project's backers. This is the only proposed LNG terminal to ever be denied a certificate from FERC.

Rhode Island was the first state in the Nation to deregulate the electric industry. He watched the debate in the state legislature that led to that enactment. He recounted that in 1996, the PUC was basically decimated by the legislature which reduced its staff to bare bones in retaliation for criticism from the then-Chairman as to how the restructuring law should be written. He has seen similar legislative intrusion elsewhere as well and has a concern for the independence of state regulatory commissions. In his case, he took on the responsibility to advocate for the ratepayer through the AG's Office.

He saw his role as Assistant Attorney General to both advise the PUC on the law and to act for the consumer ratepayer whenever he saw that the PUC was relinquishing that function out of concern for non-cost matters, such as jobs or environmental concerns. He would

continued on page 10

President's Message, continued from page 2

The Energy Law Journal is an invaluable tool and guide to energy law practitioners. The creation of the ELJ and the Foundation of the Energy Law Journal is a testament to how EBA's past leaders sought to improve the practice of energy law. From the committee reports that capture everything that you missed in a particular subject area, to the insightful articles, notes, and comments, there is always something interesting to read that can add to your practice—and the current edition and past ones are available on the FELJ website at no cost.

These are just five of the many things I think are great about EBA, and if you haven't taken advantage of some, or all, of these benefits, I invite you to do so this year. I want to close by thanking you for giving me the chance to serve as EBA President. I look forward to seeing you at events over the next year.

EBA Midwest Chapter Update

Wonderful Turnout for Annual Meeting in St. Louis

The Midwest Chapter held its Seventeenth Annual Meeting in St. Louis on March 10-11, 2014. The Chapter sold tickets to the Missouri Valley "Arch Madness" Men's Basketball tournament championship game on the Sunday, March 9th. Tickets included a donation to the CFEBA, with proceeds benefiting Missouri Energy Care, a local St. Louis energy related charity. The Chapter further raffled off an iPad mini at the welcome reception on March 10th and between both charitable endeavors, raised \$650 for Missouri Energy Care. The all-day meeting had approximately 80 attendees and 9 sponsors. Highlights included a warm welcome address by Missouri Public Service Commission Chairman Robert Kenney and keynote address by FERC Commissioner John Norris. Panels presented on Regional Reliability Audits, the Impacts of Newly Enacted EPA Regulations, Modernization of the Utility Infrastructure and Associated Risks, and the Future of Generation and Energy in the Midwest.



JUDGE'S CORNER

The FERC Practice & Administrative Law Judges Committee proudly presents Chief Administrative Law Judge Charles E. Bullock of the United States International Trade Commission as the next author in our ever-popular "Judge's Corner" series.

As many are aware, Chief Judge Bullock, a member of the Energy Bar Association, was at the Federal Energy Regulatory Commission for 24 years, as a trial attorney, Assistant General Counsel, and an Administrative Law Judge.

From there His Honor became an ALJ at the Environmental Protection Agency, where he served for 6 years before assuming the bench at the ITC. He was elevated to Acting Chief in August 2011, and then was named Chief ALJ in October 2011.

Chief Judge Bullock holds a B.A. in Political Science from Bucknell University and a J.D. from George Washington University Law School, and is licensed in the District of Columbia.

In his time at FERC, he first litigated, and then presided over, electric and gas rate cases. Many of our current FERC practitioners were trained by him when he supervised Trial Staff, and many had the opportunity to appear before him as a Presiding Administrative Law Judge. At the EPA, Judge Bullock conducted hearings and issued initial decisions in enforcement proceedings. Currently, he provides administrative guidance and leadership to assure a thorough, expeditious review of evidentiary hearings and initial determinations in investigations of alleged patent and trademark

infringements and other unfair practices in import trade.

In that connection, FERC ALJ Jennifer Whang, herself a former Attorney-Advisor in the Office of Administrative Law Judges at the ITC, wrote in the "Judge's Corner" article appearing in the Winter 2013 edition of EBA Update that, "I definitely would not be where I am today without the mentoring of my former supervisor, the Honorable Charles E. Bullock, who showed me what it takes to run a courtroom and encouraged me to pursue a career as an ALJ."

Now, we will all be able to learn from the good Chief Judge as he graces these pages with the following insightful and interesting comments:

MY EXPERIENCE AS AN ADMINISTRATIVE LAW JUDGE AT FERC

Charles E. Bullock, Chief Administrative Law Judge
United States International Trade Commission

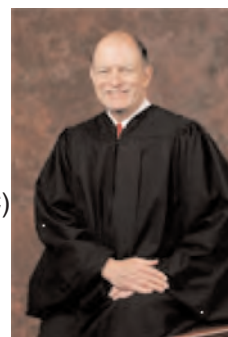
I have been an Administrative Law Judge (ALJ) for more than 29 years. Currently, I am the Chief Administrative Law Judge at the United States International Trade Commission (USITC) and have served in that position since August of 2011. However, I first became an ALJ at the Federal Energy Regulatory Commission (FERC) back in 1984.

My legal career began as a staff attorney in January, 1972 in what was then the Pipeline and Electric Rate Section of the Office of General Counsel (OGC) of the Federal Power Commission (FPC)¹. I recall my trepidation when I walked into my first settlement conference in a natural gas pipeline rate case involving Northern Natural Gas Company. As a sign of the times, there were no women in the initial conference and the air was thick with cigar and cigarette smoke.

Within the next year or so, I became a deputy to then Assistant General Counsel Jack Lotis. During that period I learned quite a lot about cost of service principles and also techniques of management. Jack was a good mentor and teacher. In 1976, I left OGC and worked for brief periods in Chairman Richard Dunham's office, the Office of Opinions and Review (which wrote draft opinions for the Commission), and as an aide to Commissioner Georgiana Sheldon.

In January, 1978, I was appointed Assistant General Counsel for the Pipeline Rates and Valuation Section of OGC. That was one of the most rewarding times of my career. During the next 6 years, I had the privilege of working with an excellent group of attorneys and support staff, as well as talented counterparts from the Office of Pipeline and Producer Regulation.

continued on page 7



¹ The FPC became the FERC on October 1, 1977 with some changes in jurisdiction.

Judge's Corner, continued from page 6

By 1980, I was beginning to explore other options. Jack Lotis had become an ALJ at FERC. Based on my discussions with him, and looking toward the next step in my career, I decided to apply to be an ALJ. In those days, there was a specialized register for economic regulatory agencies such as FERC and the FCC. Based on my score on the ALJ exam, I was eligible to be hired directly by the FERC Office of Administrative Law Judges (FERC OALJ). In the fall of 1984, I was sworn in as an ALJ by Chief Judge Curtis L. Wagner, Jr. and began my judicial career. Prior to my appointment, there was concern by a senior management official at FERC that because I knew so many attorneys who would be appearing before me, I might exhibit favoritism toward one or more of them. My response was that first, as a judge, I would make decisions on the merits of the case, and not on the basis of personal friendships. Second, I stated that, even if I were inclined to play favorites, in all likelihood there would be attorneys for several parties whom I knew in any given case so everything would balance out in the end.

Since most of the cases that I heard at FERC involved cost of service principles, I was able to transition rather easily into my new position. Having Judge Lotis as a colleague was advantageous since he was available to answer questions and give me feedback on some of my ideas as to how to manage my cases. Having to write a decision in a full rate case gave me a tremendous respect for my colleagues and the work they did. It was one thing to review a portion of a Judge's decision in my role as Assistant General Counsel and quite another to write an entire de-

cision by myself, even with the aid of my excellent law clerks, outstanding support staff, and the superb technical staff in the Judge's office.

Another change I noticed was the quietness of most of my days. As Assistant General Counsel, my days were taken up to a large extent with phone calls and meetings. By contrast, unless I was in hearing, my days as a Judge were spent in solitude, working on motions and decisions, with the phone rarely ringing. However, this was more than offset by the fact that I now had added responsibilities and challenges, and that what I wrote in my decisions reflected my own determinations, not those of someone else.

During my time as a Judge at FERC, I learned how to manage complex cases with multiple parties and many complex issues. While doing so, I had the honor of working with a very talented bar and with many learned colleagues. It was a very rewarding experience. Chief Judge Wagner was a pleasure to work with and he set the tone for an office with complete decisional independence. Part of making my time there enjoyable was my association with my Legal Technician, Ms. Hazel Anderson. Ms. Anderson currently works with Chief Judge Wagner.

I enjoyed my time at the FERC OALJ, but after 12 years in that office (which was part of a total of more than 24 years at FERC,) I decided it was time to make a change. For those of you who have had the pleasure of trying to determine a just and reasonable rate of return on common equity, I'm sure my decision to leave FERC must be hard to understand. In any event, I transferred to the Environmental Protection Agency as an ALJ in 1996, where I worked

for 6 years, and then came to the USITC in 2002. However, as an alum of the FERC OALJ, my paths have continued to cross with members of that group. Chip Terrill, a former ALJ at FERC, suggested applying to join him as an ALJ at my present agency, the USITC. During my time at this agency, I worked with Bob Rogers, also an alum of the FERC OALJ. Judge Steven Glazer, who was formerly a senior law clerk at the USITC's OALJ and is now a Judge at FERC, took me under his wing when I came to the USITC and taught me the basics of patent law. Finally, Judge Jennifer Whang, another FERC ALJ, was my first law clerk here at the USITC and aided me immeasurably with several complex patent cases. Fortunately, I still have occasion to socialize with past and present members of the FERC OALJ.

In conclusion, I have many fond memories of my time as an Administrative Law Judge at FERC and I look forward to my continued association with present and past members of that office.

Energy Law Journal: Excerpts from Past Issues

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

Ten Years Ago

"Several market participants have objected to securitization, arguing that uncertainties in stranded cost measurement, the delay which it causes in achieving operation of a fully competitive market, and other factors in its application may result in unfairness to ratepayers and/or improper advantage over competitors. It has been shown that, to the extent these objections have merit, they are not specific to securitization, but rather are objections to the uncertainties of the electric restructuring process and to stranded cost recovery. More importantly, carefully drafted legislation and a properly framed financing order avoids these objections. The decision to employ securitization is separate from the decision to restructure the electric industry, deciding what form that structure should take and the measure of stranded cost recovery permitted. However, unlike other procedures which provide for stranded cost recovery, securitization has the unique advantage that it reduces the level of stranded costs by approximately 10% (under favorable conditions) while it permits their recovery. Moreover, it preserves transmission and distribution utility financial integrity, thereby reducing corporate risk and associated equity return requirements, producing further savings for ratepayers in the future operation of those systems."

Walter R. Hall II, *Securitization and Stranded Cost Recovery*, 25 ELJ 173, 212 (2004)

Twenty Years Ago

"Insisting that utilities file market-based rates, even if one favors

maintaining the entrenched custom that prevailed for decades on cost-based rates, makes sense, for two reasons. Utilities needed to submit to the Commission market-based rates, which the FERC evaluated under ever-shifting standards, in order for the FERC to establish the boundaries of acceptable pricing for wholesale electric utilities engaging in jurisdictional transactions. Second, if utilities calculate a market price, they may collect exorbitant rates, if they failed to seek Commission approval. Therefore, failing to file market-based rates may amount in many instances to much more than a technical violation."

Joshua Z. Rokach, *FERC's Jurisdiction Under Section 205 of the Federal Power Act*, 15 ELJ 83, 89 (1994)

Thirty Years Ago

"It must be emphasized that the essential facilities doctrine provides an analysis for establishing power within the confines of the relevant market concept. The essential facilities doctrine is a more reliable alternative in regulated markets to the analysis which infers monopoly power from market share. However, application of the essential facilities doctrine to find monopoly power must still be determined in the proper relevant product market and relevant geographic market. This follows because only in relation to the proper relevant market does monopoly power have any anticompetitive significance."

Floyd L. Norton IV and Michael B. Early, *Limitations on the Obligation to Provide Access to Electric Transmission and Distribution Lines*, 5 ELJ 47, 68 (1984)

FPA Section 203: Practical Tips

Channing Strother, outgoing Chair of the EBA Electricity Regulation Committee

On March 12, 2013, the Electricity Regulation Committee ("ERC") and the Young Lawyers Committee (YLC) sponsored "FPA Section 203: Practical Tips," a seminar to guide practitioners and companies through making and pursuing filings at the Federal Energy Regulatory Commission ("FERC") under Section 203 of the Federal Power Act ("FPA"), and as to how to approach overlapping Section 203, Department of Justice or Federal Trade Commission, and state jurisdiction and proceedings. Section 203 governs transactions involving utility assets.

The panel brought together experienced in-house and outside practitioners, and the FERC staff who review such filings, to provide a "behind-the-scenes" look at the Section 203 process.

Jason Fleischer of Gibson Dunn & Crutcher moderated a panel consisting of Steve Rodgers Director of FERC Electric Power Regulation, West; Matthew McVee, Senior Counsel at PacifiCorp; William Scherman, Partner at Gibson Dunn & Crutcher; and Julie Solomon, a Managing Director at Navigant.

The Gibson Dunn hosted the seminar and a networking reception following at its Washington, DC offices. The ERC, YLC, and EBA express their appreciation.

2014 ALJ Reception

EBA members and guests came together for a lovely reception held by the Foundation of the Energy Law Journal Honoring the FERC Administrative Law Judges on April 8th at Alston & Bird LLP



Thank you to our 2014 Foundation of the Energy Law Journal ALJ Reception Sponsors

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White & Case LLP
Winstead, P.C.
Wright & Talisman, P.C.

**A Special Thank You to All the EBA Past Presidents that attended
the 2014 Annual Meeting Dinner. We appreciate your service and
continued support of the EBA.**



Left to Right Front Row: Susan Olenchuk, Carmen Gentile, Sheila Hollis, Sue Kelly, David Ward, Dave D'Alessandro, and Barbara Heffernan. Back Row: Donna Attanasio, Mike Manning, Fred Berner, Rich Bonnifield, and Bob Fleishman.

Roberti, continued from page 3

not be a “potted plant” and he would appoint a separate Assistant Attorney General to represent the PUC separately from himself in other legal forums if he saw a need to enter a case himself to promote a consumer interest that the PUC was not itself promoting.

He recalled a merger through which all the Rhode Island electric distribution companies were combined within National Grid. He spoke out against allowing National Grid to recover from ratepayers all the acquisition cost premiums by sharing savings from the merger rather than credit all of it against the cost of the acquisition. Ultimately, Mr. Roberti was key in negotiating a settlement that provided a \$13 million rate reduction and a five-year rate freeze, along with other benefits to ratepayers, including the transfer of 260 acres of undeveloped land on Narragansett Bay, which is now a State park.

“There is no LNG facility in Providence Harbor because of the work we did.”

In 1998, when the PUC Chairman was essentially defanged, with a cut in pay and decimation of his agency’s staff by the legislature, until that action was reversed on appeal, the Chairman left the Commission and Assistant AG Roberti threw his hat into the ring, winning the backing of the state newspaper. The sitting Governor at that time asked him if he would take the other vacant Commissioner slot rather than the Chairmanship, per-



Left to Right: Channing Strother, Commissioner Paul Roberti and Gary Guy.

haps in part because he had only been involved in this area for about 6 years (out of the 17 he would eventually achieve in that position). But Mr. Roberti thought then that he could be more effective on behalf of the public as a litigator in regulatory proceedings than as one of the three Commissioners with someone else as Chairman. “I either lead or I decline,” he declared as a 30-year-old self-described brash attorney.

He came to understand much better the wider world of a Commissioner and the greater access to information that that role provides, and now believes he should have accepted the offer. But even when it was offered to him again five years ago, he weighed all the pros and cons and almost declined it once more, until his wife persuaded him that he needed a change in his life. He has another year left to his term, and he tells us he likely will accept another term if it is in the offing again. Obviously, he has an evolving appreciation of the importance of the position.

Seeing Public Policy as a Science

Coming out of the AG’s Office to become a Commissioner he already knew “where all the skeletons are buried” and even knew the companies better than the man-

agement due to changes with mergers and acquisitions. His prior education also stood him in good stead as a regulator.

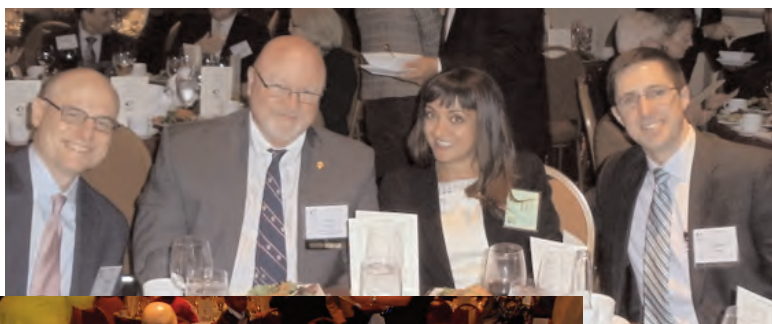
Like Plank’s Constant equations that he had to solve as a chemistry major, he sees public policymaking as requiring inputs such as technical, engineering, economic, and environmental data, and a “hidden variable” in the form of consumer psychology. As to the latter factor, for example, he sees the Smart Grid advocates as ignoring that many consumers do not want to pay for technology to give it the ability to constantly check the thermostat and time of use prices the way the industry experts like to do.

Of his “independent streak,” he explains that the problems facing the states and the country are “far too complicated to be all red or blue.” He sounds the alarm that problems are left unresolved until a disaster strikes that could have been avoided. He said the 1993 terrorist attack on the World Trade Center should have sparked action that could have prevented the far worst second attack on the same target in 2001. He sees the threat of LNG terminals in high density areas as being left unattended to now because the harm has not yet occurred.

He likens a regulator to a Minotaur,

continued on page 12

2014 Annual Meeting Dinner Highlights - April 10, 2014



"It is not a rational energy policy to start with jobs and work your way back up to a preferred energy technology."

Roberti, continued from page 10

half human/half beast, in that the PUC is half industry to the extent that it must respect what Wall Street demands to keep utilities viable, but half human to the extent that it must also be mindful of how the consumer is suffering and that "we must do least cost procurement." He also says "price matters when it comes to renewable portfolio standards." Predictability and stability are his goals for a long term energy strategy. He says this is sometimes lost on the executive and legislative branches "who are operating on a different analytical level than we operate under."

Renewables: Not a Panacea

Rhode Island is an RPS/RGGI state, but that very morning of our Saturday interview, he signed an order by a 2 to 1 vote (with the Chairman in the minority) against raising that state's renewable standards. As he sees it, it is necessary to weigh the likelihood of achieving renewable energy in the New England region against the costs that would be incurred. With Rhode Island having the highest unemployment rate in the Nation, and with the current renewable energy market tightening up, at a cost of \$50 million to ratepayers to bring in renewable technologies that already receive a production tax credit, investment tax credit, and other incentives, he seeks to avoid giving additional "ratepayer subsidies to an already incentive-rich" renewable energy structure. "There is a misunderstanding as to what Rhode Island can do in terms

of economic development through renewable energy incentives," he maintains.

Evaluating risk and consequences, Commissioner Roberti believes that green jobs may not be the panacea for local job creation and he wishes there was more focus on energy solutions as the driver. For example, he states that local job creation was not a factor behind obtaining Appalachian coal or Al-

"It is not a rational energy policy to start with jobs and work your way back up to a preferred energy technology."

gerian LNG to feed the region's energy needs in the past, nor has it been the test for obtaining other needed materials, such as steel, sand, or glass. "It is not a rational energy policy to start with jobs and work your way back up to a preferred energy technology," he contends.

Safety Concerns Uppermost in His Mind

Currently Chair of the Pipeline Safety Subcommittee at NARUC, Commissioner Roberti makes it a point to ride "shotgun" with a hard hat when compliance inspections are occurring in his state. He sees

continued on page 12

Roberti Ruminating



What he would do if he had more spare time:

Pursue his love of photography, write a book on energy, and travel on archeological and mineralogical digs.

What he reads: :

First, trade articles, briefs, studies, *The Wall Street Journal*. Then he tries to fit in some non-fiction books, such as history and biography, including the lives of Benjamin Franklin, Nathaniel Greene, and George Washington (politically incorrect, maverick, business people).

Advice to Young People on Energy as a Career:

"We live in exciting times, focusing on reliability, consumer prices, and the local economy. Both good and bad will come out of the investments being made in new technology by the federal government. Future generations will look back to determine how the current initiatives of DOE grants, RPS requirements, and aggressive ways of cracking the storage code play out. This makes it a great area for young people to get into."

Roberti, continued from page 12

industry as being in need of regulation on safety matters when the industry fails to adequately self-regulate to prevent unacceptable conditions. According to the Commissioner, being “fit-to-serve” means that the infrastructure is not only maintained, but replacement schedules require that the oldest pipes be replaced expeditiously.

We came away from this lively exchange of views extremely impressed. Here is a free spirited lawyer-turned-regulator who has a public spirited agenda that is unrelated to any particular geographic, political, or business favoritism. The newspaper editorial proclaiming that he should be appointed has proven to be prescient indeed.

The Last Word

Adrienne E. Clair, Outgoing EBA President

On behalf of the EBA Board of Directors and Staff, it is my pleasure to share this edition of the EBA Newsletter. We hope that the news and articles that have been assembled provide you with information and insights that are useful to you in your professional endeavors and intellectual pursuits.

Over the past year, the EBA has continued to implement the four goals of the EBA Strategic Plan: educational programming, networking opportunities, information resources and membership growth. All of our efforts have the singular focus of providing exceptional service to the membership. With respect to educational programming, the Chapters and Committees have held programs throughout the United States on a diversity topics – including sessions on international issues like China's energy policy, environmental and cybersecurity issues that are integral to energy policy, state-focused programs such as the mock state commission hearing which included state commissioners as faculty, and additional topics affecting energy regulation and policy such as distributed generation, energy storage and market manipulation. Over the past year, we have held nearly one program per week – all with the goal of providing timely and inexpensive program opportunities to our members and guests.

One of the key benefits of EBA membership is the opportunity to network with colleagues in a less formal setting. This year, our Young Lawyers' Committee and other committees, as well as the Charitable Foundation of the EBA and Foundation of the Energy Law Journal, hosted several events in order to afford members a chance to enjoy the benefits of networking with EBA members. These exchanges are not only beneficial to the membership; they provide a great source of new ideas (and volunteers!) to the Association.

We have undertaken a number of initiatives this past year toward improving information resources. I encourage each of you to visit the redesigned websites for the EBA, CFEBA and FELJ. A great deal of work has gone into making our websites easier to navigate and, frankly, more attractive. We have also launched on the website an EBA On Demand tool where members can access a library of program recordings for purchase, download, and review at their leisure. As the On Demand library is populated, we would appreciate your feedback on the quality of the recordings or any upcoming programs that might be of interest for recording.

Again, key to our efforts is satisfying the needs and expectations of our membership. We are grateful to all whom have remained members over the years as well as to our new members. This past fall, we held our first-ever new member reception and it was gratifying to meet the next phase of EBA volunteers and leaders. For those who have not yet renewed your membership, I encourage you to do so in order to continue all the benefits of EBA membership – including the membership directory, discounted fees to EBA programs, and access to the members-only features on our website. Membership can be obtained online at www.eba-net.org.

Finally, we hope that all who attended thoroughly enjoyed our Annual Meeting held April 8-9, 2014, in

continued on page 16

Running for a Cause

On April 27 EBA Executive Director Lisa Levine ran her first half marathon in honor of EBA President Jason Leif and in support of the Leukemia and Lymphoma Society (LLS).

Raising over \$3,600 for LLS, Lisa said "I was so proud to run in Jason's honor and so thankful for all the support! It was a personal milestone and an unbelievable experience to work with LLS and raise money to eliminate blood cancers. I feel very lucky."

The race was held on a beautiful Sunday morning in downtown Washington, DC with more than 15,000 runners -- Lisa finished in under 2 hours!



EBA Book Club Networking Event and Author Appearance

On April 7, the eve of the EBA Annual Meeting and Conference, the EBA Book Club hosted a Networking Event and Author Appearance featuring the author of the 1Q, 2014 Book of the Quarter, Scott Hempling, at the offices of White & Case LLP. Following a reception that brought together a mix of seasoned and new EBA members, Hempling led the group in a lively discussion based on themes of his book, *Preside or Lead? The Attributes and Actions of Effective Regulators*. Government employees, private lawyers, students, professors, and other energy professionals contributed varying perspectives that inspired conversation on topics ranging from how an energy regulator should determine what is in "the public interest," what the key attributes of an effective regulator are, and how such attributes can be acquired, to some challenging issues currently facing energy regulators.

EBA Book Club News Flash:

EBA Book Club Presents

The 2Q, 2014 Book of the Quarter:

**The Quest:
Energy, Security, and the
Remaking of the Modern
World**

By Daniel Yergin

Join EBA Book Club: Every EBA Member is invited to 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. Details follow:

Virtual EBA Book Club:

www.Goodreads.com (free registration required). Once you create an account, look for and join the group "Energy Bar Association Book Club."

EBA Book Club Live:

Stay tuned!

The 2Q 2014 in-person meeting will take place in August – Look for details to follow in the weekly EBA Insight!

The 3Q, 2014 Book of the Quarter will be announced in the next issue of EBA Update.

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

Wireless Technology In The Energy Industry: Avoid FCC Fines And Delays By Planning Ahead

Brian W. Higgins
Wilkinson Barker Knauer, LLP

The energy industry increasingly relies on wireless radio technology for a variety of purposes. Everything from remote control and monitoring of critical facilities (so called supervisory control and data acquisition “SCADA” systems) to coordinating security and maintenance personnel can be handled much more efficiently using wireless equipment. This equipment is subject to the rules and regulations of the Federal Communications Commission (“FCC”), and typically requires a license issued by the FCC in order to operate. Companies implementing wireless technologies can quickly amass a large portfolio of FCC wireless licenses often without realizing it, and often without appreciating that even unintentional violations of FCC rules can have serious consequences, such as regulatory delays and fines.

Companies can run afoul of FCC requirements in a number of ways. In particular, the FCC takes license ownership issues very seriously, and just last year entered into a \$70,000 consent decree with a company alleged to have engaged in an unauthorized ownership change. Even simple changes in a company’s ownership structure, such as creating a new holding company, can require FCC approval if the company, or one its subsidiaries, holds FCC licenses. And in most situations, this approval must be obtained in advance – a process which can take several weeks or more. Companies that engage in transactions are well advised not to overlook the

FCC approvals needed to buy or sell FCC licenses, or the companies that hold them.

The FCC also regularly issues fines for unauthorized operations. In 2012, the FCC found Union Oil Company of California (a subsidiary of Chevron Corporation) apparently liable in the amount of \$96,200 for operating wireless equipment for more than six years after its licenses had expired. Just like a driver’s license, FCC licenses are valid for a set period of time, and must be renewed periodically. Failure to renew a license will render it invalid with limited opportunity for getting it back. Even applying for a new license to replace an expired one isn’t always an option since the frequency channels used by the equipment may no longer be available.

A little due diligence and advance planning can help avoid common pitfalls like these. In many cases, companies have acquired licenses sporadically over the years, and may hold them in different names, some of which may not be legal entities. Companies also have come to find out that a wireless operation on which they rely requires a FCC license, but none was ever obtained.

Because of this, one of the simplest things a company can do to ensure compliance with the FCC’s licensing rules is to survey its wireless operations and confirm that everything that requires licensing is in fact properly licensed. Companies can also improve their compli-

ance record by designating one person or department in the company with the responsibility of preparing and maintaining a master list of the company’s wireless license holdings, including license expiration dates. Finally, before buying or selling a company that holds licenses, or altering its ownership structure, counsel should determine whether FCC approval will be required. Simple measures like these can help energy companies maintain their valuable wireless assets, and avoid unnecessary fines and regulatory delays.

Additional information about licensing can be found on the FCC’s website at fcc.gov, or by calling the FCC’s consumer help-line at (877) 480-3201, and selecting option 2.



Upcoming EBA Events

Southern Chapter Annual Meeting: The Changing Regulatory World: Regulatory Solutions for Enhancing Natural Gas Infrastructure

May 16, 2014, The Marshall-Wythe School of Law at The College of William & Mary, Williamsburg, VA

EBA Gas Primer: An Introduction to FERC Regulation of the Natural Gas Industry

May 19-20, 2014, Jones Day, Chicago IL

Midwest Chapter Networking Reception

May 19, 2014, "The 51", Chicago, Illinois

2014 Northeast Chapter Annual Meeting

June 12, 2014, The Learning Center, Long Island City, NY

Rocky Mountain Chapter Second Annual Meeting

June 20, 2014, Xcel Energy, Denver, CO

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.

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.

The Last Word, continued from page 12



Adrienne Clair with outgoing EBA Treasurer Jane Rueger at Annual Meeting Dinner

Washington, D.C. The Programs and Meetings Committee did an exceptional job implementing the much-appreciated suggestions from our membership for topics at this meeting. We also enjoyed the tradition of the Foundation of the Energy Law Journal's annual reception honoring FERC Administrative Law Judges.

This Newsletter marks the end of my term as President of the Association. I have been honored to serve the Association over the years and awed by the commitment of our volunteers and staff. I hope that each of you takes the opportunity to participate through a Chapter or Committee, contribute time or resources to a charitable event, or otherwise engage in the Association. I can attest that you will be better for it.

Enjoy the Newsletter and I hope to see you at an EBA event soon.



EBA Primer Series: An Introduction to FERC Regulation of the Natural Gas Industry
May 19-20, 2014

<http://www.eba-net.org/eba-gas-primer-introduction-ferc-regulation-natural-gas-industry>