

President's Message



Adrienne E. Clair

Welcome to this winter edition of the EBA Newsletter. On behalf of the EBA Board and Staff, we are pleased to share with you interesting news and articles regarding the Association and our increasingly diverse (and very productive!) membership.

The EBA Programs and Meetings Committee is hard at work preparing for the Annual Meeting to be held in Washington, D.C. on April 8-9. Thank you to all who responded to our call for topics for the Annual Meeting. We hope that each of you will plan to attend the Annual Meeting as well as the Foundation of the Energy Law Journal reception honoring the FERC Administrative Law Judges.

We are also continuing with implementation of the EBA Strategic Plan which has four key goal areas: educational programming, networking opportunities, information resources and membership growth. To that end, I recently attended the first program in EBA's new Primer Series. The sessions focused on electric

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FERC Acting Chairman LaFleur Takes Helm With Full Powers

Keeping Focused on Moving Agenda Despite Uncertain Future Composition of the Agency

Gary E. Guy and Channing D. Strother

Just three and half years ago, she was a new FERC Commissioner, with no prior government experience (but with impressive legal, business executive, and academic credentials) and having not even known there was a vacancy at FERC until contacted by the White House about filling it herself, and no one in the know publicly speculating that she was among the contenders for the position. Now, with Ron Binz, the President's nominee for Chairman, having withdrawn his name from consideration, Commissioner LaFleur is the Acting Chairman, needing no Senate confirmation. She has all the power of being the "first among equals" as she described the Chairmanship to this newsletter in October 2010 when she was the newest FERC Commissioner. On the other hand, her current term will expire in the summer of 2014 and she has not been informed as to whether she will be re-nominated, nor does she know who will fill the vacancy left by former Chairman Jon Wellinghoff's departure, nor whether the "Acting" will eventu-



ally be removed from her title.

All of which made Cheryl A. LaFleur the perfect newsmaker for your eager beaver, but hardly cub, reporters Gary Guy and Channing Strother (aka "Roger Mudd and David Schoumacher") to seek to interview. Although she had not yet granted requests from the media for interviews, she graciously agreed to allow *EBA Update* to have this scoop, and to permit the entirety of the interview to be video-taped for viewing at www.eba-net.org, which is also where you can find her fall 2010 interview and the article that was written then when she first came aboard the FERC.

What follows are highlights of the insights she shared with us at this time of transition for her and the Commission she leads.

Playing the Hand that is Dealt -- So Far All Aces

Following the recent holiday season partying on FERC's ninth floor, we were impressed by how relatively quiet and

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Charitable Foundation of the Energy Bar Association Update

New Record Set by the 2013 CFEBA Gala and Paul E. Nordstrom Service Award Recipient

On October 23, 2013 approximately 225 people attended the CFEBA's Eleventh Annual Fundraising Gala, "Fall Fete," at the Renaissance Washington in Washington, D.C. The 2013 Gala beat last year's record setting revenue by approximately 25%! Thanks to the generosity of EBA members and firms, the CFEBA Gala and Silent Auction brought in revenues of approximately \$54,000!

During the Gala, William A. Mogel was presented with the fifth Paul E. Nordstrom Service Award. This award was established by the EBA and the CFEBA in memory of Paul E. Nordstrom, a past president of the EBA and the first president of the CFEBA. The Paul E. Nordstrom Service Award honors EBA members who have demonstrated exemplary and significant service to the EBA and the community and Bill Mogel has a long history in the EBA and especially the FELJ. The award was presented by CFEBA President Evan C. Reese, III at the Gala, as well as jointly with EBA President Adrienne E. Clair during the Mid-Year Meeting Luncheon.



Guests enjoyed hors d'oeuvres and cocktails while bidding on a diverse array of silent auction items. The 2013 silent auction included items as varied as a Kate Spade handbag, private pony ride and lesson, a date night in Georgetown, and a trip to any sports game! This year many donors joined in to compete as teams to sell their auction items for the highest price. The 2013 winning team was "Team Sutherland" which brought in over \$900 between their four auction items. Thanks to all participating teams and those who supported the CFEBA by giving outstanding auction items or cash to purchase those items!



"Team Sutherland" expresses their competitive pride over winning the CFEBA Silent Auction Team Challenge.

Thank you to our 2013 CFEBA Annual Fundraising Campaign Donors

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EBA members scanning the silent auction items at the CFEBA's Annual Fundraising Gala

Fall Fête



Master Your First (or Next) Rate Case Hearing

by Holly Rachel Smith

It was about four years ago I called Len Anthony who was then General Counsel of Progress Energy and asked “when are you retiring?” I told Len before he retired I wanted to watch him try a rate case from start to finish. I had recently attended a week-long trial training course (for civil practice) and was still left wanting for additional strategies for representing clients in administrative hearings.

When asked to chair the State Practice and Regulation Committee this year, I immediately thought about an opportunity to focus on improving the practical skills of attorneys appearing in administrative tribunals. With the hard work of the Young Lawyers Committee and from expert witnesses, lawyers, and State commissioners (all volunteers), the EBA is on the eve of hosting its first mock hearing program!

On January 21st, the EBA State Practice and Regulation Committee, the EBA Young Lawyers Committee and the D.C. Bar Environment, Energy and Natural Resources Section are sponsoring: Mastering Your First (or Next) State Public Utility Commission Hearing. The program will be held in the hearing room at the D.C. Public Service Commission. The program features a short lecture on preparing witnesses and cross-examination, followed by demonstrations by experts and lawyers, who will try a portion of a fictitious rate case before three actual State commissioners from different jurisdictions. Time is reserved after the mock hearing for an instructive feedback session. In addition to the practical demonstration, the program offers an opportunity to learn about an issue common to many rate cases, Construction Work in Progress (CWIP).

Mastering Your First (Or Next) State Public Utility Commission Hearing

Tuesday, January 21, 2014

2:00-5:00 pm ET, Reception to follow

Location: DC Public Service Commission, 1333 H Street NW, Suite 700, East Tower, Washington, D.C. 20005

A practical skills mock administrative hearing.

Approved for CLE credit in NY, PA, and VA.

Faculty

Chairman Betty Ann Kane, DC Public Service Commission

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Steve Chriss, Senior Manager Rate Proceedings, Wal-Mart

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

Energy Law Journal: Excerpts from Past Issues

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

Ten Years Ago

"Perhaps, the most inescapable problem confronting energy policy makers today is the issue of global warming. The amazing industrial progress currently being made by China and, to a lesser extent, by India illustrates how the global warming picture is changing again as these developing countries race toward development. Global warming seems to be a phenomenon that almost everybody accepts informally, and refers to from time to time in everyday conversation, but where we as a nation have fought shy of international commitments. It may be the ultimate irony that the ongoing subjugation of nature by humankind is, sort of, accidentally making us think critically about the weather – a phenomenon formerly left in the care and custody of God."

Hon. Richard D. Cudahy, *Energy Law Journal 25th Anniversary Celebration Keynote Address*, 25 ELJ 267, 271-2 (2004)

Twenty Years Ago

"Some members of the U.S. Congress have criticized the SEC for its administration of PUHCA, which it might, therefore, transfer to the FERC because the FERC, it is believed, could administer PUHCA with a genuine concern for consumer protection. Perhaps the SEC has no objection to the transfer of PUHCA to the FERC. If it wishes to retain its jurisdiction, however, then it must administer the legislation with increased concern for consumer protection, which it could learn from the FERC through increased cooperation."

James W. Moeller, *Toward An SEC-FERC Memorandum of Understanding*, 15 ELJ 31, 67 (1994)

Thirty Years Ago

"The price of gas to boiler fuel users must be volatile if gas is to compete with its unregulated competitors. For residential customers a more stable price may be preferred; such customers cannot expect to buy gas at a price that is below the long-term market level, but they may prefer that their price not track the short-term changes of prices of fuels that are for them no alternative at all. The two goals do not conflict, provided the cost of gas to price-sensitive industrial users is decoupled from its cost to other users. In principle this could be done entirely through sales from system supply. Pipelines could acquire part of their gas for industrial customers under the kind of flexible contract described above and the balance of their supply under contracts provided only for an annual price redetermination. The price of gas to industrial users would be determined by the pipeline's gas costs under the first kind of contract; the price to other users would be determined by its gas costs under the second kind of contract."

Robert C. Means and Robert S. Angyal, *The Regulation and Future Role of Direct Producer Sales*, 5 ELJ 1, 45 (1984)

EBA Launches Its Primer Series

by Susan A. Olenchuk

On two cold December days in Denver, EBA successfully launched its new Primer Series with a two-day primer on Electricity and Electric Rate Regulation. EBA developed the Primer Series to promote excellence in the practice of energy law by enhancing opportunities for educational programming. To that end, the Primer Series focusses on basic industry fundamentals and core regulatory and legal concepts that every energy law practitioner must understand.

The focus of EBA's first Primer was the electric industry. The class was organized and led by EBA's Primer Deans, Larry Greenfield, Jonathan Lesser, and Jonathan Schneider. With the help of several speakers from government and industry, the class covered the history and nuts and bolts of electricity, core regulatory principles and legal milestones, traditional and alternative regulatory approaches, market structures, and reliability.

Attendance was strong, with almost 70 people attending, the venue (the historic Brown Palace Hotel) provided a lovely setting, and the feedback was positive and complimentary. So, energized by this initial success, the Primer Deans are now planning the next Primer event (and maybe two!) to be held in the spring and early summer 2014. One of the Primers will focus on the natural gas industry in a city to be named.

EBA warmly thanks the Primer Deans and all of the speakers for generously offering their time and expertise to helping launch the Primer series. EBA also thanks Holland and Hart LLP for hosting and sponsoring the networking reception, and the Rocky Mountain Chapter for warmly welcoming us all to the Mile High City.



Cybersecurity in the Energy Industry: You Cannot Prevent Everything, but You Can Manage the Risk

by James Cargas

Houston, TX(Dec. 5, 2013) – Everything in our modern society and economy depends on energy. Today, everything also depends on information technology, including the energy industry itself. In recognition of this growing dependency, the Houston Chapter of the EBA hosted a lunch meeting on how best to implement cybersecurity and how best to respond once a breach has occurred.

The panel was led by moderator, James Cargas, Senior Assistant City Attorney for Energy, and anchored by Dave Hopson, a Founding Partner of Triumpus Tek Inc. (a leading local cybersecurity firm), and Irene Kosturakis, Chief Intellectual Property Counsel for BMC Software, Inc.

Cargas opened with a summary of President Obama's Presidential Policy Directive 21 and Executive Order No. 13636, which were both issued on Feb. 12, 2013. These directives identified energy and communications systems as uniquely critical. They also went a step further by tasking the National Institute of Standards and Technology (NIST) with developing a national cybersecurity framework.

NIST released its preliminary framework on Oct. 22. It provided a common language and mechanisms for public and private organizations to address a very complex challenge where technology advances faster than policies. Its goals are to withstand a wide variety of attacks, and to rapidly recover if an attack is successful. Over 200 comments were received before the public comment period closed on Dec. 13.



Hopson discussed a barrage of terrifying examples of successful cyber-attacks in recent years. Some were against well-prepared companies, and others were against companies trying to save a few dollars by delaying upgrades only to find themselves in a \$10M mess. He also discussed the growing sophistication of viruses that can rewrite their own code to avoid detection and then destroy themselves once their damage is done or data is stolen.

"Cyber-attacks can come from criminals, activists, or from state-sponsored hackers," Hopson warned. Everyone agreed that the growing involvement of nation-states with their large resources and sophistication was a troubling new challenge. "Sometimes the first you know your competitive information has been taken is

when the FBI comes to your company to tell you," Hopson said.

"Nobody wants to spend money on security," Hopson continued, "but, you weigh the value of your information with how much you want to spend and how much discomfort you want to add to your life, and that is the balance each company must look for."

Kosturakis agreed. She suggested segregating and prioritizing your company's data to protect it, "There is no need to share everything with every employee," she said.

In addition to the external attacks Hopson warned of, Kosturakis also warned participants to look for internal threats from disgruntled employees or vendors. "The biggest threat to your data is the internal one," she said. There are systems now that track and monitor data, and spot employees' activity like the downloading of documents from a company's systems to a flash drive. Now that these preventative applications are readily available, the bar has gone up, and the expectation is they should be used. "These are invasive programs that may violate an employee's concept of privacy; it is important to have policies in place that notify employees there is no expectation of privacy in employee's use of company systems," Kosturakis said.



Kosturakis then gave attendees some hope, "If a breach does occur and a company's competitive data is taken, there are several legal remedies available." First, there are common law trade secrets protections based on Section 757 of Restatement of Torts First.

Second, state laws based on the Uniform Trade Secrets Act exist in 47 states. In Texas, the Texas Uniform Trade Secrets Act (TUTSA) is effective as of September 2013. It permits recovery of damages for misappropriation, including actual loss and unjust enrichment. "If the misappropriation is proven to be willful or malicious, then exemplary damages of two-times the award are available." Because attorney fees are also available to either party, plaintiffs must be sure they have a true misappropriation case.

Third, the federal Economic Espionage Act (EEA) offers criminal penalties for economic espionage directed by foreign governments

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Cybersecurity in the Energy Industry *Continued*

in 18 U.S.C. Section 1831, and for commercial theft of trade secrets carried out for economic advantage, whether the perpetrator is foreign or domestic, in 18 U.S.C. Section 1832. Kosturakis said a loophole was closed by the Theft of Trade Secrets Clarification Act of 2012 following *United States v. Alegnikov*, 676 F.3d 71 (2d Cir. 2012). Now, internal proprietary information related to products or services used in commerce is also covered by the EEA.

Finally, Kosturakis noted that theft of trade secrets is also a third-degree felony under the Texas Penal Code.

In concluding, Hopson strongly recommended having a cybersecurity team identified and ready before an attack or breach. "It doesn't cost anything and makes a significant difference in response time and accuracy," he noted.

"Lawyers should join forces with a technical person," Kosturakis advised everyone, "you cannot understand the technology yourself, and they will appreciate having a strong advocate for robust cybersecurity come budget time."

"You cannot prevent everything," Kosturakis added, "but you can make your systems much less vulnerable."

CFEBA Update *Continued*

Special thanks to CFEBA's 23 Gala Sponsors, which include individual sponsors Past President Susan N. Kelly of American Public Power Association and J. Curtis Moffatt of Van Ness Feldman, LLP.

The success of the Gala was attributable in large part to the leadership and special efforts of Gala Committee Chair Katherine Zeitlin, Vice Chair Amy Roma and Coordinator Michele Duehring, as well as Committee members Emma F. Hand, Evan C. Reese, III Michael A. Stosser, and Young Lawyer Committee volunteers: Justin Paul Atkins, Rekha Chandrasekher, Adam Eldean, Cailean N. Gamache, Patrick L. Morand, John Pappas, Delia D. Patterson, Sandra Saftro and Andrew O. Schulte. Thanks to all of you for once again helping CFEBA set a fundraising record at its annual Gala. It gets better every year!

EBA Western Chapter Annual Meeting Quickly Approaching

Energy Law and Regulation 2014-- New Challenges, Technology & Initiatives in the West

February 20-21, 2014

San Francisco, CA

The Western Chapter of the Energy Bar Association is holding their Thirteenth Annual Meeting entitled "Energy Law and Regulation 2014-- New Challenges, Technology & Initiatives in the West" at the Hyatt Regency San Francisco Hotel, in San Francisco, CA on February 20-21, 2014.

New energy technologies and initiatives are driving progress in energy markets and challenges for market participants in the Western region. The Western Chapter is presenting a one day program of outstanding panels and speakers to provide insight into this energy market evolution and how various regulators and industry players are responding to these challenges.

The EBA Western Chapter Annual Meeting will begin on Thursday, February 20 with a hosted networking reception and wine auction with proceeds to benefit a local charity. A full day of sessions and lunch begins on Friday, February 21. Sessions will include: *Distributed Generation and Net Metering*; *A View from the General Counsel's Office*; *Carbon Trading and its Impact on Western Electricity Markets* and the well-known *State Commissioner Panel*.

Hotel reservations are available at a special \$245 rate and can be made by calling Central Reservations at 1-888-421-1442. The cutoff is January 27, 2014.

Location: Hyatt Regency San Francisco Hotel, 5 Embarcadero Center, San Francisco, CA 94111

For Registration and Program Schedule visit:

<http://www.eba-net.org/eba-western-chapter-annual-meeting>

President's Message **Continued**

rates and regulation and based on feedback from attendees, the Primer offered a superior nuts-and-bolts education on the electric industry. In the coming months, our Primer Deans are working to provide additional sessions in our Primer Series, to be held throughout the EBA Chapter regions. With respect to information resources, in addition to unveiling the new website design for our Foundation of the Energy Law Journal and the Charitable Foundation of the Energy Bar Association, we also recently launched an On-Demand Programs feature on the EBA website which will allow members to purchase and download from a library of EBA program recordings.

The EBA has continued in its tradition of over sixty years in promoting excellence in the practice of energy law thanks to the expertise, contribution and commitment of our members. We would appreciate each of you continuing your commitment to the Association by renewing your membership if you have not already done so. We would also greatly appreciate recommending membership to your colleagues. Information on the benefits of membership and an online application are available at the EBA website, www.eba-net.org.

There are a number of upcoming meetings and events of our regional Chapters, as well as Committee events – a listing is included in this Newsletter and a complete calendar listing is available on the website.

Again, thank you for your contribution to the Energy Bar Association. I hope to see you soon at an EBA event.

Interview with Acting Chairman LaFleur **Continued**

empty it was when we entered the Acting Chairman's Offices and she warmly welcomed us for this interview. We sat down for what we thought of as an informal, even leisurely, open-ended discussion of many topics. But when we exited we found a large contingent had gathered in the outer lobby for her subsequent appointments. Even a late afternoon, end-of-year, supposedly quiet time is filled with meetings on the Acting Chairman's schedule.

We began by asking how it came to be that she has so suddenly, from a public perspective been elevated to Acting Chairman. To our surprise, her information was virtually the same as that of everybody else. Unlike her initial selection by President Obama as a FERC Commissioner in 2010, when she showed up on no public lists of potential nominees, she pointed out that the trade press was speculating for weeks that she might be tapped to head the agency when Chairman Wellinghoff's term expired. Therefore, it did not come completely as a surprise. However, when it finally came about, it did happen suddenly. As she told us, she was informed shortly before the November open meeting at which the announcement was made. To us, it seemed much like the new Pope appearing before the public shortly after the white smoke informed the world that the anticipated event would occur.

"All of life is interim."

"I didn't spend a lot of time before I got the call" thinking about whether the appointment would be made or how to conduct the office if it did, but rather stayed focused on current duties. As to the significance of the "Acting" nature of her position, she responded philosophically that, "All of life is interim for all of us anyway at any time." That is, "it doesn't make a significant difference in the day to day work of the Commission." On the other hand, because she humbly tells herself that she is "only acting" she is not initiating personnel moves, at least "at this point."

Moreover, "independent of whether I'm Acting or Chair in any other capacity, the term I am serving ends this summer." So she is in a waiting mode in many respects as to what the future will hold for her. She is receptive both to accepting another term and remaining in the Chairmanship, but she is leaving that up to the Administration while she concentrates on the immediate important tasks before her.

We asked her to be introspective in speculating why she was promoted to be Acting Chairman, suggesting that her ability to reach out to disparate groups and reason things out with various factions might be the reason, particularly as she was so often asked to preside over

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Interview with Acting Chairman LaFleur Continued

public conferences by her predecessor. While she appreciated our suggestion, she maintained, “I wouldn’t presume to second guess how any of these decisions are made.” Instead, she explained what strengths she regards herself as bringing to the job. Specifically, she named her “willingness to work hard, listen to people on all sides of an issue, and try to make an independent judgment.” She also spoke of flexing her people skill “muscles” in leading the large FERC organization. By that, she explained she attempts to make sure that the dedicated and talented FERC Staff are aware of how their contributions to the success of the goals of the Commission are being realized and appreciated.

“I am happy to walk up and down this hall as long as it takes to try to find the middle ground.”

With respect to her colleagues in particular, she says that everyone brings something different of value to the Commission and that is why it is good to have people from different geographies and backgrounds, maintaining that “we have a strong Commission.”

As evidence of her people skills, it is worth recalling that a Democratic Senator from New Hampshire and a Republican Senator from Massachusetts jointly presented her at the Senate confirmation hearings in support of her confirmation, which went through without controversy. When we reminded her of that, she said that both she and Commissioner Phil Moeller were paired with bipartisan support and that “we are proud of that at FERC.” We pressed a little further as to whether she believed the evenly split Commission by party affiliation might cause an impasse on the voting of any orders. Without venturing predictions, her response was that she is “happy to walk up and down this hall as long as it takes to try to find the middle ground” and that she hopes the issues at FERC “are susceptible to reasoned consensus and compromise because people need the orders.” She observes that the Commission tends not to divide along partisan lines and that “there is a great amount of agreement about what the priorities are.”

Interestingly, she revealed that long before Chairman Wellinghoff a tradition was developed at FERC that still continues whereby the day before an Open Meeting all the Commissioners have a brown bag lunch where they talk about anything except FERC matters for which they are forbidden to discuss *en masse* in private meetings. Her topic is usually sports; others have small children at home that they talk about.

Cybersecurity, physical security, geo-magnetic disturbance security: all pressing issues for the industry, and FERC to tackle.

Heading into 2014; Building on Accomplishments of 2013

The first priority she identified is to continue implementing the Order No. 1000 transmission planning and cost allocation requirements. She allowed that she might have a different emphasis and focus on individual aspects of those broad parameters of implementation. But, having been part of the ongoing “work streams,” she has no intention to “scrap” this huge unfinished undertaking that she considers to be “important to the needs of the customers we serve.”

She has taken command just as the Commission completed action on the first round of Order No. 1000 compliance filings at the December 2013 (and 1000th) Commission meeting. “Now we will be turning to the second wave of filings” needed to complete the restructuring that many of the first rounds only partially accomplished. “We also have the full gamut of inter-regional filings” that are in their first round stage, she observed. “And yes, the Solicitor will be defending the Order in court at the same time so we are far from done with the Order No. 1000 work.” Finally, on this top priority, she added that “we know that the ball is in our court” following all the stakeholder processes that have gone on to bring about compliance with this massive rulemaking.

“The ball is in our court” to finalize implementation of Order No. 1000 regional and inter-regional compliance filings.

The Nation’s Security as a FERC Issue

“Reliability and grid security” are other matters on FERC’s high priority list, Acting Chairman LaFleur stated. She recounted FERC’s fall 2013 approval, subject to certain conditions, of CIP-5, the fifth version of critical infrastructure protection standards administered by NERC. She sees the next step of overseeing compliance with CIP-5 as a “major effort.” Beyond that, she relayed that FERC is involved with other government agencies in

the development of the voluntary infrastructure protection under the President’s Executive Order. She pointed out that physical security, along with cybersecurity, will be a major focus of FERC’s activities.

Geo-magnetic disturbance is another area in which Commissioner LaFleur has been a leader within the Commission. This is a natural disaster phenomenon brought about by solar storms that disrupt the electric grid. In the last year, FERC instructed

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Interview with Acting Chairman LaFleur **Continued**

NERC and the transmission industry to work on proposing two sets of standards, one consisting of operating procedures geared to these events “just as you would with a hurricane or a tornado” in order to be prepared to act in the event of an emergency. This first set of standards has been filed and is pending Commission action. Second, and not yet filed, are standards to mitigate the effects of geo-magnetic disturbances, such as equipment standards, operating standards, and specifications for new kinds of sub transformers or transformers. She expressed appreciation for all the work that is going into these standards development because this is an area that falls within the category of “high impact, low frequency” in that it could cause great harm even though the likelihood of its happening is rare. Accordingly, advancing on this significant on-going effort is another task that FERC will be engaged in throughout 2014.

The Gas Front

The Acting Chairman sees two continuing developments involving FERC’s oversight of the natural gas industry. With gas increasingly being extracted from horizontal drilling of Marcellus and Utica shale in, among other places, New York, Pennsylvania, Ohio, and Appalachia generally, she sees the old pipeline structure of bringing gas from Texas Gulf production to northern market areas in the east and Chicago, where large populations are located, as well as imports from Canada, as outdated from a FERC ratemaking perspective. In other words, she sees pipelines now receiving much less of their revenues from long-haul transportation and more from short-haul deliveries, as the production area and the market area are more closely situated to one another. This is driving a need to restructure rates, she explains. Also, there are more certificates being sought to build laterals and compressor stations to get more

Marcellus gas to market.

PHMSA, the Pipeline and Hazardous Materials Safety Administration within the Department of Transportation, has established a new set of pipeline safety rules that is another big category for FERC’s attention in the gas realm, according to the Acting Chairman. For example, compliance with the maximum allowable operating pressure rules of PHMSA and the impact on capacity release rules is a pipeline issue throughout the country that has FERC heavily engaged.

Further, FERC is “seeing a lot of LNG *exporting* applications,” she related, which



she noted is “quite a change.” In that connection, she pointed out that she prepared for her nomination to become a FERC Commissioner in 2010 by studying various LNG “import” applications, only to find that “by the time I was seated at the table at FERC, the world had changed on its axis and now we are seeing the opposite.”

What to do About Electric Transmission Base ROEs

Observing that a New England ROE complaint case underwent a hearing and ALJ Initial Decision in 2013 and that other cases have been filed that have not yet reached that stage, Acting Chairman LaFleur expressed the intention that FERC act in this area as another high priority. She sympathized that both those who filed the complaints and those for whom ROEs are

being questioned need to have a resolution. As to whether a case specific decision will be rendered or a general approach to the extent of any commonality of issues, she prefers to “keep our options open,” but advises that as action is taken in any case it could have an impact on the outcome of others as well. The basis of any ROE decision will be “generating a solution that’s principled and sustainable.”

Coming up: “Generating a solution that’s principled and sustainable” on ROE.

Enforcement Actions Becoming More Clear

“We are still in early days of our enforcement work, but over the last year and a half have issued a lot of orders in market manipulation cases,” she asserts. She believes that in a settlement or an order to show cause, FERC must provide detailed factual information so that it is clear what kinds of activity the Commission is examining. In that regard, she maintains that “a lot of clarity” has been given in orders voted out as to FERC’s approach towards “people playing the financial and physical markets against each other.”

A high priority for the Acting Chairman is making sure that the Commission has the resources needed in this complex area, as well as in market design. She also indicated that clarity over the respective enforcement jurisdictional roles of FERC and the CFTC is expected to be the topic of an announcement before too long.

In the advice category, Acting Chairman LaFleur pointed out that the enforcement policy statement, which predates her tenure at FERC, precludes subjects of an investigation from coming in person, but allows written communications. As she cautioned with

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Interview with Acting Chairman LaFleur Continued

respect to meetings with her, she advises being “succinct and clear” in these written submissions as well. From a practical standpoint, this means providing something that can fit in a briefcase “if you want all the Commissioners to read it.” She explains that “we want to do the right thing and read everything we get, but we’re not weight lifters.”

Her Special EBA Comments

“We are seeing a lot of changes in power supply” brought about by environmental concerns and goals as to the various alternative sources of electric generation, she told us. Her advice to anyone starting out on a legal career is to “try to understand where those energy and environmental linkages are because I see a lot of energy decisions being made on the basis of environmental rules as well.” She declares energy “a great area,” and says she “appreciates what the Energy Bar Association does to train people,” particularly “those smart young people who we need to come in and solve our problems.” She also finds the *Energy Law Journal* useful, and enjoys visiting with the EBA Regional Chapters when she is otherwise in the area.

We EBA members have always had a good friend in Cheryl LaFleur. She has given greatly of her time over the years in being with us and supporting our activities. At this most transformative time in her remarkable career, she has allowed us first crack at learning her views before she grants a media-wide open house in January. Her sage insights, advice, and impressions shared with us here demonstrate why the President has turned to her to provide FERC with the steady leadership it needs.

Quizzing the Acting Chairman

What pleasure travel does she take these days:

In her former life, she was a traveler, including trips to visit family friends, among them former *au pairs*, in Western Europe. Now she prefers to stay home and read a book given her extensive business travel demands.



What books does she read instead of traveling:

Biography (Teddy Roosevelt most recently) and historical authors such as David McCullough, Doris Kearns Goodwin, and Bill Bryson. “They are engrossing but not so engrossing that I will stay up till 4 in the morning to see what happens.”

New Year’s Resolution: Get on an exercise program.

Wishes for the New Year: Good health to loved ones; more bipartisanship in Washington like the recent budget deal (which we already have “in our little world at 888 First Street”).

Advice to Brief Writers: Write out your acronyms the first time you use them! And, along with FERC, attempt to achieve commonality in acronyms concerning organized markets; “We have to let a thousand flowers bloom.”

For Upcoming Meetings Check EBA Meeting Central
@ <http://www.eba-net.org/education>

Post Script: A New Perspective

Editors Note: We wondered if Acting Chairman LaFleur's perspective has changed along with her new role and time at FERC.

"I'm still raring to go; I've loved the work," is LaFleur's immediate reaction when asked if she has changed her views and outlook in the time she has been with FERC, and particularly as its new head. "The team of people here are really wonderful. It is a particular honor in my role as Acting Chairman to lead the wonderful group of people who work at FERC."

In her time at the Commission, she says, "I found out I did not know as much as I thought I knew about the things I thought I knew. But I knew a little bit more about the things I thought I did not know anything."

She also learned about FERC's role in the "constellation of government agencies that regulate the same companies that we do." New to government and new to Washington, D.C. when she arrived at FERC, she has made it an increasing priority to reach out to state governments and the DOE, CFTC, EPA, PHMSA, and NRC to "try to develop relationships with them because there are a lot of linkages in our work." She looks forward to scoping out these linkages as Acting Chairman.

NERC, not a government agency, but a corporation with statutory functions, is also an entity that Acting Chairman LaFleur has been very active with, given FERC's oversight role. She states that she has a very good working relationship with Gerry Cauley, Chairman of NERC's Board, and believes he has done a good job setting priorities there. She sees NERC as having completed the first stage of getting the initial standards set and moving to the next level of improving reliability assurance initiative standards and the way in which standards are arrived at, reviewed, and enforced. She voiced her support for the general approach of NERC, with the caveat that there are sometimes differences, such as when FERC remands certain aspects of proposals to NERC, as occurred as recently as November.

She has been particularly pleased with her involvement with the state commissions through NARUC, finding that with few exceptions, on matters touching FERC jurisdiction, there is "a part regulated at the federal level and a part that is regulated at the state levels, and mutual areas of understanding are very important." She did not realize the full extent of the need for inter-exchanges when she preparing to become a FERC Commissioner. Rather, she saw herself reading papers at her desk, making a decision "in a very measured and stately fashion and then someone will bring in the next case; but the volume and pace was more than I expected."

In her new capacity, she intends to curtail business travel in order to concentrate on "minding the store and getting the orders out for at least the first couple of Agenda cycles to understand how it all happens." Even though she has been through the process as a Commissioner, she states that "it is a little different" to be in charge of the process. She "wants to be here to make sure we reach a consensus and vote out the orders." She has always had more speaking requests than her other commitments allow, and now she will likely be even more sought after with even less availability. Still, she expects "to make a lot of speeches and certainly be accessible to meet with people." She regards the ability to visit people in the various regions as an important aspect of being on the Commission. "I was already part of the energy community, and enjoyed meeting people, but I've met so many more, particularly at other regions of the country, like the Pacific Northwest, where I had not spent enough time." She also believes that technical conferences have been a good model for how to bring more in-depth discussion at the FERC Sunshine Act decisional meetings. She wants those meetings to be increasingly useful "in providing whatever clarity we can."

In terms of meeting with visitors to her Offices, she indicates that most meetings are a half hour and "you see the handiwork of the lawyer in the presentation" by the business executives in that they are clear as to what they are there for and what they are seeking, "and that is enormously helpful." She finds that the higher the position of the company officials, the harder it is for them to "make the hard ask." While she attributes that to human nature, she appreciates it when people are "direct" in speaking to her, including in letting her know who will not like what it is they are asking FERC to do. She sometimes is told "no one" when she asks, and then she sees the protests afterwards. So, word to the wise, when having a pre-filing meeting with the Acting Chairman, be precise, specific, and candid, and she is more than willing to engage you in an open exchange about the merits of what is being sought.

Finally, concerning lessons learned at FERC, "I did not come in with firmly held views," she tells us, but she has come to appreciate the need for regional diversity more than before assuming office in that "geography is destiny, and things are different in various parts of the country for a reason." Whereas she used to believe that everyone was moving to the same place, just at different rates, now she is of the conviction that "for the rest of my career there will be different systems in different places." However, "I have not changed my mind about the importance of competitive markets because I have seen firsthand how much they can help customers." She does not believe we can take the existence of energy and capacity markets for granted; "we have to make sure it is going right as we go along."

"I have not changed my mind about the importance of competitive markets because I have seen firsthand how much they can help customers.... We have to make sure it is going right as we go along."

Energy Bar Association Book Club Newsflash



Presenting the 1Q, 2014 EBA Book Club Book of the Quarter:

Preside or Lead? The Attributes and Actions of Effective Regulators **By Scott Hempling**

From the Book Jacket:

Our public utilities build and operate the infrastructure that supports modern economies. Lives depend on their performance. Defining and demanding that performance is the job of regulators. By setting standards, compensating the efficient and penalizing the inefficient, regulation aligns private behavior with the public interest.

Regulators are real people. Case outcomes are determined not only by facts, law and policy, but also by commissioners' personal attributes—their purposefulness, decisiveness, independence, creativity, ethics and courage. These attributes, or their absence, influence regulators' actions. Some regulators merely "balance" and "preside"; others create vision, inspire performance and lead. Even the most purposeful, educated, decisive, and independent regulators—those who make the tough calls and take the right actions—face obstacles: the forces of self-interest, short-term thinking and political inertia that can undermine regulation's purpose.

By exploring the connections among regulators' attributes, actions, and obstacles, these 60 essays reveal the ingredients for effectiveness.

!!!!!! FREE BOOK !!!!!

Several copies of the 1Q, 2014 Book of the Quarter have been generously donated to the EBA Book Club by the author, EBA Member Scott Hempling! Attend the 4Q, 2013 Book of the Quarter in-person book club meeting on January 23, 2014 (see "EBA Book Club Live" for more details) or email EBABCModerator@gmail.com to get your free copy (while supplies last).

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:

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

Note that the prior EBABC platform (bookclubit.com) recently unexpectedly went out of business, thus it has become necessary to find a new home. This also means each existing EBABC member will need to register for the new site, but registration is free and should only take a few seconds. Thank you for your understanding!

EBA Book Club Live:

Join us for networking and a lively discussion of the 4Q, 2013 EBA Book Club Book: *The Power Surge: Energy, Opportunity, and the Battle for America's Future*, by Michael Levi. All are welcome - whether or not you have finished (or even started) the book!

When: Thursday, January 23, 2014

Time: 6:30 – 8:00 pm

Location: Hill Country, 410 Seventh St., NW, Washington, DC

BONUS: Obtain your FREE COPY of the 1Q, 2014 EBA Book Club Book, "Preside or Lead? The Attributes and Actions of Effective Regulators," which has been generously donated by the author, EBA Member Scott Hempling! If you cannot make the Happy Hour on the 23rd, please contact the EBA Book Club Moderator at EBABCModerator@gmail.com to arrange to pick up your free copy (while supplies last).

Coming Attractions: Look for the 2Q 2014 Book of the Quarter in the spring edition of *EBA Update*! Book recommendations are welcome – please email any suggestions to the Book Club Moderator at: EBABCModerator@gmail.com.

Upcoming EBA Events

Mastering Your First (Or Next) State Public Utility Commission Hearing

January 21, 2014
DC Public Service
Commission
Washington, DC

Energy Enforcement: Outlook for 2014

January 30, 2014
Akin, Gump, Strauss,
Hauer & Feld, LLP
Houston, TX

Thirteenth Annual Western Chapter Meeting

February 20-21, 2014
Hyatt Regency
San Francisco
San Francisco, CA

Seventeenth Annual Midwest Chapter Energy Conference

March 10-11, 2014
Hilton St. Louis at the
Ballpark
St. Louis, MO

EBA Annual Meeting & Conference

April 8-9, 2014
Renaissance Hotel
Washington, DC

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

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.

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EBA Spring 2014 Annual Meeting & Conference

April 8-9, 2014
Renaissance Hotel
Washington DC

Registration is now open.
For information on the
Conference and to register,
visit:

<http://www.eba-net.org/eba-annual-meeting-conference>

Please Make Note of EBA's New Address (as of 12/15/13)

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