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A ONCE AND FUTURE CHAIRMAN?

FERC Chairman Glick Sets the Record Straight and Discloses FERC Offer in Exclusive EBA Interview on Eve of Departure from the Commission:

By Gary E. Guy and David Martin Connelly

After a Covid-19 hiatus of 2 ½ years, the EBA Interview Squad Gary E. Guy and David Martin Connelly (aka “Robert McCormick and Robert Semple”) are back in action! We have scooped the competition in obtaining an “exit” interview with Federal Energy Regulatory Commission Chairman Richard “Rich” Glick. We got the inside story from him about a former opportunity to serve at FERC that he declined --as it was not the way he wished to enter office-- his unprecedented conscientiousness in recording meetings with officials only to have them misrepresented in opinion pieces, and the lessons he learned about good stewardship from Senator Dale Bumpers that have stood him in good stead (and explain why he has been controversially outspoken in discharging his responsibilities).

Off and On at FERC

Most EBA members are aware that Chairman Glick was the pick of President Donald Trump to be a Democratic FERC Commissioner in 2017 and the pick of President Joe Biden to be Chairman in 2021. As our well-informed readers are aware, the White House sent his name to the Senate for another term, but lack of action there will cause him to leave office with the January 3rd or so expiration of the Congressional session. But what is not widely known is that Mr. Glick was offered a recess appointment to FERC by the Clinton White House on January 19, 2001 just before the transition to a Bush Administration to run until the end of the Congressional session in December (to be paired with another interim appointment from the other party). The reason he was slotted for appointment was his work on the California energy crisis while working for Secretary Bill Richardson because relief in the form of providing price caps in the West was being discussed (and ultimately implemented). Mr. Glick was at the White House meeting, when at the end of the discussion he was asked if he would like to have the Democratic recess appointment. An hour or so later, he called back and declined. Then the White House, perhaps at least in part based on his reasoning, decided to forego both such appointments. Keen as he was to take on a FERC Commissionership, he passed on the offer because he believed that the Senate would resent his taking advantage of the absence of Congress to fill a vacancy for a year's span of time. So, he did the right thing from his perspective, not knowing that the opportunity would resurface with two later Presidencies.

Having almost joined the Commission in 2001, and almost extending his stay now, we asked him about his future prospects. He expressed doubt that he will be renamed when a nomination is made by the Administration after the new Congress comes into session. For one thing, as he pointed out, unlike the special rules in the evenly split Senate ending this year, normal Senate rules will apply in the next Congress in that a 60-vote filibuster-proof majority, rather than a tie vote, will be needed to move a nominee from a Committee to a floor vote, making Chairman Manchin's opposition that much more difficult to overcome were the Biden Administration to resubmit his name.

However, he said he believes that whoever is nominated for his Democratic seat should be paired with a Republican nomination given that Commissioner Danly's term expires in June. When we suggested the possibility of both incumbents being put forward together, he demurred, saying he owes it to his family to move on, suggesting the possibility of going with a law firm in D.C. as a logical next step (and less disruptive to his school-age son). He was equally non-committal as to whether Commissioner Danly should or would serve again, but remarked that the two of them, despite "being very different people," were always cordial in their bi-weekly meetings. As to who should be Chairman, he indicated that it was a plus for him coming in as Chairman to have previously served as Commissioner and he believes it is best to promote a sitting Commissioner to Chairman.

A Resume Built for FERC

Mr. Glick surely did not have designs on the FERC leadership post when, after growing up in Connecticut, he began his career following graduation from George Washington University and Georgetown Law. But he sure hit all the bases, legal, political, business, and policy to make for an ideal FERC Commissioner. He went from private practice at the Verner Lipfert firm (working with a future FERC Chief of Staff and General Counsel, John Moot), representing energy clients, to serve as Legislative



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Director and Chief Counsel to Senator Bumpers (incidentally, as a former Senator, the leader of the defense during the President Clinton impeachment proceedings in the Senate). He tells us that being from Connecticut was not a drawback as far as Sen. Bumpers of Arkansas was concerned, and neither was his lack of prior Hill or political experience. It was Mr. Glick's particular expertise in the esoteric topic of regional regulation of utility holding companies at his law firm that the Senator wanted. Among other significant matters, he worked on the Energy Policy Act of 1992, as Sen. Bumpers was a senior member of the Energy and Natural Resources Committee. The good Senator also taught the future Chairman many lessons that he has followed since. For example, he told Mr. Glick that he knew he could easily get reelected forever by voting to lower taxes and give away money but that it is more important to do what is right and make a difference for the better than to stay in office. "I took a lot of his approach to my work here," he remarked. "If I was trying to be

popular and avoid controversy, I failed miserably," he added. "I tried to do what I thought was right...We made some tough choices and that's what we are here for." (As Commissioner Mark Christie perceptively pointed out at the December FERC Meeting, Chairman Glick is serving here to get things done.)

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.... I tried to do what I thought was right.* ”

From the Senator's Office, he went on to become Chief Policy Advisor to Energy Secretary Richardson. Then he entered the business world, as Director of Government Affairs, first at PacifiCorp and then PPM Energy. Iberdrola then had the good fortune of his services as head of its D.C. office, developing its federal legislative and regulatory advocacy strategies, eventually promoting him to Vice President over the entire enterprise's renewable energy, electric and gas utility, and natural gas storage activities throughout the United States. He then took all this experience back to the Hill as Democratic General Counsel of the Senate Energy and Natural Resources Committee, serving as senior policy advisor on electricity, renewable energy, and similar salient topics. It was there that Senator Maria Cantwell of Washington, the ranking Democrat on the Committee, asked him if he would be interested in the FERC spot being relinquished by Colette Honorable (who had confided her plans to Sen. Cantwell), to be paired with the nomination of Kevin McIntyre for a Republican seat and the Chairmanship, under President Trump. Needless to say, he jumped at the chance, and Senator Cantwell went to bat for him among the Senate Democrats and the Trump White House. And the rest is history.

It is noteworthy that the Chairman spoke very movingly of his sadness over the loss of Chairman McIntyre, his affection for him, and his deep sympathy for his family. He also correctly recalled that while

in private practice, Mr. McIntyre had been most active within the Energy Bar Association (and FEBA as it was earlier named). He wistfully stated his belief that FERC “would have been far different” if Chairman McIntyre had lived to remain as Chairman during the latter part of the Trump Administration.

No Good Deed Goes Unpunished

Another matter that the Chairman brought up on his own, that probably belongs in the category of answering critics with facts, is that that popular press has found itself taking an unusual interest in FERC with hints of something being amiss. Specifically, there was more than a suggestion that “FERC was taking orders from the Administration that I can assure you was the furthest from the truth. Nothing like that was even close to happening.” For that matter, he observed that members of Congress must also be mindful “of the independence of the agency.”

By way of explanation, he pointed to the proliferation of publications sometimes looking for salacious revelations, although mostly fair in what they are reporting. This story-hunting was compounded by Chairman Glick’s practice, unlike that of some of his predecessors, of scrupulously putting on his calendar every meeting, and making those records freely available under FOIA requests. These included regularly scheduled meetings with Energy Secretary Jennifer Granholm and separate meetings with people in National Climate Advisor Gina McCarthy’s office in the White House and even on rare occasions with her as well. He explained that the purpose was to inform them of matters FERC had acted on that had a bearing on their responsibilities, such as concerning the reliability of the electric transmission grid, particularly with regard to freezing cold snaps in New England. He stated that “we accept all requests and we meet with folks.”

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Lo and behold, he related that these meetings were depicted in an op-ed in *The Wall Street Journal* by Thomas Pyle, a member of a “climate-denying organization” who had been on the Trump transition team, as though the Administration was telling FERC what to do, and then Republicans in Congress picked up on the false accusation. “Far from it,” according to the Chairman, adding, “in fact, I have seen what it is like from the prior Administration, there was in fact a lot of that going on.” The Chairman explained that the conversations he participated in and duly calendared were always held with the upfront, explicit understanding of all the participants that any and all matters pending before the agency were off-limits, and the *ex parte* rules were always observed. While this was all explained, he recalled that Mr. Pyle would have none of it, demanding proof of the negative. Again, the Chairman observed, such conversations themselves were nothing out of the ordinary; it was only the fact that this Chairman kept a transparent record of them that is exceptionable. “I feel very strongly that the independence of the Commission needs to be protected and I know we’ve done that.”

FERC Tenure: Seeing it from Both Sides Now

Having been Commissioner in the minority and Chairman in the majority, Mr. Glick has seen what it is like to be both a dissenter from FERC rulings, as well as the primary setter of FERC policy. Having begun as a Commissioner in November 2017 and as Chairman in January 2021, he has served in excess of five years at the agency, with a major impact through both dissents and major policy issuances.

He told us, not surprisingly, that the differences are stark in that a Commissioner is given a draft order to review and perhaps try to get changed, whereas a Chairman has direct impact, with the office heads he appoints, into the initial preparation of the draft order. He also explained that as Chairman, he looks at how to fashion the order not only to reflect his own views but also in a way that is likely to gain support among his colleagues, with the aim being unanimity. In other words, a Chairman is more interested in building a majority while a Commissioner is focused more on whether he or she likes the order, with a view to writing a separate opinion if not.



Chairman Glick and EBA Reporter Gary Guy

In that connection, he spoke of how the rehearing order staffers within OGC are focused on crafting orders to best withstand judicial review. Again, as a Commissioner, he recalled that he promoted FERC rulings on pipeline certificate applications to reflect the *Sable Trail* court decision requiring an examination of the impact of downstream greenhouse gas emissions on climate change. As he stated, following this review requirement “doesn’t mean you are killing a pipeline or killing an LNG project.” He observed that then-Commissioner (and prior Chairman) Cheryl LaFleur shared his view. However, the majority under Chairman Neal Chatterjee voted otherwise. “One of the things I am most proud of,” he elaborated, “is that on the things on which I dissented ... the courts eventually did the right thing.” As Chairman, he observed that FERC rulings now reflect those court remands that he maintains should have been avoided by proper rulings beforehand. He also observed that the two draft gas policy statements that drew criticism and confusion before they were reissued for further comments as drafts are intended to additionally address the courts’ concerns in this area and remain “unfinished business.”

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Regrets? Too Few to Mention

He is upbeat and positive about having had the opportunity to serve at FERC for five-plus years. He believes that strides have been made in terms of eliminating various RTO NOPRs that had caused uncertainty and concern, advancing transmission planning reform, making the grid more reliable, and providing for more comprehensive pipeline certificate environmental reviews, and he would have liked to have brought many of these matters further along before leaving office. But he understands that the work is never done completely, and that no matter when he ended his tenure, he would be leaving loose ends behind, as is true of any FERC Chairman. “I never thought I would be here one day, much less five years!”

Referencing Senator Bumpers’ advice to “wear your emotions on your sleeve, don’t hide it,” he stated that he did so, not on a personal basis concerning any of the Commissioners but on a policy perspective.

He also said that he came to FERC with no specific agenda other than to adjudicate the cases before him judiciously and to promote general policy goals regarding such topics as “removing barriers to newer technologies such as intermittent generation,” demand response, energy storage, distributive energy resources and goals enumerated above. He views accomplishments in these areas under his Chairmanship as “pretty remarkable” but also as building on advancements achieved during Chairman Chatterjee’s tenure. He also gave assurances that the Commission does pay attention to petitions for rulemakings and declaratory orders, and that these kinds of submissions cause him to reassess why the Commission does certain things the way it does, adding that there are certain matters like that pending before the Commission now. In particular, he noted that outside groups have suggested changes in transmission planning that have impacted FERC initiatives.

“ I am really proud of what we accomplished with the states. ”

In terms of federal/state relationships, he stated that, “I am really proud of what we have accomplished with the states.” He noted that the line between retail and wholesale transactions “is not entirely clear.” This has over the years caused “tense relations” between FERC and state regulators, including the first couple of years that Mr. Glick was a Commissioner. He recalled that upon becoming Chairman he made it a point to “reach out to NARUC and I believe we have done a pretty good job,” including: (1) having one of more state regulators at FERC technical conferences directly addressing the Commission; (2) encouraging state involvement in formal docketed FERC proceedings; and (3) forming a joint FERC/NARUC Task Force on transmission issues, with a significant number of state Commissioner members and all FERC Commissioners participating as well. These three initiatives “have been an overwhelming success” in the Chairman’s assessment. He sees it is as reducing the prior “tension” and assisting both FERC and states with the initiation of rulemakings at both levels of regulation.

The Chairman is also upbeat about energy as a career for young people. Observing that when he was studying law at Georgetown, there was only one energy course (that he didn’t take) on oil and gas

law, he pointed out that that now there are many courses examining various aspects of this field. He said many former FERC Commissioners teach such courses and have invited him and other Commissioners to speak to students. He has been struck by how interested the students are, particularly concerning energy as it relates to climate policy. His advice to interns and others starting out is “stick with it and plan out your career.” He emphasized the importance of balance in D.C., getting experience on Capitol Hill, in the Executive branch, in trade associations, and in the private sector. Being involved in the latter gave him a perspective into issues that “I would not have dealt with” including the need for regulatory certainty. And *vice versa*, only being in the private sector would have left him uninformed about legislative and executive perspectives.

“ Advice to the young: Stick with it and plan out your career. ”

The Chairman was also generous in his comments about the panel programs that the EBA offers both nationally and in the Chapters, as he has attended and spoken at both such forums, both before and since coming onto the Commission. Indeed, he observed that the agendas for these CLE programs are very attuned to the issues facing FERC, making them timely and beneficial to practitioners. He called “invaluable” the nuts-and-bolts brown bag discussions with FERC Administrative Law Judges on the practicalities of litigating and negotiating at FERC. In particular, he commended the Charitable Foundation and the naming of a Service Award after the late, former Association President Paul E. Nordstrom, a “mentor of mine when I was at Verner, Lipfert.”

Most of all, he was laudatory of the “stellar, top-notch” and hard-working professionals at FERC. He credits their love for their work as explaining their dedication and long hours, as well as the “good atmosphere we have here.” He called it “humbling to see how smart they are” as they tackle difficult engineering and economic challenges that are troublesome to lawyers.



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It was a pleasure visiting the Chairman in his waning days at the Commission and getting his take on the lay of the land from his unique perspective. In summary, we came away with the impression that Richard Glick is a man of great integrity who tells it as he sees it.

Glimpses Gleaned from Glick

1. **Favorite D.C. restaurant:** The Hamilton.
2. **Checked off bucket list:** Riding a bike down Mount Haleakala in Maui.
3. **Most influential person in childhood:** My American government high school teacher.
4. **Most beautiful place ever seen:** Grand Tetons (where my wife and I were engaged).
5. **Favorite season and why:** Spring. After a long cold winter, it offers hope and warmth.
6. **DIY or hire someone:** Hire somebody. I am the least handy person I know.
7. **Favorite pizza topping:** Pineapples and tomatoes.
8. **Most surprising thing about you:** I play blackjack for hours without a break.
9. **Favorite movie:** *Annie Hall*.
10. **Public figure most admired:** President Obama.
11. **Nightstand book:** *So Many Ways to Lose: The Amazin' True Story of the New York Mets*.
12. **Favorite way to get around D.C.:** Walking.
13. **Best advice ever received:** "Do the right thing, not the popular thing." Dale Bumpers.
14. **Advice on maintaining work/life balance:** I'm still trying to figure this out.
15. **Would take to a desert island:** A solar powered TV and satellite dish to watch the Mets.
16. **In school, excelled at:** Math.
17. **Favorite type of music:** Punk Rock.
18. **Most proud of:** Our son – Alexander.