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Max Minzner, FERC General Counsel, Describes Challenges

He Joins Agency for a Second Time, Both at Behest of Norman Bay

Gary Guy & David Martin Connelly

Recently installed Federal Energy Regulatory Commission General Counsel Max Minzner generously granted an interview on the afternoon of a busy day - that of the Commission's February monthly meeting -- to your faithful interrogators Gary Guy and David Martin Connelly (aka "Paul Duke and Ron Nessen"). Here is a brief recap.

BAY AND MINZNER – FROM NEW MEXICO AND BEYOND

While still relatively new to his current position, Mr. Minzner was at the FERC in 2009 and 2010, when he served as Special Counsel to then-Director of the Office of Enforcement, and now Chairman, Norman C. Bay. He rejoined the Commission in June 2015 as an advisor to Chairman Bay and then was elevated to General Counsel in September. He and the good Chairman go back almost 20 years together at the United States Attorney's Office for the District of New Mexico. (He also was an Assistant United States Attorney for the Eastern District of New York prosecuting homicide-for-hire, crime family,



Max Minzner, FERC General Counsel

international drug and kidnapping, and major corporate fraud cases, was in private practice, and was a law clerk for United States Court of Appeals for the Ninth Circuit Judge Pamela Rymer.) "I certainly feel lucky that I have gotten to work with Norman in a lot of different contexts," he tells us. Of his return to the FERC after five years, he states, "It's a tremendous opportunity. It's a wonderful office." In particular, he relishes the high quality of the Staff in OGC. "I am consistently impressed by the quality of the work they do." For that reason, he looks

Minzner, continued on page 8

President's Message

Richard Meyer, EBA President

EBA is All About You!

The Energy Bar Association is about the law student, the business student, the energy professional, the expert witness, the state or federal energy regulator, the consumer advocate, the environmental activist, the investor owned utility lawyer, the independent generator analyst, the regulated industries professor, the energy trade association lawyer, and the law firm attorney. It is about alternate dispute resolution, competition and antitrust, compliance and enforcement, demand-side resources and smart grid, electricity regulation, environmental regulation, FERC practice and administrative law judges, finance and transactions, international energy law and transactions, judicial review, legislation, natural gas regulation, nuclear regulation, oil and liquids pipeline regulation, power generation and marketing, professional development, education and ethics, programs and meetings, renewable energy, state commission practice and regulation, system reliability and planning, young lawyers and other professionals. Little doubt that you and your professional involvements are reflected here.

Be the EBA Ambassador we know you can be, so that EBA can be all that it can be for you. If you have not already done so, please recruit at least one new EBA member during the next several weeks. Make a specific point of doing so. We have been going through law firm profiles and there are many attorneys holding themselves out as energy law practitioners who are not yet members. Many are in your firms. Please actively encourage them to join. And don't forget to renew your own membership lest you inadvertently miss out on valuable educational and networking opportunities.

We still have big inroads to make in the large community of energy professionals. Virtually all of energy law is based on economics, engineering and finance. Energy professionals in these disciplines have much to offer the association as members, yet many have not yet joined. Please spread the word and actively recruit them. The association will be stronger with a larger segment of these professionals actively involved. As mentioned many times before, EBA is not for lawyers alone. Energy professionals and lawyers stand on equal footing within EBA.

A formal member assessment survey has been initiated to better serve all EBA members. Initial sampling of members has begun. All members will have an explicit invitation prior to the annual meeting to provide input and ideas. We want to hear from you. This is an opportunity for you to help shape EBA to ensure that EBA best serves your needs.

Energy law education is a primary EBA mission. With the *Energy Law Journal's* publication of the report of EBA's Ad Hoc Committee on Energy Law Education, EBA now stands at the cutting edge of the future of how energy law is taught in the United States and elsewhere. To maintain the momentum initiated by this report, a new EBA Task Force is examining implementation of the report's recommendations. EBA Vice President Bob Weishaar has agreed to chair this effort. As Bob will be in key EBA leadership roles for the foreseeable future, I am confident the report will attain sufficient momentum to secure concrete results. I also note that a panel will likely discuss the report at this June's annual meeting. We want to make sure that those entering the energy profession have the best possible grounding in energy law.

To better harness the experience and judgment of past EBA presidents, there is a new EBA Presidents Advisory Council. The council will serve as an organized resource of experience for sitting EBA presidents who,



Richard Meyer, EBA President

in their discretion, may seek the council's advice from time to time. Former EBA presidents Dave D'Alessandro and Rich Bonnifield have graciously agreed to serve as the council's initial chair and vice chair. Thank you gentlemen.

There will be many EBA Energizers, chapter events and other education and networking opportunities leading up to our annual meeting this June. These valuable opportunities are organized by you, for you, and we look forward to seeing you at these events, including at the Charitable Foundation's gala to be held in conjunction with the annual meeting.

There is much work to do right now for the annual meeting. I'm now begun initial efforts to turn over the reins to President-Elect Emma Hand in June. It's similarly not too early for you to be actively thinking about the future role you may want to have within EBA's many committees, the Charitable Foundation, and the Foundation of the *Energy Law Journal*. Opportunities abound for you. That's because EBA is all about you!



Richard Meyer
EBA President



About EBA

The Energy Bar Association (EBA) is an international, non-profit association of attorneys, non-attorney professionals, and students active in all areas of energy law. The EBA promotes the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies. The EBA provides superior educational programming, networking opportunities, and information resources to its members. It has over 2,000 members throughout the United States with regional chapters located in Houston, New Orleans, the Midwest, Southern, Western, Northeast and Rocky Mountain regions.

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From the Executive Director

EBA Brings You More... and Wants to Know What More You Want!

Lisa A. Levine, CAE



The first quarter of 2016 has been one of the busiest for the Energy Bar Association and our membership – “Why” you might ask? It is because EBA has been working hard to bring the membership more of what it wants.

More CLE Offerings? – “Yes please!” EBA presents approximately one CLE program a week. Program topics range from “Informing Investors of Climate Risks” to “Defining Federal and State Regulation of Today’s Electric Grid” and provide you with anywhere from one hour of CLE up to a full day of credit. EBA Committees, Councils and Chapters organize these outstanding programs to meet your ongoing educational needs. Don’t miss a program, visit

our online calendar often: www.eba-net.org/calendar

On-Demand Programs— Last year, under the leadership of Jason Leif, EBA Immediate Past President, we embarked on a partnership with WestLaw to provide members with outstanding energy educational offerings delivered to their desktop. We had no idea how much you would love On-Demand programming! Members and non-members have been downloading and enjoying our growing library of courses, many include CLE hours. EBA is adding programs monthly and if you haven’t visited the library, please do so. You will find it easy to download programs to your computer and personal devices. EBA On-Demand... allowing you to learn while you commute! www.eba-net.org/on-demand

Regional programming and networking events – EBA’s seven regional chapters plan a variety of educational and networking events to bring you together with your local colleagues. If you would like to host an event or program in your town, please contact your chapter president or the EBA office for assistance.

University “Road Shows” - Did you know the EBA Young Lawyers Council works directly with chapters and universities to bring an energy law “Road Show” to law students nationwide? This is a great opportunity to share the benefits of a career in energy law with first and second year law students. It is also a wonderful reason for you to reach out to your Alma mater. If you would like to assist in presenting a road show, please visit our webpage, www.eba-net.org/get-involved/young-lawyers-students, to learn more.

Finally, in our effort to bring you more...we have a request. EBA kicked off a **Member Assessment Survey** last week and we want to hear from you! The survey will only take approximately 15 - 20 minutes to complete. Your responses will help guide the next EBA strategic plan and set the future of EBA. Your input is extremely valuable, so please let us hear from you.

Thank you for allowing us to serve you. Thank you for your membership and thank you for participating in the survey.

I look forward to seeing you at chapter and committee events this spring and hope you are making your plans to attend the 2016 EBA Annual Meeting & Conference in Washington DC on June 7 - 8.

See you soon!

A handwritten signature in black ink that reads "Lisa A. Levine".

Lisa A. Levine, CAE
Executive Director



2016 Annual Meeting & Conference

June 7-8, 2016

Renaissance
Downtown Hotel
999 Ninth Street NW
Washington, D.C., 20001

www.eba-net.org/2016

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exhibiting opportunities are
available.

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www.eba-net.org/2016sponsor

FELJ News

ALJ Reception Re-Named to Honor Chief Judge Curtis L. Wagner, Jr.

Linda L. Walsh

The Foundation of the *Energy Law Journal* (FELJ) has officially re-named its popular annual Administrative Law Judge (ALJ) Reception in honor of the late Chief Judge Wagner, a fitting tribute to a man who spent decades helping to shape energy law at the Federal Energy Regulatory Commission. The FELJ's annual event will now be known as "The Honorable Chief Judge Curtis L. Wagner, Jr., ALJ Reception."

The FELJ Board Members made the name change official at the FELJ's February 11, 2016 Board meeting, voting unanimously to bestow this honor.

FELJ President, Grace Soderberg, stated that "Chief Judge Wagner has been a pillar of the Energy Bar Association and the FELJ for so many years. The ALJ Reception is the FELJ's largest event of the year. We all wanted to honor his memory in this way."

EBA President Richard Meyer, who spoke at the December memorial service for Chief Judge Wagner, reported that the announcement of the upcoming name change brought applause from those attending the

service: "I can't think of a more fitting tribute to Chief Judge Wagner."

Starting in 2016, the ALJ Reception will be held in conjunction with EBA's Mid-Year meeting in the Fall instead of in the Spring. The Mid-Year meeting will be held from October 5-6, with the reception to be held on the evening of October 4, 2016. The FELJ will be seeking sponsors of the event, including a sponsor to host the meeting. Anyone interested in a sponsorship should contact Marlo Brown at (202) 499-5842 or marlo@EBA-net.org.



Honorable Chief Judge Curtis L.
Wagner, Jr.

About FELJ

Since 1980, the *Energy Law Journal* has provided great value to the Energy Bar Association's members. The *Journal* provides in-depth analyses on current, salient issues affecting members and their clients and businesses and provides a forum for the exploration and understanding of new, cutting edge issues. The *Journal* is a benefit to EBA members and subscriptions are available to non-EBA members.

Visit www.felj.org to download the current issue or subscribe.

Energy Law Journal

Excerpts from Past Issues

TEN YEARS AGO

"The trend in regulation can go at least two ways after PUHCA's repeal. Regulators can attempt to re-create the PUHCA regulatory model which subjects entire holding company systems to regulation. Alternatively, regulators can focus more narrowly on the companies within a holding company's system that serve captive customers. The latter approach of constructing a ring fence to protect only certain companies from the unregulated activities of the broader group is most sensible because it provides consumer protection without imposing barriers to investment or unnecessary regulation."

Markian M.W. Melnyk and William S. Lamb, *PUHCA's Gone: What is Next for Holding Companies?*, 27 ELJ 1, 15 (2006)

TWENTY YEARS AGO

"From FEBA's earliest history, it was the practice to have a banquet following the Annual Meeting. This has been continued to the point where the reception and banquet have become an important function of FEBA. Comments from numerous past officers and members give this function a high place among FEBA's programs. One past President indicated great appreciation for FEBA's consistent attention to the specialized needs of its members and their clients via timely educational programs and the Journal. However, in his view, the Banquet is the most valuable component of FEBA's total program. Specifically, the current tradition whereby a Commissioner of

the FERC – usually a new member – gives a humorous, but genuine, account of his or her experience with the other Commissioners, the Staff, the FERC's policy agenda, and the people representing the regulated entities. These presentations have featured some clowning by the speaker. Numerous memoirs of such clowning were cited – the late Ray O'Connor's gusto when he stormed up to the head table and ejected his masquerading assistant who had just been introduced as Chairman; Commissioner Terzic's presentation on 'Lake FERC Begone' at a time when the demise of FERC was an idea getting serious Congressional attention; or the extremely hilarious interplay between Commissioner Holloman and the late Don Smith. Another former President described the Banquet as extremely mercurial and unpredictable – where humor is unleashed; where numerous bad jokes fly by; where Commissioners let down their facades, even if just for a moment; and where the guests have 'the most fun we can still legally enjoy in the practice.'"

Richard A. Rosan, *On the Fiftieth Anniversary of the Federal Energy Bar Association*, 17 ELJ 1, 13 (1996)

THIRTY YEARS AGO

"FERC has been confronted with seemingly contradictory objectives. On the one hand, it is responding to a Congressional determination to deregulate the cost of gas, while on the other hand retaining regulation of the price of old gas and of interstate transportation and sales for resale. As part of its deregulation mandate, FERC is unbundling gas costs from the fixed costs of providing service, with the hope that unbundling will improve the transmission of price signals from the burner-tip to the wellhead and vice versa. In addition, in response to judicial mandates and as part of its effort to improve the marketability of gas, FERC is pushing pipelines to provide open access to their transportation systems. These efforts, it is hoped, will inject competition into a previously monopolized market so that the laws of supply and demand can more efficiently allocate the resources of the industry."

John Wyeth Griggs, *Restructuring the Natural Gas Industry*: Order No. 636 and Other Regulatory Initiatives, 7 ELJ 71, 98 (1986)



The image shows a graphic for the Energy Law Journal. At the top, the words "ENERGY LAW JOURNAL" are written in a large, blue, serif font. Below this, there is a torn paper effect revealing a blue background with white text. The text includes the website "www.felj.org" and a list of actions: "Donate", "Subscribe", "Contribute", and "Download".

Charitable Foundation of the Energy Bar Association (CFEBA) Update

Michele Smith

You will not want to miss another great networking event and an opportunity to help the CFEBA to continue to successfully provide funds for its many worthwhile energy-related charitable grants. Please mark your calendar for the CFEBA Annual Fundraising Gala, *Light Up the Village!* to be held on **June 7, 2016** at the Renaissance Downtown Hotel in Washington DC, immediately following the first day of the EBA Annual Meeting & Conference. This will mark the first formal dinner event in CFEBA history as the Foundation takes its fundraising efforts to new heights!

Light Up The Village! is this year's Gala theme, as our cornerstone project this year centers on electrifying a rural community in Bolivia. The community consists of 461 families located in a region in northeast Bolivia called El Beni, a farming area between the cities of Guayaramerin and Riberalta. CFEBA has partnered with the International Foundation of the National Rural Electric Cooperative Association (NRECA) for this initiative. With your help, we can provide life-changing electric service to these families.

The CFEBA has numerous sponsorship opportunities available in connection with the Fundraising Gala. All sponsorship opportunities and benefits are available at <http://tinyurl.com/cfebasponsorship>. Stay tuned for more details!



2016 CFEBA Fundraising Gala *Light Up the Village!*

Held in conjunction with the 2016 EBA Annual Meeting & Conference.

Date: Tuesday, June 7, 2016
5:30 to 6:15 pm Cocktail Reception
Dinner to follow

Location: Renaissance Downtown Hotel
999 Ninth Street NW, Washington, DC, 20001

Tickets \$250
Sponsorships \$3,500 and above
For more information, call (202) 223-5625.

Event proceeds will support our cornerstone project, the electrification of a rural farming community in Bolivia.
www.eba-net.org/cfeba-annual-fundraising-gala-light-village

About CFEBA

The Charitable Foundation of the Energy Bar Association's (CFEBA) mission is to engage in a wide variety of energy-related internships, providing educational grants and scholarships, participating in volunteer community service projects and providing financial support to needy individuals and non-profit organizations for payment of utility bills and other purposes. The Foundation relies upon tax-deductible contributions from EBA members and businesses for its funds and the active participation of EBA members for its service projects.

For more information about CFEBA campaigns or to make a donation, please go to www.cfeba.org.

Minzner, continued from page 1

"I certainly feel lucky that I have gotten to work with Norman in a lot of different contexts. . . . It's a tremendous opportunity. It's a wonderful office."

forward to coming to work each day.

He is quite an impressive academic, having been a Professor of Law at the Benjamin N. Cardozo School of Law when Director Bay first persuaded him to come to the FERC in 2009, and then again at the University of New Mexico School of Law (again, something he has in common with Chairman Bay), when Chairman Bay tapped him once more to come to the Commission in 2015. He was also Associate Dean for Academic Affairs at the University of New Mexico. Indeed, he was awarded the 2013-2015 University of New Mexico

Presidential Teaching Fellow. This is a lifetime achievement award that is made each year to but one professor university-wide to recognize excellence in teaching. So he left a position for which he was highly acclaimed when he came back to D.C. to become the FERC General Counsel.

Not only is he a top-notch teacher; he is a prolific writer of scholarly works appearing in the Harvard Law Review, Texas Law Review, William & Mary Law Review, and other journals. Naturally, he was an excellent student as well. Mr. Minzner is a graduate of Brown University and Yale Law School.

We can attest that his honorifics and accomplishments have not gone to his head. Mr. Minzner is an engaging, informal, down-to-earth fellow who was very easy to converse with and with whom it was a sheer pleasure to get to know. He provided us the following information about the goings-on at the FERC generally and his own activities in particular.

CHANGES IN THE WORKS

Having just come off of the February Open Meeting of the Commission, Mr. Minzner spoke to us of two

important announcements that were made there. Of the appointment of Niles Nichols to be the new Director of the Office of Administrative Litigation, he expressed great admiration, saying "Niles is fantastic. I'm sure he will do a wonderful job there." He gave equal praise to Ted Gerarden, Mr. Nichols' immediate predecessor who has now retired (and who was the subject of a feature news interview article in the Fall 2011 issue of *EBA Update*).

Mr. Minzner explained that, while OAL handles litigation of matters set for hearing, OGC handles legal issues that come up on energy questions, be they gas, electric, oil, or hydro, plus all types of energy projects, and appeals through the Solicitor's Office, as well as general law matters, including FOIA and ethics, through OGC's Office of General & Administrative Law.

Cases that are litigated at OAL are first handled by OGC in that OGC will write the initial order setting the matter for hearing (and perhaps establishing settlement judge proceedings prior to hearing). Then the case comes back to OGC once a

Minzner, continued on page 14



EBA Primer Series presents: **Electricity and Electric Rate Regulation: An Introduction**

April 4-5, 2016 ♦ San Francisco, CA

Pillsbury Winthrop Shaw Pittman LLP
4 Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998

www.eba-net.org/calendar

A Tribute to Judge Richard D. Cudahy

Daniel F. Stenger, Contributing Author

This past year, the Energy Bar lost one of its greatest and most influential thinkers. On September 22, 2015, Richard D. Cudahy, senior judge of the U.S. Court of Appeals for the Seventh Circuit, and heir to the Cudahy meatpacking fortune, passed away at the age of 89. While serving on the federal bench for nearly 36 years until his death, Judge Cudahy will also long be remembered as one of the most prolific and incisive writers on matters of energy law and regulation. For his lifetime of accomplishments, he became only the sixth recipient of the Energy Bar Association's President's Award in 2010.

Perhaps his greatest contribution to the field came when Judge Cudahy served as Chairman of the Wisconsin Public Service Commission (1972-75). In that role, he became widely known as one of the early proponents of marginal cost pricing for electric rate design. As he wrote in his concurring opinion in *Re Madison Gas and Electric Co.* (August 8, 1974), "Our decision in this vintage proceeding marks a new and constructive departure in the establishment of rates – one which gives adequate emphasis to the formulation of the prices themselves as distinguished from related aggregates such as revenue requirement or return . . . Our order, I believe properly, approves long-run incremental cost . . . as the most appropriate touchstone of rate making. . . ."

This was a ground-breaking decision.

Long before the advent of "demand response," Judge Cudahy saw rate design as a means to conserve precious natural resources. In a Wisconsin Law Review article published in 1976, he observed that "there is substantial evidence that elasticity of demand, in the long run at least, will prove to be quite significant, and usage will prove much more sensitive to changes in price than has been generally believed."

A little known fact is that Judge Cudahy served as a lecturer at George Washington University Law School from 1976 to 1979, where he taught a class in Energy Law, believed to be one of the first ever law school classes devoted exclusively to the subject. Judge Cudahy's hand-selected materials for that class included many of the "classics" of energy law: the Supreme Court's decisions in *Smyth v. Ames* (1898) and *FPC v. Hope Natural Gas Co.* (1944); the dissent of Justices Brandeis and Holmes in *State of Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri* (1922); and Bonbright's *Principles of Public Utility Rates*. He knew his students, in order to become successful energy lawyers, would need to understand the roots and theory of public utility regulation and ratemaking.



Judge Richard Dickson Cudahy of the Chicago-based 7th U.S. Circuit Court of Appeals

A dry low-key manner scarcely concealed his wealth of knowledge and insight. Above all else, Judge Cudahy was a true gentleman and scholar. I had the privilege of being a student in his Energy Law class in the spring of 1979. Just a few weeks after the semester ended that year, he was nominated by President Carter to a seat on the Seventh Circuit.

More than two decades later, Judge Cudahy still remembered his students. At the 2004 EBA Annual Meeting, where he was a keynote

A Tribute, continued on page 15

EBA Committee Updates

At the Forefront of Energy Case Resolutions: Alternative Dispute Resolution (ADR) and Mediation

Deborah Osborne

Chair, EBA, ADR and Consensus Building Committee

National Mediation Week, held the third week of October each year, celebrates mediation as a means of dispute resolution and as an alternative to litigation. In the Energy Industry we had the opportunity not only to celebrate the institutionalization of mediation but also its success and continued growth in the industry. On October 14, 2015, the Energy Bar Association's ADR and Consensus Building Committee partnered with JAMS for a panel on "ADR for Energy Disputes: Myths, Realities, and a Look into the Future."

Panelist Justin Marlles, a partner at Baker and McKenzie practicing in dispute resolution and international arbitration, discussed mediation as compared to arbitration to resolve energy conflicts. He stated that "arbitration has become increasingly costly as US domestic court practices continue to creep into arbitral proceedings. As a result, mediation has become comparatively more attractive as an alternative dispute resolution mechanism due to the prospect of resolving disputes before significant legal costs are incurred." Mr. Marlles continued, stating that nevertheless, "clauses that include mandatory mediation provisions prior to the commencement of arbitration are not advisable as a successful mediation requires the voluntary engagement of both sides." Mr. Marlles' statements show that while all parties must be willing and

committed for mediation to be successful, when the disputing parties are amenable, mediation is the future of dispute resolution.

Panelist Deborah Osborne, Committee Chair and Director of the Federal Energy Regulatory Commission's (FERC's) Dispute Resolution Division, went on to demonstrate FERC's success with its Energy ADR program. She showcased the successfully mediated outcome on the American Midstream ("Midla") application before FERC for over 300 miles of abandonment of natural gas pipeline facilities in Louisiana and Mississippi. Although politically visible and highly contentious with multiple interests, issues, all levels of government and sophisticated parties involved, within 7 months Midla filed a complete and unanimous or uncontested agreement that resolved all issues and affiliated complaints. Although the issues mediated were tough--pipeline safety, future energy infrastructure reliability and gas service for impacted customers and energy consumers, gas contracts and rates, and costs associated with replacement facilities and energy services - the parties, guided by FERC neutral staff mediators rolled up their sleeves to work hard at solving the problems together to achieve the mutually satisfactory resolution. A case like the Midla Pipeline Case shows the effectiveness of mediation when

parties are motivated to find a resolution.

The committee will partner with both the DC Circuit and Ninth Circuit Courts along with FERC's Dispute Resolution Division to present on April 12th, where the Chief Mediators for each Circuit will sit on a panel, spearheaded and moderated by Charles Ferguson, Executive Vice President of Energy Dispute Solutions, LLC, to dig into their collective knowledge of how to make the process of mediation successful for the parties involved. Amy E. Wind, the Chief Circuit Mediator for the D.C. Circuit, responsible for the mediation programs in the U.S. Court of Appeals, the U.S. District Court, and the U.S. Bankruptcy Court for the District of Columbia and Claudia L. Bernard, the Chief Circuit Mediator for the United States Circuit Court for the Ninth Circuit along with Ms. Osborne will discuss how to make a mediation successful as well as how the process impacts a litigation schedule. The panel will show how the future of energy disputes even in the courts is shifting towards a mediation first approach. It will highlight the power of consensus building in the Energy Industry, showing how attorneys and clients alike can benefit from the mediation process. #

For more information about EBA Committees, please go to:
www.eba-net.org/get-involved



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New in 2016!

EBA Primer Series: Energy Trading Parts I & II

Earn CLE credit with this two-part primer on the fundamentals of energy trading. Part I of the series provides an introduction to energy trading, transactions, products and how the market is defined. In Part II of the series, faculty discuss the natural gas, oil and electricity markets in greater detail, including how trades are documented and regulated.

Litigation Adversaries and Public Interest Partners

Presenter Scott Hempling, adjunct professor at the Georgetown University Law Center, teaches several courses, including one specifically on "Litigating at Regulatory Agencies." He also previously served as Executive Director of the National Regulatory Research Institute. In this On-Demand Program, Scott discusses his spring, 2015 *Energy Law Journal* article on Practice Principles for New Regulatory Lawyers.

Locational Marginal Prices - Foundations and Frontiers

This program focuses on a review and discussion of the Locational Marginal Prices (LMP) that underpin the electric markets throughout much of the US and Canada, and an analysis of how some States including New York, through its Reforming the Energy Vision initiative are proposing to expand the use of LMP to the distribution system. Participants gain an understanding of both the theory and arithmetic underlying LMP and insight into its evolution.

Access the complete list of programs online at www.eba-net.org/On-Demand.

EBA Chapter Updates

Western Chapter

The Western Chapter held its fifteenth Annual Meeting in San Francisco on February 25-26, 2016 at the Palace Hotel.

The all-day meeting had approximately 100 attendees and 9 sponsors. The annual meeting began with a reception and Charitable Foundation of the EBA wine auction in which the Western Chapter raised approximately \$700 for the benefit of the Western Chapter's designated charity, Habitat for Humanity, San Francisco.

Morning highlights included a warm welcome and EBA update from EBA Executive Director, Lisa Levine, and a keynote address by the Honorable Tony Clark of the Federal Energy Regulatory Commission (FERC). The meeting also featured an informative luncheon speech from the General Counsel of

FERC, Max Minzner. Topics presented by the panels included: *The Evolving Energy Landscape: Significant Changes in the Energy Industry in the West*; *Greenhouse Gas Emissions Reduction and Carbon Markets*; and *Energy Imbalance Market*. The program also featured a panel of state commissioners, which included the Honorable Commissioner Liane M. Randolph, California Public

Utilities Commission, Honorable Lorraine H. Akiba, Hawaii Public Utilities Commission, Honorable



Honorable Tony Clark of FERC



Attendees at the 2016 Western Chapter Annual Meeting on February 25-26, 2016 in San Francisco, CA



Tesla's Daniel Witt at the 2016 Western Chapter Annual Meeting



Tara Kaushik, EBA Western Chapter President

Philip B. Jones, Washington Utilities & Transportation Commission and Honorable Paul Kjellander, Idaho Public Utilities Commission. The feedback on the program content has been remarkably positive and a big thank you to the Chapter for their efforts on a successful event.

Southern Chapter

Cliona Mary Robb

President, EBA Southern Chapter

Ade Adeniyi, a third year law student at Emory University Law School, did an amazing job of organizing an EBA Roadshow at Emory on February 17, 2016, with Floyd Self, a partner with Berger Singerman and President Elect for the Southern Chapter, guiding the chapter's efforts in making this a resounding success. Several law school student organizations partnered with the

Southern Chapter and did a very nice job of hosting and providing refreshments

The Southern Chapter had over 30 people in attendance and multiple students who hung around over an hour after the presentation was done to talk with the speakers. The Southern Chapter received great feedback from the

students, many of whom had no idea as to the variety of career options available in our industry. Based on input that Ade provided afterwards, the Southern Chapter may want to consider coming back in the fall with an updated presentation.

The Road Show speakers did a great job of displaying the diversity of our industry and the

professionals who work in it. Floyd welcomed the students and provided introductions to the speakers. Curtis Romig, a partner with Byran Cave and a Southern Chapter board member, provided an introduction to Energy Law. Chris Demko from Southern Company's legal department (a former FERC staff attorney), addressed FERC, legal history, and electricity regulation. Shannon Coleman, Senior Attorney, Colonial Pipeline Company, and an EBA Board member, addressed oil pipeline matters. Shannon Pierce, Vice President, State & Federal Regulatory Affairs for AGL Resources and a former



Southern Chapter visits Emory Law School on February 17 for an EBA "Road Show"

President of the Southern Chapter as well as a current Southern Chapter board member, addressed natural gas and finance. Then all the speakers joined in the hot topics discussion.

As a result of the Road Show, eight students joined EBA. Scott Johnson, who organizes the EBA's Road Shows, and various members of the Southern Chapter Board have volunteered to sponsor these memberships, so we're in good shape to work with Lisa Levine on adding eight members to the EBA ranks!

And Floyd is not done yet. This experience inspired him to have lunch this past Monday with the dean of the Florida State University (FSU) College of Law, as well as exchange some emails with Professor Hanna Wiseman, who teaches several energy law classes at the FSU law school. Both the dean and Prof. Wiseman are very interested in having Floyd organize a roadshow for them at FSU for later in March, which Floyd thinks he can pull off with some local talent.

Floyd is thinking large. He's sure this would be a good program for the



Emory University School of Law



EBA Southern Chapter at Emory University Law School on February 17, 2016

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hearing has been held and an Initial Decision has been issued for which briefs on exceptions and briefs opposing exceptions have been filed (or perhaps a settlement has been submitted and certified by the ALJ). The majority of cases filed before the Commission are not set for hearing, and are also handled through OGC, he states. While OGC is not the litigation staff, Mr. Minzner obviously has extensive trial experience as a former federal prosecutor, former Professor teaching criminal law and criminal procedure, among a range of subjects, and former Special Counsel at OE. So he and Mr. Nichols have a good understanding of each other's roles and responsibilities.

The other announcement of that morning at the Commission Meeting that Mr. Minzner spoke to us about was the creation of a new rehearings branch within the Solicitor's Office of OGC. As he elaborated, a reason for this initiative is that filing a request for rehearing is a prerequisite for filing for a petition for review in the Circuit Courts of Appeal. Therefore, he continued, it makes sense to bring to bear the expertise of the Solicitor's attorneys in preparing the rehearing orders that these attorneys may well be defending in court. "It's also a step that is designed to bring a substantive change in the look and feel of the rehearing order," he said. For example, he pointed out that one of the rehearing orders approved that morning is a summary denial given that no new matters were raised requiring further discussion. He considers that to be an "efficient and effective manner" of handling rehearing requests while keeping

the Commission poised to well handle any appellate review.

This innovation was cited by Mr. Minzner as a positive development while at the same time he observed that it has been his observation that the FERC "has always done excellent work" on appeals of Commission orders with a proven high success rate. Thinking critically about the handling of rehearing orders through the creation the new branch is something he hopes will prove to be beneficial over time. It was given considerable thought within OGC, the senior Staff, and by the Chairman and Commissioners, he added. He "looks forward to its implementation."

LIFE OF A FERC GENERAL COUNSEL

With the orders that are on each Commission Meeting Agenda, the host of notational orders, the appellate matters, and general legal issues coming through his office, not to mention giving testimony on Capitol Hill, Mr. Minzner describes every day as different and explains that this diversity "makes it an interesting place to work."

"I have loved everything I've had the chance to do," he reflects. He had some exposure to energy-related matters prior to coming on board at the FERC (twice now). Plus he has found that there is an endless source of expertise to draw on within the Commission on any topic that arises.

Of his comings and goings to Washington, D.C., for two different stints at the FERC from two law schools, the first time moving from New York and this time moving from New Mexico, he seems to be very content. He describes the Nation's Capital as a wonderful place to live and work, and is "very happy" to be back. After being away from the Commission for five years, he finds

that the core of the Staff is basically unchanged, while the City itself has undergone substantial redevelopment, making it a "very different place to work."

**A new branch change
"designed to bring a
substantive change in
the look and feel of the
rehearing order."**

The issues before the FERC reflect changing market pressures from what was the situation in 2010, and that makes the work "very interesting" to him as well. While, for example, demand response was a key issue both then and now, he sees it at a "different stage" with the Supreme Court having entered into the picture.

The matters he worked on at a "team" within OE back in 2009-2010, particularly the penalty guidelines and the overall enforcement program, have proven to be a "success" in his estimation. He calls OE a "very strong office."

Concerning the hiring of the OGC Staff, he explains that he looks for a variety of skill sets rather than a particular background. He looks for "enthusiastic and energetic, smart lawyers who are excited by the work of the Commission." His aim is to have his Office craft legal orders and provide legal advice with the highest level of care and attention.

He states that he has been "consistently impressed by the quality of the energy bar." He correctly observes that "it must be a pleasant group to practice with." He encourages us to be clear in our

rehearing requests on exactly how it is that we maintain that the Commission erred, with citations and identification of particular sections where the order is inadequate. He welcomes such filings as a way to help the Commission improve the quality of its decision-making.

“This is a place where you can have a family, and work should not be the only thing going on.”

He finds the Commission to be very well organized and although busy, he would not describe its days as “hectic” as we suggested he might. In particular, he strives to make sure that the Staff can have a balanced

lifestyle. “This is a place where you can have a family, and work should not be the only thing going on,” he maintains. He is also pleased that, “The day to day work of FERC is collegial and non-political.”

In Mr. Minzner, Chairman Bay has found a consummate professional, who instills a sense of dedication and high purpose among his high quality Staff in keeping with the public interest mission of the Commission. The entire energy bar can be glad that he has returned to us.

Mining Minzner’s Mind

My idea of relaxation is: “I love to read and play cards.”

Favorite season and why: “The Fall because the weather is changing.”

Rio 2016 - In which sport would you love to win a gold? “Tennis – but that’s not very realistic.”

Favorite food: “Green chiles. I am always a New Mexican at heart.”

Favorite vacation spot: “Hawaii.”

A favorite memory: “When my kids were born.”

Android or iOS? “Android.”

DIY or hire somebody? “I like to say, ‘do it yourself,’ but with the family and the job, it’s a little more tiresome these days.”

Favorite TV show: “Right now, *Game of Thrones*.”

My dream car: “I have to say I really like the subway.”

Favorite pizza topping: “Pepperoni.”

Something I learned from an influential teacher: “Listen carefully.”

Something I learned from my Mom and/or Dad: “Generosity” (from his Mother).

I have this hidden talent: “I can complete a Rubik’s cube.”

EBA Insights

*If you don’t get it,
you don’t get it.*

Arriving to your inbox
every Wednesday
morning with all the
news you need:

✉ Energy Industry News

✉ EBA Events

✉ EBA News

A Tribute, continued from page 9

speaker, we reminisced about his energy law classes. Shortly after, he wrote me, recalling the practical difficulties of finding materials with which to teach energy law in the early days: “You could certainly vouch for the fact that there were indeed classes in energy law in the late ‘70s. Unfortunately, there weren’t any case books around, so a little preliminary work was required.”

His Honor seemingly never stopped working. In the winter 2014 edition of the Infrastructure publication of the ABA Section on Public Utility, Communications, and Transportation Law (of which Judge Cudahy was editor-in-chief), he contributed an article detailing the regulatory history of the airline industry and the lessons of deregulation that one could draw from it. To the end, he wanted only to impart his knowledge and wisdom to future generations.

Upcoming EBA Events

For the full calendar, visit www.eba-net.org/calendar

Informing Investors of Climate Risks

March 17, 2016, Washington, DC (*Teleconference Available*)

Energy in the Ski Industry

March 17, 2016, Salt Lake City, UT (*Teleconference Available*)

Meet the Judges: Trial and Settlements with

Jennifer Whang, Michael Haubner and Dawn Scholz

March 23, 2016, Sidley Austin LLP, Washington DC

The Hazy “Bright Line”: Defining Federal and State Regulation of Today’s Electric Grid

March 31, 2016, Morrison & Foerster LLP, Washington, DC
(*Teleconference Available*)

2016 EBA Primer: Electricity and Electric Rate Regulation - An Introduction

April 4-5, 2016, San Francisco, CA

Western Chapter Luncheon with FERC Commissioner Colette D. Honorable

April 5, 2016, San Francisco, CA

Saving Louisiana’s Coastline and Protection of Critical Energy Infrastructure

April 8, 2016, New Orleans, LA (*Teleconference Available*)

Mediating an Energy Case – Practical Advice from Program Administrators

April 5, 2016, San Francisco, CA (*Teleconference Available*)

Legal Advice in the NERC Age: 2006-2016

April 22, 2016, Washington, DC



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www.eba-net.org/MarketingGuide

The Energy Bar Association’s Annual Meeting & Conference hosts approximately 500 attendees active in all areas of energy law, which include, antitrust, international energy transactions, legislation and regulatory reform, electric utility regulation, alternative dispute resolution, finance and transactions, and environment and public lands, including private attorneys, industry practitioners, students and regulators, at federal, state, and international levels.

Upcoming EBA Events *cont.*

For the full calendar, visit www.eba-net.org/calendar

2016 Rocky Mountain Chapter Annual Meeting

May 6, 2016, Denver, CO

2016 EBA Annual Meeting & Conference

June 7-8, 2016, Renaissance Downtown Hotel, Washington, DC

2016 CFEBA Annual Fundraising Gala,

Light up the Village!

June 7, 2016, Renaissance Downtown Hotel, Washington, DC

2016 EBA Mid Year Meeting & Conference

October 5-6, 2016, Renaissance Downtown Hotel, Washington, DC

2017 EBA Annual Meeting

April 3-4, 2017, Renaissance Downtown Hotel, Washington, DC

2017 EBA Mid Year Meeting & Conference

October 15-18, 2017, Renaissance Downtown Hotel, Washington, DC

EBA Chapter Updates, continued from page 13

Southern Chapter to more regularly offer around the south at a number of the law schools to better engage our current EBA members in those communities as speakers as well as to get out the word about the EBA to the next generation of energy attorneys now in law school.

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Visit the EBA Road Show homepage for more information about presenting a program at your university:

www.eba-net.org/road-show

For more information about EBA regional chapters, please go to:

www.eba-net.org/get-involved

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.