



# EBA Update

[www.eba-net.org](http://www.eba-net.org)

Q2 2017

## EBA Bestows Influential Attorney Robert Nordhaus with Rare President's Award

In April, the Energy Bar Association (EBA) posthumously awarded renowned Washington-based energy attorney Robert (Bob) Nordhaus its EBA President's Award. Nordhaus, a landmark figure in the development of U.S. energy and environmental policy, passed away in December 2016. He is only the seventh recipient of the EBA President's Award, and the first since 2010. The President's Award is given to individuals who have demonstrated outstanding life-long service in the field of energy law.



"We are all indebted to Bob Nordhaus," said Bob Weishaar, EBA President. "He set a very high standard that many energy attorneys can only aspire to achieve. His passing is a blow to the energy law community, but the legacy he left us is vast. All Americans, and indeed many world citizens, will be enriched by his vision and his work on energy and the environment for generations to come."

The litany of Nordhaus' accomplishments is profound. He authored key provisions of the seminal Clean Air Act of 1970 that expanded the U.S. Environmental Protection Agency's jurisdiction over pollution sources. He wrote groundbreaking legislation on automobile fuel efficiency standards, including language that allowed drivers to turn right on red. Legislation he wrote in the aftermath of the 1973 oil embargo guided U.S. energy policy for the next decade. He was selected by President Jimmy Carter for the

### In This Issue

- Remembering Robert Nordhaus
- President's Message
- Executive Director's Message
- Interview with Congressman Mullins
- EBA News
- Chapter Updates
- New EBA Members and Ambassadors
- FELJ News
- CFEBA News
- What's Ahead
- Diversity Statement

(Continued on page 21)

## President's Message



### Meeting Our Needs

EBA's members include practitioners in all aspects of the energy industry. We focus on state regulatory, transactional, natural gas and nuclear energy matters, and other important niches of energy law. Some of us are corporate counsels. Some are in private practice. Many of us are not attor-

neys at all – we work as consultants and as other types of professionals in the energy industry.

Last fall, EBA's Board undertook a comprehensive update of its Strategic Plan with a particular focus on enhancing the value that EBA delivers to us - its members. As adopted by the Board in January, the current Strategic Plan builds upon our past success with renewed emphasis on four key areas:

- Building and growing our regional focus;
- Optimizing how we members derive value from the EBA;
- Enhancing EBA programming content value, and through technological innovation, enhancing accessibility to that content; and
- Expanding EBA leadership and volunteering opportunities for all members.

These are the key elements of the Plan to achieve our vision of promoting professional excellence in the practice of energy law. Of course, no Strategic Plan is capable of providing value if it sits on a shelf. To that end, all current Board members, through four Task Forces, are actively engaged in Strategic Plan implementation. Each Task Force is drawing from the experience and expertise of members throughout our organization. We will be making meaningful improvements to EBA's delivery of value to members.

Strategic Plan implementation is not the only item on our plate. EBA:

- Congratulates the New Orleans Chapter for its expansion to become the new Louisiana Chapter;
- Welcomes the current initiative that is underway to form a Canadian Chapter;
- Commends the Foundation of the Energy Law Journal on its most recent publication – Volume 38, No. 1 – which addressed a wide range of cutting-edge topics;

- Appreciates the Charitable Foundation's ongoing efforts to provide an opportunity for all EBA Members to give back, in our regions and abroad; and

- Looks forward to celebrating FERC's 40th anniversary at our Mid-Year Energy Forum on October 16-17, 2017.

If there is anything we can do to help you, please let us know.

Thank you again for the opportunity to serve you, EBA's members. Enjoy your summer.



Bob Weishaar  
EBA President  
McNees, Wallace & Nurick, LLC



About the Energy Bar Association: EBA is a non-profit voluntary association of attorneys, energy 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, regulation and policies. Established in 1946 as the Federal Power Bar Association, EBA 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, EBA is an international, non-profit association of attorneys, energy professionals and law students active in all areas of energy law. It has over 2,500 members throughout the United States, Canada and internationally with seven chapters in Houston, Louisiana, Midwest, Northeast, Rocky Mountain, Southern and Western regions of the U.S.

## Executive Director's Message



One of the valuable opportunities we have during the summer season is that it gives us time to reflect on what's important for our business as well as a chance to prepare for what comes next. What's of most value to you to grow your energy practice? That is a question we routinely ask ourselves at the Energy Bar Association. As summer begins to close, autumn will soon be upon us. With that in mind, I encourage you to familiarize yourself with some of the benefits membership with EBA provides to help ease you more seamlessly into the rush of the fall business season.

The [EBA Membership Directory](#), rated by members as a key benefit, is available online and via hardcopy to all members. Take a tour through the valuable online tool to find colleagues, consultants and others, all searchable by name, firm, location and specialty. I believe you will find the directory essential to your professional and networking activities.

Stay on top of the energy law news cycle through EBA's social media channels, [LinkedIn](#) and [Twitter](#) and our weekly [Insights newsletter](#). If you are not already connected to these content channels, we encourage you to do so today. They provide important content to help you grow your practice or business, keep your clients informed, and receive timely information on Early Bird registration details, speaking opportunities and breaking industry news.

In need of the last few CLE credit hours for recertification? We encourage you to visit EBA's [Library of 24/7 On Demand Programs](#). Our library is growing all the time and many of the programs we offer include CLE hours. The end of summer is a great time to brush up on your industry knowledge or learn about something new.

Looking for energy specific information and resources? EBA has a plethora of material to assist you and your colleagues with your research. Visit EBA's [Meeting Materials](#) to access a numerous variety of energy-related resources, publications, videos, audios and handouts from educational sessions.

And finally, prepare your fall calendar now. Visit EBA's [Calendar of Events](#) for updates on programs, happy hours and networking events. Don't miss the Early Bird registration discount for the [2017 Mid-Year Energy Forum](#) on October 16-17th in Washington, DC. You will save money by registering early and benefit from two days of educational programming, networking, special events and CLE offerings.

Make the most out of the waning days of summer. EBA is working hard to help you do so. And, we hope to see you at the Forum in October.



Lisa Levine, CAE  
Executive Director

### The Curtis L. Wagner, Jr. Administrative Law Judges Reception

**October 16, 2017**

**5:30 pm—7:30 pm**

**Proceeds support development  
and publication of the *Energy  
Law Journal***

[www.eba-net.org/2017ALJReception](http://www.eba-net.org/2017ALJReception)



# Congressman Mullin Advocates for FERC Taking Lead on Oil Pipeline Import Projects

## He Wants to Remove Politics from Licensing



By Gary Guy and David Connelly

Bootstrapping from the placement of law school student interns under the FELJ Mogel Intern program (named after the first Editor-in-Chief of the *Energy Law Journal*) into a Congressional Office, your interview team Gary Guy and David Martin Connelly (aka “Drew Pearson and H.L. Mencken”) got the intern to set up an interview for us with the Congressman. And what a fabulous interview we had! Here is a recap:

### FELJ Connections

Chase Snodgrass, the 2015-2016 Editor-in-Chief of the Student Editorial Board of the University of Tulsa Law School was the William A. Mogel student intern sponsored by the Foundation of the Energy Law Journal in the summer of 2016. He was assigned to work in the Capitol Hill Offices of the Honorable Markwayne Mullin, currently serving his third term as Congressman from the Second District of Oklahoma. In fact, Congressman Mullin has sponsored four Mogel Interns, beginning in 2014. We asked Chase to put in a good word for us with the good Congressman. (And the Congressman was very complimentary of Chase, so we obviously used the right contact.) Sure enough, that did the trick and we were granted an interview. While it was slated for 30 minutes, it ran overtime and the Congressman packed in a lot of information.

It was quite a busy day too, with visitors coming in and out both before and after our interview. While we waited in the outer office, having arrived early, we were graciously given water by Madison Thames, the Scheduler, who sat and talked with us. When we commented on how well appointed the office was, in a definite Western decor, she said the Congressman personally handled the decorating. (Once we got into to see him, we noticed his impressive Western footwear also.) And when we noticed photographs of the Congressman with his lovely wife and five young children, she told us that kids are all wrestlers, just like their father.

Amy Lawrence, the Communications Director who kindly helped arrange our meeting, then brought us into the Congressman's office and was kind enough to take the photos of us with Congressman Mullin that adorn this article.



## Oklahoma Reformer

We began by asking Representative Mullin, who was first elected at the age of 35, about his meteoric rise to power. He responded that it has been more like a "rise to humility."

He explained it was a rather circuitous and unplanned route. His father was a small businessman and fell ill when young Markwayne was attending Missouri Valley College on a wrestling scholarship. In 1997, he came to the rescue of the family plumbing business in light of his father's illness and the financial troubles of the company, foregoing his scholarship and, at least for the time being, his education. He managed to grow Mullin Plumbing into one of the largest service companies in the region, with over 150 employees. The Mullin family has expanded into successful enterprises, including Mullin Environmental, Mullin Plumbing West Division, Mullin Services, Mullin Properties, and Mullin Plumbing New Construction. Mr. Mullin was also able to pick back up on his education, earning a degree in Applied Science in Construction Technology from Oklahoma State University Institute of Technology in 2010.

He became "fed up" with burdensome regulations imposed on his businesses, almost shutting down an entire division of one of them in 2011 through EPA regulations, compounded with the enactment of Obamacare. He calculated that complying with state and federal regulations was costing 40 cents of every dollar coming in. People urged him to run for office to fix this problem for three months before he agreed. "Until then, politics was not even in my world," he stated. "But I figured if my biggest problem to my company is not my competitor but some faceless bureaucrat that I can't see, then that's where I'm going."

His first race was in 2012, for Congress, having spent the previous 14 years in business. In fact, his first political event was when he stood up with a total of eight all announcing they intended to run for the nomination. He emerged the victor, and is now one of only two Native Americans serving in the House. He also serves as a member of the Republican Whip Team.

"If my biggest problem to my company is not my competitor but some faceless bureaucrat that I can't see, then that's where I'm going."

## Family Man, First and Foremost

With his wife Christie, who he married when she was only 18 and he was 19, they are raising their five children, Jim, Andrew, Larry, Ivy, and Lynette, on the same family farm where Markwayne was raised in Westville, Oklahoma. The youngest two children are twins who were born since his election five years ago.

He gets back to see them as much as he can (meaning almost every weekend), and has learned to adapt to their routine so that his wife does not have to get the kids to switch back and forth to a different schedule as he comes and goes. He also brings them to Washington as often as possible, particularly most of the summers,

(Article continued on Page 14)



## EBA News

### Call for Nominations for the Paul Nordstrom Service Award

Paul Nordstrom, a key figure in energy law and partner at Verner Lipfert, represented clients on a gamut of regulatory and power supply litigation. As a former EBA President, Nordstrom was the guiding force in creating the Charitable Foundation of the Energy Bar Association (CFEBA). In 2008, to honor his service and impact, EBA established an award in his name that recognizes exemplary long-term service or a particularly significant example of public service to the community through EBA, CFEBA or the Foundation of the Energy Law Journal. Exemplary community service outside of these organizations may also be considered. A nominee must be a current or former member of EBA. A final nominee will be determined by the Board of Directors for EBA and CFEBA. The first award was given to Paul posthumously. In the years that followed, A. Karen Hill, Sheila S. Hollis, Richard Meyer, Freddie Greenberg, William A. Mogel, Paul B. Mohler and current *Energy Law Journal* editor-in-chief Robert Fleishman have been honored.

EBA is calling upon EBA members to offer suggestions on candidates for the award named in his honor. **The deadline for submissions is August 15, 2017.** Please provide your recommendations by email to Adrienne Clair, [aclair@thompsoncoburn.com](mailto:aclair@thompsoncoburn.com), Richard Meyer, [rich.meyer@nreca.coop](mailto:rich.meyer@nreca.coop) and Robert Fleishman, [RFleishman@mofo.com](mailto:RFleishman@mofo.com). The award will be presented at the Mid-Year Energy Forum in October.

### Call for Nominations for the State Regulatory Practitioners Award



EBA's State Regulatory Practitioner Award recognizes innovation and superior advocacy by EBA members who focus their practice on state energy regulatory matters. Prior recipients of the award include Ben

Stone, James Van Nostrand, Sonny Popowsky, Jeff Genzer, Charles Gray and Stephen H. Watts, II. The 2016 recipient of the award is Sandra Mattavous-Frye. Announcement of the 2017 award recipient will be made at EBA's Mid-Year Energy Forum on October 17, 2017 in Washington, DC.

Nominees should satisfy the following criteria:

- State representation is a predominant part of the nominee's total practice;
- The nominee's state practice and participation in the state energy regulatory process has produced significant results or recognition;
- The nominee's state practice reflects enhanced professional competence of the practice of energy law; and
- The nominee must be a member of the EBA.

**The deadline for submissions is August 15, 2017.**

Nominations should be submitted by email to Brian O. Edmonds, Esq, [bedmonds@psc.dc.gov](mailto:bedmonds@psc.dc.gov) or Vicki Karandrikas, [VKarandrikas@mcneeslaw.com](mailto:VKarandrikas@mcneeslaw.com).



## The Key U.S. Energy Event of the Fall is EBA's Mid-Year Energy Forum, October 16-17, 2017

2017 has seen heated debate and change in the energy field. Many federal and state energy and environmental policies remain in flux as political and regulatory officials push competing agendas. The Forum brings together key insiders for two-days of discussions on all aspects of energy law. Don't be on the outside looking in. Attendees will enjoy:

- Nationally renown experts presenting on key policy issues and trends;
- Numerous opportunities to network and build relationships with high-level industry insiders;
- Approximately 12 of CLE credits plus ethics credit, pending; and
- Special events like the ALJ Reception, EBA's dinner celebrating FERC's 40th anniversary, and announcements of EBA's annual service awards.

### Forum Sessions Include:

- CEO Round Table
- Surviving the Deal: Best Practices in Oil & Gas Pipeline Transactions During Times of Uncertainty
- The (Long and Winding) Road to Developing Offshore Wind in the United States
- Energy and Environmental Justice
- The Evolving Legal Intersection of State Policy and Energy Markets
- A New Sheriff in Town: The Trump Administration's Dramatic New Approach to Energy and Environmental Policy
- Resiliency of Energy Infrastructure - The Physical (Un) Certainty of Energy Supply
- Intermittency vs. Reliability: How to Deal with the Rapid Expansion of Renewables
- Ethics Presentation: My Client, My Employer: Ethical Considerations for In-House Counsel
- The Future of Distributed Energy

### Special Events (Separate ticketing required.)

- October 16 - The Honorable Chief Judge Curtis J. Wagner, Jr. Administrative Law Judges Reception
- October 17 - Women in Energy Breakfast
- October 17 - Closing Celebration Dinner with FERC Commissioners

### How to Register:

- Online: [Register Now](https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=EBA&WebCode=EventDetail&evt_key=e471d3fc-ee96-4d5c-8d9c-ffd4bad1370d) ([https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=EBA&WebCode=EventDetail&evt\\_key=e471d3fc-ee96-4d5c-8d9c-ffd4bad1370d](https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=EBA&WebCode=EventDetail&evt_key=e471d3fc-ee96-4d5c-8d9c-ffd4bad1370d))
- Fax your completed [Registration Form](#) with payment to EBA: (202) 833-5596
- Mail your [Registration Form](#) and payment to EBA, 2000 M St. NW, Suite 715, Washington, DC 20036

**Questions? Call EBA at 202-223-5625.**

## Chapter Updates

### Louisiana Chapter



Commissioner Erick Skrmetta of the Louisiana Public Service Commission speaking at the Louisiana Chapter's annual meeting.

In June, EBA's Board of Directors voted to expand the scope and impact of the New Orleans Chapter to include the entire state of Louisiana. The change enables more active participation in other parts of the state

such as Baton Rouge and Shreveport where large contingents of energy lawyers practice. It is expected the move will result in more focus

on issues at the state and regional level and will provide enhanced volunteer opportunities and expanded membership growth. "The Louisiana Chapter leadership is very excited about the prospects for further growth and development of the Chapter in terms of both its membership and its programming," said Chapter President Dan Pancamo. "We're grateful for the Board's support and confidence in us."

The Louisiana Chapter also announced Pancamo and Dana Shelton will continue as Chapter President and Vice President during its Annual Meeting in Baton Rouge in May. Elizabeth Adams will serve as Secretary, and Justin Swaim, Nathan Huntwork and Mark Pearce will serve as Board members. The meetings also hosted a welcome address from Louisiana Public Service Commissioner Erick Skrmetta and panels sessions on The New Order of Federal/State Jurisdiction Over Energy Regulation and Other Recent Developments Affecting State Regulation of Energy. 58 attendees participated during the day and the meetings were followed by a networking reception.

### Rocky Mountain Chapter



Former FERC Commissioner Tony Clark was keynote speaker at Rocky Mountain's Annual Meeting in May.

The Rocky Mountain Chapter held exclusive tours of the Tesoro Refinery in Salt Lake City as well as the Valmont Coal Plant in Boulder as part of its Annual Meeting in May. The tour of Valmont

was delayed until July due to inclement weather. During the Annual Meeting, a discussion was held on The Public Utility Regulatory Policies Act (PURPA) and how utilities, quali-

fying facilities, consumers, and state public service commissions in Chapter states deal with the law. A second session focused on protecting cyber and physical security information and key issues in oil and gas royalty litigation. Former Federal Energy Regulatory Commissioner Tony Clark delivered the keynote speech for the event.

### Western Chapter



FERC Chief Judge Carmen Cintron keyed the Western Chapter's annual meeting.

Speeches by FERC's Chief Judge Carmen Cintron and Richard Glick, then-General Counsel to the U.S. Senate Committee on Energy and Natural Resources and recently nominated

by the Trump Administration as a new FERC Commissioner, headlined the Western Chapter's Annual

Meeting in February. Panel discussions included the rapidly expanding California Independent System Operator energy imbalance market in the Western states, the evolving nature of the natural gas industry, and the revolutionary changes occurring in the Western



United States with the growth of electric distribution and customer choice. State utility commissioners from California, Washington, Utah and Nevada also met to discuss challenges in the energy sector for their states. More than 80 attendees took part in the two-day event which included a wine auction on behalf of the Charitable Foundation for the Energy Bar Association.

## Northeast Chapter



Kevin Flynn, EBA Northeast Chapter President addressing Annual Meeting attendees in June.

Chairwoman Angela O'Connor of the Massachusetts Department of Public Utilities shared her perspectives on key challenges facing the energy industry in Massachusetts and New England during the Northeast Chapter's Annual

Meeting held in Boston in June. The meetings also hosted panels on electricity storage, natural gas infra-

structure, FERC's challenge with the interaction between state energy policies and the electricity wholesale markets, and distributed energy resources in the Northeast. Representatives from Natural Gas Supply Association, Interstate Natural Gas Association of America, Process Gas Consumers Group, ISO New England, New York Independent System Operator, PJM Interconnection, Pace Energy and Climate Center, and major law firms, consulting groups, electric power generators and consumer groups participated.

For more information on EBA's chapters, visit [EBA Chapters](#) or call Michele Smith at 202-499-5841.

## EBA Chapters Name New Leadership

In the aftermath of EBA's Annual Meeting & Conference in April, EBA's Western, Midwest and Houston Chapters have announced the election of their Chapter officers and Board members for 2017-2018.

The Western Chapter officers are Charles R. Middlekauff as President, Jennifer Spina as Vice President and Jackson Stoddard as Secretary/Treasurer. The Western Chapter Board members are Beth Fox, Deborah Scott, Lara Skidmore, Tara Kaushik and Arshak Zakarian.

The Midwest Chapter officers are Conor Ward as President, David Streicker as Vice President and Eric Dearmont as Secretary/Treasurer. The Midwest Chapter Board members are Hanna Conger, Freddi Greenberg, Jason Higginbotham, Jennifer Moore, Tanya Paslawski, Nikki Shoultz and Stacy Stotts.

The Houston Chapter officers are James Cargas as President, Diane Neal as Vice President and Richard Smead as Secretary/Treasurer. The Houston Chapter Board members are Michelle Grant, Kathleen Magruder, Christian McMurray, James Olson, Adina Owen, Kathryn Patton, Mosby Perrow, IV, and Peter Trombley.

## Young Lawyers Council's 9th Annual Summer Intern Reception



Nearly 100 attendees gathered and networked at the Young Lawyers Council's (YLC) 9th annual Summer Intern Reception, held at Mission Restaurant in Washington, DC on July 11. YLC Chair Jamie Blackburn and Vice Chair Nick McTyre hosted the reception and thanked YLC members Dan Nugent, Christopher Chaulk, and Michael Kellerman for their work in planning the event and promoting sponsorships. YLC wishes to thank the following Premium Sponsors: Andrews Kurth Kenyon, Day Pitney; Dentons US; Duncan Weinberg Genzer & Pembroke; Husch Blackwell; ITC; and White & Case; as well as Sponsors Akin Gump Strauss Hauer & Feld; Alston & Bird; attorney Adrienne E. Clair; Exponent; Stinson Leonard Street; and Van Ness Feldman.



Joining EBA during April through July 2017

### Joining Houston Chapter

Danetta L. Beaushaw  
Anna Kuperstein, TransCanada

### Joining Louisiana Chapter

Erin Bambrick  
Paul Thomas Chastant, III, Sisung Group  
Walter C. Ferguson, MISO  
Keith B. Hall, LSU Law School  
Robert Lane Sisung, Sisung Group

### **Joining Midwest Chapter**

Amy Fellows Cline, Triplett Woolf Garretson, LLC  
Bret A. Dublinske, Fredrikson & Byron  
Hon. Brandt Hershman, Indiana St. Senate - District 7  
Peter Monzon, Loyola University School of Law  
Elmer Thoreson, Indiana University Northwest  
Aaron B. Kahn, Marathon Pipe Line

### **Joining Northeast Chapter**

Baird Brown, Drinker Biddle & Reath LLP  
Benjamin D'Antonio, New England States Committee on Electricity  
Benjamin Cotts, Exponent Inc.  
Andrew Whitley Cox, George Washington University Law School  
Tayo Kurzman, Con Edison of New York  
William Lohrman, Federal Energy Regulatory Commission  
Roger Lueken, The Brattle Group  
Richard Dane Norwood, U.S. Nuclear Regulatory Commission  
Sarah Rafie, Bracewell LLP  
Benjamin Daniel Stone, MCE Social Capital  
Taylor Stuart, Georgetown University  
Wen Tu, Exponent Failure Analysis Associates, Inc.  
Eli B. Daniels, Washington College of Law  
Senrui Du, George Washington University  
Mary Emerson, Elon University School of Law  
Brian Gumz, George Washington University Law School  
Joseph Haase, Vermont Law School  
Alanna Horan, The George Washington University Law School

Mark James, Vermont Law School  
Daniel Jerke, ICF International  
Patrick Leary, II, Vermont Law School  
Robert A. Matsick, Georgetown University Law Center  
Conor Tallet, Syracuse University College of Law  
Jason Warrington, New York University School of Law  
Joshua W. Yang, George Washington University Law School

### **Joining Rocky Mountain Chapter**

Andrew Crain, Crain Law, LLC  
Christopher Irby, Xcel Energy Services, Inc.  
Travis Parker, Denver University College of Law  
Craig N. Johnson, Platte River Power Authority  
Justin Kraske, Montana Public Service Commission

### **Joining Southern Chapter**

Luther D. Bentley, Alabama Public Service Commission  
Clarence R. Hawkes, III, William & Mary Law School  
Gavin Kim, University of North Carolina School of Law  
Emily Prince, Troutman Sanders LLP

### **Joining Western Chapter**

David Bennett, Fortis Inc.  
Mary McKenzie, Meyers Nave  
Gina J. Choi, U.C. Berkeley  
Catherine Parada, Loyola Law School  
Lauren Perkins, University of San Diego  
Arshak Zakarian, UC Hastings College of the Law

EBA also extends congratulations to **EBA Ambassadors** from April through July, 2017: Donna Attanasio, Brian D'Andrade, Bill Dudley, Daniel Hagan, Amanda James, Michael Kline, Jason Marshall, Crystal McDonough, Sam Ritchie and Dana Shelton.

## FELJ News

### [Spring 2017 Edition of the \*Energy Law Journal\* Available](#)

Integrating public policy in wholesale electric markets, electricity customer management, Mexican antitrust laws, electric and gas utility mergers, pipeline certificates, and three articles addressing various aspects of fuel use and climate change are among what's covered in the Spring edition of the *Energy Law Journal*. Also available are EBA committee reports on Compliance and Enforcement, Electricity Regulation, Finance and Transactions, and Renewable Energy. The *Journal* welcomes articles on emerging issues and significant developments affecting the energy industry. To learn more about submissions, contact Bob Fleishman, Editor-in-Chief, at [RFleishman@mofo.com](mailto:RFleishman@mofo.com) or (202) 887-8768. Articles from the current edition include:

[“Easing Jurisdictional Tensions by Integrating Public Policy in Wholesale Electricity Markets,”](#) by Ari Peskoe of the Harvard Environmental Policy Initiative, explores FERC's legal authority to incorporate in wholesale market tariffs state environmental mandates and generation choices made under the states' historic authority over generation facilities.

[“The Challenges of New Electricity Customer Engagement for Utilities and State Regulators”](#) by Kevin Costello, looks at how growing customer engagement (i.e., customers actively seeking out opportunities to manage their electric consumption) has been a driving force behind transformation of the U.S. electric industry.

[“A Straw Man Attack on the Moral Case for Fossil Fuels”](#) by Alex Epstein, is part of a series stemming from a 2014 book entitled “The Moral Case for Fossil Fuels.” Epstein replies to Harvard law professor Jody Freeman's earlier contribution to the *Journal*, “A Critical Look at The Moral Case for Fossil Fuels.” Epstein advocates the notion that if we follow a better method of thinking, we will conclude that the proper energy policy for the foreseeable future requires increasing our use of fossil fuels—not dramatically and coercively restricting our fossil fuel use.

[“Electric and Gas Utility Mergers and Acquisitions: Trends in Deal Terms, Contract Provisions, and Regulatory Matters,”](#) by William S. Lamb and Michael Didriksen, examines how economic and competitive factors in the industry have accelerated the long-term trend towards consolidation in the investor-owned electric and gas utility sector, thus resulting in a seller's market.

[“Considering the Public Convenience and Necessity in Pipeline Certification Cases Under the Natural Gas Act,”](#) by Robert Christin, Paul Korman, and Michael Pincus, reviews the evolution of FERC's pipeline certificate policy in response to calls for new procedures to evaluate pipeline certificate applications.

[“The Application of the Antitrust Law Under the New Rules of the Oil and Gas Industry in Mexico,”](#) by Alejandro López-Velarde, takes an in-depth look at the industry reforms taking place as a result of The Federal

Competition Law (Antitrust Law) enacted by the Mexican Congress in 2013-14.

[“Biodiesel for the 21st Century Renewable Energy Economy,”](#) by Professor John J. Perona, presents options for the role biodiesel fuels, especially photosynthetic microalgae, could play in our nation’s energy future.

[“Ethanol as Mitigation Measure in the Transport Sector: Countervailing Perverse Effects of Uncoordinated Biofuel Standards in the U.S. and Brazil,”](#) by Bram Devlies, discusses the incentives to ethanol production introduced in Brazil and the United States and how the coordination of legal and environmental policies is crucial for biofuel to help attain global GHG reductions.

[Click here to read all the articles from the current Energy Law Journal.](#)

# Join Us for EBA’s 2nd Annual Women in Energy Breakfast

Tuesday, October 17, 2017

7:30 am-8:30 am

Renaissance Hotel, Washington, DC

Honoring Women in Energy Law

To register:

Visit [www.eba-net.org/women-energy-breakfast-special-mid-year-forum-event](http://www.eba-net.org/women-energy-breakfast-special-mid-year-forum-event)



Anne Bomar, Senior VP of Dominion Resources Services, speaking at the 2016 Women in Energy Breakfast



## 2017 William Mogel Intern



FELJ Mogel Intern William Reynolds, left, with Congressman Markwayne Mullin.

I am William Reynolds, a third-year student at the University of Tulsa College of Law, staff member with the *Energy Law Journal*, and the 2017 William Mogel Intern. My internship with Congressman Markwayne Mullin of Oklahoma was made possible through the generosity of the University of Tulsa and the Foundation of the Energy Law Journal (FELJ). Congressman Mullin is a member of the House Energy & Commerce Committee and my internship provided me an opportunity to witness the crafting of energy policy.

As a Mogel Intern for Congressman Mullin, I put together briefing materials for his Energy Subcommittee hearings, conducted research on key issues and attended Committee hearings and briefings. This provided me with invaluable insight on the numerous energy-related bills the House is considering for this Congress. During my internship, Congressman Mullin introduced a bill that seeks to expedite the approval process for border-crossing facilities related to the import and export of oil, natural gas and electricity, in part by shifting authority from the U.S. State Department to the Federal Energy Regulatory Commission (FERC). I drafted talking points for the Congressman and was with him during its Subcommittee markup.

During my summer in Washington, I met numerous energy attorneys and policy professionals. I attended FELJ's June Board meeting, spoke with members about their experiences and heard their thoughts on new attorneys wishing to work in energy. This internship has been incredibly rewarding for me. It has reaffirmed my interest in energy law and my desire to work in this practice area upon graduation. I hope to be back in Washington soon. I also greatly appreciate the support of FELJ and Tulsa Law for making the Mogel Internship possible, and look forward to my continued involvement on *ELJ* for the upcoming academic year.

### An Interview with Congressman Mullin (continued from Page 5)

but also during the school year with the cooperation of the educators, commenting that the school class watched live on CSPAN while his son Andrew, age 11, was allowed on the House floor for the swearing in of the Speaker of the House Paul Ryan. "My Dad took me to the farm and I bring my kids to Washington, D.C., and I have them here with me all the time because I want them to know that I am doing this for them."

**"I bring my kids to Washington, D.C. and I have them here all the time because I want them to know that I am doing this for them."**

As for their wrestling pursuits, he says he told the boys they can “choose their attitude” in that they either wrestle and like it or wrestle and not like it, but either way they are going to wrestle. He made wrestling optional for his daughters but they must be a chip off the old block because they took right to it. He believes wrestling teaches self-discipline, self-motivation, and self-reliance, “a work ethic that you sometimes don't get anymore.” No doubt, it helped to shape him into the self-made man that he is today.

## Getting Into Things Energy

His overall philosophy about government interference with business entrepreneurship, which he experienced first-hand originally with his family plumbing concern, extends to what he has observed in the energy field as well. He sums up the Obama years as a time when “there was a war against energy, a war against fossil fuel, a complete disdain and hostile attitude toward the oil and gas industry and the energy sector as a whole, even hydro, with the exception of plucking out solar.”

**“There was a war against energy, a war against fossil fuel, a complete disdain and hostile attitude toward the oil and gas industry and the energy sector as a whole, even hydro, with the exception of plucking out solar.”**

He ascribes the approach taken to have been to regulate these energy sources “to the point that the product is not viable anymore.” He states that the attack started with coal, then moved to oil, “and then started hitting natural gas.” And he talked about how long it takes to get a hydro plant permitted. All of this government regulation is thwarting job growth and the ability for a self-sustaining middle class earning a good living through independent business development, in his opinion. Consequently, Rep. Mullin has managed to get himself strategically placed to deal with these energy sector matters. That is because, among many other assignments, he sits on the prestigious Energy and Commerce Committee as well as on the Energy Subcommittee. This is appropriate because of the importance of energy policy to rural Oklahoma. His Committee has direct oversight of the Department of Energy, and he deals extensively with energy production, oil and gas exploration, energy sector jobs, and oversight of all utilities, ranging from coal-powered to alternative sources.

We asked him how it came about that he was placed on these coveted Committee and Subcommittee seats since many areas lay claim to energy interests that would also presumably want these plumb assignments. He explained that the key to good



Committee assignments starts with “relationship building.” He looked at where he could be most effective in promoting the interests of Oklahoma. He concluded that would be the highly sought after Energy and Commerce Committee. He basically mounted a campaign for the appointment, demonstrating that he had a “good, practical handle” on the issues dealt with there. He was the only “sophomore” to make the grade. A Steering Committee -- largely influenced by the Speaker (who was then John Boehner), Leader, and Assistant Leader -- with members from all regions, in consultation with the Committee itself, made the determination based on the efforts made by the Congressman.

## Delivering on Promises

In line with his campaign platform of fighting to reduce the red tape that crushes entrepreneurship, job growth, and economic development, Representative Mullin authored the Promoting Cross-Border Energy Infrastructure Act, which passed the Energy Subcommittee last month on a vote of 19-12. The legislation, among other things, is designed to establish a predictable and transparent process to permit construction of cross-border oil pipeline facilities, with a 120-day period to either find that it is not in the public interest or else permit it to go forward. The Keystone XL Pipeline Project is an example of the delayed decision-making that he has designed his bill to avoid. He wants FERC to use its expertise to issue authority for oil pipelines as it does for natural gas pipelines. He believes the State Department is too politicized to be entrusted with this responsibility, when an Administration is “anti-fossil fuel,” as he says was true under the Obama Presidency. To him, the result was that the country’s best interest of “getting rid of Middle East oil” and replacing it with supply from our good neighbor Canada gave way to politics. He emphasized that the oil was getting through by rail and truck so that the environment was not a legitimate concern. Rather, he saw the pipeline as a “symbol” and that the State Department could continue to take political measures to symbolize ideology in future administrations absent legislation removing that jurisdiction and giving it to a bipartisan, independent agency, namely, FERC, which has the expertise, as it has exercised similar authority with respect to gas.

He told us that just the day before representatives of the State Department were in to see him about how they had made changes and asking him to rescind the bill. He asked them how they would keep politics out of their review of permitting, and he did not get a satisfactory response. Of the Keystone action by State, he says, “it did not just cost jobs that were ready to go, good-paying, blue collar jobs,” but hurt the economy by “clogging” rail transportation and driving up the cost of commodities from clothing to consumption goods.

He has explained that the bill deals with facilities that are located at the international boundary and “has been carefully crafted with bipartisan support to be protective of public safety and the environment.”

Another energy issue he is concerned with led to an intriguing assignment being given to this summer's Mogel Intern, William Reynolds, a rising third year law student at the University of Tulsa Law School, who is also on the student editorial board of the *Energy Law Journal*. As the Congressman explained, he is working on a bipartisan project with Congressman Joseph Kennedy (grandson of Robert F.) to study hydro power and how it can be more effectively utilized. Will, our Mogel Intern, was tasked with researching how hydro licensing is handled in other countries. In particular, he investigated Australia, which is “in a bit of an energy crisis,” and Will “put together a pretty impressive energy package in a very short time” that covered that whole region of the world. Congressman Mullin was doubly impressed that Will offered to continue to dig deeper, but the Congressman said Will had already exhausted the intricacies of the subject, with enough material for him to digest on his three hour flight back to Oklahoma (an indirect flight through Texas). (Will has written about his internship and summer in D.C. in a companion article in this edition on page 14.)

As to other pressing energy issues, the Congressman said that cybersecurity is a “huge concern that we are always looking at because our grid is particularly vulnerable, and everything our grid touches is vulnerable.” He said the grid is “under attack” and that the Congress as a whole, Republican and Democrat, is watching this issue closely on a non-political basis. But, foremost on the agenda of the gentleman from Oklahoma is the “roll-back” of regulation with legislation because any executive order can be undone by the next Chief Executive. This means it is worthwhile to enact legislation parroting good executive orders in order to make it more durable. He views the previous administration as having been “hostile” and holding the economy “hostage.” His mission is keeping that from happening again “since we have an opportunity to fix it.” Obviously, Congressman Mullin is deeply committed to the causes that led him to seek public office, and he has maintained true to the pledges that he made to his constituents. We are indebted to him for giving us the benefit of his views on a very busy workday.

### Congressional Briefing

**Favorite meal:** Cereal, and bologna sandwich “with Doritos smashed on it.”

**Favorite junk food:** Ice cream, but adds fruit to make it healthy.

**Favorite sport to watch:** Mixed martial arts.

**Favorite movie:** “Rocky, of course!”

**Favorite TV program:** House Hunter International on HGTV (watches with his wife).

**Favorite exercise:** Works out all the time, nine lifts, 8 repetitions, done three times. Also runs, but hates it.

**Favorite vacation spot:** Camping in the middle of nowhere in Wyoming for 7 days with family and no TV.

**Favorite way to get around D.C.:** Driving (personally behind the wheel).

**Most surprising thing about Washington:** “How important relationships are.”

**Most admired public figure:** Teddy Roosevelt.

**What is he most proud of:** “My marriage.”

**Most influential person in childhood:** “My Dad.”

**Best advice ever received:** “What would I do if I were there? I guarantee I’d figure it out.” His Dad said that when equipment broke, meaning don’t leave a problem for somebody else to fix.

**How to balance life style:** “Set priorities: God, family, then you.”



## Beyond the Classroom and Away from the Textbook: EBA Provides Learning 24-7 in a Variety of Ways

Interested in learning events with CLE credits that are:

- Inexpensive;
- Save you time;
- Flex to your schedule; and
- Are specialized to meet your needs?

Visit EBA's [24-7 On Demand Library](#) with programming available online anytime, anywhere.

Did you know EBA provides learning opportunities year-round and around-the-clock? We are always seeking creative ways to share great content to help you with your clients, build your practice or business or educate other academics.

Following the 2017 Annual Meeting & Conference, [EBA posted videos to members at no cost on:](#)

- The Utility General Counsel's Roundtable
- Environmental Regulation in the New World and Its Impacts on the Power Sector; and
- The New Electricity Network: Distributed Resources, System Operators and The Grid.

Want more?

Session handouts from panels examining:

- The fate of Obama-era environmental regulations under the new Administration and state-level efforts to expand protections;
- Competitive markets to achieve carbon reduction;
- The changing landscape for oil pipeline shippers with FERC;
- and many more.

Interested in seeing our archives? EBA has session handouts for many events as far back as 2009 and they are available to you at [EBA Meeting Materials](#).



## Energy Law Journal, Excerpts from Past Issues

### Ten Years Ago

“As the FERC intended, most pipeline rate changes have been made pursuant to the ceiling index during the subsequent decade. Although the regulations did to some extent ‘obviate debate’ over rates for many individual pipelines, they have not obviated concern by pipeline sponsors over the ultimate direction of the FERC’s rate regulations and the potential impact on pipelines – particularly new pipelines. Two areas of uncertainty, in particular, have arisen: the standard to be applied to determine when a complainant has successfully challenged the ‘deemed’ just and reasonable status of grandfathered rates; and the extent to which MLPs, LPs, and LLCs will be permitted to recover a tax allowance as part of their cost of service. The FERC issued orders on both of these topics, which are currently subject to appeal; independent of the Court’s and the FERC’s further resolution of these issues, they have created substantial uncertainty in projecting the revenue impact of infrastructure investments by oil pipelines.”

Christopher J. Barr, *Growing Pains: FERC’s Responses to Challenges to the Development of Oil Pipeline Infrastructure*, 28 ELJ 43, 58 (2007)

### Twenty Years Ago

“Just as it looked as if a whole new world of ruthless rivalry was about to emerge, a cloud no bigger than a man’s hand appeared on the horizon. At the edge of the cloud one could barely make out the letters of a word – ‘Merger.’ For when the electric power people awoke from their long night of natural monopoly, they began to rush into each other’s arms to attempt an unprecedented number of corporate couplings.... Mergers might confer that most dreaded endowment, market power, on the merging partners. There has, therefore, been anxious attention to consolidation in the electricity industry because of fear that mergers will strangle the infant, Competition, in her crib. But now, with its Merger Policy Statement, we are assured that the FERC vigilantly stands guard at crib-side.”

Hon. Richard D. Cudahy, *The FERC’s Policy on Electric Mergers: A Bit of Perspective*, 18 ELJ 113, 113-4 (1997)

### Thirty Years Ago

“Requests for admissions are an underutilized discovery device. Parties frequently know what they want to prove and expect that documentary evidence will support their claims. Requests for admissions place the onus on the responding parties to admit or to be prepared to come forward with contrary information. Since the request for admissions as a device itself was not expressly provided for in the rules, its use in the past has depended upon the willingness of the Commission’s administrative law judges not only to permit its use, but to encourage it. The new rules should greatly enhance the usefulness of the request for admissions as a discovery device.”

Harvey L. Reiter, *The FERC’s New Rules of Discovery: A Welcomed Approach*, 8 ELJ 35, 58 (1987)

## CFEBA News

### CFEBA Raises Over \$40,000 for African Development During Its Power of Water Gala



Villagers in Uganda who are benefiting from a combined CFEBA and Innovation: Africa initiative to increase water access.

CFEBA raised more than \$40,000 to help poor African villages gain access to life-saving water supplies at its Power of Water gala during EBA's 2017 Annual Meeting. These monies were in addition to \$122,000 granted early by CFEBA's Board to help the villagers. CFEBA partnered with Innovation: Africa (iA), a non-profit providing solar water pump and drip irrigation technology to African villages. CFEBA's funds will help supply Akuyam Village in Uganda with clean water for the first time. The water supply, in turn, will help create food security, according to iA who has implemented similar projects across the continent.

"I can't express enough my gratitude to you and EBA for your generous and life-changing contribution," said Sivan Yaari, iA's Founder & CEO.

Yaari and her team were on a humanitarian mission in Uganda when they unexpectedly ended up in Akuyam, where an ongoing drought had created famine conditions on a scale they had not witnessed before. 37 villagers had died the week iA visited and starvation had led locals to forage for mice and leaves to survive.

With the support of EBA members, CFEBA is funding and iA is implementing solar water pump technology and a drip irrigation system to 4,600 people in the Karamoja region of the country. Currently, the only water source is seasonal river water, which is often contaminated and responsible for cases of deadly diarrhea, cholera and typhoid. During the dry season, wait times for water are often three hours or more.

iA is currently at work, drilling beneath the ground in the aquifer, installing a water tank, a solar pump, and using solar panels to pump water up to the tank. Immediately after the complete installation, clean water will flow through 10 taps of water in the village for the first time.

CFEBA continues exploring ways to expand our programs and target our donations to reflect the diverse locations and interests of our members. If you know of potential worthy grant recipients, please contact Donna Attanasio, Grants Committee Chair at [dattanasio@law.gwu.edu](mailto:dattanasio@law.gwu.edu) or Michele Smith, Manager, Chapter & Foundation Relations at [michele@eba-net.org](mailto:michele@eba-net.org). You can also contact Michele at 202-499-5841 if you would like to become more involved with CFEBA or learn about its initiatives.

### Let's Grow Our Membership



### Recruit a Colleague to EBA This Year

Contact [dshaman@eba-net.org](mailto:dshaman@eba-net.org) to learn more.

## Robert Nordhaus Receives EBA's President's Award (continued from Page 1)

White House's Energy Policy and Planning Office and later as Assistant Administrator of the Federal Energy Administration. He also served as the first General Counsel of the Federal Energy Regulatory Commission following its evolution from the Federal Power Commission and was appointed General Counsel of the Department of Energy by President Bill Clinton. In addition, he wrote the Employee Retirement Income Security Act of 1974 and the law creating the Consumer Product Safety Commission. Raised in New Mexico, Nordhaus graduated from Yale Law School in 1963 and came to Washington to work with the U.S. House Legislative Counsel's office. He later became counsel to the U.S. House Commerce Committee. Nordhaus was a law partner with Van Ness Feldman following his years in public service.



"Robert Nordhaus epitomizes the impact energy attorneys can and do make on our society," said Lisa Levine, EBA's Executive Director. "Energy law has such a profound importance in all aspects of our daily lives and his life is an example of how important it really is for our welfare and well-being. We were blessed to have him as part of our EBA community. This award is a small way of saying thank you back to him."

Nordhaus is survived by his wife, Jean Nordhaus of Washington, D.C.; son Ted Nordhaus of California; daughter Hannah Nordhaus of Colorado; siblings Richard Nordhaus and Elizabeth Messeca, both of Albuquerque, and William Nordhaus of Connecticut; and two grandchildren.



## Upcoming EBA Events



### SEPTEMBER 2017

13th — FELJ Author Talk, Washington, DC

18th—EBA Energizer: LNG Exports Fueled by the Hydraulic

Fracking Revolution, Washington, DC

### OCTOBER 2017

16th-17th — 2017 Mid-Year Energy Forum, Washington, DC

- 16th—The Honorable Chief Judge Curtis L. Wagner, Jr. ALJ Reception
- 17th—Women in Energy Breakfast
- 17th—Closing Celebration with FERC Commissioners

### NOVEMBER 2017

8th—FELJ Writing Workshop, Washington, DC

### MAY 2018

7th-8th—2018 EBA Annual Meeting & Conference, Washington, DC

7th—2018 CFEBA Annual Gala, Washington, DC

### OCTOBER 2018

29th-30th—2018 Mid-Year Energy Forum, Washington, DC

[www.eba-net.org/calendar](http://www.eba-net.org/calendar)

## Diversity & Inclusion Policy Statement:

The Energy Bar Association (“EBA”) is committed to the goals of fostering an inclusive and diverse membership and increasing diversity across all levels of the Association. Attorneys and energy professionals in the energy field are welcome to join our ranks, regardless of race, creed, color, gender (including gender identity or expression), sexual orientation, family and marital status (including pregnancy), family responsibilities, religion, national origin, age, personal appearance, political affiliation, veterans status, disability, source of income (government, solo, corporate, firm practice), or place of residence or business (geographic diversity) and are encouraged to become active participants in the Association’s activities.



Energy Bar Association  
2000 M Street, NW Suite 715  
Washington, DC 20036 202-223-5625  
[www.eba-net.org](http://www.eba-net.org)  
© 2017 Energy Bar Association