



EBA Update

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Q3-4 2017

Large Gathering at 2017 Mid-Year Forum as Key Energy Officials Discuss Policy Agendas

Nearly 500 attendees gathered for EBA's 2017 Mid-Year Energy Forum on Monday and Tuesday in Washington, DC as they participated in more than a dozen policy discussions and networking sessions. Luminaries included Federal Energy Regulatory Commission (FERC) Chair Neil Chatterjee and FERC Commissioners Cheryl A. LaFleur and Robert F. Powelson as well as numerous former FERC commissioners and a range of federal officials, energy industry executives, energy attorneys and policy experts.



(FERC Chair Neil Chatterjee address 2017 Forum attendees.)

Forum attendees heard Chair Chatterjee discuss the DOE's NOPR and the important challenges facing FERC under the heightened scrutiny of its regulation and oversight of nation's energy infrastructure. Key discussions included a roundtable of industry CEOs on how they adjust to changing market conditions, pipeline officials assessing the current regulatory environment, a debate about the future of off-shore wind development in the U.S., an assessment of the Trump Administration's energy and environmental agenda, and a dialogue about non-cyber threats to the grid.

The highlight of the Forum was its closing dinner as Commissioner Powelson entertained a packed audience in celebrating FERC's 40th anniversary. He was joined by a host of former FERC commissioners including Norman Bay, Tony Clark, James Hoecker, Colette

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President's Message



Growing Stronger

EBA's 2017 Mid-Year Energy Forum was a great success. We celebrated FERC's 40th Anniversary with many former FERC commissioners, enjoyed one of our highest attendances in recent memory, honored Mike Stosser with the Paul E. Nordstrom Service Award, spent time with our newest

members, held our second annual Women in Energy breakfast, and enjoyed the first annual reception of the LGBT Power group. I want to personally extend my deepest appreciation to our EBA Staff, Professional Education Council, and many others who contributed to a wonderful event.

Planning has already begun for our 2018 Annual Meeting (May 7-8, 2018) and our 2018 Charitable Foundation Gala (May 7, 2018), which will raise funds for energy projects to help Puerto Rico recover from Hurricane Maria. Mark your calendars; we look forward to seeing you there.

Your talented and dedicated Board continues to work hard to strengthen EBA.

- Members unanimously approved comprehensive updates to our Bylaws, which will allow one of our Student members and one of our Energy Professional members to join the EBA Board in a non-voting capacity beginning with our 2018-2019 "EBA Year".
- The Board has approved changes to provide greater opportunities for our Solo and Small Firm Practitioner members to attend our Annual Meeting and Mid-Year Energy Forum.
- The first of our Strategic Plan Task Force Reports has been adopted, and implementation is underway. The remaining three Strategic Plan Task Force Reports are scheduled for "first reads" during our November Board meeting.
- At our November Board meeting, we will be approving a balanced budget for 2018 that includes several new opportunities to grow revenues.
- Our Committee Chairs and Vice Chairs have a full slate of "Energizers" that are sure to include a topic that fits neatly with your practice.

- Our Chapter officers are contributing to our Task Force efforts, as they prepare for Chapter Annual Meetings and other events in their regions.

We recently sent out membership renewal information for 2018. Be on the look-out for it. We look forward to your continued active participation in 2018.

I hope everyone takes some time during the holiday season to rest, relax, and enjoy time with friends and family. All the best.



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.

2017 Mid-Year Energy Forum Recap (Continued)

Honorable, Joseph Kelliher, Marc Spitzer, Branko Terzic and Jon Wellinghoff for the festivities. The event was put together by EBA's Professional Education Committee led by Co-Chair Stuart Caplan of Troutman Sanders, Co-Chair Damien Lyster of Vinson & Elkins, Co-Vice Chair Thomas Millar of Wilkie, Farr & Gallagher, and Co-Vice Chair Norman Pedersen of Hanna and Morton.

Other highlights included a gathering of new EBA members and first-time Forum attendees at the New Member Meetup, a meetup of LGBT attendees and a sold-out gathering of attendees of the second annual Women in Energy Breakfast featuring Kellie Donnelly, Republican deputy chief counsel for the U.S. Senate Energy and Natural Resources Committee.



Attendees who downloaded the meeting app will be able to access Forum materials during the next six months. Session handouts may be downloaded from the 2017 EBA Conference Resource Center. Information will be forthcoming about video recordings from the Forum.

EBA wishes to thank again its 2017 Forum sponsors and exhibitors.



2017 Mid-Year Energy Forum (Continued): ALJ Reception Raises \$47,000 for FELJ

More than 225 attendees crowded into the Washington offices of Duane Morris for the 2017 Honorable Chief Judge Curtis L. Wagner Administrative Law Judges Reception and raised more than \$47,000 for the Foundation on the Energy Law Journal (FELJ) on October 16, 2017.



(FERC's Administrative Law Judges gather for the 2017 Honorable Chief Judge Curtis L. Wagner ALJ Reception. From left to right are Judge Suzanne Krolikowski, Judge Patricia Hurt, Judge John Dring, Judge Lawrence Brenner, Judge Philip Baten, Chief Judge Carmen Cintron, Judge Steven Glazer and Judge Peter Young.)



(Duane Morris attorney Sheila Hollis was the featured guest of honor at the 2017 ALJ Reception.)

The annual event on the first evening of the Mid-Year Energy Forum honors FERC's Administrative Law Judges. Hundreds of energy attorneys and professionals gathered to salute the judges as well as honor the career of Sheila Hollis, a prominent energy lawyer with Duane Morris and the first director of FERC's Office of Enforcement. Gary Guy, President of the FELJ, served as the event's MC.

2017 Mid-Year Energy Forum Recap: Scenes from the Meeting



To see more photos from the 2017 Forum, visit [EBA's Flickr page](#).

Media Coverage of Energy Forum

As the nation's leading energy policymakers and legal authorities were convening at the 2017 Mid-Year Energy Forum in mid-October, national news and energy media outlets were on hand to cover the discussions. Major industry news organizations such as Argus Media, Bloomberg BNA, Foster Report, Point Logic, RTO Insider and Utility Dive were in attendance and more than a dozen articles on aspects of the Forum appeared in the days following its conclusion. Please visit [Media Coverage of the 2017 Forum](#) to access the articles.

Attendees Reflect on the Energy Forum



"It's always useful to hear different perspectives on current issues in the field."

"Understanding energy regulation is vital to my career."

I primarily work on natural gas pipeline construction. The meeting had a panel that was very relevant to my work."

"Timely topics, good depth."

"The environmental justice session was phenomenal."

"Thanks again for another great conference!"

Mark your calendar and plan to attend the [2018 EBA Annual Meeting](#) on May 7-8, 2018 in Washington, DC.

It's the Season to Renew Your EBA Membership



EBA's annual membership renewal drive has begun and we encourage you to renew your membership as soon as possible. Why is membership with EBA so valued by 2,400 energy professionals throughout the U.S. and in more than a dozen countries? Because EBA is dedicated to fostering **business opportunities** for energy professionals with **unique networking, training and knowledge sharing events**. Where else can you find access to key national and state energy policymakers who make EBA's meetings a mandatory part of their calendars? Where else can you find subject matter experts who deliver content of value to you and your practice? These events demonstrate time and again, how powerful a driver EBA is for energy professionals to make connections, develop relationships, share information and build business opportunities. *Your membership renewal is one of the most valuable investments you can make for your own professional development.* Don't delay. Renew today.

For information about renewing your membership, visit [Renew Your EBA Membership Here](#)

Senate Energy and Natural Resources Committee Chief Counsel Patrick J. McCormick III Describes Life on the Hill

He Delves into Many Aspects of Lawmaking, Regulating, and Adjudicating in Energy

By Gary Guy and David Connelly



Taking time out of his hectic schedule, Patrick J. ("Pat") McCormick III graciously allowed reporting squad Gary Guy and David Martin Connelly (aka "Les Moonves and Don Hewitt") to speak with him at the Dirksen Senate Building Offices of the Senate Energy and Natural Resources Committee of which he is the Chief Counsel. He has remarkable insights that we are happy to share with you.

Committee Mechanics

His title, "Chief Counsel," connotes that he is the lead lawyer for the Committee, while his counterpart, as lead lawyer for the minority, is "Democratic Chief Counsel." By Senate procedure, the counsel for the majority is Chief Counsel, so the title shifts along with control of the Senate. Mr. McCormick reports directly to Chairman Lisa Murkowski of Alaska. He explained that, reflecting the division in its

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EBA Energizer Program Focus: How U.S. LNG Growth May Shake Up Global Gas Markets



By Ken Barry

Branko Terzic of the Berkeley Research Group, Ben Norris of the American Petroleum Institute, Charlie Riedl of the Center for Liquefied Natural Gas and Julia Weller of EBA's International Energy and Transactions Committee discuss the geopolitics of the U.S. liquefied natural gas market.

On September 18, EBA's International Energy and Transactions Committee, joined by the Natural Gas Committee, convened a panel of experts in Washington D.C. to explore how the launch of the LNG export industry in the U.S. could transform European and other global markets standing to benefit from competition. Loosening the grip of Russian pipeline gas on Europe's markets is a particularly intriguing possibility from a geopolitical perspective.

The program – titled "Geopolitical Impacts of LNG Exports Fueled by the Hydraulic Fracturing Revolution" – was moderated by former FERC Commissioner Branko Terzic (now Managing Director of the Berkeley Research Group, which also hosted the event). Also contributing to the dialog were representatives from two trade associations supporting the

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Evaluating Your Cost Per Case and Saving Advertising Dollars

By Deanna Power, [eGenerationMarketing](#)

It seems as if there are nearly endless advertising options for a law firm nowadays. While TV commercials and billboards are still popular and highly effective options for attorneys, digital ads are increasing in popularity every year. How can a firm determine which marketing channels are most profitable?

What is Cost Per Case?

Cost per case (CPC) refers to the exact dollar amount a firm spent from one marketing campaign to sign a single client. It can be calculated simply by dividing the total ad spend by the number of new clients signed:

Dollars Spent on Marketing Campaign/# New Clients

Not every client will have a cost. For example, if a firm was recommended to a company by someone else in the industry for doing good work, that firm essentially gained a new case for free via a referral.

A Hypothetical Example of Cost Per Case

Billboards are a very popular advertising medium for thousands of law firms across the country. [Lamar.com](#) is the nation's largest billboard providers. A billboard in Washington/Arlington/Alexandria on Fenton Street is listed at \$5,700 per 4-week billing period. Lamar estimates that this billboard should be viewable by up to 220,000 people. It's not likely that even

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Chapter Updates

Florida Energy Sector the Focus of Southern Chapter Energizer

Florida's electricity, renewable and telecommunications sectors were the focus of an EBA Energizer produced by the Public Utilities Law Committee of the Florida Bar and EBA's Southern Chapter on October 6 at Stetson University's Law Campus.



(Kimberly Frank of McCarter & English addresses an audience at an EBA Energizer on Florida Electric, Renewable, and Telecommunications Updates: The Interplay for Federal, State and Local Jurisdictions in Tampa.)

Key event highlights included Mark Futrell, Deputy Director for the Florida Public Service Commission, discussing the rules that govern renewables in Florida. Futrell noted solar is now a cost-effective option in the state and explored the challenges in calculating avoided costs and whether net metering credits should be at a retail or wholesale rates.

Fred Harris of Greenberg Traurig, who specializes in financing of renewables, said distributed energy will play an important role in the future but current battery technologies remain a challenge. Harris noted solar investors

are looking for sizeable tax credits (30% or more) and that an obstacle to growing the sector was that nonprofits could not get tax credits. He went on to describe different categories involved in finance structuring, and that utilities are building solar capacity. Harris went on to note that larger "big box" stores must own their property if they want to have the solar, and if there is a lease, the facility must otherwise become a utility. Harris said 47 states allow power purchase agreements but they are not allowed in Florida without the facility becoming a utility.

Kimberly Frank of McCarter & English, LP, noted the Federal Energy Regulatory Commission (FERC) in certain instances has the authority to preempt state programs, and state programs on renewable energy credits are being challenged as preempted by FERC. Frank noted, however, programs not aimed directly at a FERC function could be upheld in a court challenge.

Scott Tomasson of Vote Solar discussed an experiment that brought investor-owned utilities, solar, and manufacturers together for confidential meetings that achieved agreements on community solar and small agriculture net metering.

Tracy Hatch of AT&T, Gary Resnick of GrayRobinson, P.A., Ryan Matthews of Peebles, Smith & Matthews addressed a controversial new Florida law that generally trumps local government authority regarding the placement of wireless telecommunications devices on utility poles.

Cindy Miller, Vice President of EBA's Southern Chapter and Michael Cooke of Greenberg Traurig served as co-hosts for the event.

Regional Chapter Sessions Highlight the Range of EBA's Knowledge Sharing Activities

In October, the **Houston Chapter** and Akin Gump Strauss Hauer & Feld LLP hosted an Energizer on FERC enforcement issues. Former FERC enforcement officers David Applebaum and Todd Brecher, now with Akin Gump discussed strategies for effectively defending FERC investigations and navigating its enforcement process. Kathy Patton, the Director of Trading Compliance with Calpine Corp, moderated.

The **Midwest Chapter** and Polsinelli PC hosted an Energizer on regional electric markets and the impact of state and federal policies in early November. Former FERC Commissioner Collette Honorable, now with Reed Smith, Brian Granahan of Illinois Power Agency, Jeff Bladen of Midcontinent Independent System Operator and Gary Helm of PJM Interconnection discussed the tension between state policies to promote renewable and lower-carbon generation and the wholesale market's promotion of generation resources based on operational and economic efficiency. The event was moderated by Jennifer Moore of Katten & Temple.

On November 14, the **Western Chapter** held an Energizer on the Alternative Dispute Resolution process with expert insights from Howard Herman, the Director of the ADR Office of the U.S. District Court for the Northern District of California and Charles Ferguson, the President of Energy Dispute Solutions. Chapter President Charles Middlekauf moderated.

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

New EBA Primer on Oil Pipeline Regulation Scheduled for January 2018



Registration is now underway for the **2018 EBA Primer Series: An Introduction to Federal Oil Pipeline Regulation** to be held January 25-26, 2018 at the offices of

Anadarko Petroleum, in The Woodlands, TX. This primer will provide the following sessions:

- Introduction to the Oil, NGLs, and Refined Products Pipeline Industry
- Overview of Pipeline Operations
- Regulatory Basics
- Tariffs
- Litigation
- Policies and Current Issues

Taught by industry experts and regulators from the Federal Energy Regulatory Commission, the course is essential training for all energy law practitioners.

[Learn more about the course](#)

[Register for the course](https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=EBA&WebCode=EventDetail&evt_key=0f607761-0f9c-4209-8bc6-760b22fdd805) (https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=EBA&WebCode=EventDetail&evt_key=0f607761-0f9c-4209-8bc6-760b22fdd805)

Evaluating Your Cost Per Case and Saving Advertising Dollars (Continued)

1% of these viewers will need a firm's legal assistance—it's visible to every man, woman, and child passing by the highway after all. It's not unreasonable for a firm to sign four new clients with a billboard that sees such high traffic. Using the CPC formula, the cost for this new client would be \$1,425. Is this a "good" CPC? It all depends on how large your clients are and how much you earn per billing period.

A Social Security disability attorney typically only earns \$3,000 per case. For SSD lawyers, spending nearly \$1,500 per case is wildly unprofitable. An energy law firm working with a major electric company may earn up to \$500 per hour of service. It's that an energy law firm will work with a client for less than ten hours, so spending \$1,500 for a new client would be wildly profitable.

A good rule of thumb is a firm shouldn't be spending more than 10-20% of its overall expected revenue per case on any one marketing channel. An energy law firm would simply need to calculate how much it typically earns on average for a client, and set CPC goals accordingly. A CPC of \$20,000 could theoretically be profitable depending on how much a firm typically makes per new client.

Final Thoughts...It's Imperative To Get the Data Right

CPC is only as accurate as the data a firm uses. If a firm isn't sure where a client originated, it'll be impossible to know which marketing campaigns are more profitable. One of the best ways to accurately attribute new clients to ads is by asking every caller, "How did you hear about our firm?"

Keep Sample Size in Mind

A low CPC is always desirable, but do not let low costs become the most important component for marketing channels. If a firm cannot generate enough volume from one

low-cost campaign to maintain a profitable caseload, more expensive options must be considered. For example, a spectacular pay-per-click campaign could yield one new client for just \$25 each. But if the campaign only generates one client per quarter, it'll be impossible for even a small firm to receive enough revenue to stay in business.

When a firm evaluates its CPC, it can accurately determine which campaigns are increasing caseload at a desirable price. There's no guesswork, no saying, "Well I think our TV commercial gives us the most clients." Instead, using CPC gives a firm data to back its marketing efforts and a clear idea for future efforts and budget allocation.

Join Us for a New Member Happy Hour on November 30



EBA's Membership Committee is hosting a pre-holiday season **New Member Happy Hour** on Thursday, November 30, from 6:00pm to 8:00 pm at the 14K Restaurant & Lounge, 1001 14th Street, NW, Washington, DC, located in the Hamilton Crowne Plaza Hotel at the intersection of 14th and K Streets. This is a great opportunity to meet new members, influential rising leaders in the energy law sector and senior EBA officials. Meeting the right person can make all the difference, and EBA wants to get you "connected." Join us for this fun networking event with your [RSVP here](#). For this New Member Happy Hour, EBA is seeking donations for Toys4Tots and will be collecting unwrapped toys for this worthy cause.



New Members from August to October

Joining Houston Chapter

Cristiana Daugherty, Vitrol Inc.
Edward A. Finklea, Northwest Industrial Gas Users
John Metzger, Plains All American Pipeline, L.P.
Molley Sheriff, IHS Markit

Joining Louisiana Chapter

Jacob Cunningham, Louisiana State University
William M. Mohl, WMM Enterprises, LLC

Joining Midwest Chapter

Luke Adams, University of Tulsa
Aisosa Arhunmwunde, University of Tulsa
Jeffrey Bacon, University of Tulsa
Leslie Briggs, University of Tulsa
Connor Brittingham, University of Tulsa
Christopher Gnaedig, University of Tulsa
Alex Howard, Case University
Joshua Ihler
Mitchell Lovett
Zach McClymond
Peter McVary, University of Tulsa
Chandler Moxley, University of Tulsa
Lashandra Peoples-Johnson, University of Tulsa
Clinton Privett, University of Tulsa
Randi Rymut, University of Tulsa
Cody Schlegel, University of Tulsa
Kevin Spontak
Katie Treadway, One Energy LLC
Hal Trentman, University of Tulsa
Loren Trice
Morgan Vaughn, University of Tulsa Energy Law Journal
Dakota Wrinklein, University of Tulsa

Joining Northeast Chapter

John Cossa, Beveridge Diamond
Steven P. Croley, Latham & Watkins LLP
Joy Dorsey, PEPCO
Gwen Fleming, Van Ness Feldman LLP
Alexander Kaplen, NERC
Noelle Kinsch, Avangrid Networks
Gary Kruse, LawIQ
Kenneth M. Kulak, Morgan, Lewis & Bocikius LLP
Kristine Little, GKG Law

Joining Northeast Chapter

Deirdre Lynch, Maryland Public Service Commission
Joanna Martin Ziegenfuss, Berkeley Research Group
Max Minzner, University of New Mexico School of Law
Justin Mirabal, Reed Smith LLP
Veronica Norman, Office of the Army General Counsel
Jeff Plewes, Charles River Associates
Nina Pogorzelski, FERC
Zach Pollock, Smarter Grid Solutions
Sharli Silva, Federal Energy Regulatory Commission
Sheri A. Spang, Van Ness Feldman LLP
Timothy Walsh, Pillsbury Winthrop Shaw Pittman LLP
Monique Watson, Steptoe & Johnson LLP
Jennifer Wnek, South Jersey Industries
Jonathan Wright, DLA Piper

Joining Rocky Mountain Chapter

Jeremiah Langston Montana Public Service Commission

Joining Southern Chapter

Brad Brown, Innovative Solar Systems
Tyler Ezell, University of Tulsa
Angela Morrison, Morrison Law
Gabiella Passidomo, Washington & Lee School of Law
Brannon Taylor, Atmos Energy
Keino Young, Gainesville Regional Utilities

Joining Western Chapter

Edward Barton, Saint Martin's University
Nicholas Kirby, APS
Mariah Roberson Kennedy, Puget Sound Energy
Jessica Kirshner, University of San Diego School of Law
Matthew Luchsinger
Karilee Ramaley, Salt River Project
Lisa Smith, Puget Sound Energy

EBA also extends congratulations to **EBA Ambassadors** from August through October, 2017: Robert Butkin, Will Haslam, Jim Heidell, Catherine McCarthy, Ron Oppenheimer, Kristina Pacovsky, Jeff Riles, Cody Schlegel, Floyd Self and Elizabeth Whittle.

Become an EBA Ambassador by recruiting people to join EBA. For more information on membership, visit:

[Join EBA](#)

[EBA Ambassador Program](#)

An Interview with Pat McCormick (Continued)

membership, the Committee has a total staff of approximately 48 divided relatively evenly between majority and minority. As a practical matter, although the Majority and Minority Staff sometimes act jointly (as when a “Joint Staff amendment” is put forward as having been agreed to by both Staffs), the two Staffs are, in effect, two groups that act in parallel. First, Mr. McCormick showed us the anteroom where the Committee members confer. Then he took us into the adjoining Hearing Room itself, where we spoke with him for almost two hours.

This particular Committee has a custom of bipartisanship, he observed. It also traces its lineage to the Committee on Public Lands in 1816. In the 1970s, its jurisdiction was expanded to take on energy as a specific responsibility. See <https://www.energy.senate.gov/public/index.cfm/history> The Interior and Insular Affairs Committee Chair at that time, the famed Henry M. “Scoop” Jackson of Washington, and Republican leaders on the committee, including James A. McClure of Idaho, who later came to Chair the Committee in 1981, saw the need for energy to be given a more specific and active role in the Senate’s activities.

McCormick’s Background

As this Senate Committee was reorganizing itself in the 70s, the young Pat McCormick was an undergraduate history major at Wheeling Jesuit with a great interest in the energy and environmental news of the day. He graduated from college in the same year that the Department of Energy Organization Act was enacted and the Federal Energy Regu-

tory Commission was established to succeed the Federal Power Commission. He realized then, as he does now, how fundamental energy’s role is to people’s well-being, the economy, and the environment. He has always been fascinated with the complexities and need to balance interests in setting energy policy. By happy coincidence, his mother’s brother was an energy lawyer and served as an inspiration for him to pursue a similar career. In fact, Mr. McCormick’s uncle was the last General Counsel of the old Gulf Oil Company.

So Mr. McCormick got his Catholic University law degree at night while working at Pepco in D.C. He was privileged to be the Assistant to the General Counsel, Alan Kirk, for about six years. Mr. Kirk was an early mentor after whom Pat and his wife later named a son. Then he went to a law firm.

In 1987-88, he was a volunteer on the presidential campaign of Vice President George Bush. Martin Allday was appointed Chairman of FERC by President Bush in 1989, and enabled Mr. McCormick to be hired there as Deputy Assistant General Counsel for Electric Rates and Corporate Regulation. Pat modestly played down his role by stating that one’s importance in Washington is in inverse proportion to the length of his title. But practitioners before FERC know better.

He there encountered what he called “great” people on the FERC Staff. He singled out Larry Greenfield and Dan Larcamp, the first his peer on the Staff and the second his immediate superior in those days, among others who we will personally pass along his regards.

Near the end of 1990, he was contacted about coming back to Pepco, and indicated he preferred to stay at FERC. Then his wife had a sonogram indicating that she was carrying twins. The prospect of raising the pair

caused Mr. McCormick to reassess, and he did leave FERC to return to Pepco after all. He remained there a couple years in the General Counsel's Office and then was recruited by Balch & Bingham. He served as Office Managing Partner in Washington for more than a decade.

Then he was invited over to Hunton & Williams in 2005 to lead the firm's regulated markets and energy infrastructure practice in its Washington office. That lasted until April 2011, when then-ranking member Senator Murkowski recruited him to the committee staff as Special Counsel, primarily to advise on energy and administrative law matters.

Energy 2020, a 120-page booklet that is on the Committee website, was one of the work products he contributed to while serving in this capacity. See <https://www.energy.senate.gov/public/index.cfm/energy-20-20-a-vision-for-america-s-energy-future>. It gives Senator Murkowski's view on long-term energy policy, and is a "guiding theme" for the Committee. With the completion of this special task, he would have returned to private practice but the Chief Counsel became the Staff Director, and Mr. McCormick was invited to stay on as Chief Counsel.

The New FERC Commissioners

His responsibilities include review of potential nominees under the new Administration, including getting a quorum at FERC. He describes FERC as a "quasi-judicial body" in which the Commissioners are charged with reviewing and ruling on legal pleadings, which gives him an appreciation of the need to place well-qualified individuals at the agency. Although he did not discuss the fact that his own name has been mentioned on more than one occasion when FERC vacancies occur, he did point out that former Committee Staffers have been nominated to FERC, including Elizabeth A. Moler and Charles A. Trabandt, and now Richard Glick is the latest in that line. Indeed, he likens the Committee's oversight role over FERC to FERC's own oversight role over the RTOs and NERC, and for that reason sees a benefit in having people

familiar with both bodies. He elaborated upon this point by citing the work of former Commissioner Trabandt, to whom he also expressed gratitude as another mentor. "More than anyone, Chuck Trabandt taught me the importance of considering the consequences of the work of the Committee in the work of the Commission, and the concomitant responsibility of the Commission to faithfully execute laws which had their genesis in the work of the Committee," Mr. McCormick said.

He says he is "always delighted" when called upon to give counsel on selections to high posts, and he expressed great enthusiasm for the FERC nominees, four in all, who have been sent to the Committee by the White House. He recalled that this is the biggest changeover in the composition of the Commission since 1993, when the so-called "Dream Team" was put into place. He sees this new set of nominees as equally "very talented and very capable." He spoke of working very closely with Neil Chatterjee for six years, and calls the Chairman/Commissioner "very well regarded," good at "reaching across the aisle and bringing people together," and hard-working and "a very humble guy." He expects Mr. Chatterjee to be instrumental in getting the Commission to reach consensus by working well with his colleagues.

He knows Robert F. Powelson primarily through his work at NARUC. He believes that the high standing that Mr. Powelson has among the state regulators is very important in furthering federal-state relations. Mr. McCormick sees Mr. Powelson being in the mold of Collette Honorable and Tony Clark in terms of providing FERC access to the perspectives of state officials.

"Rich" Glick is a colleague on the Committee for whom Mr. McCormick has "great respect." While maintaining "distinct policy views," he believes Mr. Glick will be similar to Cheryl A. LaFleur, both Democrats, in terms of "reading the pleadings and doing their best to be fair" based on their expertise.

Kevin McIntyre is seen by Mr. McCormick to be a great choice as Chairman given his active representation before the agency

as a FERC practitioner well-known throughout the energy bar, including by Mr. McCormick from the days he was in private practice. He believes that “the energy bar is very important to achieving a good result in energy policy.” His experience has been that even those practitioners with whom he has disagreed over the years “are for the most part, learned, diligent, well-motivated, and respectful of the law and the Commission’s precedents.” They are “zealous in wanting their point of view to win the day, and I think the contest of people who have those attributes leads to good results.”

“The energy bar is very important to achieving a good result in energy.”

Therefore, the composite of various strengths brought by the mix of Commissioners gives the Chief Counsel great confidence in the accomplishments to come out of FERC. “I am excited to have been part of that, and,” he adds, “the Committee will be looking very closely.”

A Productive Committee

In this age of Capitol Hill gridlock, Mr. McCormick sees the Committee as being able to cooperate across party lines to advance significant energy legislation. He points to the fact that the last Senate passed the first major energy bill since 2007 by a vote of 85-12. A lengthy conference session then ensued with the House and the matter was not brought up there due to lack of time. But he is hopeful a substantially similar bill – S-1460 – will be enacted in both bodies during this Congress. It can be called up by the leadership and both Chairman Murkowski and Senator Maria Cantwell of Washington are urging that that be done. For that reason, he calls the energy bill the “eager kid,

saying ‘put me in Coach!’”

“The energy bill is the eager kid, saying ‘put me in Coach!’”

“The Energy and Natural Resources Act” is the title of this legislation, and Mr. McCormick brought a copy for us to peruse. In addition to its energy provisions, he calls the bill a vehicle for moving items involving resources, which no longer pass by agreement as in the past. The federal government owns a little more than a quarter of the land in United States, primarily in the western states, he reminded us. In fact, 67% of Alaska land is owned by the federal government, with Alaska being 1/5 the size of the continental United States. Many issues concerning the resources under federal control are addressed in the bill.

There are also measures to improve administrative procedures within FERC, he told us, particularly as it relates to natural gas and pipeline facilities, hydroelectric facilities, and electricity. It also improves the process for LNG exports.

Aside from this bill, he explained that the Committee took action relating to cybersecurity in the last Congress by designating the Department of Energy as the lead agency for cybersecurity in the energy sector. These provisions were included in the transportation bill known as the FAST Act. And in this Congress, the Committee has already held two hearings on cyber matters. He calls cybersecurity “a matter of intense concern to the Committee.” Senator Murkowski has been a leader in calling upon the DOE to devote more of its focus on cybersecurity, and for all the agencies to have better communications with industry about cyber threats, in part by more promptly providing clearances for access to information. He indicates that the greatest cyber threats are

“advanced persistent threats” from nation states and even from non-nation states. The assets that are targets of cyberattacks have widely dispersed ownership, which requires a “deeper partnership” between the government and the asset owners, he tells us.



By way of explaining the bipartisan approach when it comes to energy legislation, he notes that Senator Murkowski is an “institutionalist.” As he sees it, although deeply respectful of her father, former Senator and Chairman Frank Murkowski, she considers as a mentor the late Alaska Senator Ted Stevens, for whom she served as a high school intern even before her father was elected a Senator. . Senator Murkowski is manifestly committed to Alaska’s well-being and keenly loyal to the Senate as an institution. Not surprisingly Mr. McCormick said Senator Murkowski told him two things when he first came to the Committee Staff. First, that he must always keep Alaska’s interests at the forefront. And second, that he must be faithful to the Senate. He explains that Senator Murkowski is “persistent” and “consistent” in what she says to any audience, so that, with her, “what you see is what you get.”

He observed that whoever is Chairman is generally the lead initiator of Committee activities. He quotes Chairman Murkowski as taking the logical approach that “energy is good, and should be affordable and accessible, clean, diverse, and secure.” He also points out that the Committee

holds hearings and is very inquisitive about the budgets of the agencies that affect energy. On the Appropriations Committee, Senator Murkowski is also Chairman of the Subcommittee on Interior, Environment, and Related Agencies, thus giving her wide jurisdiction over the Department of the Interior and the EPA.

“Energy is good, and should be affordable, accessible, clean, diverse, and secure,” according to Chairman Lisa Murkowski.

Her goal is to protect natural resources while prudently developing them, he continued. She wants to empower technology and see it used creatively to improve quality of life for people, combat climate change and reduce greenhouse emissions. She fights to reduce the high energy costs experienced by Alaskans so that they can have meaningful access to its use.

Inter-relationship between the Branches of Government

In general, Mr. McCormick believes that the energy laws that have originated in his Committee “have been faithfully executed.” On the other hand, he believes that the Executive Branch, especially with the last Administration, has come to wield more power in this area than was intended by Congress over a long period of time.

While much discretion is reserved to the Commission in the Federal Power Act and Natural Gas Act, and to other administrative agencies such as the Environmental Protection Agency in other statutes, he believes agency authority has been stretched “to the nth degree.” Recommending a greater adherence to the words of statutes, he provides as an example NEPA, which he maintains was not intended to have the consequences that it has led to by the way it has been invoked.

In terms of judicial review, he is a proponent of allowing the statute to control with the legislative history to serve as a guide in cases where there is ambiguity, which he observes

An Interview with Pat McCormick Continued

might be even further than the late Justice Antonin Scalia would allow in the way of judicial reliance upon legislative debate. He believes that Senators are “tuned into one another” so that what they say on the Senate floor is very much followed by their colleagues even if you don’t see them physically present at these televised appearances. He sees the Senators as “attentive” to the needs of their constituents, and that this realization is instrumental in how Senators negotiate compromises.

Given his breadth of experience in legal practice, regulatory responsibilities, and legislative matters, it is comforting to know that Mr. McCormick sees the energy field as benefitting from unusual cooperation among the political forces in Congress, and as having a new team of federal regulators at FERC who are ready to hit the ground running and lead us into an exciting and productive era. We thank him for giving us the benefit of his candid assessments.

Under the Spotlight

Favorite summer vacation spot? The Rhode Island Seashore.

Most beautiful place ever seen? A place in the south of France called Eze.

Person most influential in childhood? My parents.

Hidden talent? It’s very well hidden.

Favorite comedy in stage or film? *Annie Hall*.

Favorite musical artist? Louie Armstrong.

What to order in an ice cream parlor? Sundae or Cone.

What flavors? A cone in whatever flavor they have.

Fantasy vehicle you’d like to own? Electric race car.

In school, excelled at? History.

Signature dish you cook is? BBQ steak.

Currently reading: Several books, including one on social Catholic teaching, and George W. Bush’s *Decision Points*.

Most adventurous undertaking? Coming to work for the Senate.

Advice to someone starting out on Capitol Hill: Be prepared; read, read, and after that read some more; and be circumspect.

U.S. LNG Growth Continued

buildup in U.S LNG export capacity: Ben Norris, Senior Counsel at the American Petroleum Institute, and Charlie Riedl, the Executive Director of the Center for Liquified Natural Gas. The speakers were introduced by Julia Weller, the Chair of EBA’s International Energy and Transactions Committee.

Henry Hub to Cast a Long Shadow. Branko Terzic expects that the coming boom in U.S. LNG exports will have a profound effect on international LNG markets, including their commercial terms. He recounted two distinct but contradictory “phases” in this country’s global impact. First, in the late 1990s and early 2000s, the U.S. looked poised to become a major importer of LNG, with over two dozen applications pending to construct import facilities; however, on the heels of the domestic shale gas revolution taking off in the middle of the decade, the looming gas shortage turned into a surplus, the U.S. was eventually entertaining over 20 export facility applications, and the rest of the world’s exporters had to find a new home for their LNG.

Terzic also brought out the significant advantages the U.S. has over other countries with theoretically developable shale resources. The U.S. industry is characterized by privately owned, for-profit companies that can bring independent financial and technical resources to bear, based upon “rational economic business principles” and accessing a largely existing network of pipelines connecting gas fields to sites where liquefaction and shipping facilities may readily be constructed. Nations with state-owned enterprises tend to lack this mix of natural and institutional advantages.

The U.S. LNG export industry can also offer the world more reliable and flexible commercial terms, Terzic continued, revolving around its “unique” Henry Hub gas-

(Article continued next page)

based price index. Non-U.S. suppliers, in contrast, apply an index for LNG headed to European markets based on a “basket of oil products,” or on a combination of oil and spot gas markets indices for Asian shipments. Terzic firmly believes the Henry Hub-based index, being entirely decoupled from oil, is preferred by customer and destined to become the “global standard.”

Turning to the geopolitics of LNG versus pipeline gas, Terzic acknowledges that Gazprom, the Russian pipeline supplier, will always be able to underprice U.S. LNG. But he maintains that some European nations – especially the Baltic states – will be willing to pay a “security premium” to have multiple sources, rather than being wholly dependent on Russian gas. Additional supply diversification could come from Turkey becoming a “gas hub,” bringing Azerbaijani as well as Russian gas to Europe from the south.

Net Domestic Benefits. A central tenet of Ben Norris’s presentation was that a growing U.S.-based LNG industry is good not only for oil and gas producers but for the domestic economy as a whole. Multiple studies, whether sponsored by the industry or by the U.S. DOE, have shown that, notwithstanding a “modest” increase in natural gas costs caused by exports, the overall benefits, such as increased employment and GDP, exceed costs across a spectrum of LNG export scenarios.

Addressing doubts over whether domestic resources will be ample enough to support an ambitious level of LNG exports on top of increasing domestic consumption, Norris noted that the U.S. Energy Information Administration this year announced a “record” amount – 2300 TCF – of technically recoverable gas in the U.S. He next surveyed a variety of state and local challenges faced by gas producers, such as local bans on fracking, state severance tax policies, and seismicity concerns. Finally, Norris analyzed two recent D.C. Circuit Court of Appeals decisions reaching somewhat differing conclusions on the adequacy of federal agency

NEPA compliance in permitting LNG projects.

Getting Off the Ground. Charlie Riedl began by emphasizing how nascent the U.S. LNG export industry is. Back when Qatar and Australia were becoming established as major exporters, the U.S. was still on the road to becoming a large importer; and even today, sizeable U.S. exports are coming from only one facility, Cheniere’s Sabine Pass plant, which started up last year. Still, the U.S. is on track to become the world’s third largest LNG producer by 2019.

The structure of LNG contracts is also evolving, Riedl observed. From the older model of large shipments under long-term contracts bound for a single destination, the industry is now seeing a “hybrid” model in which a liquefaction train produces some LNG for sales under long-term contracts but also for sales in smaller packages to developing nations and the spot market.

So what’s the state of play in the U.S. industry today? Riedl related that, besides the operational Cheniere plant, five more projects are under construction. Four other projects, though they have passed the permitting stage, are on hold due to the current oversupply in the global marketplace. However, Riedl does not see this suspension as a long-term phenomenon; if pending projects don’t go forward by 2019, he warns, there’s a “real possibility” that global LNG demand may far outstrip supply.

Responding to Terzic’s remarks on gas geopolitics, Riedl says it “remains to be seen” how much U.S. LNG will actually displace Russian sales to Europe. The more likely role, he foresees, is one of meeting short-term spikes in demand through spot sales. Nonetheless, he agrees with Terzic about the potential for “demonstration sales” of U.S. LNG into Europe putting a dent in Gazprom’s dominance over these markets. Ultimately, he thinks, it’s simply “too early to tell” how the competition for European sales will shake out.

Listen to a recording of this event via
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For example, this November, EBA published two new On-Demand Programs:



- [LNG Exports Fueled by the Hydraulic Fracturing Revolution: What are the Geopolitical Implications](#). This informative discussion with leading experts explores the geopolitical impact of LNG exports from the U.S. made possible by hydraulic fracturing;



- Ari Peskoe, Senior Fellow at Harvard Law School's Environmental Policy Initiative, discusses [Can State CO2 Reduction Policies be Implemented Through FERC-Regulated Tariffs?](#), where he explores FERC's authority under the Federal Power Act to approve wholesale tariffs that facilitate market participants' achievement of their legal obligations under renewable energy and CO2 policies;

- Following the 2017 Annual Meeting & Conference, [EBA posted recordings to members at no cost on](#); and
- In the near future, EBA will publish more recordings from the 2017 Mid-Year Energy Forum.

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

Questions or need assistance? Contact EBA at 202-223-5625 or mary@eba-net.org.

Visit EBA's On-Demand Programs at <http://www.eba-net.org/education/on-demand-programs> to learn more.

Energy Law Journal, Excerpts from Past Issues

Ten Years Ago

“When the Commission has taken regulatory action to facilitate demand response, it has generally recognized and sought to respect the traditional role of the states in this area. These statements provide an important guide for the future, but more active management of the jurisdictional overlap also may be appropriate, particularly as the Commission takes steps to promote demand response and other distributed resources, consistent with the Congressional directives set forth in the EAct 2005.”

Hon. Jon Wellinghoff and David L. Morenoff, *Recognizing the Importance of Demand Response: The Second Half of the Wholesale Electric Market Equation*, 28 ELJ 389, 412 (2007)

Twenty Years Ago

“The pure version of a non-stakeholder board contains only independent board members. No stakeholder representatives are allowed on the board. The hybrid version includes both independent and stakeholder members, but with the independent members in a voting majority. The obvious advantage of a hybrid board is that the independent members have direct access to fellow board members who have direct first hand knowledge of how the grid operates. The disadvantage of a hybrid board is that it raises many of the same design issues (e.g., how many classes, how is representation changed when sector structure changes, etc.) that arise for a full stakeholder board.”

James Barker, Jr., Bernard Tenenbaum and Fiona Wolf, *Regulation of Power Pools and System Operators: An International Comparison*, 18 ELJ 261, 270 (1997)

Thirty Years Ago

“Congress chose not to impose a common carrier obligation on public utilities for services regulated under the FPA. It decided that wholesale electric and transmission services should be established primarily by voluntary private contracts between public utilities and their customers. Nonetheless, the FPA has been construed as providing the Commission with relatively broad authority to require utilities to provide wholesale electric service, and recent amendments to the Act afford the Commission some additional authority to require utilities to provide wholesale services. Moreover, the Commission’s decisions demonstrate that the Commission may seek to compel the provision of wholesale services not voluntarily provided in circumstances where the Commission believes the ‘public interest’ so requires.”

J.A. Bouknight, Jr., and David B. Raskin, *Planning for Wholesale Customer Loads in a Competitive Environment: The Obligation to Provide Wholesale Service under the Federal Power Act*, 8 ELJ 237, 239 (1987)

CFEBA News

CFEBA Raises Over \$30,000 for Hurricane Harvey Victims

In response to the Hurricane Harvey disaster in impacted Texas and other parts of the U.S., EBA members have generously donated more than \$15,000 for energy-related relief efforts to the Charitable Foundation of the Energy Bar Association's (CFEBA) [Hurricane Harvey Relief Fund](#). In addition, CFEBA announced that NRG Energy, Inc. agreed to match up to \$15,000 in donations to the fund, raising CFEBA's relief effort to over \$30,000. CFEBA wishes to thank all of our EBA members and [NRG Energy, Inc.](#) for its support.



CFEBA is currently securing budget needs for a grant that would help Blue Triangle, a multi-cultural community center helping underserved Houstonians. The center focuses on community services including free swim lessons and water safety programs, and after-school and summer camp for 5-13 year olds. CFEBA found Blue Triangle online as it was raising money for the new roof and electrical rewiring and upgrades. Blue Triangle is now preparing a grant application to the CFEBA Board. We will update you on future developments.

CFEBA also encourages you to mark your calendar for #GivingTuesday, November 28th, the global day of giving and show your support with a [contribution to CFEBA](#). All donations are tax deductible. The 2018 fundraising efforts will be focused on support for Puerto Rico. If you know of a worthy grant recipient to partner with CFEBA, please contact Michele L. Smith, Manager, Chapter & Foundation Relations at michele@eba-net.org.

Special Guest Visits EBA'S Young Lawyers Council Happy Hour



On September 21, the EBA's Young Lawyers Council (YLC) was hosting its monthly happy hour at the Wunder Garten in Washington, DC when attendees enjoyed a surprise visit by new FERC Chairman Neil Chatterjee (second from right). Chatterjee was nominated by President Trump in May to join the agency and confirmed by the U.S. Senate in August. In October, he also attended EBA's Mid-Year Energy Forum as the keynote speaker for the event's luncheon. The YLC monthly happy hours in the Washington, DC region encourage all EBA members to attend and is especially geared for young lawyers, students and new members looking to network with other EBA members.



Let's Grow Our Membership: Recruit a Colleague to EBA This Year

Visit [EBA's benefits](#) or contact dshaman@eba-net.org to learn more.

Upcoming Events

November 2017

30th – New Member Happy Hour, Washington, DC

December 2017

14th – EBA Energizer: Storage, Markets and Reliability, Washington, DC

January 2018

25th to 26th - 2018 EBA Primer Series: An Introduction to Federal Oil Pipeline Regulation, The Woodlands, TX

February 2018

22nd to 23rd - 2018 Western Chapter Annual Meeting, San Francisco

March 2018

12th to 13th - 2018 Midwest Chapter Annual Meeting, Chicago

April 2018

11th - 2018 Enforcers and Defenders Forum, Washington, DC

May 2018

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

7th - 2018 CFEBA Annual Gala

October 2018

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

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
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