

## **Maryland PSC Chairman Jason M. Stanek Gives In-Depth Interview Covering All Aspects of Energy Regulation from His Vast Experience at FERC, Capitol Hill, and State Government**



### **Former Senior FERC and Capitol Hill Lawyer Leads A Commission of His Own**

Having had the good fortune to interact with Jason M. Stanek in conjunction with EBA interviews of FERC Commissioners, and through his many contributions to the EBA (where he is currently Vice Chair of the Legislative Practices Committee), it was a thrill and honor for your news squad Gary Guy and David Martin Connelly (aka “Mel Elfin and Martin Shram”) to conduct an interview with now Chairman Stanek of the illustrious Maryland Public Service Commission. Here are some of the fascinating things he had to tell us on your behalf in a wide-ranging hour-plus conversation.

### **Fulsome Energy Experience Precedes State Commission Appointment**

We note that the good Chairman, a native of Queens, is well-steeped in energy matters. Following his formal education, where he earned a bachelor’s degree in International Relations from Tulane University (spending the fall of his senior year as an intern to Congressman Robert Livingston) and a law degree from the State University of New York at Buffalo, with student jobs at the Commodities Futures Trading Commission at the World Trade Center in New York City and at National Fuel Gas Company in Buffalo, where he discovered the Federal Energy Regulatory Commission by working on FERC Order No. 637 gas unbundling and compliance filings (for \$10 an hour). Upon graduation in 2001, and after obtaining a New York law license, he launched what turned out to be a 16-year career at FERC, as one of 18 new attorneys that year, arriving in the D.C. suburbs with a “U-Haul attached to my Volvo.”

Coming to FERC “with a U-Haul attached to my Volvo.”

He started out in the order-writing section of the Office of General Counsel Department of Energy Markets. He was given an award for presenting nine orders at a single Commission Meeting. After he presented an order wrapping up some of the controversy then ensuing in California, Chairman Pat Wood III approached him about filling a vacancy on his staff that opened when the greatly talented Andrew Soto left to go into private practice (and later the American Gas Association). Mr. Stanek also did a stint for about a year on the FERC Trial Staff, litigating and settling rate and reactive power cases.

Then, Commissioner Philip D. Moeller placed Mr. Stanek on his Staff, where he remained for eight years. When we first interviewed Commissioner Moeller for the Spring 2007 issue of *EBA Update*, he spoke very glowingly about his Policy Advisor Jason Stanek, calling him very knowledgeable about FERC and the role of an attorney-advisor through his previous service for former Chairman Wood. Interestingly, Mr. Stanek also seized an opportunity in 2011-12 to take a hiatus from Commissioner Moeller's office to serve as a Special Assistant United States Attorney in the District of Columbia. He calls that a "once in a lifetime opportunity" to add courtroom experience to his hearing room experience at FERC. He then returned to the good Commissioner as his East Coast Advisor, delving into matters involving the NE-ISO, NY-ISO, and PJM.

In 2014, he moved on from there to the FERC Office of Enforcement (which employs more staff than all the Maryland Public Service Commission combined). He worked within the energy market oversight division, and served under the OE Director Norman Bay, who would later become a FERC Chairman. He also worked in the investigations division and liked it but decries that the cases sometimes take many years to prosecute. He recalls a resolution whereby \$410 million was paid by JP Morgan without requiring it to accept responsibility.

While Mr. Stanek enjoyed each of these FERC responsibilities, he found that the delegation given to him as a Commissioner's Assistant to negotiate and re-write orders – a necessity due to the sheer volume of orders coming into a Commissioner's office – to be the role that was most rewarding.

Managing orders like being on "an *I Love Lucy* conveyor belt."

Even with three Advisors, he called the management of the incoming drafts as being like an "*I Love Lucy* conveyor belt" for those who have seen that classic episode. For example, if six orders came in a day, then each Assistant would be charged with reading and analyzing two of them each day. But, in carrying out these responsibilities, Commissioner Moeller made sure that his Assistants knew his policy views and that would inform how they interacted with the Staff in the pre-Agenda meetings and in advising the Commissioner on the salient issues. Again, reflecting on how different things are at FERC, he points out that the electronic notational voting for "must-action" items that cannot await a FERC Sunshine Act agenda, has 12-15 different options as opposed to the basic three, yes/no/dissent options for Maryland PSC Commissioners to choose from.



Mr. Stanek credits both Commissioners in whose offices he worked, Wood and Moeller, as mentors who gave him much advice. He calls Chairman Wood a morale booster to FERC Staff just like his colleague, Maryland Commissioner Obi Linton, in that both ended up serving on Commissions where they once were staffers. Linton, a former Office Director at the Maryland agency, and whom Chairman Stanek calls a “stand-up guy,” also once worked at Baltimore Gas and Electric Company along with one of your interviewers. Wood was on the FERC Staff before going back to Texas, and then was called back to head up the federal agency by President George W. Bush.

Mr. Stanek credits Commissioner Moeller, a former assistant to United States Senator Slade Gorton of Washington State and a former energy sector lobbyist, with knowing “how to navigate the great political shoals in Washington.” Mr. Stanek was ready to move on after 16 years at FERC. He consulted with Mr. Moeller about an opportunity that had come his way, although unsolicited, to join the United States House of Representatives Committee on Energy and Commerce as Senior Counsel to its Energy Subcommittee, advising on national energy policy, particularly electricity issues, including the operations of regional power markets. To this day, he does not know the identity of his benefactor who, in January 2017, recommended him for this important job for which he was tapped. Commissioner Moeller was very supportive,

allaying Mr. Stanek's concern with the cut in pay and being the oldest one in the room "by decades."

He recalls a 20-year-old assistant telling him on his first week on the job that she thought the training offered on Capitol Hill on how a bill becomes law was not open to someone of his age. He nonetheless took the two-day training and assures us that bill-making is "a lot more complicated than people imagine," attributing that to why 95 percent never make it out of committee.

### **Taking All this Experience to the Maryland Public Service Commission**

He did not seek the office; the office sought him. Once again, as with his mysterious Capitol Hill booster, someone forwarded his name to Governor Larry Hogan. Mr. Stanek was importuned to fill the vacancy that was slotted to occur on June 30, 2018, the expiration of the term of Chairman Kevin Hughes, an appointee of the previous Governor, Martin O'Malley. Specifically, three of the senior staff of Gov. Hogan spoke with him initially, followed by meetings with Cabinet Secretaries, and he was ultimately chosen to be the next Chairman. Assuming office based on a recess appointment, he will appear for confirmation hearings after the convening of the next legislature in January for a term expiring in June 2023.

As Chairman, he will present the agency budget to the legislature and make reports starting this month of December to both the Senate Finance Committee and House Economic Matters Committee. He expects to see an increased oversight role played by the new legislature, perhaps calling more for background information, and he looks forward to the opportunity to educate them on PSC matters.

One of the most comedic episodes we ever heard concerning the assuming of office was told us by Chairman Stanek. He explains that in Maryland the taking of the oath of office entails "no pomp and circumstance." Instead, he was directed to go to the Circuit Court of the County in which he resides and have the oath administered by the Clerk's office. He trekked to Upper Marlboro and, after the person at the desk found the correct index card with the oath, repeated the words as best he could understand them through bullet proof glass, with him on the public side of the counter. Jennifer A. Quinlan-Murray, another former Assistant to Commissioner Moeller, was kind enough to attend to take an official photo but was shooed away as picture-taking is not allowed within the Clerk's office for security reasons. Unfortunately, in the process of passing his Maryland State certificate to him under the glass, the document ripped, thus depriving the incoming Chairman from having it placed on a PSC wall to memorialize this momentous occasion.





Despite this inauspicious beginning, Chairman Stanek has gotten off to a good start, at what he calls the best job he has ever had. He found that the transition was smooth and his predecessor, Chairman Kevin Hughes, was very gracious. He has observed and continued to maintain a lot of historical continuity among the departments, including former retired corporate executives from Verizon and CSX Railroad heading up offices. He admires their work ethic from a prior era when executives wore white starched shirts and started at 6 am.

He has also retained Terry Romine, the Chief of Staff. He had two of his five advisors, all of whom focus on different niche areas, join us for the interview. “Amanda Best is the best and joined us in the spring,” he told us. “Molly Knoll, also since the spring,” was also introduced to us by the Chairman, and he conveyed how invaluable they both are to him in keeping things running smoothly. He relies also on his General Counsel, Robert Irwin, who serves as an informal ethics advisor, as well as an office ethics counsel who advises all agency heads out of Annapolis.

“I did not know what to expect. I had a lot of misconceptions which have been disabused. I knew it was not going to be easy being an agency head. But having great Staff to support you goes a long way.” He finds himself bringing his workload home every night and weekend to get prepared for the next day.

## Getting Underway

Still, he states that he feels like “a little kid driving a big school bus and trying to keep it from going off the road.” His first day was July 9, 2018, and he wanted to “hit the ground running and meet every staffer here and I was able to do that.” He did not know what the agenda was at the agency and has found that “we seem to have most of the areas covered.” This includes electrification of the grid and grid modernization. He points out that Maryland is ranked 4<sup>th</sup> in the country in terms of leadership on that front. He describes an active PSC involvement in promoting electric vehicles, innovative rate designs, time of use, solar issues, and integrating renewables in a state. These are important matter because Maryland is among the five states that import energy most heavily, with 44% of its energy from out of state. He tells us that the state has finally seen some plants built there recently, including two in Prince George’s County. There has been some controversy in that the Panda Power Project is in an area that conducts automobile auctions and houses nearly 3,000 junk cars. While some neighbors worry about being dumping grounds, he points out that these projects can alleviate large pipeline bringing in out-of-state supplies. He vows that “we need more in-state generators” and that “we are moving forward.”

“We need more in-state generators. We are moving forward.”

The state has one big nuclear plant, Calvert Cliffs, and one big hydro project, Conowingo on the Susquehanna. There is no fracking taking place any more in Maryland. Offshore wind projects have been approved to come on line beginning in 2021 on a unanimous vote last year after much public input.

We asked about the need to exchange information between various levels of government and energy companies to protect against threats. He and most state commissioners do not have security clearances and he finds that that is becoming a problem in evaluating low probability/high-risk events, such as geomagnetic disturbances, sunspots, or terrorist attacks. “We have had one private briefing on a non-classified basis,” and have staff that is dedicated to looking at these issues but nothing on the scale of the DOD or DOE. He observes that military bases are large energy consumers in Maryland.

“I want to be collaborative; I seek the input of all the Commissioners,” he tells us. He has frequent one-on-one meetings with each of them. He calls them a great group to work with, and with no discernable partisan splits, even though there happens to be two Republicans and two Democrats among his colleagues. Rather, each Commissioner is driven by individual policy persuasions, so that he has a good idea of how they will come out on a given topic. There have been quite a few 3-2 splits, all of which were bipartisan. He has been the tie-breaker many times. He considers himself a moderate, with some conservative leanings and some liberal leanings, depending on the issue. In that sense, he believes that he reflects the state administration and the state generally.



## FERC v. PSC

Chairman Stanek finds the subject matter and the procedures to be “dramatically different” between his state commission and FERC. For example, rather than the one day per month FERC Sunshine Act Meetings, with an occasional technical conference, the Maryland Commissioners have an open meeting every Wednesday, covered on You Tube, with more than 100 subscribers, including his Mom. Although she finds them boring and doesn’t stay tuned for very long, for some reason.

“It’s interesting how much we use the hearing room,” he states, in comparison with the use of the FERC Meeting room. The Maryland PSC Commissioners personally hear most of the rate cases themselves *en masse*. While the agency Public Utility Law Judges try some rate cases, they are also occupied with such proceedings as denials of taxi cab licenses, customer complaints, and various other matters. As for having all the Commissioners presiding over evidentiary hearings on rate matters, “I would like to get away from that, to be honest.” He believes the Commissioners should be spending more of their time on policy and less on the nuts and bolts of rate cases for which “we have well qualified PULJs.” They have had three rate cases in the last two months and will be having another soon.

Essentially, he finds that the state agency gets bogged down in minutiae at unstructured hearings where practitioners often misuse cross-examination to delve into discovery before five captive Commissioners, while the FERC Commissioners “have the luxury of setting overall

national policy,” albeit they “drill down” into the details of the entities they regulate as appropriate, he quickly adds.

He prefers to exercise more of the role of a policy maker but finds that he is “more of a judge than I expected.” He keeps the federal rules of evidence handy “although Maryland does not adhere closely to the rules” he laments. To compensate, “I have started developing local rules for the hearing room.” These deal with the hands-on conducting of the hearing, much like individual FERC ALJs will hand out at the first prehearing conference on a matter set for hearing.

“Things were going sideways, at least from my perspective,” as he explains it. “That’s when I started asking ‘What are our rules?’”. He was told, “We don’t really have any. You have to make them up as you go along.” So that is what he is working on.

To the extent that there are rules in place, he finds many to be 180 degrees different between the two agencies. For example, with FERC rulemakings, you can talk to anybody on an *ex parte* basis. Here it is the opposite. “They view that as more sacred because of the impact on state policy.” On the other hand, at FERC, you cannot have closed discussions on contested matters but at the PSC “we do that all the time” with what are called “deliberations” with all five Commissioners present because they affect a more limited class of parties.

Two of his colleagues are lawyers and two are non-lawyers. He calls Commissioner Mindy Herman a “tremendous litigator” from her prior years as an in-house and law firm attorney representing parties before the PSC. “She lived here in this hearing room.” For that reason, he looks to her for much advice on running the hearings.

Another difference he found is that the PSC has much more involvement with the individual taxpayers. “I’ve spoken to some very angry constituents,” he volunteers. These range from such matters as a pipeline digging up their front yard to a billing dispute. The public perception of the PSC generally is limited to seeing it referenced in a taxi notice and a utility bill and with involvement in individual customer complaints, so that “we fly under the radar for the most part” until there is a calamity. Then, he finds that his state agency gets more mass media coverage than does FERC, even down to criminal taxi driver behavior. While the PSC is ten times smaller than FERC, “it has an important portfolio that seems ten times larger.” This includes overseeing water companies, wire telecoms, height of railroad bridges, and even airlines that do not fly out of the state, a “mixed bag of dogs and cats.”

“Maryland pushed the limits. If I had been here maybe we wouldn’t have gone down that road.”

In terms of the seemingly running disputes over state versus federal jurisdiction in the energy realm, “it will take me a little while to take off my federal hat and fully represent the interests of the state.” He points out that his Commission has lost in litigation with FERC over wholesale electric/retail jurisdiction and speculates that “if I had been here maybe we wouldn’t have gone down that road.” He thinks “Maryland pushed the limit” in trying to draw the line between wholesale and retail jurisdiction. On the other hand, he finds that the loss at the United



States Supreme Court in *Hughes v. Talen* proved instructive, in that Justice Kagan gave similarly situated parties a road map on how to do things differently next time, as has been done successfully in Illinois with ZECs and in the Second Circuit in New York. “The dam has been breached,” he states, “and is changing the face of the markets.” For example, he observes that PJM is “front-row center with the capacity market debates.” In that connection, he states, “We had a knock-down, drag-out fight at NARUC on the issue of states’ rights.” In fact, he relates that there was a resolution that did not make it to a substantive vote because Commissioners were split on many different sides.

Speaking of NARUC, he, along with about nine other Commissioners, took a new-Commissioner-training program through NARUC, including the entire delegation from Puerto Rico, all of whom are brand new. Noting that some of them he met are elected in their states, he comments that he could not ever see himself running for election. He serves on NARUC’s Committee on Electricity and the Committee on International Relations; he is also active in the Regional Greenhouse Gas Initiative, for which he is on the Board of Directors; and he is a member of the Critical Consumer Issues Forum Advisory Committee.

For now, he is entrenched in running the agency and, while he receives many speaking invitations, he turns most of them down. While he might accept more when nearing the end of his tenure, “I still feel the need to have a presence here more often.”

Surprisingly, he answered our request for advice to young people interested in energy by saying he would encourage them to go to business school because there is so much innovation in this sector for entrepreneurs to both make a good living and “feel good about what you are doing, and hopefully make a difference as well.” For that reason, the Chairman is very supportive of the EBA’s outreach to non-lawyer energy professionals and diversity and inclusion. In fact, his agency makes use of the EBA job site to post vacancy notices. He also conveys his thanks to Andrew Wills for his leadership of the Legislation Committee upon which Mr. Stanek serves as Vice Chair.

And while we appreciate his kind words for our association, it is we who are indebted to him for sharing his time and insights with our membership through this riveting interview.



### Standardized Stanek

Michael Phelps or Cal Ripken: Ripken.

Baltimore Harbor Tunnel or Fort McHenry Tunnel: Baltimore Harbor Tunnel.

Favorite thing about Baltimore: Strong work ethic. He sees it everywhere he drives: Dundalk, Cherry Hill, East Baltimore Avenue until it ends, etc., etc. And he plans more field hearings to integrate more with the disadvantaged communities.

Favorite Baltimore eating place: Lexington Market.

Best crab cakes in Baltimore: Faidley's at Lexington Market.

Favorite pizza topping: Raw onions.

Favorite Movie: *Dawn of the Dead*. He's watched it about 80 times. He's done a pilgrimage to the location in Pittsburgh.

Favorite type of music: Soft rock (Billy Joel, Elton John).

Favorite TV Show: *60 Minutes*. (Note: this is former FERC Commissioner Powelson's favorite too.)

Favorite vacation spot: Florida Keys. (Been there about ten times.)

Dream Car: Volvo XC70 Sports Wagon.

Pendry's or 4 Season's: Pendry's.

Early Bird or Night Owl: Early Bird.

Best advice ever received: Have no regrets in life. (His Mom's advice.)

Excelled in school at: Hard work.

Hidden Talent: He is a pilot (with a few white-knuckle experiences).

Surprising fact about him: Prepares home cooked meals for his two big dogs but only gives himself a microwave dinner for lunch every day. "I'm not proud of that" (and his Staff was first to reveal it to us).

Similarities and differences between FERC and MD PSC: Eating is similar. No place to eat at FERC in the early days; practically no place to eat near the PSC. Subject matter is different. He thought this would be a mini-FERC; it has defied that expectation.