

EBA Update

Summer 2014

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Keen Energy Observer Llewellyn King Provides Insights on Tackling Industry Problems

Passionate Advocate for Innovation Tells How We are Learning the Wrong Lessons

Gary E. Guy and Channing D. Strother

Founding Editor-in-Chief and publisher of *The Energy Daily* and *Defense Week*, and Creator, Executive Producer and Host of *White House Chronicle*, among too many other journalistic and award-winning accomplishments to name here, Llewellyn King granted a most fascinating interview to news aficionados Gary Guy and Channing Strother. We have posted an audio recording of the conversation at <http://www.eba-net.org/information-resources/quarterly-eba-update-newsletter/prior-video-interviews>. As an extra added attraction, we have also posted at the same link an award acceptance speech by Mr. King given at the United States Energy Association 2014 Annual Meeting. Both are well worth listening to, as he had some profound and provocative things to say. Here is a brief recap of our interview.

King to Regulators: Don't Deregulate Natural Monopolies

Mr King does not mince words. We asked him about the restructur-



Llewellyn King

ing of the electric transmission business. His reaction: it has been "fairly disastrous." He maintains that investors prefer a regulated company such as the Southern Company to unregulated utilities, and that the "benefits of deregulation haven't materialized."

That is not to say that he opposes deregulation *per se*. When, in the early 80s, then California Public Utilities Commission Chairman John Bryson invited him to speak at Stanford on the topic, "Deregulating Generating," he showed up as a deregulation advocate. As he saw it at the time, it would be a good way to segregate the price of electricity rather than mask it through the bundling of other costs

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ABOUT THE ENERGY BAR ASSOCIATION

EBA is a non-profit voluntary association of attorneys, non-attorney 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, regulations and policies. Established in 1946 as the Federal Power Bar Association, the Association 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, the Energy Bar Association is an international, non-profit association of attorneys, non-attorney professionals and law students active in all areas of energy law. It has over 2500 members, throughout the United States, Canada and Internationally with seven formal chapters in Houston, New Orleans, Midwest, Southern, Western; Northeast and Rocky Mountain regions of the U.S.

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President's Message Jason F. Leif

Well, I've made it through the first few months of my time as EBA president and from what I can tell the organization hasn't collapsed under my leadership. The reason for that has little to do with me. Instead, the strength of the organization lies with the many volunteers and EBA staff who every day work to further the organization's mission "to promote the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies by providing: superior educational programming, networking opportunities, and information resources." Of course, those words mean little unless there are concrete actions that make them a reality. So, in this column, I wanted to point out some of the things that the EBA has done recently to meet its mission, to mention some upcoming events, and highlight one exciting new and easy way for you to support the Charitable Foundation of the EBA, *at no cost to you*.

EBA Primer Series. Under the leadership of past president Susan Olenchuk and our three Primer Deans, Jonathan Schneider, Jonathan Lesser, and Larry Greenfield, EBA is making sure that our members can learn new practice skills (or refresh old ones) no matter where they live and practice. Following the success of our first EBA primer program focused on electricity regulation, we held our second EBA primer program in May in Chicago—EBA Gas Primer: An Introduction to FERC Regulation of the Natural Gas Industry. The Primer Series is continuing full speed ahead. In September, we will hold our third primer program in Boston—An Introduction to Hydro Power Regulation—in conjunction with the National Hydropower Asso-



ciation. This program will include a visit to a hydro facility. And, an oil and liquids pipeline program is under development. So, watch the EBA Primer Series space on the EBA website for more information.

EBA on Demand. EBA has tried its best to change with the times to better meet our members' needs. In an effort to make learning available to our members at any time, EBA is developing an on-demand library of programs. Right now, along with our natural gas regulation primer, we have on-demand programs related to FERC enforcement, smart grid and demand side resources, mastering your first (or next) state public utility commission hearing, and others. Take a look at our On Demand Program Page to see our programs and start to learn on your own schedule.

EBA's Efforts Outside the Beltway. EBA's Chapters are busy as always. The Southern, Northeast, and Rocky Mountain Chapters each recently held successful annual meetings and the Houston Chapter has a meeting on the calendar on July 22nd called Ethical Considerations in Responding to FERC Investigations. A particularly exciting development is that the EBA will hold its first meeting in Canada, in Toronto, on September 19th. Keep your eyes open for further information on that development.

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Charitable Foundation of the Energy Bar Association Update

CFEBA Helps to Plant 70 Trees in Langdon Park

Marcia Hooks

On the morning of Saturday, April 25, 2014, ten EBA members and their families joined with 90 other volunteers along with Casey Trees to plant 70 trees in Langdon Park. Langdon Park is a huge local recreation facility in the Woodridge-northeast section of Washington, DC, which will also soon be home to a memorial honoring the famous late Go-Go singer Chuck Brown. At the outset, the Casey Trees coordinator commended CFEBA's consistent prior participation in such events and also recognized the financial support that we have given. This event also proved to be a great opportunity for CFEBA to provide service to the community, and it was a first-hand learning experience about tree planting.

Casey Trees provided the volunteers the appropriate tools, shovels, hoes, rakes and pics and

divided us into teams of four, which included a more experienced arborist. The arborist gave us practical tips about the fine art of tree planting, like showing us the width and depth of the ground that should be dug-out to ensure stability and enhance tree growth. After each team planted at least two trees, the volunteers had a chance to network and were treated to a variety of scrumptious food selections graciously provided by several local restaurants in the Woodridge and Brookland sections of Washington, DC. EBA members and friends participating in the CFEBA tree planting event included, John Calhoun, Adrienne Clair, Emma Hand, Fred and Marcia Hooks, Jeffrey Janicke, Jennifer Moss, Sandi Safro, Delia Patterson and Yaritza Velez.

CFEBA Annual Gala and Silent Auction

The CFEBA will host its 12th Annual Gala and Silent Auction, *Light Up the Night* on Tuesday, November 4, 2014 in conjunction with the EBA Midyear Conference at the Renaissance Hotel in Washington DC. Funds raised at the Silent Auction will be used for energy-related charitable projects, such as providing medical solar suitcases to the most needy in the world in an effort to save lives of mothers and children during childbirth in villages where there is no access to electricity.

Since its inception in 2002, the CFEBA has awarded more than \$1,250,000 to deserving national and international organizations. EBA members' participation is necessary to ensure a successful gala. To help in this worthwhile endeavor, members and their employers may contribute in several ways.



CFEBA Update

CFEBA Update, continued from page 3

They may provide cash donations or even sponsor the gala. They may also contribute silent auction items.

Items the Gala Committee is currently requesting:

- * Wine
- * Kennedy Center, Arena Stage or National Theater tickets etc.
- * Gift certificates to restaurants
- * Vacation Rentals

On October 6, the State Practice and Regulation and the Young Lawyer Committees, are planning to host a reception to honor State Public Utility Commissioners from across the country. Entrance to the event will be granted in exchange for a donation of an auction item, hopefully of a value greater than \$50.

In addition the CFEBA is excited about the Gala's fifth annual team competition. The CFEBA encourages you to form a team which will donate an item or basket of items to be auctioned. The team that generates the highest winning bid for the silent auction entry will receive recognition in the EBA newsletter and bragging rights until next year's silent auction. It's a friendly competition between friends, law firms, and companies, and you have the added satisfaction of knowing the proceeds from your donation will be used to assist worthy organizations' energy-related activities. The sky is the limit on what we can achieve working together.

The gala committee is always seeking new volunteers to help make the event a success. Please

contact Michele Duehring if interested, or with any gala related questions at 202-223-5625 or email her at michele@eba-net.org.

Fundraising Efforts

The CFEBA continues to be grateful for the strong support it receives from generous members and particularly the giving programs of many of the members' firms. We cannot overstate the importance of energy and the charitable work done as a result of CFEBA's grants. Whether it is finding incremental solutions for the 20 percent of the world that has no electric power, finding ways to help the 16 percent of Americans who fall below the poverty line and need help to pay their utility bills, or helping organizations such as Habitat for Humanity or Meals on Wheels accomplish their missions with innovative energy solutions, CFEBA has been there, thanks to the generosity of its members.

We need you to increase your support.

How can we expand both CFEBA's contribution and the breadth of engagement of its membership? A major objective that we are really emphasizing this year is to get truly broad participation across all of the EBA, beyond the relatively small share of our membership that contributes so much. If you have not individually contributed to the CFEBA (or even if you have), please do so now or at any time. Any amount is welcome; it's the membership's individual engagement we want to see.

Meanwhile, there is something you can do right away that can get some additional funding coming

into the CFEBA, without costing you anything. All you have to do is:

Register for the Amazon Smile Foundation

Please, do this small thing that can mean a lot to us. And, please tell all your family and friends to do the same.



Whenever you buy from Amazon, go to www.smile.amazon.com and set that as your default when buying from Amazon, designating the Charitable Foundation of the Energy Bar Association as your preferred charity.

The Amazon Smile Foundation will donate 0.5% of the price of each of your purchases to the charity you designate, the CFEBA.

It doesn't cost the shopper anything, and shopping on www.smile.amazon.com is no different than on the regular Amazon website - same products, same prices, etc., and you use the same account information you normally do.

King , continued from page 1

related to its transmission and delivery. But then came the move to deregulate a natural monopoly, namely, the transmission wires business. This has caused a breakdown of the public service obligation, a franchise contract, as Mr. King calls it, all to no good end. There is no longer the sense of service in the utility business that “was pervasive” and “the heart-felt pride of public utilities.” Instead, he states, we have arbitrageurs making huge profits over a public necessity; we have executives who are professional money-makers rather than electricity experts. We went from a “golden age” beginning with the Public Utility Holding Company Act of 1935 until we got deregulation and the “trading of electrons,” he tells us. He decries Enron as having been “out of control” by “starving California of elec-

The “golden age” of energy ended with deregulation and the “trading of electrons”.

tricity to up the price.” Regrettably, he said he had three similar entities in mind that are still operating for profit motivation without providing corresponding efficiencies. He is all for free market trading of products that can be stored, but not for “real time” electricity generation. This new form of transacting sales makes no more sense to Mr. King than if air traffic controllers sold landing slots to pilots calling in bids while in-flight circling runways.

King to Public

Policymakers: Don't Prevent Technological Progress

His antipathy to electric restructuring does not mean that Mr. King is opposed to change. Far from it. He believes that technological breakthroughs are being withheld from the market out of misplaced fear, wrong-headed politicians, and a false either one extreme or the other environmental debate. He warns environmentalists that “evolution is the answer,” with better technologies and better understanding of the sciences. “More bang for the buck, if you will.”

“Why should nuclear energy be regarded as something that all left-wing politicians hate and all right-wing politicians love?” he asks. He calls it a “paradox” that there is such a concern with maintaining safety at nuclear power plants that there is an assumption that they must be unsafe rather than a recognition that they have, in fact, been made extremely safe.

For example, thanks to the Nuclear Regulatory Commission, and its predecessor, the Atomic Energy Commission, nuclear power plants are what he calls the “gold standard” of safety. However, he maintains that so much has been done to keep them safe that they are being kept from advancing. He states that the nuclear industry is “frozen” in light-water fuel rod technology from the late 1960s. While granting that this is still perfectly good technology, he would like to see nuclear power produced with revolutionary new reactors. He faults the NRC for insisting that all applicants adhere to rote, repetitive requirements rather than take advantage of evolutionary developments.

To illustrate the safety of nuclear

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President's Message, continued from page 2

EBA's Midyear Meeting. You will have seen through our call for topics that planning for the EBA Midyear Meeting and Conference is well underway under the leadership of EBA Program Committee Chairs Dan Simon, Gary Guy, and Mosby Perrow. Mark your calendar for this event and the CFEBA's Annual Gala, which will take place at the Renaissance Hotel in Washington, D.C. on November 4th to 5th.

Supporting the CFEBA Through Amazon Smile. The CFEBA is entering its second decade of giving. While I can go on and on about the CFEBA's good works, I wanted to do something a little different here; highlight an easy, and free, way that you can give to the CFEBA through AmazonSmile, a simple and automatic way to support your favorite charitable organization every time you shop, at no cost. Full details can be found on page 4, along with registration link. Please make this easy choice and help the CFEBA increase its giving in its second decade of good works.

Thanks as always for giving me a chance to serve as the EBA president. If you have any thoughts, comments, or questions, please don't hesitate to let me know.

EBA Northeast Chapter Update

Northeast Chapter Goes Back to NY for Annual Meeting

On June 12, 2014, the Northeast Chapter held its Annual Meeting at the Con Edison Learning Center in New York City. There were four panels: (1) “Resilient Infrastructure: State Initiatives,” which had government officials from Connecticut, New York, New Jersey and Maryland discussing their most recent storm related initiatives; (2) “RTOs/ISOs Perspectives on Order No. 1000,” which included representatives from the New England, New York and PJM ISOs/RTOs giving their perspectives on the status of Order 1000 implementation; (3) “Restructuring Markets Outside of the US,” which had panelists discussing the current status of restructuring in Great Britain, Canada and Mexico; and (4) “Exporting Liquefied Natural Gas,” which discussed recent developments in obtaining permission to export natural gas. The meeting was well attended by a wide range of practitioners—public, private, in-house, and firm. The meeting was followed by a networking cocktail party on the roof of a hotel in Long Island City that had great views of the Manhattan skyline.



Incoming Chapter President Rick Drom, gives thanks to outgoing President Rich Miller for his hard work and leadership over the 2013-2014 year.



Kate Burson, Chief of Staff to the Chairman of Energy and Finance for New York, gives the luncheon keynote at the 2014 Northeast Chapter Annual Meeting.

JUDGE'S CORNER

The FERC Practice & Administrative Law Judges Committee proudly presents Federal Energy Regulatory Commission Administrative Law Judge Michael J. Haubner as this issue's contributor to our enlightening "Judge's Corner" series.

Judge Haubner assumed the FERC bench on January 14, 2013. He previously served as an ALJ at the Office of Disability Adjudication and Review at the Social Security Administration, beginning in September 1996. Before his appointment to the bench he was in private practice in San Diego, California, served as a Superior-Court Arbitrator, and a Settlement Judge pro tem.

His Honor's extensive trial experience includes active duty in the United States Navy Judge Advocate General's Corps from April 1981 to September

1985. During his last two years in that capacity he was assigned as a Special Assistant United States Attorney for the Southern District of California. He also served as an intelligence officer in the United States Navy Reserve and was recalled to active duty during Desert Storm. Judge Haubner retired from the Reserve in 2003 as a Navy Captain (the equivalent of a full Colonel). Following his original tour of duty he was the senior trial associate in a prominent San Diego business-law firm. Thereafter, he served as in-house litigation counsel for a major industrial insurer and later ran his own law firm.

Among Judge Haubner's impressive scholarly achievements, he has been an adjunct law professor and is the author of over thirty professional articles. For six years he was the Editor-

In-Chief of Dicta Magazine (the San Diego County Bar Journal). He graduated from The John Marshall Law School in Chicago in 1981 and received a Bachelor of Science degree cum laude in Political Science and Business Management from Maryville University of St. Louis. He completed the National Institute of Trial Advocacy program on Expert Witnesses and the National Judicial College's Civil Mediation Training. A friend and active attendee at Energy Bar Association events, Judge Haubner is licensed in both California and Illinois.

We are very fortunate to have Judge Haubner grace these pages with the following excellent insights:

LUCID LONGHAND FOR LAWYERS: A PERSUASIVE ART

Michael J. Haubner, Administrative Law Judge
Federal Energy Regulatory Commission

***Eye no Mai gram her Ann sin tax our write,
Mai spelt Czech tolled mi sew.***



Ever wonder why some attorneys' compositions always seem a bit more persuasive than others'? It's axiomatic that a lawyer's stock in trade is largely comprised of words and their usage. One key to successful legal writing, and admittedly not easy to achieve, is brevity. Cicero once apologized, "If I had more time, I would have written a shorter letter." If your document looks like it was drafted in the *Department of Redundancy Department*, it's time for a substantial re-write.¹ As a judge I generally find repetition in a legal brief to be more tedious than emphatic. I'm not alone in this sentiment. Years ago I heard a respected jurist opine: "The more lawyers write in a case, the more I'm convinced they have nothing to say."

You should strive to employ the Keep It Simple, or KIS, concept. Make your point, cite supporting precedents and evidence, deal with contrary positions, and get out. Indeed, the Texas Oilman Rule is equally valid in the law: if you don't strike pay dirt in ten minutes, stop boring. The seductive argument that "the legal issues in this case are too complex for brevity" is often illustrative of a lack of professional application in refining ideas. Cicero's implication is clear: it takes time and creativity to write concisely. The extra effort, however, could win your case.

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¹ For example, this article was originally 4,592 pages long, but I managed to pare it to its present form in a weekend of editing. Incidentally, this is as good a place as any to insert the usual lawyer-like disclaimers. Such as, the opinions expressed in this article are my own. My opinions do not necessarily reflect the views of the Federal Energy Regulatory Commission or my fellow judges.

ORGANIZATION

Remember the old law school examination-writing formula known as *IRAC* (*Issue, Rule, Application, and Conclusion*)? List the *Issue*, state the *Rule of law*, *Apply* the rule of law to the facts, and discuss your *Conclusion*. As a litigator I found use of this formula, with one simple modification, quite persuasive in brief writing. I called it *ISRAC* (*Issue, Short answer, Rule, Application, and Conclusion*). Following recitation of the *Issue* I added a heading for the *Short answer* to provide just that, a succinct indication of my response to the *Issue*.² The short answer can and usually should be as concise as stating "yes" or "no." By giving a short answer up front you avoid holding the readers in suspense or confusing them. You also reduce the risk of losing their interest.

Adherence to the *Issue, Short answer, Rule, Application, and Conclusion* or similar organizational tool can be useful in preventing rambling text. Long, rambling narratives are a common pitfall in drafting litigation documents. Such narratives can easily fatigue or frustrate your reader. Thus, it is essential to develop an organizational outline and follow it.

²Your phrasing of the issue will be more persuasive if it suggests the answer. For example, "Should the calculations of Witness X be adopted?" isn't nearly as effective as the following. "If the figures used by Witness X were misapplications of the tariff's formula, should his calculations be disregarded?" Obviously, where the judge requests a Joint Statement of Issues you won't have as much latitude in applying this technique, but be creative.

³ See e.g., Bryan A. Garner, *LEGAL WRITING IN PLAIN ENGLISH* 17, 19-21 (University of Chicago Press 2001).

⁴ By way of illustration, the two sentences you just read were originally written as one long thought. *I.e.*, "If your sentence is longer than that, go back, read it aloud, and try breaking it up by inserting a period where you would normally take a breath."

⁵ Using *word count* a few times can get you in the habit of writing shorter sentences. Sadly, it is fairly common to see energy-law documents containing multiple sentences approaching 50 words. I've even seen some sentences containing over 100 words. As you might imagine, it is difficult to digest such a "brief." Assist your readers; write short sentences.

⁶ THE PLAIN LANGUAGE ACTION AND INFORMATION NETWORK, *FEDERAL PLAIN LANGUAGE GUIDELINES*, March 2011, p. 50, available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/writeShortSent.cfm> (last visited June 18, 2014).

⁷ *Id.*, p. 62, available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/write1Issue.cfm> (last visited June 18, 2014).

⁸ *Id.*, p. 66, available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/writeShortPara.cfm> (last visited June 18, 2014).

⁹ Please refer to my standard *Rules For Conduct Of The Hearing (Rules For Conduct)*, §II, ¶20(b), which I issue in all hearing cases. In those rules I restrict sentence and paragraph length as discussed above.

¹⁰ *PPL Energyplus LLC v. Hanna*, No. 11–745, 2013 WL 5603896 (D.N.J. Oct. 11, 2013).

¹¹ In a recent concurring opinion, Judge Silberman rebuked counsel for liberally using "obscure acronyms, sometimes those made up for a particular case" He noted that "the practice constitutes lousy brief writing." *Delaware Riverkeeper Network v. Federal Energy Regulatory Commission*, No. 13-1015 (D.C. Cir. June 6, 2014).

BREVITY AND CLARITY

Consistent with understandable, persuasive writing is the use of short sentences and paragraphs. Readers can easily get lost in dense, lengthy text. This is especially true in energy-litigation briefs involving highly technical subjects, such as engineering or accounting principles. Breaking up material with headings and keeping sentence and paragraph lengths shorter provides white space that will help maintain focus.

Most scholars and writers agree that sentences should generally be limited to around 20 words.³ If your sentence is longer than that, go back and read it aloud. Try breaking up lengthy sentences by inserting a period where you would normally take a breath.⁴ Not sure how long your sentences typically run? A quick method for determining sentence length is to use the *word-count* function of your word processor.⁵

To insure your document conveys thoughts clearly, each sentence should include only one point or idea.⁶ Following this rule is vital when the content is technically oriented. Multiple ideas in a single sentence are difficult for a reader to assimilate.

Similarly, paragraphs should include only one topic each.⁷ Regarding paragraph length, the majority of writing experts recommend limiting each from three to eight sentences.⁸ Since energy lawyers deal with particularly complex issues, you should draft short paragraphs to insure greater comprehension.⁹

On occasion, even a single-sentence paragraph might be inserted as a transition between points of an argument.

You should also limit the use of acronyms, which admittedly can be a challenge in our forum. As one court noted:

The electric energy industry has its own jargon, which makes great use of acronyms. With so many acronyms being used, the testimony and briefs become like alphabet soup where all the letters swirl around and may confuse the reader.¹⁰

While some alphabet soup is probably inevitable in energy litigation, keep in mind that a basic goal of persuasive writing is to avoid confusion. Restricted use of acronyms can help accomplish that goal.¹¹

Where you must use an acronym, list the entire phrase that forms the

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acronym's basis the first time it appears in a document.¹² If a term is used only a few times it's advisable to recite the full phrase every time and just omit the acronym. Moreover, I find it helpful when counsel include an appendix of abbreviations and acronyms with each document.¹³

Clarity is additionally served by avoiding double negatives. They too can be a source of confusion, often forcing the reader to mentally remove the negatives. Worse yet, double negatives have the potential to create ambiguity that can obscure your point. We think in the positive, so write in the positive.¹⁴

BASIC COMPOSITION

At a minimum, grammar, syntax, and word usage errors are distracting. They tend to draw the reader's attention to the *faux pas* rather than the point you're trying to make. A few abuses I see frequently include: *further* instead of *furthermore* at the beginning of a sentence¹⁵ and *into* instead of *in*

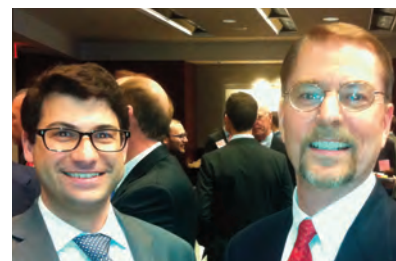
to.¹⁶ Your word processor's spellcheck and grammar functions are convenient tools that should be used. Nonetheless, as illustrated by my farcical example at the beginning of this article, it can be folly to rely solely on them. Rather, I highly recommend review of a good basic-writing reference, such as *The Elements of Style*.¹⁷

In addition to being distracting, improper sentence construction can cloud or even change the intended meaning of your text.¹⁸ Consider how varying the following sentence's syntax alters its meaning. "Their expert was diagnosed by his psychologist with schizophrenia." Psychologist jokes aside, a more apt rendition would be: "Their expert was diagnosed with schizophrenia by his psychologist." Correct application of English-language fundamentals is, therefore, the first step toward creating lucid documents.

CONCLUSION

Persuasive legal writing begins with some basic precepts. Good

grammar, syntax, and usage are essential to conveying your thoughts clearly. Furthermore, employment of organizational tools during the drafting process will make your job easier and improves readability. To facilitate transparency provide appendices of abbreviations and avoid double negatives. If you want to maintain your readers' attention and convince them of your position, keep each point as rudimentary as possible. Remember, brevity in sentence, paragraph, and document length is crucial. Best of luck in honing your writing skills, or as my spellcheck might allow: *hears two grate righting!*



Judge Haubner and his clerk, Evan Oxborn at the 2014 ALJ Reception

¹² Several energy-industry acronyms are used so frequently by insiders that recognition is naturally assumed. Keep in mind that some readers, such as those at a reviewing court, deal with our terminology less often. Thus, it is prudent to enumerate the basis for every acronym in *all* documents.

¹³ *Rules For Conduct, supra*, §II, ¶20(a). Notwithstanding provision for such an appendix, the more persuasive brief writers simply avoid acronyms.

¹⁴ FEDERAL PLAIN LANGUAGE GUIDELINES, *supra*, p. 54, available at <http://www.plainlanguage.gov/howto/guidelines/FederalPLGuidelines/writeNo2Negs.cfm> (last visited June 18, 2014).

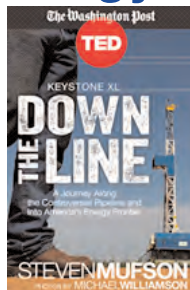
¹⁵ "Further" is usually employed as an adjective that modifies a noun. For the most part, it is not used at the beginning of a sentence (e.g., "Without further delay."). It is synonymous with "additional." "Furthermore" is an adverb that doesn't modify anything. It is used to support or expand a prior statement. It is generally used at the beginning of a sentence (e.g., "Furthermore, he included pass-through credits."). It is synonymous with "in addition."

¹⁶ The word "into" is a preposition that expresses movement or direction. It is roughly synonymous with "against," "toward," or "inside" (e.g., "Kramer walked *into* the wall when Elaine came *into* the room"). The two words "in to," on the other hand, start with "in" as an adverb, followed by the preposition "to." The phrase "in to" is synonymous with "in order to" (e.g., "Newman came *in to* say hello.").

¹⁷ William Strunk, Jr. & E.B. White, *THE ELEMENTS OF STYLE* (Longman, 4th ed. 2000). When I was an adjunct law professor I made this small, handy book a required purchase for all my students. It provides fundamental tips and gives examples of improper and proper usage. Unlike the version I used as a student, this edition has an index that helps quickly locate words, phrases, and concepts.

¹⁸ For a delightful commentary on punctuation, originally published in England, see Lynne Truss, *EATS, SHOOTS AND LEAVES* (Gotham Books 2004). The cover depicts a panda painting out the comma after "EATS" while another panda walks away carrying a handgun. Ms. Truss's book reminded me of a sign I saw as a child along the old Route 66. It read: "EAT AND GET GAS." Obviously, the sign painter was not educated by a British punctuation stickler (or nuns with rulers). Admittedly, I was not an English major (although, at one point, I was taught by nuns with rulers). I suspect some sticklers may take issue with my composition or substantive recommendations, or both. Even so, I provide this perspective to render a glimpse of my writing preferences should I have the pleasure of working with you.

Energy Bar Association Book Club Newsflash



Presenting the 3Q, 2014 EBA Book Club

Book of the Quarter:

Keystone XL: Down the Line

By Steven Mufson Reporter, The Washington Post

From the Book Jacket:

The proposed Keystone XL pipeline has enflamed the bitter fight over America's energy future. Opponents of the 1,700-mile pipeline, which is designed to bring oil extracted from Canadian tar sands down to the US, say it represents a furthering of a dead-end oil-based energy policy that is unsustainable and poisonous, and have turned the permit requests to build the pipeline into an environmental litmus test for President Barack Obama. Supporters of the Keystone XL say it represents a step toward America's energy independence. Beyond the Beltway, the real story of this pipeline is one about American frontiers - the lengths to which we go for oil and the intrusive effects that quest causes all the way down the line. Steve Mufson, a reporter for The Washington Post, journeyed by car along the length of the proposed pipeline to see what this policy debate looks like at the ground level. Each segment of his trip touched on different issues: climate change and the oil sands; the U.S. energy trade with Canada; the North Dakota shale boom and its woes; prairie populism in Nebraska and pipeline politics; the Ogallala aquifer and the threat of leaks; Native Americans and their desire to protect land, water and burial sites along the old Trail of Tears; the fight of ranchers and farmers against a Canadian company's right to eminent domain; and why both oil sands producers and Texas refiners want to see the pipeline completed. As long as the world relies on fossil

fuels for transportation and industry, we will face unappealing choices. The Keystone XL pipeline serves as a larger metaphor, illuminating the vast energy infrastructure it takes to sustain the American lifestyle and the debatable choices we must make in pursuit of short-term comfort. Which risks, now and in the future, are we willing to take?

Note: This book is only available electronically. It can be downloaded to your computer, Kindle, smart phone, or other e-reader from Amazon.com instantly for \$1.99 (*if using Amazon, please remember to sign up for Amazon Smile and designate CFEBA as your charity of choice!*)

Join EBA Book Club: Every EBA Member is invited join for any or all quarterly sessions of the EBA Book Club. Let this be your inspiration to read industry-related literature at your own pace and discuss, ask questions, share perspectives and debate the book's themes and conclusions with other EBA Members.

The EBA Book Club has both virtual and physical platforms to interact with other members. Virtually, the EBA Book Club will meet under "Energy Bar Association Book Club" at Goodreads.com. Details follow:

Virtual EBA Book Club:

Please join the online EBA Book Club forum at www.goodreads.com (free registration required). Once you create an account, search for and join the Group "Energy Bar Association Book Club."

EBA Book Club Live:

In honor of the 2Q, 2014 Book *The Quest*, the Book Club's quarterly meeting will take on a quest of its own! Please join us the evening of **Thursday, August 21st** to participate in a Washington, DC Urban Adventure Quest. We will meet at **5:30 pm at Elephant and Castle**, located at 1201 Pennsylvania Ave., NW (important – there are two E&C's in DC, so please confirm the address), and will embark on the scavenger-hunt style adventure in one or more small groups no later than 6:00 pm. We will reconvene at E&C at 8:30 pm to tally scores and discuss our quest and *The Quest*. All are welcome – it is not a prerequisite to have finished (or started!) *The Quest* and/or any prior EBA Book Club books.

This event is free of charge, but please RSVP to EBABCModerator@gmail.com no later than August 19th if you plan to participate.

For more information on the DC Urban Adventure Quest, check out: <http://www.urbanadventurequest.com/tours/things-to-do/washington-dc/default.aspx>.

Coming Attractions:

Look for the 4Q, 2014 Book of the Quarter in the next edition of *EBA Update*!

Book recommendations are welcome – please email any suggestions to the Book Club Moderator at: EBABCModerator@gmail.com.

Happy reading!

Energy Law Journal: Excerpts from Past Issues

All Prior issues of the Journal are available at www.FELJ.org

Ten Years Ago

"The most effective salve for electricity restructuring would be the return of low natural gas prices and capacity surpluses. After all, these are the two factors that created the economic conditions that supported the birth of electricity restructuring in the early 1990s. These factors allowed politicians to embrace deregulatory policy as a low-risk, pro-consumer initiative. In many regions, the surplus capacity has reappeared, but it may take a long time for the low natural gas prices to return."

John S. Moot, *Economic Theories of Regulation and Electricity Restructuring*, 25 ELJ 273, 318 (2004)

Twenty Years Ago

"In both the natural gas and electric power industries, the transportation and transmission functions remain monopolies and need to be regulated in a manner that prevents natural gas pipeline companies and transmission-owning utilities from using their monopoly positions to frustrate the benefits that result from a competitive market for natural gas at the wellhead and an increasingly competitive market for electric generation. Consequently, access to natural gas transportation and electric transmission is critical to realizing the potential benefits of competitive markets in natural gas production and electric power generation. For both industries, the Commission's policy initiatives have been aimed at mitigating transportation market power by means of requiring open access transportation, i.e., the ability of third parties to use the transportation owners' system on a nondiscriminatory basis."

Donald F. Santa, Jr. and Clifford S. Sikora, *Open Access and Transition Costs: Will the Electric Industry Transition Track the Natural Gas Industry Restructuring?*, 15 ELJ 273, 294 (1994)

Thirty Years Ago

"FERC's reliance on the first-in-time rule frequently results in the award of a preliminary permit to an entity whose plans are not 'best adapted' but who is merely the applicant who was able to develop and submit a preliminary permit application first. In most instances, permit applications can be prepared with relatively little effort or expense because the technical data required by FERC can be obtained from the Corps of Engineers. Thus, this rule encourages hydroelectric developers to submit preliminary permit applications for a large number of sites without engaging in the prefeasibility studies essential to determine whether development of a site is economically practical. Instead, such studies are routinely performed by developers after a preliminary permit is issued and the resulting delay in performing such studies has led to the surrender of a large number of preliminary permits where the preliminary permit holder subsequently determines development of the site is infeasible. . . . The FERC's reliance upon the first-in-time rule thereby permits trigger-happy hydroelectric developers to tie-up potential sites for several years and precludes actual development by others."

Barbara E. Schneider, *FERC's First-in-Time Rule: An Impediment to Hydropower Development*, 5 ELJ 97, 100 (1984) (emphasis in original).

Rocky Mountain Chapter Update

On June 20, 2014, the Rocky Mountain Chapter held its Second Annual Meeting at the Xcel Energy offices in Denver, Colorado. The meeting was one-half day, starting with lunch and ending with a cocktail reception. The key energy policy advisors from each of the five member states, Colorado, Montana, New Mexico, Utah and Wyoming, gave an overview of the key energy issues facing each state and how each is addressing those issues. After a brief networking break, we heard from experts regarding how recent federal land decisions, the new EPA water rules, and carbon pollution standards are affecting all aspects of energy development in the Rocky Mountain Region. The meeting was well attended by a wide range of practitioners—public, private, in-house, firm, electric, oil & gas, and coal. We were also very pleased to have President Jason Leif attend and give supportive comments. We concluded the business portion of the afternoon by holding elections for our new officers and Board members.

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Xcel Energy

2014 Young Lawyers Summer Intern Reception

EBA members and guests came together for a lovely reception held by the Young Lawyers in honor of the CFEBA and FELJ Summer Interns.



A Special Thank You to Our Sponsors:

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Unleash nuclear power with safe, new technology already employed by the military.

power production through new technology, he holds up the United States military. He says they would hang you in San Francisco Bay if you advocated putting a nuclear power plant there. Yet, he posits that a Navy ship would be cheered in San Francisco Harbor with 8 reactors on board because of the sense of patriotism for the troops and confidence in their abilities. But he says that a civilian ship would not be allowed to come into port with any reactors. He says that the military, with 40 years of research into nuclear technology, has state-of-the-art small reactors that have promise in the commercial world if the government would allow the transference of this knowledge into the marketplace for peaceful purposes. For emphasis, he states that there is a way of “spiking” fuel so that it cannot be used for weapons but can be used for producing power. The market and the government need to work together; neither can operate successfully at cross purposes with the other, as he sees it.

He would have the nuclear industry evolve much like the natural gas industry has. He maintains that fracking of shale gas is an “old idea” that has been around since production fields first began, but that experimentation with new methods by George Mitchell with government assistance has brought this resource into a new state of development. He believes that the same can be done with nuclear power if the regulators would get out of the way. He sees



the politicians and extremists among the environmentalist groups as holding back needed progress in energy production via nuclear, coal, and other sources.

King to the Public Square: End the False Dichotomy in Public Debates

The proponents of wind and solar as nirvana versus the proponents of coal, nuclear, and gas as the preferred energy sources is a false depiction of the choices facing us, King contends. He has calculated that it would take at least 8,000 windmills to replace the New Hampshire Seabrook Plant, plus a gas-fired plant as back-up for when the wind does not blow. He likes solar panel roofs on houses, but is skeptical of the mass production and installation of solar panels. And he is “very dubious” about growing a food crop, such as corn, in order to make electricity. He has been briefed by the White House on self-generation, known as distributed generation, for both on-site consumption and for selling of any excess to utilities under mandatory avoided costs provisions of the Public Utility Regulatory Policies Act of 1978. Cheap, clean electricity production is needed to make life better, to create jobs, grow businesses, and to lessen the costs of just about everything. He does not agree that “all of the above” energy sources will flourish in the market, but he does believe that the market

-- with government assistance -- can ensure that energy production is plentiful, cheap, safe, and environmentally friendly.

As to the last topic, he warns that he “treads lightly” in the climate change/global warming debate be-

Take climate change seriously but build the Keystone Pipeline.

cause of his lack of scientific background. However, intuitively he cannot believe that the emission of billions of carbon-made effluents and coal into the air by man-made products over the decades is having no impact on the detectable melting of ice caps and increased acidity of oceans. He believes that there are knee-jerk reactions against this view when, for example, the Heartland Institute condemns a global warming report by releasing a press release minutes after the report is issued without having had the time to even read the report.

By the same token, he believes the opposition to the Keystone XL Pipeline is doing great harm to the environment by forcing the use of rails to move oil sands output and thereby pollute the air. He believes

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King, continued from page 13

that as wrong as the Canadians are to engage in oil sands production and transportation, we need to accept the practice as a fact of life and not force Canada to export its production elsewhere with worse environmental impacts globally. He would bring the Keystone oil supply to the Gulf Coast and export it. This would reduce the world oil price and “be the beginning of decoupling the global price of oil to natural gas, particularly the LNG price. It would give us a seat at the table” at helping the Europeans deal with “the craziness of the Putin regime.”

As to the sophisticated attack on the Metcalf Plant in California, Mr. King says that we have been given an “early warning” and need to act on the information in the disclosures of the FERC documents that many believe should never have come to light. He believes utility executives most likely do not collectively appreciate the need to deal with refurbishing infrastructure, providing new dimensions of security, including cyber security, and accommodating themselves to net metering and local self-generating threats to the utility business model. He says they “have a lot on their plate” and he will speak to them about it at an upcoming Electric Energy Institute meeting in Las Vegas.

Growing Up in an Energy-Less World

We asked him what got him so impassioned about energy, and were captivated at what we learned. Llewellyn King was a British colonial energy inspector’s son born and raised in Africa. In 1968, he saw first-hand the subsistence in Zambia, then-called northern Rhodesia, when people were digging trenches for sewer pipes with no electrically-driven machinery, only picks, shovels, and hammers to place platforms 20 feet deep or

more. This was “massive, physical labor” that he could not do as an 18-year-old “in pretty good shape.” He witnessed people cooking dirty meat in open fires, carrying items on poles over their back, completely without mechanical equipment, without electric lighting, and electrical means of communication. He recalled hooking a radio to a car battery. He has seen the same squalor in India before the advent of electricity. He spoke to an Indian official who told him – correctly – of how everything would change for the better once they obtained an electric grid so people will have better hygiene, be able to watch black-and-white TV, and experience a decrease in the birth rate. (“I don’t know if that is because they are watching television

“It is not a rational energy policy to start with jobs and work your way back up to a preferred energy technology.”

in the critical hours.”) He has seen the same hand carrying of poles in China in places where electricity is scarce. He believes that with electricity people achieve the “beginnings of a better day” and a brighter future, free from want, illness, and poverty. He is soon leaving to go to Turkey and knows that he will have good accommodations there precisely because electricity has long ago come to the far-away country. He calls it a “distributive genius” that you can transport your car anywhere in the world and fill up the tank with a standardized fuel so that it runs wherever you want to drive. Things we take for granted are tremen-

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Lightening Round with Llewellyn

What he reads:

“Better detective stories” He reads them not for the mystery. Solving the crime is a way of giving the book a beginning and an end – the “bookends” of the writing. But the “better” detective story gives you a sense of the culture, history, and people in which the action takes place. That is its true value. He likes Canadian crime writer Peter Robinson, and the fictional character Commissario Guido Brunetti, who solves crimes in a Donna Leon series that takes place in Venice.

Also, history and biography. Recently read a bio of Hugh Trevor-Roper, Lord Dacre of Glanton, a very eclectic English historian. And he reads a lot of World War I works. He just read Max Hastings book, *Catastrophe 1914: Europe Goes to War*. He does not like to read about the war; he reads about the politics of war and the evolution of technology since that period. He does not like to read about weaponry and did not like to look at the weapons he wrote about in *Defense Week*. He “shudders at weapons designed to blow up 18 year-olds.”

What he doesn’t read :

None of the great tomes on energy regulation, nor does he intend to write one. He keeps up with energy through the trade press and the internet (including OilPrice.com). He has followed the writings of Amory Lovins, the Rocky Mountain Institute Chairman, physicist, environmental scientist, author, and speaker.

Advice to Young People on Energy as a Career:

“Do not let other people put barriers around you.” Rejection and fear of failure should not deter you from attempting to do new things. Do not believe that you only have limited areas where you are talented. Engineers tell him they are no good at writing and then give him something to edit that is beautifully done. A striver will get lots of rejection, but that leads to success. Do not fear the rejection, and do not rest with limited success. Remember Churchill: “Failure is not fatal; success is not final.”



dous technological advances that have improved living standards immeasurably. We inhabit a “cocoon of energy,” as he puts it, with Houston and Miami only inhabited as major metropolises because of air conditioning.

He also told us that he loves the energy field because it “never stops giving and is so beneficial to mankind.” He sees energy as “part of our freedom” in large part because it allows for mobility rather than keeping people living and dying in a 100-mile radius from where they were born. Those that provide energy are performing a good in much the same way that doctors do, in his view. In addition, to him, the field of energy is “very seductive,” with its concern with geopolitics, raw materials, science, imagination, technological innovations, economics, and everyday life. As the world becomes electrified, he observes, it becomes smaller and more interconnected.

And he says he sees this fascination with energy among his news colleagues as well. He has been covering energy since 1969, when he left *The Washington Post*, to go to McGraw-Hill, started *The Energy Daily* in 1973, and sold it in 2006. He has observed that many of those who started working for his publication *Defense Week* have left to go to other outlets, including *The New York Times*, *Time Magazine*, and the Associated Press, where

they cover different subjects. On the other hand, the turnover in reporters who began working for his publication *The Energy Daily* has been far less in that they still cover energy even if they have gone to a different publication. He attributes this interest in covering energy as a shared fixation with him about how interesting and important a topic it remains.

Listening to him speak of how he has lived to see human misery alleviated with the introduction of an electric grid, and how he has seen a “golden age” followed by both misguided regulatory reforms and misguided thwarting by government of technological advancement, we came away equally enthralled about this subject. Mr. King sees the need for much more to be done to right wrongs, solve challenges, and improve lives through energy properly produced, priced, and made accessible. His writings, speaking engagements, interview broadcasts on television and radio, all do much to advance the causes that he advocates in the energy realm. We are fortunate that he helps keep the public focused and informed on the energy challenges and opportunities, even if one may arrive at different conclusions. Those of us who are involved in the energy sector ourselves do well to consider both his high praise and his misgivings.

Presenting Mrs. Smith

For the past ten years, many of you have gotten to know and worked with Michele Duehring, EBA Associate Administrator on CFEBA programs, Chapter events and much more. On June 14, 2014, Michele Duehring married Aaron E. Smith, Jr. in Columbia, MD. EBA sends congratulations and best wishes to Michele and Aaron!

We are pleased to present Mrs. Michele L. Smith to the membership!



Upcoming EBA Events

EBA Gas Primer: An Introduction to Hydropower Law and Regulation

September 15-16, 2014, JAMS Resolution Center, Boston, MA

Meet Commissioner Picker

September 17, 2014, Holland & Knight LLP, San Francisco, CA

EBA's First-Ever Canadian Meeting: *Enforcement Proceedings before Energy Regulators in Canada and the United States*

September 19, 2014, The National Club, Toronto, Ontario

NERC Compliance & Enforcement for Practitioners

October 2, 2014, GW Law School, Washington, DC

Twelfth Annual Fundraising Gala & Silent Auction

November 4, 2014, Renaissance Hotel, Washington, DC

2014 Mid-Year Conference

November 4-5, 2014, Renaissance Hotel, Washington, DC

Check the EBA Calendar for more information on any of these events or if you have any questions please contact Associate Administrator Michele L. Smith at 202.223.5625 or michele@eba-net.org.

DIVERSITY POLICY STATEMENT: The Energy Bar Association is committed to the goals of fostering an inclusive and diverse membership and increasing diversity across all levels of the Association, so as to reflect the diversity of the energy industry and the Nation as a whole. Attorneys, non-attorney professionals in the energy field and law students are welcome to join our ranks regardless of race, creed, color, gender, ethnic origin, religion, sexual preference, age, or physical disability and are encouraged to become active participants in the Association's activities.

EBA Primer Series:



An Introduction to Hydropower Law and Regulation

September 15-16, 2014

The National Hydropower Association and the Energy Bar Association are pleased to team together to present a primer on the hydroelectric industry. The purpose of the primer is to provide attorneys who are new to the practice of hydroelectric law a foundational understanding of the hydroelectric industry and how it is regulated by teaching basic industry fundamentals and core regulatory and legal concepts. The primer also provides an overview of key legal and policy issues affecting the industry today. **Full Program Schedule and Registration:** <http://www.eba-net.org/eba-primer-series-introduction-hydropower-law-and-regulation>



Optional Plant Tour

Primer Attendees are encouraged to participate in the optional on-site tour of the **Boott Hydroelectric Project**. There is an additional transportation fee of \$45 per person for the tour. The van will depart from the JAMS office at 1:30 pm and return to the Millennium Bostonian Hotel no later than 6:30 pm. *Tour participants MUST wear pants and durable close toe shoes. Tour is rain or shine so dress accordingly.*