

ENERGY LAW JOURNAL

Volume 21, No. 1

2000

CONTENTS

Editor's Page	ix
In Memoriam	xi

ARTICLES

Who Needs What, and Why? Reporting and Disclosure Obligations in Emerging Competitive Electricity Markets	1
<i>Donald F. Santa, Jr.</i>	
Universal Service in Competitive Retail Electric Markets: Whither the Duty to Serve?	27
<i>Jim Rossi</i>	
What Can We Expect From Restructuring In Natural Gas Distribution?	51
<i>Dr. Jeffrey J. Leitzinger and Steve Ostrover</i>	
Antitrust Law Regulation: A New Focus For a Competitive Energy Industry	79
<i>Ray S. Bolze, John C. Peirce, and Linda L. Walsh</i>	
Tracking Stranded Costs	113
<i>Ajay Gupta</i>	

NOTE

<i>Dayton Power v. Browner</i>	159
<i>Indianapolis Power & Light Co. v. Pennsylvania Public Utility Commission</i>	175

BOOK REVIEW

888 Annotated User's Guide to the Federal Energy Regulatory Commission's Open Access Tariff	189
<i>Reviewed by Howard E. Shapiro</i>	

SUBMITTED COMMITTEE REPORTS

Administrative Practice and Administrative Law Judges	195
Antitrust.....	211
Ethics	239
Judicial Review	243

ENERGY LAW JOURNAL

Editor-in-Chief
William A. Mogel

Articles Editors
Issac D. Benkin
Carolyn Y. Thompson
Joshua Z. Rokach

Reports Editors
Freddi L. Greenberg
Kristine L. Delkus

Book Review Editor
Julia Richardson

Notes Editors
Stuart W. Conrad
Alex Goldberg
Kenneth G. Hurwitz

Business Manager
William T. Miller

THE UNIVERSITY OF TULSA
College of Law
National Energy-Environmental Law & Policy Institute

Faculty
Marla E. Mansfield

Student Editors

Editor-in-Chief
Laneshia T. Anderson

Executive Articles Editor
Ricky Pearce

Executive Notes & Comments Editor
Brandon L. Edgington

C. Adam Buck

Articles Editor

Betsey Whiteaker

Jennifer A. Aranda

Notes & Comments Editors

Staci Smith

Regional & Special Projects Coordinator
Kimberley Davenport

Public Relations Editor
John A. Parris

Marilyn Beilke
Anna Goode*
Bryan McWilliams
Robert D. Singletary

Student Staff
Kandas Burnett
Christie Ingram
Joseph Murphy
Eric B. Swartz

John Cook, Jr.*
Kris Koepsel
Julia Sellers*
C. Chance Wright

* denotes senior staff

THE ENERGY BAR ASSOCIATION

FOUNDED 1946

OFFICERS

Robert Fleishman
President

Joel F. Zipp
President-Elect

Paul E. Nordstrom
Vice-President

Deborah A. Swanstrom
Secretary

Kevin M. Downey
Treasurer

Antoine P. Cobb
Assistant Secretary

Donna M. Attanasio
Assistant Treasurer

BOARD OF DIRECTORS

Thomas L. Blackburn
Andrea J. Chambers
David D'Alessandro
Kelly A. Daly
A. Karen Hill

Andrew S. Katz
Robert C. McDiarmid
Elisabeth Myers-Kerbal
Mary Ann Ralls

Harvey L. Reiter
Jacolyn A. Simmons
Carol A. Smoots
Elizabeth W. Whittle

The Energy Bar Association is a non-profit corporation interested in the development of federal energy law. Founded in 1946 as the Federal Power Bar Association, the Association currently has approximately 1,700 members. Included in the membership are government, corporate, and private attorneys in virtually all areas of federal energy practice. The objective of the Association is to "promote the proper administration of the federal laws relating to the production, development, conservation, transmission and economic regulation of energy." In addition to publishing the *Energy Law Journal*, the Association organizes and sponsors a number of activities, including a continuing legal education program during November of each year, as well as a program held in conjunction with the annual meeting each May which focuses on issues of current interest. The Association also sponsors a number of committees which monitor and report to the membership developments of interest. Complete membership and subscription information can be obtained from the Association at 1350 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036 or by calling (202) 223-5625.

The *Energy Law Journal* is published two times a year. Articles by members and non-members of the Association are welcome. All manuscripts should be of substantial length, not previously published, deal with aspects of federal energy law, and follow *A Uniform System of Citation*. A brief biographical statement should be included. All manuscripts should be sent to William A. Mogel, Editor-in-Chief, Squire, Sanders & Dempsey, P.O. Box 407, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20044-0407. Only manuscripts submitted exclusively to the *Energy Law Journal* will be considered for publication. The opinions expressed in the published material are those of the writers and are not intended as expressions of views of the Energy bar association. Inquires about advertising in the *Energy Law Journal* should be addressed to Mr. Miller at (202) 296-2960. The *Energy Law Journal* is indexed in the INDEX TO LEGAL PERIODICALS, The CURRENT LAW INDEX, WESTLAW, and LEXIS services.

To be cited as: 21 ENERGY L.J. ____ (2000).
© Copyright 2000 by the Energy Bar Association
ISSN 0270-9163

EDITOR'S PAGE

The new Millennium marks at least two anniversaries – the anniversary of the word “law” which entered our language in 1000 A.D.¹ and the *Journal's* 21st year of publication.

If the *Journal* were a person, a 21st birthday would be recognized as an important milestone of maturity. The same is true for this publication. However, unlike the discourse usually surrounding a newly minted 21 year old, discussion of the *Journal* should turn to the future and not be a recitation of the past. As someone who was present at the beginning (actually before the *Journal's* launch), the past certainly has been impressive, but it is the future that holds the greatest promise.

Energy law is an ever-changing discipline. Not many years ago, both electric power and natural gas were subject to pervasive regulation. Today, regulation is becoming light-handed or non-existent in order to reflect a competitive market for these energy services. As a result, energy lawyers, policymakers, consultants, and academics have to brush up on their transactional skills. Competition also has given mergers and acquisitions a bigger role in defining the “new” energy law. A third trend that affects the scope of energy law is convergence — the merging of other industries, such as telecommunications, with energy law. This list is not intended to be exhaustive, but illustrative.

Change is good because it creates the opportunity for the *Journal* to serve the dynamic needs of its loyal readers. Thus, the challenge for the future is to recognize these changes and publish the highest quality articles and notes.

Although this Page has focused on the future, we are mindful of the past. On March 2, 2000, the Law School dedicated the offices used by the *Journal's* student staff in the memory of J. Richard Tiano. More than a decade ago, Richard had the vision to establish a not-for-profit Foundation that would have a sufficient corpus so that its income could pay for the *Journal's* expenses. Richard vigorously pursued that goal while being a leading energy practitioner, serving as corporate general counsel, standing a term as President of our Association, and being the father of two lawyers. Only last year, not long after Richard's untimely death, was his vision achieved. We are ever grateful for his efforts.

William A. Mogel
Editor-in-Chief

¹ The word comes from Old Norse *lag*, which derives from Old Icelandic. The Old Icelandic meaning of the root word is “something set down” or “laid down.” “Law” appears in Middle English texts as *lach*, *laewe*, *laghu*, *laghe*, *laha*, *lau*, *lauh*, and even *laugh*. Not until the 1400's or later did the English standardize its spelling. “Lawyer” came in to use in the 1300's, as a combination of law with the suffix *-ier*, *-yer*, meaning employment or profession, possibly akin to the Latin suffix *-or*. DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* 34-35 (1963).

IN MEMORIAM

Edward S. Kirby, President of the Federal Power Bar Association during the 1978-79 term, passed away in New Jersey on December 10, 1999, at the age of 87. His likeable and approachable personality made him a popular President with many friends in all segments of the industry.

Ed was the General Solicitor of Public Service Electric and Gas Company of New Jersey. An active member of the Association from the early 1950's, he participated in landmark energy cases throughout the 50's, 60's, and 70's. These cases addressed issues ranging from the formation and supply capabilities of pipeline companies serving the Northeast to area rate proceedings, gas curtailments, and securing just and reasonable prices for natural gas at the city gate. At a time when costs were especially crucial, Ed spearheaded a group effort to control wellhead prices and sales in the famous "Catco" case, *Atlantic Ref. Co. v. Pub. Serv. Comm'n. of New York*, 360 U.S. 378 (1959).

Ed was a Marine Veteran of World War II and saw action in many South Pacific campaigns, including Guadalcanal. He was Honorably Discharged as a Major. A *magna cum laude* graduate of the University of Notre Dame, Ed also received a Masters Degree from Columbia University and a Law Degree with honors from Rutgers University.

We will miss him.

Foundation of the Energy Law Journal

CONTRIBUTORS*

Corporate/Law Firm

Sustaining

Bruder, Gentile & Marcoux, L.L.P.
Constellation Energy Group, Inc.
Ross, Marsh & Foster
Vinson & Elkins L.L.P.
Wright & Talisman, P.C.

Sponsors

Preston Gates Ellis
& Rouvelas Meeds LLP
Van Ness Feldman, P.C.
Verner, Liipfert, Bernhard
McPherson & Hand,
Chartered

Friends

Cullen and Dykman
Gallagher, Boland Meiburger
Huber Lawrence & Abell
The Southern Connecticut
Gas Co.

Contributors

Bosek Law Firm
Brunenkant & Haskell, LLP
Cabot Oil & Gas Corp.

Cameron McKenna LLP
Curtis, Mallet-Prevost,
Drennan & Associates
Gorak & Bay, L.L.C.

NW Natural
Public Service Co.
of North Carolina, Inc
Sheinfeld, Maley & Kay, P.C.
Wisconsin Public Power,
Incorporated System

Individual

Sustaining

Stephen A. Herman

Sponsors

Kenneth G. Hurwitz
Peter C. Kissel
William M. Lange
William S. Scherman
Mark C. Williams

Friends

Richard D. Avil, Jr.
Thomas F. Brosnan
Charles H. Brownman
Donald K. Dankner
Paul W. Fox
Freddi L. Greenberg
John F. Harrington
Scott Hempling
Andrea R. Hillard
Donald A. Kaplan
Peter C. Kissel
Richard J. Kruse
Becky McGee
Leslie P. Recht
William S. Scherman
David R. Stevenson
Catherine Carl Wakelyn
Mark C. Williams

Contributors

Ernest B. Abbott
Janice A. Alperin
Allan W. Anderson, Jr.
Donna M. Attanasio
Jason Autsin
George A. Avery
Richard D. Avil, Jr.
James H. Bailey
Bernays T. Barclay
David J. Bardin**
Harry E. Barsh, Jr.
Lawrence F. Barth
Kevin B. Belford
Thomas L. Blackburn
William O. Blome
David I. Bloom
Eric P. Bock
Ray S. Bolze
Sherri L. Booye
J.A. Bouknight, Jr.
John P. Bowman
Steven H. Brose

Kenneth D. Brown
Charles H. Brownman
Neil H. Butterkleee
Robert E. Cackowski
Margaret Caffey-Moquin
M. Hampton Carver
Carol Caul
David C. Champion
John Clements
David H. Coffman
Richard B. Cole
David Martin Connelly
David N. Cook
G. Mark Cook
Michael D. Cotleur
John C. Crespo
Richard D. Cudahy
Charles B. Curtis
Charles M. Darling, IV
Anthony C. DeCusatis
William D. DeGrandis
Jeanne M. Dennis

William R. Derasmo
Kimberly H. Despeaux
Hon. Romulo L. Diaz, Jr.
Heidi E. Dodd
Clark Evans Downs
Thomas J. Eastment
Rodger T. Ederer
Eugene R. Elrod
N. Beth Emery
Leslie B. Enoch, II
Peter G. Esposito
Joseph H. Fagan
David I. Fein
Diane I. Fellman
Cheryl M. Foley
Drew J. Fossum
Frances E. Francis
Robert J. Frank
Micahael J. Fremuth
Eric T. Fresch
Joseph F. Furay
Jeffrey L. Futter

Linda S. Gilbert
I. Jay Golub
David E. Goroff
Marsha L. Gransee
Gail Ann Greely
Richard C. Green
Freddi L. Greenberg
Gary E. Guy
Cheryl K. Hachman
Walter R. Hall, II
Lynn N. Hargis
Roland V. Harris
Joseph R. Hartsoe
Steven E. Hellman
John C. Herbert
Patrick J. Hester
Kelly D. Hewitt
A. Karen Hill
Thomas E. Hirsch, III
Carl D. Hobelman
James J. Hoecker
John H. Holloman, III
Marcia C. Hooks
J. David Hughes
Ernest J. Jerardi
Timothy P. Ingram
James P. Johnson
Michele G. Johnson
Patrick Johnson
Thomas G. Johnson
James D. Johnston
Paul B. Keeler
Robert W. Kehres
Michael L. Kessler
Bruce F. Kiely
M. Frazier King, Jr.
Martin V. Kirkwood
Richard J. Kruse
George R. Laidlaw
Julia A. Lake
Melissa L. Lauderdale
Noreen M. Lavan
Gary Levenson
Duke R. Ligon

William J. Madden, Jr.
Michael R. Mangham
Donegan Mann
J. Michel Marcoux
Philip M. Marston
Jay Griffith Martin
John P. Mathis
Peter K. Matt
Michael N. McCarty
James R. McCotter
Keith R. McCrea
Becky McGee
James H. McGrew
Brian J. McManus
Randolph Q. McManus
Richard M. Merriman
Richard Meyer
Rebecca J. Michael
Paul B. Mohler
H. Liza Moses
Richard J. Munsch
Kent D. Murphy
Robert J. Mussallem
C.M. (Mike) Naeve
Robert A. Nelson, Jr.
Maria Kyres Pavlou
Stephen T. Perrien
Matthew J. Picardi
David R. Poe
Patrick B. Pope
Bill Prentice
Shelby L. Provencher
Demetrios G. Pulas, Jr.
Leslie P. Recht
Steven G. Thomson Reed
Randall S. Rich
Alan H. Richardson
R. Lee Roberts
Douglas G. Robinson
Patrick C. Rock
Richard A. Rosan
A. Hewitt Rose
Jerry E. Rothrock
Sherrie N. Rutherford

Jane I. Ryan
John L. Sachs
Keith T. Sampson
Sue Ann Levin Schiff
Jonathan D. Schneider
Charles S. Schultz
Jennifer Lokenvitz Schwitzer
Peter M. Schwolsky
Andrea M. Settanni
Barry Sheingold
Charles H. Shoneman
Timothy K. Shuba
Halcyon G. Skinner
Roger E. Smith
S. Kinnie Smith, Jr.
William H. Smith, Jr.
Alice V. Sterkel
David R. Stevenson
David M. Sweet
David G. Tewksbury
Carolyn Y. Thompson
James L. Thorne
Eugene E. Threadgill
Thomas C. Trauger
Edmunds Travis, Jr.
Gregory A. Troxell
Joseph V. Vasapoli
James B. Vasile
Thomas George Wagner
Catherine Carl Wakelyn
Cheryl J. Walker
Linda L. Walsh
David B. Ward
Wendy B. Warren
Jeffrey D. Watkiss
Joseph F. Weiler
Adam Wenner
Stanley W. Widger, Jr.
Walter J. Wilkerson
Mark C. Williams
Anita R. Wilson
Joseph K. Witmer
Raymond B. Wuslich

* As of March 31, 2000

** In Memory of Reuben Goldberg

