

BOOK REVIEW

THE COURTS' VIEW OF REGULATION AT THE FEDERAL ENERGY REGULATORY COMMISSION by David W. Miller, Norland Press, 1988.

Reviewed by *John E. Holtzinger, Jr.**

Mr. Miller, a Presiding Administrative Law Judge at the Federal Energy Regulatory Commission, has organized a very detailed and helpful compilation of cases by the Supreme Court and the courts of appeals concerning the regulatory actions of the Federal Power Commission and the Federal Energy Regulatory Commission (FERC or Commission) from 1970 to July 1988. Court decisions referring to the Natural Gas Act (NGA), the Natural Gas Policy Act (NGPA), the Federal Power Act (FPA), and the Public Utility Regulatory Policies Act (PURPA) are included. Judge Miller states in the preface that his purpose was not to comment on the law but rather to objectively review the courts' decisions: "The book is essentially a collection of quotes or paraphrases from decisions of the [courts]."

FERC Regulation is divided into two "books"—gas and electric—each a three-ring binder which facilitates the insertion of additional pages. At the end of the electric book are helpful appendices—Supreme Court gas and electric cases and courts of appeals gas and electric cases—which give a chronological listing of important cases, their citations and a brief description. There is also a listing of the cases included in the text at the end of each chapter. The author warns that he has not checked these case citations to see if certiorari was sought and denied, quoting Judge Richard Posner as justification for omitting this check, noting that it is "a useless elaboration of citation form." While this may be true, the practitioner will want to check for subsequent history on the cases.

Judge Miller's treatise is so well organized and such a comprehensive listing of important gas and electric cases in one place that the practitioner will be tempted to use it as a digest. While the book is currently the best starting place for understanding and researching gas and electric law issues, it makes no attempt to analyze, reconcile or apply the cases which are included. Judge Miller composed the book by using the LEXIS computer research system to identify Supreme Court and courts of appeals cases referring to the NGA, NGPA, FPA and PURPA. This system of research does not identify contradicting applications of these acts among circuits and does not provide a systematic review of subsequent Commission applications of court decisions. An analysis of the cases reported by an author with Judge Miller's experience would have been useful but undoubtedly would have made its publication far more difficult.

One shortcoming of the book is that it begins with cases decided in 1970.

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An understanding of gas and electric law requires going back well before 1970. Some crucial cases were decided by the Supreme Court in the 1930s and 1940s. While some of these cases have been mentioned briefly in the book (for example *FPC v. Hope Natural Gas Co.* (1944); on the gas side, and *Public Utilities Commission of Rhode Island v. Attleboro Steam and Electric* (1927), on the electric side), a truly comprehensive compilation of gas law decisions would have gone back at least to the inception of the NGA in 1938.

This is not to suggest that the work is not an extremely helpful addition to the field of energy law. It will be a very welcome addition to any practitioner's library. One of the most useful features is the "Judicial Review" chapter at the end of each "book." The chapter entitled "Judicial Review of Commission Actions" in the gas book contains detailed sections on standing, ripeness, jurisdiction, standards of review, the record and interpretation. A similar section in the electric book entitled "Judicial Review" includes chapters on timely objections, mootness standards and reopening the record. These chapters give the attorney facing a Commission hearing some idea of what to expect and what is required in the administrative setting. Coupled with *The FERC Practice Manual*, *FERC Regulation* gives substance to the cold language of the convoluted statutes and guides the practitioner in realistic application of the acts' requirements.

The book also includes chapters in both the gas and electric books detailing the history and purpose of the acts regulating the industries. These chapters contain some legislative history and each chapter gives guidance in determining whether to apply state or federal regulation under each of the acts.

All in all the book is a needed and useful entrant in the field of energy law. Those wanting to fit modern gas and electric issues into historical context will find the book invaluable. While *FERC Regulation* is by no means a complete research tool, it is an excellent starting point for research and excellent background for the complex issues involved in energy law today.