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ON THE FIFTIETH ANNIVERSARY OF THE FEDERAL ENERGY BAR ASSOCIATION

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I. A PROLOGUE

In May, 1996, the Federal Energy Bar Association (FEBA) will celebrate its Fiftieth Anniversary.¹ Commencing with a handful of members in 1946, FEBA² has been an increasingly effective bar association for fifty years. In its fiftieth year, it has 1,700 members. Active participation by its members in FEBA's affairs and activities has provided strength and vitality. For example, currently about 200 members are serving on its sixteen General Committees. Eleven members are participating in the publication of its *Energy Law Journal (Journal)* in various editorial capacities, plus one member as business manager.

From its inception, its Officers and Directors have provided sound, constructive, and progressive leadership so that through FEBA's programs its members could effectively meet the challenges posed by a society with an almost insatiable demand for energy; by rapidly changing technologies in the production, transmission, and uses of energy; by expanding regulatory jurisdiction and governmental intervention on many fronts; and by expanding forms of energy services with related tariffs and revenue. A growing number of participants in the regulatory and legal processes necessitated more lawyers with energy law expertise.

* At the time of his retirement from the Columbia Gas System, Inc. in 1977, Mr. Rosan was Executive Vice President, General Counsel, Secretary, and Director of Columbia Gas and its Service Corporation.

1. This history was undertaken at the suggestion of former Presidents John E. Holtzinger, Jr., and John T. Miller, Jr., as part of the program to celebrate the Bar Association's Fiftieth Anniversary. Former President Rosan, assisted by former President Jerome J. McGrath, undertook this history. This article reflects extensive comments and suggestions from many present and past Officers and Directors of FEBA, and from Administrator Lorna J. Wilson, and from the Editorial Staff of the *Energy Law Journal*.

2. See app. A hereto for a commentary on the history of FEBA's names, the FERC's jurisdiction under the Federal Power Act, the Natural Gas Act, the Department of Energy Organization Act and the National Energy Acts of 1978.

From the outset, FEBA arranged for the dissemination to its members of essential information concerning the Federal Power Commission (FPC)—notices, orders, rulemakings, and decisions. These services were of critical importance to members in the era before the rise of many service organizations meeting the informational needs of energy lawyers and their clients.

Over the years, FEBA's expanding educational programs—conferences and workshops—and the *Journal*, as well as its committee activities, have met the need for a cross-cutting organization dealing with energy. FEBA has provided an opportunity for members to compare notes, look for universal trends and principles, and address with their peers problems outside their own area of practice. FEBA has also provided an excellent training-ground for the younger lawyers in the energy practice.

Through its conferences, committee work, and the *Journal*, FEBA has contributed enormously to scholarship in energy law and to continuing legal education. In many instances, it has sponsored the needed non-adversarial forums for exploring and providing balanced input into the sound development of new regulatory policies and procedures.

In a primarily adversarial legal system, it is essential that there be mechanisms to help maintain a common level of civility, cooperation, ethical conduct, and cordial relationships. When people can find a means of working with each other on complex problems in a low key, professional manner within a relaxed environment, far more can be accomplished. As a relatively neutral organization in areas of conflicting substantive policies and economic interests and by including social events within its educational programs, FEBA has provided the appropriate mechanisms.

Finally, in this prologue for celebration, it is not amiss to recall that providing energy, whatever the form, is of vital importance to the welfare of our nation and its people. Thus, electric power, gas and oil for residential, commercial, and industrial uses must be available in a timely and reliable manner. For these reasons, the law obligates utilities to be able and ready to provide their services upon request.

Commencing with its Twenty-seventh Annual Report (1946-47), the FPC indicated with dramatic statistics (a) the surging demand for electric power and natural gas, (b) a continuing "close race between supply and demand" for both services, and (c) shortages of natural gas supply in the Appalachian and Middle West markets necessitating emergency service rules (order of rationing supply to customers). These circumstances were an important catalyst for establishing FEBA.

Federal and state regulation has an important role in the complex process of making energy available. Members of FEBA have been, and will continue to be, prominently involved in the regulatory process, as well as in many of the other steps required to provide energy. In significant ways, FEBA has assisted its members to fulfill their role in a credible and effective manner. Thus, FEBA has been a constructive force in helping to meet our nation's energy needs. For this, there is much to celebrate on FEBA's Fiftieth Anniversary.

II. THE FOUNDING OF FEBA

FEBA resulted from the recognition, by a group of active practitioners before the FPC, of the unprecedented demand for energy—particularly electric power and natural gas—in the immediate Post-World War II period. They foresaw the increasing scope of the FPC's regulation as the movement of energy across state lines accelerated and the Natural Gas Act's extensive impact on the interstate transmission and sale of natural gas—a relatively new industry. They had concerns that the demands for electric power and natural gas would not be met in a timely manner under the existing procedures and administration of the FPC.³

The idea for a bar association was spearheaded by Carl I. Wheat, a Washington lawyer representing natural gas clients, and C. Huffman Lewis, a Shreveport, Louisiana, lawyer with natural gas clients. Subsequently, they were the first and second Presidents, respectively, of FEBA.

Wheat and Lewis gathered a group of active practitioners before the FPC to consider forming a bar association. In addition to Wheat and Lewis, the group included Robert E. May, Tom J. McGrath, Richard J. Connor, and Stanley M. Morley, who acted as secretary for the group and subsequently was the first Secretary of the Association. Several others may have been involved—*e.g.*, Charles V. Shannon, John Scott, and possibly J. Ross Gamble. Except for Gamble, the individuals comprising the group were lawyers primarily involved in practice before the FPC on behalf of natural gas clients. Mr. McGrath represented the coal and railroad industries as an intervenor in pipeline expansion proceedings to protect the coal and railroad industrial markets, particularly coal-fired power plants.

The electric industry had a longer history of dealing with the FPC under the Power Act than the gas industry under the Gas Act. FEBA's third president, Randall J. LeBoeuf, Jr., from New York City, had several major electric utility clients, some of whom also distributed manufactured gas and one of whom had been seeking a natural gas supply from the Southwest for its total gas needs. Accordingly, it seems highly likely that his advice was solicited.

The discussions among the Founding Group continued for six to twelve months in 1945-46. The specific subjects considered are not documented. However, it is most likely that some or all of the following subjects were considered.⁴

3. In checking FEBA's archives, few records or reports prior to 1952 were found. However, several past and current practitioners knew members of the Founding Group and generally support the discussion under this heading. In addition, a number of past officers and members of FEBA provided specific comments on FEBA's contributions to the energy bar and their clients' interests. In the interest of a less legalistic narrative, it was determined not to attribute and place in quotations the text of these numerous and excellent comments which have been woven into this history. Such information has been exceedingly valuable and much appreciated.

4. The growth in service demands on the electric and gas industries in the post-World War II period was most severe. Extensive new facilities to either create and/or transport energy were essential. The growing delay in the regulatory process was extremely frustrating to these industries and their lawyers—especially where lengthy Staff audits, lengthy hearings caused by Staff's insistence on "building records," and bureaucratic delay suggested a seeming lack of appreciation of the urgency for

A. *An Urgent Need To Expedite the Regulatory Process*

As suggested in the prologue, our nation and its people expect essential utility services to be available on demand. In the late 1940s, such capability seemed an unlikely possibility. The FPC's Twenty-seventh and Twenty-eighth Annual Reports (1946-48) recognized that the pipelines serving the Appalachian and Middle West markets had seasonal supply shortages and emergency service rules would be required for the allocation of available supplies among the pipelines' customers.⁵ Until major expansion of pipeline capacity from the Southwest was certificated and then constructed, it seems likely that the Founding Group and their clients had grave concerns as to how deep such shortages might become under the FPC's procedures and as to the legal consequences to pipelines and, in turn, their utility and industrial customers.

Additional pressure for expanded pipeline capacity from the Southwestern gas fields came from utilities serving manufactured gas along the Eastern Seaboard. Initially, some eastern gas utilities had been seeking natural gas supplies to mix with their manufactured gas as an economical means of expanding supply, and incidently their distribution system's capacity by reason of natural gas heating value of 1,000 Btu/cubic foot compared with manufactured gas heating value of about 550 Btu/cubic foot. For the longer term, these utilities sought to convert to straight natural gas.⁶ These utilities were confronted with significant manufacturing cost increases which would be substantially eased by obtaining natural gas. To meet such market demands along the Eastern Seaboard required major

accelerated action. The FPC's Annual Reports to Congress for Fiscal Years 1946-47 to 1953-54 provide an excellent overview of the expanding energy demand, capacity shortage, and the mounting backlog of unresolved proceedings. Some procedural changes were made by the FPC, most probably because of pressure from the Bar and their clients. However, as to regulatory delay, the 1947-48 Annual Report stated: "In comparison with this major obstacle (acute nationwide shortage of steel for pipe) all procedural delays were relatively unimportant."

5. The FPC Twenty-eighth Annual Report discussed two hearings on emergency service rules because the gas supplies (capacity) of several large natural gas pipelines were "far short of seasonal demands." According to the Report, one hearing involved six pipelines, thirty-six distribution utilities, and twenty-six industrial customers. The hearing took forty-five days with ninety-seven witnesses, 7,600 pages of testimony, and 210 exhibits. The second hearing involved one pipeline but a large number of distribution utilities and industrial customers. The hearing took thirteen days.

6. This table sets forth in billions of cubic feet the expansion of natural gas utility sales and the demise of sales of manufactured gas:

YEAR	NATURAL GAS	MANUFACTURED GAS	MIXED GAS
1946	2,195 Bcf	405.3 Bcf	114.8 Bcf
1950	3,850 Bcf	221 Bcf	128.3 Bcf
1955	6,334 Bcf	45.7 Bcf	304 Bcf
1960	9,288 Bcf	12 Bcf	215 Bcf
1965	11,980 Bcf	—	—

RICHARD A. ROSAN, REGULATION OF THE GAS INDUSTRY § 3.01 (American Gas Assoc. 1995). The table suggests how the early history of FEBA coincided with the growth of natural gas as an important supplier of energy. The electric power industry had comparable growth.

pipeline capacity from the Southwestern producing areas. One of the early post-war projects was the Transcontinental Gas Pipe Line Corporation certificated in 1948 to build an 1,800-mile line from Texas/Louisiana to New York City.

The demand for electric power was imposing comparable supply problems. Applications for hydropower licenses expanded as power companies used every available means to add generating capacity. The power industry's efforts were almost unbelievable—as of June 30, 1948, installed electric capacity was 65.6 million kW, and as of year end 1952, utility and industrial capacity had reached 97.3 million kW and annual production of 463 billion kWh!

In its Twenty-seventh Annual Report (1947), the FPC was encouraging the power companies to establish emergency interconnections as a means of having available generating capacity equal to the estimated peak loads. In its Thirty-third Annual Report (1953), the FPC commented on the “intensive study being given to the interconnection” and “coordination” of electric utility systems.

As early as 1945-46, it was evident that the FPC's procedures needed reform to process the surging workload in a timely fashion. The Founding Group must have explored whether a bar association could make a positive contribution to the regulatory process. As one former FEBA President suggested regarding the FPC's processes, the key thought at the time was “expedite.”⁷

B. The Need for Current Information

In the FPC's fiscal year 1946-47, 1,934 formal documents were filed with the FPC; 1,234 orders were issued. The next year, the FPC reported that the number of formal filings of all types nearly doubled, and the number of notices and orders served on individual parties to proceedings rose to “nearly 60,000” compared with 17,000 in the preceding year.⁸ The existing distribution of essential information and actions at the FPC to the energy bar, in and out of Washington, was wholly inadequate. Many Washington law offices with energy clients systematically obtained at the FPC copies of all documents issued, and indexed and filed the FPC's notices, orders, and decisions and relevant court orders and decisions. This effort was necessary to have applicable procedures and precedents to cite. In many cases, copies of pertinent documents or memoranda as to FPC actions were provided to their clients outside Washington.

The problem of keeping up with FPC activity, or lack thereof, on pipeline matters before the FPC became increasingly difficult. As a result, commencing in the early 1950s many pipelines and some larger utilities

7. The FPC Thirty-third Annual Report (1952-53) commented on the effect of continuing growth in the demand for utility services upon FPC's workload and the “sometimes disproportionate rise in some of the ‘by-products’ of expansion, such as rate increases, security issues, accounting matters, etc.”

8. In the 1946-50 era, these increasing numbers are more significant than a current reader might appreciate—no word processing equipment for producing documents; no Xerox or other techniques for rapid reproduction of documents; and no Fax or Federal Express to distribute them.

established offices in Washington with legal and engineering staffs, a major function of which was to keep corporate headquarters informed almost on a daily basis of FPC actions. The other major function was to expedite the FPC's processing of pending applications.

The Founding Group probably concluded that a bar association could resolve in some manner this inadequate dissemination of essential information.

C. *The FPC's Inadequate Facilities*

From 1945 until 1953, the FPC's offices were located in the Hurley-Wright Building at 1800 Pennsylvania Avenue, N.W. This old, seven-story building was, to say the least, drab, uncomfortable, and wholly inadequate. The only hearing room occupied the seventh floor; air conditioning consisted of opening windows and circulating air with several small fans, hardly adequate during Washington's summer months. The quarters were wholly inadequate for the FPC's staff, even though it had been downsized despite the FPC's mounting business. The lawyers' dissatisfaction with the conditions under which they had to practice—almost all proceedings involved a hearing and conferences—reached a stage of outrage. The Founding Group undoubtedly concluded that a bar association could assist the FPC in obtaining better quarters.

D. *The Decision*

During a dinner at the Old 823 Restaurant on 15th Street, N.W., the Founding Group concluded that there was a need for a bar association and agreed to move ahead with its formation. It is believed that this decision was cleared with the FPC Commissioners, or at least with the Chairman.

The decision has stood the test of fifty years—fifty years of turbulent administrative, judicial, and legislative activities. Most significant, despite the crowded calendar of events, FEBA has stayed on the course of helping its members contribute toward a more responsive and informed regulatory process.

III. FEBA'S PURPOSES

The revised Articles of Incorporation, approved on May 9, 1985, and filed July 8, 1985, incorporated in Article Third the purposes and objectives of FEBA since its inception. The evolving means of achieving such purposes and objectives were also included.

The artfully drafted Article Third provides that FEBA is "organized exclusively for the purposes of promoting the *proper administration* of federal laws relating to the production, development, conservation, transmission and the economic regulation of energy." (Emphasis added.) Six clauses follow describing the types of permissible activities to achieve FEBA's purposes. Significantly, the "*proper administration* of federal laws" relating to energy is the key purpose. This follows logically from the concern relating to the FPC's delays in handling the expanding workload.

This provision limited FEBA's activities in an important respect. It excluded the taking of positions on industry policy issues. That there was an intention to effect that limitation is apparent from the following clause: "presenting the views of the Association on regulatory *procedures* and *administrative* matters to Federal agencies and departments, and to Congress." (Emphasis added.)

As one reflects on its past fifty years, the wisdom of the Founding Group is fully supported. The limitation precluding the taking and advocating positions on substantive policy issues and legislation has undoubtedly contributed to FEBA's fifty successful years. The long, bitter debates on deregulation of gas producer prices offer an outstanding example of the value of FEBA's policy. FEBA's Annual and Mid-Year Meetings provided a forum for those debates. However, because of its neutral position on the substantive policy issues, FEBA avoided any significant dissension within its membership.

IV. FEBA'S MEMBERSHIP

The membership data tabulated below was taken from the minutes of the Executive Committee, FEBA's mailing lists, and FEBA's current records.⁹ Since the membership reports were on different dates within these years, there is a slight distortion in comparing membership growth for the periods noted.

GROWTH IN MEMBERSHIP

1955	—	234	1979	—	1,074
1958	—	473	1980	—	1,117
1960	—	555	1982	—	1,347
1961	—	633	1995	—	1,700

There is no hard data concerning membership prior to 1954. One contributor to this history estimated that less than 100 persons attended the Fifth Annual Meeting Banquet in 1951. The dinner speaker was an official from a Federal agency other than the FPC.

Little purpose would be served to speculate on which specific events stimulated application for membership. However, the following circumstances and/or events had, it is believed, significant impact on the growth in membership:

9. The officers of FEBA have been conservative on dues. The initial dues of \$7.50 were increased to \$10 in the early 1950s and then to \$15 in 1967. At the Annual Meeting in 1968, the Treasurer indicated a possible cash crisis because of the increasing cost of obtaining and distributing informational material to members. Thus, the dues of \$15 might not be adequate. The Executive Committee was given the power to levy an assessment of \$10 per member "if the dues were inadequate to meet FEBA's expenses." While the levy was not assessed, in 1980 the dues were set at \$30. The dues remained at that level until 1982, when they were raised to \$35. The expanded services provided by FEBA, necessitated the employment of a full-time Administrator. The current dues are \$80 for private practitioners and \$40 for government employees and academic lawyers.

(1) The continuing demand for additional electric power and natural gas in the 1950s and 1960s. The extension of natural gas services to many new areas of the nation was a cause for membership. The expansion of facilities and greater service demands raised the cost of doing business. The rise of rate case activity created an expanding group of interested participants represented by lawyers.

(2) In 1954, the Supreme Court in *Phillips Petroleum v. Wisconsin*¹⁰ held that producer prices for gas moving in interstate commerce for resale were subject to FPC price regulation. In fiscal year 1954-55, 10,000 producer rate applications were filed with the FPC. For twenty-three years, the FPC struggled to find a viable approach for fulfilling its obligations under *Phillips*. The extent of the legal activity generated by *Phillips* is difficult to quantify, but it was definitely very significant and had an impact on FEBA's membership.

(3) Regulatory issues kept expanding—accounting issues, and rate treatment of new tax issues such as liberalized depreciation, and pricing of a pipeline's own production.

(4) In the 1969-71 period, a gas shortage began to develop as drilling declined and/or diversion of gas from the interstate pipeline market increased. Demand for additional natural gas supply kept expanding because gas prices were very favorable vis-a-vis competing fuels. By 1970, the FPC was confronted with the need for pipeline curtailment regulations. The issue generated much controversy and litigation, culminating in 1973 in a General Statement of Policy in Order Nos. 467-A and 467-B prescribing specific curtailment priorities. Some curtailment proceedings extended as long as eight to ten years, including appeals and remands. This area of FPC work was further compounded by judicial findings in the early 1970s that an environmental impact statement had to be incorporated in curtailment decisions.

(5) Intense competitive pressures between the electric and gas industries in the early 1960s gave rise to antitrust complaints—a new field for energy lawyers.

(6) Finally, the National Energy Act of 1978 gave rise to scores of rulemakings and extensive appellate court and legislative actions. The administration by the FERC of these acts, especially PURPA and the NGPA, gave rise to a need for a substantial number of energy lawyers.

From the above recital of *some*—and the word *some* is emphasized—of the expanding regulatory and appellate court issues, the increasing number of energy lawyers and FEBA members is quite understandable.

One former President observed that he currently tends to look at FEBA as an organization that has passed through an evolutionary process which has taken it far above its origins, serving in the process to make (1) administrative procedures more efficient and better understood, and (2) the members of the energy bar more capable of performing their duties.

10. 347 U.S. 672 (1954).

As a result, the broadened membership now includes lawyers from all branches of the energy field.

At the January, 1978, Executive Committee meeting, there was extensive discussion on permitting and encouraging FEBA membership to government lawyers. Some concern was expressed that such membership might be inconsistent with the *ex parte* or conflict of interest rules of the Department of Energy. However, a motion was moved and adopted that government lawyers be permitted as members if they otherwise qualify. This was a definite step in broadening the membership base of FEBA.

In 1980, President Brosnan urged that efforts be made to broaden further the base of members. As a result of an intensive membership drive, 236 lawyers from various segments of the energy field became members between 1980 and 1982. The transfer of jurisdiction over oil pipeline from the Interstate Commerce Commission to the FERC also contributed to this expansion in membership.

The significant growth in membership and the strength and diversity of such membership can be summed up by noting: Some 275 law firms located throughout the country have one to twenty-five members of FEBA. Forty-seven energy producers (oil and gas), fifty-two electric utilities, forty-nine pipelines, and forty-five gas utilities have members of FEBA on their staffs. Numerous trade associations, service corporations, federal and state agencies, and regulatory bodies have members on their staffs. Three Canadian provinces and numerous colleges, universities, and financial organizations have members on their staffs.

The foregoing demonstrates the broad spectrum of FEBA's current members' interests. The law firms with one or more members are widely disbursed. Washington, D.C., firms constitute a majority of the 275 firms represented, although in numerous cases the firm may be headquartered in another state. A significant number of firms are located in Texas, Louisiana, New York, California, Illinois, Michigan, Kansas, Alabama, Georgia, and Massachusetts.

As noted earlier, FEBA's strength is derived, in large measure, from its members' active participation in its affairs. Currently, about 225 members are involved as officers, directors, editors of the *Journal*, and members of FEBA's sixteen general committees.

A. *The Women Lawyers' Role*

Membership by women lawyers has a lengthy history. In 1954, Louise Powell was elected Secretary. FEBA's records indicate that in 1961 four women were dues-paying members. From that beginning, women lawyers have been increasingly active in FEBA's affairs. For many years, women have served as Secretaries of FEBA and in numerous cases as Vice Presidents. In 1995-96, four of the seven Officers were women; ten were Chair or Co-Chair, one was Vice-Chair, and thirty-six participated as members of general committees.

In 1991-92, after many years of devoted work as FEBA's Secretary and Assistant Secretary and on committees, Sheila S. Hollis served as

FEBA's President. Subsequently, she has served as FEBA's representative in the ABA's House of Delegates. She noted that, as the first woman to be honored by the FEBA Presidency, FEBA has provided a positive symbol to young women entering the energy law field. The President-Elect for FEBA's fifty-first year is Jennifer N. Waters.

B. The Quality of Membership

Over the years, FEBA's members included a large number of men and women who were not only outstanding professionals but individuals with broad perspectives on the proper role and administration of regulatory law in an increasingly complex social and economic setting. These individuals exhibited concern for fostering a well-informed, competent energy bar to handle such complexities. The programs of FEBA which these individuals have helped to create and support has provided the continuing means by which FEBA has met the expanding legal expertise needs of its members and their clients.

V. FEBA'S CURRENT MAJOR CONTINUING PROGRAMS

To a large degree, these Programs are interrelated. For example, publishing the Committee's Annual Reports is an important feature of the *Journal*; on the other hand, publication of the Reports has raised the level of the quality of these Reports (both as to substance and form). The excellent articles and notes, Reports, and the Cumulative Index make the *Journal* a most valuable research resource on the continuing evolution of energy law.

A. The Annual Meeting and Conference

Information concerning the first eight Annual Meetings is very sketchy; however, extensive notes are available from the Ninth Annual Meeting on March 1, 1955. The Meeting was called for 4:15 p.m. At 2 p.m., the Executive Committee met and considered and/or acted on various matters including:

- (1) Dues for the calendar year were set at \$10;
- (2) Approved a survey of members concerning changes in FPC's Certificate Rules;
- (3) The Committee on Publications reported that Volume 10 of the FPC Reports (1951) was available and Volume 11 in the process of preparation. The Report noted that FEBA had arranged with the FPC to have court opinions/decisions obtained promptly for mailing to members.
- (4) The Publications Committee Report noted that the FPC's Litigation Calendar was sent to members in February. The Executive Committee proposed that FEBA get copies of Notices of Proposed Rulemaking and of changes in FPC Rules and Regulations for mailing to members.
- (5) The meeting discussed rate problems associated with tax amortization, and referred to the Committee on Certificates and Rates, FPC's proposed rule at R-133 providing a fee schedule for certificate authorization and for permits.

Attached to the minutes of the Executive Committee meeting was a list of the following Special Committees: Certificate and Rates, Publications, Tax Amortization, Revision of Rules of Practice and Procedures, Rules Governing Rate Filings, and Docket No. R-136.¹¹

The Annual Meeting followed at 4:15 p.m. Election of Officers was held. It was reported that FEBA had 234 members.

Considerable discussion by officers, committee members, and members related to revisions of the FPC's Rules of Practice and Procedure. During the discussions, it was suggested that the problems were not so much with the Rules as a matter of administration. Present members of FEBA who practiced before the FPC in 1954 and thereafter, suggested that, based on their experience, there was a lack of urgency in handling expeditiously relatively routine, as well as major, dockets. The use of administrative (non-hearing) measures to resolve issues was not always enthusiastically supported by the Staff.

Comment from the floor suggested FPC opinion and order writing should be done by others than the Staff personnel engaged in the proceeding. This concept—separation of the Staff's adversarial and adjudicatory functions—became a continuing matter pursued by FEBA.

Some members asked whether FEBA could do something about the FPC's lack of responsiveness on proceedings remanded by appellate courts.

At the Annual Banquet following the meeting, the guest list included seventy-three FPC Commissioners and Staff. This information suggests that the custom of inviting members of the FPC and Staff has a long history.

The format of the Ninth Annual Meeting was, it is believed, the general procedure that had been followed for the Annual Meetings. It indicates a close working relationship between the Executive Committee and the appointed special committees monitoring the regulatory issues. On major committee recommendations, it provided a means of presenting them promptly at the following Annual Meeting. It is not clear whether committee reports were written and available for distribution to the members at the Annual Meeting.

An important change in the format of the Annual Meeting occurred at the Eleventh Annual Meeting (1957). President Littman suggested to the Executive Committee that, on the morning of the Annual Meeting, there be a two hour session (10 a.m. to noon) for a "debate" on some specified issue. The afternoon session would follow the procedures described above for the Ninth Annual Meeting. The suggestion was adopted, and a three person committee was appointed to arrange for the morning debate. This was, it would seem, the first "program" committee.¹² The records are silent as to the specifics of the debate.

11. Docket No. R-136, 13 F.P.C. 1166 (1954) proposed regulations implementing the Hinshaw Amendment to the Natural Gas Act which added subsection (c) to section 717 of the Act.

12. Since that beginning, the Programs and Meetings Committee has greatly expanded—both in numbers and scope of work. The expanding number and scope of issues confronting the Electric Power and Natural Gas industries present the Committee with an imposing assignment and responsibility. An

Several other matters at the Eleventh Annual Meeting deserve mention:

1. Proposed Enlargement in FEBA's Purposes

In the course of giving the Report of the Committee on Rules governing the filing of rate increases, the Committee Chairman recommended that:

The Association and the Executive Committee consider seriously whether the Association should take a more active interest in substantive, as well as procedural, matters to accomplish the objectives of regulation at a reasonable cost.

He pointed out that the American Bar Association "does not hesitate to get into the realm of substantive law." This proposed enlargement of FEBA's purposes was apparently not formally considered. The proposal was never adopted.

2. President Littman's Retrospective

Retiring President Littman's review of FEBA's actions during his term provides insight as to FEBA's activities in the last half of the 1950s:

- (i) The program of mailing information to members was expanded;
- (ii) The President's Statement supporting the ABA's position that Title V of the Independent Office Administration Act of 1952 (fees and charges for filing documents, etc.) should be repealed was filed with the Senate Appropriations Committee;
- (iii) FEBA filed, in Docket R-149, the Report of its Special Committee on Certificate Rules and Rules Governing Rate Increases;
- (iv) The FPC's General Counsel was requested to undertake having the FPC's Reports updated and published as soon as possible;
- (v) The President described the current activities of the Special Committee on the Revision of the FPC's Rules of Practice and Procedure; and
- (vi) The President had sent a letter to the FPC's Chairman with respect to insufficient notice for intervention in certificate proceedings;

Clearly, the Eleventh Annual Meeting was a landmark in FEBA's educational efforts. The distribution of important FPC notices, orders, etc., and committee reports had been, up to this time, FEBA's major informational and educational efforts. The introduction of a debate on pertinent issues at the Annual Meeting was the first effort to provide a forum to discuss in depth the increasingly large number of substantive regulatory issues confronting the electric power and gas industries. Accordingly, the concept of a symposium or seminar as part of its Annual Meeting continued. It is believed that until 1981 the educational portion of the Annual Meeting was limited to the morning and possibly a luncheon speaker. In 1981 the records noted that, for the "first time, the educational portion

interesting experience for the Committee occurred in connection with the educational part of its May 3, 1968 Annual Meeting. In December, 1967, there were three days of argument before the United States Supreme Court on the Permian Basin Area Rate Case. The Committee's Chair, Frederick Moring, heard the argument and decided that it deserved prominent billing at the Annual Meeting. A panel of leading practitioners was assembled to discuss the Supreme Court decision. Fortunately, for the Committee and Chair, the Supreme Court decision came down on May 1, two days before the meeting.

encompassed the whole day." The business meeting (election of officers and directors and financial matters) was compressed into a relatively routine half hour meeting between the end of the educational program and the reception and banquet.

B. The Annual Reception and Banquet

From FEBA's earliest history, it was the practice to have a banquet following the Annual Meeting. This has continued to the point where the reception and the banquet have become an important function of FEBA. Comments from numerous past officers and members give this function a high place among FEBA's programs. One past President indicated great appreciation for FEBA's consistent attention to the specialized needs of its members and their clients via timely educational programs and the *Journal*. However, in his view, the Banquet is the most valuable component of FEBA's total program. Specifically, the current tradition whereby a Commissioner of the FERC—usually a new member—gives a humorous, but genuine, account of his or her experience with the other Commissioners, the Staff, the FERC's policy agenda, and the people representing the regulated entities. These presentations have featured some clowning by the speaker. Numerous memoirs of such clowning were cited—the late Ray O'Connor's gusto when he stormed up to the head table and ejected his masquerading assistant who had just been introduced as Chairman; Commissioner Terzic's presentation on "Lake FERC Begone" at a time when the demise of the FERC was an idea getting serious Congressional attention; or the extremely hilarious interplay between Commissioner Holloman and the late Don Smith. Another former President described the Banquet as extremely mercurial and unpredictable—where humor is unleashed; where numerous bad jokes fly by; where Commissioners let down their facades, even if just for a moment; and where the guests have "the most fun we can still legally enjoy in the practice."

In the view of many, the Banquet and the presentations by Commissioners have done more to bring about "understanding" between FEBA members and the Commission and its Staff than any other program. The Banquet has provided FEBA with an opportunity to promote a rare kind of fellowship among government regulators and those representing the regulated community. This fellowship has nurtured an environment in which the two sides are more likely to understand and appreciate each other's position. One commentator found unique and wonderful FEBA's gracious and proper tradition of honoring former Commissioners, Staff, and past Bar Presidents.

The Annual Meeting for the effective management of FEBA's business, the scholarly symposia, the enjoyable Reception and Banquet, and the fellowship of the Golf and Tennis Programs are important parts of FEBA's traditions and history.

C. *The Energy Law Journal*

Even before the first issue of the *Journal* was published in the Spring of 1980, its existence was in the thoughts, and possibly the dreams, of many FEBA members.

The *Journal's* beginnings can be traced to the now extinct Publications Committee. Before its chairmanship was assumed by William A. Mogel in 1979, the Publications Committee's function was to assemble, duplicate, and distribute the various reports submitted by FEBA's several committees. If it had an editorial role, the Publications Committee was limited to format and style changes to the Committee Reports.

On June 8, 1978, FEBA's Board appointed a Special Committee to report on the desirability of a publication to further serve the needs of the membership, as well as that of attorneys, judges, state and federal officials, and consultants. On January 8, 1980, the Board quickly accepted the Special Committee's report proposing to publish a scholarly journal of law review quality articles. The journal would also include FEBA's committee reports.

In short order, funding was authorized and Bill Mogel was appointed Editor-in-Chief. He assembled a blue ribbon panel of a dozen lawyers to serve as the *Journal's* first Editorial Board.

The inaugural issue of the *Journal*, Volume 1, appeared in May, 1980. It contained 232 pages and featured five lead articles on such diverse subjects as:

- The Emergency Federal Role in Gas
Distribution and End Use Regulation
- Beyond the Stopwatch: Determining Appellate
Venue on Review of FERC Orders
- Interlocking Director Positions: An Area
of Concern for Electric Utilities
- Hydroelectric Facilities Licensing—a FERC
Jurisdictional Primer
- The FERC Adjustments Process Under
Section 502(c) of the Natural Gas
Policy Act of 1978

Volume 1 also included ten Committee Reports (pp. 107-232) and three pages of advertisements.

In the President's Message in Volume 1, No. 1, then-President Tom Brosnan prophetically wrote:

With this *Journal*, the Federal Energy Bar Association inaugurates a new publication with the potential for becoming a significant legal periodical in the field of energy law. More than 1,000 lawyers specializing in all aspects and applications of energy law are members of FEBA. From this considerable reservoir of talent and experience, we have the resource to produce a continuing flow of scholarly and provocative articles for future editions. Certainly, there is no lack of subject matter; it grows exponentially.

Given the success of the Inaugural Issue, FEBA's board quickly authorized and provided funding so that the *Journal* could be published twice a year.

Beginning with Volume 2, the *Journal* expanded its scope by including notes and book reviews. The Spring issue of Volume 3 saw the publication of an index, prepared by Peter Kissel. The Cumulative Index now is a standard feature which has grown with each year of publication. In addition, during the early years, the efforts of many resulted in the *Journal* attracting advertising and increasing its circulation to non-members.

By the fourth year, the *Journal* had almost 2,000 subscribers. In that year's Editorial Page, Bill Mogel wrote:

Upon this celebration of the *Journal's* fourth anniversary, it also is appropriate to examine whether the *Journal* is a factor in that body of law described as Energy Law. By most measures, the answer is yes. The *Journal* is cited by scholars and practitioners. The *Journal* is subscribed to by a large number of law schools and public law libraries. The *Journal* receives numerous manuscripts seeking publication. Various indexing and microfilming services include the *Journal*. The *Journal* even was the subject of an attempted imitation. The future of the *Energy Law Journal* only is as good as its next issue. Meaningful articles always are needed. Good editors continually are necessary. Advertisers are essential. If the vigor, intelligence, and experience of those contributing in the past to the publication of the *Journal* continues, the future is welcome.

At the end of the fourth year of publication, the *Journal* had published 1,561 pages, containing thirty-nine lead articles and notes, seven book reviews, and forty-nine Committee Reports. In addition, new subscribers were from both western Europe and the Orient.

One of the most important events in the life of the *Journal* occurred in 1986, when Professor John Lowe proposed a partnership between the *Journal* and the National Energy Law and Policy Institute (NELPI) of the University of Tulsa College of Law. The proposal had a dual benefit: it would provide the *Journal* with "student power" to do "Bluebooking," proofreading, and other needed tasks. In turn, the students would gain the experience of working on a law review and the opportunity of having their writings published as notes. With little debate, the proposal was adopted, and an arrangement was signed with NELPI. After a competition, the first Board of Student editors was selected and helped produce Volume 6. This remarkable association with NELPI continues.

The sixth year of the *Journal* life saw another significant milestone. Richard Tiano, sensing the need to give the *Journal* a firm financial base, which ultimately would enable it to be independent of FEBA's support, proposed the establishment of a foundation. Consensus quickly was achieved and the Foundation of the Energy Law Journal was created. Since its inception, the Foundation and its talented Board of Directors have solicited tax deductible contributions from individuals, law firms, and corporations, in order to insure the economic viability of the *Journal*. In addition, at the time of FEBA's Annual Meeting in May, the Foundation sponsors a reception that both honors FERC's Administrative Law Judges and serves as a fundraiser.

By its eighth year of publication in 1987, the *Journal* reported on three achievements. First, it had more than 2,000 subscribers in the United

States, Canada, New Zealand, West Germany, England, Japan, France, Italy, and the Philippines. Second, the Foundation had accumulated a *corpus* of \$51,000. And, finally, a permanent Board of Editors of outstanding practitioners had been assembled. The Board included David Benkin, David Bloom, and Freddi Greenberg, all of whom have continued to serve the *Journal* for more than a decade.

In its ninth year, the *Journal* achieved two milestones. First, under the vigorous leadership of Richard Tiano, the *corpus* of the Foundation surpassed \$100,000. Second, the authors of lead articles expanded from members of the Association to, in Volume 9, No. 1, a law school professor, an FERC administrative law judge, and the general counsel of a major electric utility.

On the occasion of the *Journal's* first decade of publication, Bill Mogel wrote in the Editor's Page:

Circulation has reached an all-time high of 2,285; Foreign subscribers reside in Japan, West Germany, Canada, England, Spain, Taiwan, the Philippines, Italy, New Zealand, and Brazil; Citations to the *Journal's* lead articles and notes regularly appear in court opinions, law review articles, briefs, and administrative decisions.

By its thirteenth year of publication, the *Journal* had published a body of lead articles, student notes, book reviews, and Committee Reports so that the Cumulative Index had grown to 33 pages. Equally important, the *Journal's* pages reflected the changing nature of energy law. Several lead articles dealt with international energy issues as well as topics that were not exclusively FERC subjects, such as the Energy Policy Act. The *Journal's* "teenage" years witnessed another important milestone. Academics discovered the *Journal* and became enthusiastic and thoughtful contributors.

At the beginning of the fifteenth year, it was written in the *Journal*:

The challenges of 1994 and beyond coincide with the *Journal's* commencement of its fifteenth year of publication. Always guided by the touchstone to chronicle significant energy law developments, the *Journal* also must look to the future. What issues will our readers (or their clients) face as we rush toward a new Century? For the electric and natural gas industries, the sea-changes resulting from the Energy Policy Act, Order No. 636 and FERC's attempt to resolve stranded costs, standardize EBBs and grapple with gathering are some of the immediate issues. Beyond this horizon, are international energy projects and important state regulatory issues. Such an agenda will occupy our readers and should provide ample basis for lively discussion in this publication.

By late 1994, the Foundation had accumulated a *corpus* approaching \$500,000. Looking back at the more than 7,500 pages published by the *Journal* from its beginning to the close of 1995, it can be concluded that the dreams of many have been fulfilled and FEBA and its members can be proud of its sponsorship of this important publication.¹³

When commenting on FEBA's activities and programs, numerous FEBA members included the *Journal* as a major contributor toward fulfil-

13. The foregoing history of the *Energy Law Journal* was written by Bill Mogel, who has guided the *Journal* as Editor-in-Chief since its inception.

ling FEBA's charter "purposes of promoting the proper administration of federal laws relating to the production, development, conservation, transmission and the economic regulation of energy."

President J. Richard Tiano's message in Volume 15, No. 2, provides in three sentences a fitting conclusion to this history of the *Journal's* record to date:

This issue of the *Energy Law Journal* is truly outstanding and evidences the preeminence of the *Journal* as a scholarly forum. Federal and state commissioners, a federal judge, an Assistant Secretary of Energy, and two academicians have contributed thoughtful articles to this issue. The hard work of Bill Mogel, the Editor-in-Chief of the *Energy Law Journal*, to achieve this level of scholarly work, deserves to be recognized by all members of the Association.

D. *The Mid-Year Meeting*

During FEBA's entire history, there has been a relentless expansion of regulation of the energy industries. Such expansion relates not only to the administration of the Power and Natural Gas Acts and the impact of judicial interpretations, but a number of new energy laws and laws of general applicability such as the National Environmental Policy Act of 1969 and the clean air and clean water legislation which have major impacts on the energy industries.¹⁴ As a result, the issues for interpretation, analysis, discussion, and debate at public forums are endless. FEBA's mid-year meeting offers an excellent example.

Commencing in the mid-1970s, committees of Congress were devoting much effort and debate concerning national energy issues. Considerable congressional committee work was devoted to deregulation of producer prices which spilled over into many other issues. The outline of the scope of PURPA and NEPA, as well as the Fuel Use Act, were generally known and various terms of these potential acts were ripe for debate. Accordingly, FEBA determined to hold a one-and-a-half day conference in January 1977 to consider this possible legislation. There were many pros and cons to be discussed.

It was a successful conference. The conference undoubtedly helped the Federal Energy Bar and their clients to focus on the details and to assist in formulating positions with respect to this major legislation.

Because of the great success of this mid-year meeting, it has become an annual program of FEBA. In 1986, the mid-year meeting was advanced from January to November. As a result, in 1986 there were two mid-year Meetings—one in January and one in November. Interestingly, the revenues from the first meeting funded the start-up costs of the *Journal*.

FEBA has continuously sought, since 1981, to obtain Continuing Legal Education Credit for attendance at the Annual Meeting Conference and Mid-Year Meeting. About twenty states are now covered by specific

14. See app. A. PURPA and the NGPA are good examples of specific legislation. The Environmental Policy Act of 1969 is only one of numerous general acts with substantial impacts on the energy industries.

FEBA applications. Another fifteen states require application from the individual lawyers.

It should be noted that on occasion FEBA has sponsored other programs when a specific legal issue needed public hearing and discussion. For example, on October 16, 1989, FEBA held a one-day review of important adjudicatory procedures of the FERC, with emphasis on the practical aspects of FERC practice, important recent developments for implementing Rules of Practice and Procedure, and FERC's proposed Discovery Rules. With one exception, each of the four panels that day had as one of the panelists an Administrative Law Judge. The luncheon speaker was Chief Administrative Law Judge Wagner on "The Role of the ALJ at the FERC."

FEBA also sponsored one-day seminars on antitrust laws and their application to regulated utilities.

The success of FEBA's programs depend in large measure on the Programs and Meetings Committee, which has portrayed sound leadership. Over the years, the Committee has attracted more members, thereby providing more input into the planning and execution of the programs and meetings.

E. FEBA's Committees

It is quite common for organizations to have committees to oversee specific parts of the organization's operations. From the outset, FEBA has had a number of committees to oversee a large number of areas. It seems that initially, except for the Committee on Nominations, the Officers and Board appointed a special committee to investigate or review a specific problem or issue.

Appendix B hereto is a comparison of FEBA's committee structure in December, 1974; April, 1978; January, 1981; and August, 1994. In 1974, there were only Special Committees. Four years later, a number of Special Committees had been redesignated General Committees, and Nine Special Committees had been designated to reflect the organization of the DOE. By 1994, the committee structure had been greatly refined and consolidated. Special Committees were eliminated and the areas of responsibility of some committees consolidated into one General Committee with broader responsibilities.

The enduring value of FEBA's Committees, whether Special or General, has been (1) their valuable assistance to the Officers and Directors in identifying the issues confronting the energy bar and offering suggested solutions, and (2) their educational value to the membership. The Programs and Meetings Committee gets suggestions from other Committees for topics for FEBA's conferences and meetings. Aside from its scholarly articles, the publication of Committee Reports in the *Journal* provides an excellent source of quality analysis on current legal developments. Such Reports have made the *Journal* an outstanding source of research material.

Membership on Committees has offered members an opportunity not only to become more expert in the particular committee's area of law, but

to expand their circle of contacts in the Energy Bar and to discuss—possibly debate—evolving issues and interpretations of regulatory policies and decisions.

Finally, and importantly, membership on committees provides opportunities for members to expand their friendships with others in the Energy Bar. As one past president noted, FEBA has always provided a place where lawyers on opposite sides could meet in friendship.

F. FEBA's Directory

FEBA's Directory goes well beyond the typical directory which sets forth the names and addresses of the organization's members. FEBA's Directory provides extensive information which offers a tremendous service to every member. A brief review of the 1995-1996 Directory issued in August 1995 outlines the wealth of data members can call on:

- Dates of Mid-Year and Annual Meetings
- Names and addresses of FEBA's officers and Board of Directors
- Names of the former Presidents
- Names and addresses of the Editorial Board of the *Journal*
- Names and addresses of officers and Board of Directors of the Foundation of the *Journal*
- Names of members of the Committee on Nominations
- Name of the Representative to the ABA House of Delegates
- Officers of the Houston and New Orleans Chapters of FEBA
- Name of the Administrator of FEBA
- Names of members of sixteen General Committees
- Copy of FEBA's Articles of Incorporation and By-Laws
- Frequently called numbers
- Directory—name, association, address, Telephone and FAX Numbers of each FEBA member
- Directory of Firm/Company Names

The cross-indexing of members' names and addresses and telephone/FAX numbers with the firm/company/agency with which members are associated was undertaken very recently (1993-94) as an additional service to members. It is planned to add e-mail addresses in 1996.

VI. NOTABLE EVENTS ALONG THE WAY

A. Changes in the FEBA Organization

In 1976, the office of Assistant Secretary was established; in 1982 the Office of Assistant Treasurer was established.

On May 5, 1977, the Association's name was changed from Federal Power Bar Association to Federal Energy Bar Association.

In 1980, the Executive Committee was increased from nine to twelve members, in recognition of the increasing scope of the specialties in Energy Law.

Also in 1980, the Articles and Bylaws were amended to create the office of President Elect.

At the 1980 Annual Meeting, the names of committees listed in the Bylaws were changed to harmonize with the scope of responsibilities stemming from passage of the DOE Organization Act of 1977 creating the FERC and the five acts forming the National Energy Act of 1978, particularly PURPA and the NGPA.

In 1985, the Secretary and Treasurer provided the Executive Committee with a memorandum in support of FEBA employing an Administrator. The work load had increased to such an extent (for example, planning and implementing the two annual conferences) that performance of their responsibilities was placing an unreasonable burden on them and the staffs of their law firms. The matter was initially resolved by a part-time Administrative Assistant and culminated with a full-time Administrator in 1987.

On May 14, 1987, after preliminary approval of the program in 1985, the Houston and New Orleans Chapters of FEBA were established.

B. Regulatory Reform

Under the heading "The Founding of FEBA," the need to expedite FPC's processing of licenses and certificates was cited as a major reason for founding FEBA. From 1946 to 1970, delay was a continuing problem. In many cases, the cause for delay did not lay with the Commission—for example, the regulation of producer prices (the 1954 *Phillips* decision) posed an unbelievable workload and, most importantly, a very time-consuming trial-and-error effort to find a legal and efficient basis for regulating producer prices. However, much of the delay resulted from FPC's practices, procedures, and lack of sound managerial practices. Accordingly, FEBA had from the outset committees on Practice and Procedure to suggest ideas for speeding up the processing of FPC's work load. It would serve no useful purpose to chronicle the numerous comments FEBA filed on rulemakings and new procedures proposed by the FPC or the numerous working committees to propose improvements in the Rules of Practice and Procedure. These efforts resulted in improvements—basically a long series of changes and refinements in FERC's practice and procedures which in the aggregate have expedited the process.

Another and separate problem was the substantive regulation of the energy industry. It related primarily to a belief on the part of the regulated industries that the administrative process was not fair since the adversary staff was also the advisory staff with strong input on the final decision. For this reason, an important aspect of regulatory reform was to obtain some degree of separation of functions. It was believed it would, in the long run, reduce the FPC's workload by eliminating exceptions to initial decisions and court appeals.

Progress on separation of Staff functions was made in 1983. FEBA sent a letter to the FERC urging a "complete separation of the advocacy and advisory offices of the Commission." A response from FERC's General Counsel Satterfield came in time for the May 6, 1983 Annual Meeting. In his response, Satterfield noted the Commission was guided by two broad objectives: (1) efficient use of its Staff, and (2) procedural fairness to the parties. To accomplish this, the Office of General Counsel has been "carefully reorganized to segregate its litigation and advisory functions in the natural gas and electric areas into separate offices."

Satterfield noted that the Commission has established rules that "forbids anyone from combining advocacy and advisory functions in the same or factually related proceeding"—but it [Commission] refrains from imposing a rigid wall of separation between any involvement in the advocacy process and advisory role.

Satterfield wrote that "it was too early to judge whether this kind of separation adopted by the Office of General Counsel between litigation and advisory offices would be desirable or even workable in the technical offices of the Commission given their different role in the conduct of litigation."

While this was not as complete as FEBA's request, it represented a recognition by the FERC that some separation of functions was necessary to provide procedural fairness.

In recent years, FEBA has sought to dispose of cases by using a procedure called "Technical Conference" which is conducted by members of FEBA's advisory staff. How this might affect the separation of functions remains to be seen.

In summation, regulatory reform has been a significant effort of FEBA from the outset. While credit for specific improvements cannot be claimed, FEBA's efforts have contributed to many procedural reforms undertaken by the FPC and the FERC to expedite the administrative process.¹⁵

In 1958, FEBA's Physical Facilities Committee arranged to decorate the FPC's offices and hearing rooms with attractive photographs of electric and gas companies' facilities and their construction. FEBA presented the FPC with seventy-five walnut frames for such photographs. This program brightened up the hearing rooms and offices.

On October 22, 1958, the Committee on Reports reported to the Executive Committee that sixty-six of the FPC's written actions had been sent to members.

At the 1962 Annual Meeting, members urged officers to request the FPC to suspend hearings during August in order that members could plan vacations and also attend meetings of the American Bar Association. The FPC acted promptly and favorably upon FEBA's request.

15. At the time of Satterfield's letter, the Committee on Practice and Procedure noted that the Grace Commission suggested a "responsible" advisory attorney for a given case provide a summary of the issues before submitting a draft order to the Commission.

At the 1969 Annual Meeting, two important panel discussions transpired. The first panel considered Area Price Regulation and Maintenance of Gas Supply. Panelists were John O'Leary (Director of Bureau of Rates); Morton Simons (Attorney representing New York Public Service Commission); C. William Cooper (General Counsel, Consolidated Gas System); and William K. Tell (Counsel Texaco). This was a very debatable issue as gas shortages faced interstate pipelines.

The second panel discussed Conditions in the Money Market; Increasing Cost of Capital and Adequate Rate of Return. Panelists were E. Morris (FPC Acting Head of Finance) and A. Sorrenson (Vice President, Kidder Peabody). These topics were of great importance as inflation continued, and rates of return were always an issue in contested cases. Notes indicate a presentation was made on Electric and Gas Total Energy Projects. The notes also indicate 266 persons attended the luncheon and 464 attended the Banquet.

On October 21, 1968, FEBA expressed its long-term support of ALJs. The Executive Committee was advised that at the Administrative Law Conference there was a movement to reclassify FPC's Examiners as Administrative Law Judges. This was received favorably.

In 1979, Congress considered a bill to set a ten-year term limit for ALJs. In testimony before Congress, FEBA strongly and successfully opposed the proposal. FEBA argued such term limits would reduce the quality of applicants for such positions and reduce their independence in dealing with the agencies and their staffs. The ABA joined in this opposition.

In the Spring 1983, the Office of Management and Personnel (OMP) proposed to downgrade ALJs from GS-16 to GS-15. By letter dated April 1983 to the OMP, both FEBA and the ABA strongly opposed such action, for much the same reasons advanced against the term limits proposal. The proposal was dropped.

One of the pluses of FEBA's support of ALJs has been their reciprocal support of FEBA. ALJs have participated on panels and individually at FEBA conferences discussing the trial of cases before the FERC. The FERC ALJs are invited guests of honor at the annual reception to raise funds for the Energy Law Journal Foundation and are guests at the Annual Reception and Banquet.

On June 27, 1972, the Administrative Law Committee sponsored a luncheon at which former FPC Commissioner Carver addressed the question: Can regulatory agencies adapt their procedures to the requirements of the Environmental Policy Act of 1969 and still regulate?

In 1978, FEBA sponsored a one-day conference addressing the Department of Energy's Economic Regulations. Established in 1977, the Energy Bar was very interested in what directions they could expect the DOE to move.

For the period between 1980-81, the Annual Report of the Committee on Legislation provided a comprehensive review of sixteen Congressional bills directly affecting clients of FEBA's members. The Committee recom-

mended its scope be enlarged to a Committee on Legislation and Government Regulation. Because of the energy shortages in the 1970s, the energy crisis situations for areas of the country in the harsh 1976-77 winter, and the aftermath of the administration of the National Energy Act of 1978, Congress became increasingly interested in energy regulation. The regulated industries also wanted some repeal or modification of parts of these five acts.

Between 1981-82, FEBA began to issue ID cards. President Reifsnnyder called David Ward, Chair of FEBA's Facilities Committee, to advise him that the FERC had instituted new security measures. All people entering the FERC's building had to show a guard some identification and sign in. Sign-in lines were extending out into the street, and hearings were being delayed well past the normal starting time. Ward was told to do something about it. Ward contacted the Executive Director, suggesting FEBA could help solve the problem of delay. FEBA would issue "picture identification badges" to its members. Security people could recognize them as building passes and thereby cut the sign-in problem in half. The Executive Director was pleased and obtained the necessary authorization from the Chairman. FEBA's members have greatly benefitted from the ID cards.

In October 1984, FEBA sponsored a one-day workshop on FERC Practice and Procedure. The workshop covered: Existing and Proposed Discovery Rules; Cross-Examination and Brief Writing; Separation of Functions; Interlocutory Appeals; *Ex Parte* Restrictions; Settlement Practice; Summary Dispositions; Certificate Questions; Appellate Practice; and Late Interventions.

Between 1988-89, FEBA became an affiliate organization of the ABA. Nothing has displayed the maturity of FEBA more than the decision of the American Bar Association to admit FEBA as an "Affiliate Organization." FEBA's admission, primarily through the efforts of former President Gilliam and member John Rebman, entitles FEBA to a Delegate in the ABA's House of Delegates. Through such Delegate, FEBA may draft and present to the House of Delegates proposed policy reports, which, if passed, become ABA Policy. FEBA can also vote on other matters being considered by the House of Delegates. FEBA's first Delegate, former President Thomas Johnson, noted that, while there is some program overlap between FEBA and the ABA Section of Natural Resources and the Environment (SONREEL), as Delegate he has tried to coordinate efforts by joining the Council of SONREEL as liaison to FEBA. By this means, programs of SONREEL and FEBA on the same subject in about the same time frame have been avoided. In fact, on several occasions, joint sponsorship was obtained for programs on major FERC actions, *e.g.*, Order No. 436. FEBA's delegates have a term of two years.

Between 1989-90, when Martha Hesse was FERC Chairman, President Ward proposed that the FERC put its orders and notices on a modem-accessible computer. There was some foot dragging until FEBA convinced

the Executive Director that this idea was really Chair Hesse's idea. The CIPS soon followed.

In April of 1994, as an expanded educational service to its members and their clients, FEBA jointly sponsored with the New England Gas Association a meeting in Boston to explore "the Changing Environment for the Natural Gas Industry in New England." FEBA and the New England Gas Association also scheduled an April 1995 meeting in Burlington, Massachusetts, to consider "Natural Gas Markets in Transition; the New Competitive Structure."

FEBA has held jointly with the Southern Gas Association several meetings—the first on June 1, 1995 was a satellite broadcast discussing "From Tariffs to trade Protection — Antitrust and Other Laws of Competition" and the second, a "live" presentation on September 28, 1995 considering "Pricing and Contracting for Gas Service Part 636."

The foregoing recital of events along the way is an attempt to convey a flavor of FERC's activities and actions. Since 1980 the activities have expanded as the tempo of regulation and reorganization of the energy industry has accelerated. We need look no further than FERC's announcement in the early months of 1995 requiring electric utilities to permit retail customers to acquire power supplies from other sources and have such power wheeled to the customers over the utilities' existing facilities. This sweeping change in the use of electric utilities' property may open a new field of energy law and possibly litigation. FEBA will be there to provide forums for discussion and debate on policy and legality as well as to assist in procedural areas. In fact, there is no other organized bar association—international, state, or federal—that focuses on the expanding practice of energy law.

New technologies—affecting the production, movement, and uses of energy—will spawn new regulatory issues for legal exploration and resolution. The need for an effective bar association will continue, if not expand.

The Federal Energy Bar Association has good cause to celebrate its 50th Anniversary. And, as we review these successful years, it is wholly appropriate to recall the vital part energy plays in the lives of every person in our Nation. FEBA's future history, like its past, will be an important part of the exciting saga of our Nation's success in assuring the required energy for the indefinite future.

APPENDIX A

FEBA's original name was Federal Power Bar Association, reflecting the name of the Federal Power Commission before which the prospective members practiced. The Federal Water Power Act (June 10, 1920, 41 Stat. 1065) provided for the licensing of non-Federal hydro electric power projects on navigable streams and rivers. The original Federal Power Commission consisted of the Secretaries of War, Interior, and Agriculture. In 1930, the FPC was reorganized as an independent agency with five full-time Commissioners appointed by the President with the advice and consent of the Senate.

In August 1935, with the enactment of the Public Utility Holding Company Act, the Water Power Act became Part I of the three-part Federal Power Act. Part II of the Power Act gave the FPC responsibility for regulation of the interstate transmission and sale of electric energy and empowered the FPC to encourage the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy. Part III of the Power Act authorized the FPC to prescribe a uniform system of accounts, to require reports, and to inspect the books and records of licensees and public utilities.

The Natural Gas Act (June 1938) provided for the regulation by the FPC of the transportation and/or sale of natural gas in interstate commerce for resale. The Natural Gas Act was amended in February 1942 to make the FPC responsible for certificating facilities for the transportation and sale for resale of gas in interstate commerce. See the Introduction to the 1970 Annual Report of FPC.

In August, 1977, the Department of Energy Organization Act (91 Stat. 569) became law, consolidating major Federal energy functions in the cabinet level Department of Energy (DOE). It transferred to DOE many responsibilities—including those of the FPC. Initially, such Reorganization Act provided that the FPC's jurisdiction would be transferred to the Secretary of Energy, the Administrator of the Economic Regulatory Administration, and a Board of Hearings and Appeals. Strong objections to this plan came from many quarters, and, in response, Congress largely reincarnated the FPC as the Federal Energy Regulatory Commission (FERC), a five-member agency within DOE, charged with basically the same regulatory responsibilities as the FPC had under the Power Act and the Natural Gas Act.

The responsibilities of the FERC became further complicated by the enactment on November 9, 1978, of the National Energy Acts of 1978:

- (1) The Public Utility Regulatory Policies Act (PURPA) (PL95-617);
- (2) The Energy Tax Act (PL95-618);
- (3) The National Energy Conservation Policy Act (NECPA) (PL95-619);
- (4) The Powerplant and Industrial Fuel Use Act (PL95-620); and
- (5) The Natural Gas Policy Act (NGPA) (PL95-621).

Almost simultaneously with the establishment of the FERC, the Association's Board concluded it was appropriate to change the Association's name to the Federal Energy Bar Association (FEBA).

This history uses the term FEBA for the Bar Association's name throughout the period 1946 to present.

APPENDIX B — A Comparison of FEBA's Committee Structure — 1974-1994

1996]

FIFTIETH ANNIVERSARY OF FEBA

DECEMBER 1974 SPECIAL COMMITTEES ON	APRIL 1978 GENERAL COMMITTEES ON	JANUARY 1981 GENERAL COMMITTEES ON	AUGUST 1994 GENERAL COMMITTEES ON
Natural Gas Certificate and License Regulation (27)	Natural Gas Certificate and Authorization Regulation (25)	Natural Gas Certificate and Authorization Regulations (27)	Administrative Practice (8)
Environment (26)	Environment (6)	Environment (11)	Antitrust (8)
FERC's Physical Facilities and Services (3)	FERC's Physical Facilities and Services (4)	FERC Physical Facilities and Services (6)	Electric Utility Regulation (36)
FERC Reports (5)	FERC Reports (3)	FERC Reports (3)	Environment (10)
Practice and Procedure (26)	Practice and Procedure (27)	Practice and Procedure (27)	Ethics (5)
Programs and Meetings (6)	Programs and Meetings (1)	Programs and Meetings (13)	FERC Administration (2)
Publications (5)	Publication (2)	Publications (10)	Hydroelectric Regulation (8)
Regulation Under Part I of Federal Power Act (19)	Rates and Accounting Regulation — Natural Gas Act (14)	Natural Gas Rate and Accounting Regulations (25)	Independent Power Production (18)
Regulation Under Part II and III of Federal Power Act (20)	Regulation — Part I Under Federal Power Act (9)	Regulations — Part I Federal Power Act (12)	International Energy Transactions (26)
Tax Developments (5)	Regulation — Parts II and III Under Federal Power Act (14)	Regulation — Parts II and III Federal Power Act (12)	Judicial Review (6)
FPC Reports (5)	Tax Developments (5)	Tax Development (6)	Legislation and Regulatory Reform (9)
Rate and Accounting Regulations Under Natural Gas Act (23)			Natural Gas Regulation (36)
			Oil Pipeline Regulation (14)
			Programs and Meetings (18)
			Public Lands (6)
			Tax Developments (2)
NOTE: NO GENERAL COMMITTEES			NOTE — NO SPECIAL COMMITTEES
	SPECIAL COMMITTEES ON	SPECIAL COMMITTEES ON	
	Coal Conversion (11)	Coal Conversion (19)	
	Crude Oil and Natural Gas Liquid Pricing and Allocation (20)	Crude Oil and Natural Gas Liquids Pricing and Allocation (15)	
	Department of Energy Regulations (10)	Energy Research and Development (9)	
	Judicial Review (11)	Antitrust (17)	
	Legislation (29)	Judicial Review (15)	
	Liaison with ALJs (7)	Legislation (24)	
	Natural Gas Curtailments (18)	Liaison with ALJs (7)	
	Natural Gas Imports and Exports (19)	Natural Gas Curtailments (11)	
	Oil Pipeline Regulation (7)	Natural Gas Imports and Exports (14)	
		Oil Pipeline Regulation (9)	
TOTAL MEMBERS = 120 *	TOTAL MEMBERS = 274 *	TOTAL MEMBERS = 266 *	TOTAL MEMBERS = 179 *

* A member may serve on more than one committee. This probably results in a slight overstatement of member participation. The consolidation of electric regulation into a single Electric Utility Regulation Committee with 36 members indicates the increasing involvement by FERC in electric power. See the Committee's excellent report in 15 ELJ 505. The Programs and Meetings Committee with 18 members has an important role in developing and coordinating the educational efforts.

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