

BOOK REVIEW

ENERGY LAW AND POLICY FOR THE 21ST CENTURY by James E. Hickey, Jr., Suedeen G. Kelly, Marla E. Mansfield, Joseph P. Tomain, and Donald N. Zillman. (Rocky Mountain Mineral Law Foundation, 2000).

Reviewed by
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With an intriguing title and five law school professors (including the Faculty Adviser of this publication) as authors, there is immense promise in *Energy Law and Policy for the 21ST Century*. The Preface announces: “[t]his work reflects the collective wisdom of the authors’ involvement in energy matters. We have produced, taught, consulted, researched, and written . . . since energy law first took shape in the wake of the OPEC embargo . . . of 1973.”¹

At the outset, this publication makes clear that it is written for the student, attorney, or policy maker “who is new to the field. We are more primer than treatise.”²

Energy Law and Policy for the 21ST Century is organized in thirteen chapters, each written by one of the five professors (with one exception) on subjects, such as: “Energy-Environmental Economics and Regulation,” “The Legal Framework,” “International Law,” “Oil,” “Natural Gas,” “Coal,” “Electricity,” and “Alternative Energy Sources.” There is no single voice that ties the text together. Multiple viewpoints, however, can be a virtue that enables the reader (especially a novice) to reach his or her own conclusions. In addition, the Table of Contents is detailed enough to enable the reader to dive in on topics of particular interest.³

Chapter One,⁴ written by Professor Zillman, is especially informative and serves as a good starting place. It is chocked full of statistics, tables, and charts about various fossil fuels, nuclear power, and certain alternative fuel sources. No new ground is broken and no law is discussed here.

Professor Hickey, the author of Chapter Four on international law,

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1. A quibble, but energy law “took shape” much before 1973. A starting point might be 1911 when the Supreme Court in *West v. Kansas Nat. Gas Co.*, 221 U.S. 229 (1911) held that state regulatory authorities lacked the power to regulate the transportation of natural gas in interstate commerce. See also *Public Util. Comm’n. v. Attleboro Steam & Elec Co.*, 273 U.S. 83 (1927).

2. Earlier, in these pages another primer, *Gas Dailey’s Guide To FERC’s Regulation Of Natural Gas*, 18 ENERGY L.J. 433 (1997), was reviewed.

3. As helpful as is the detailed Table of Contents, the Table of Cases is less useful because it omits all citation references.

4. This review only will discuss selected chapters. No conclusions or inferences should be drawn from the reviewer’s selection process.

opens with the understatement that "international law" is relevant because "globalization in energy sectors is very likely to increase. . . ." Unfortunately, the bulk of Chapter Four deals with public international law and does not give attention to the private laws that affect energy transactions on such matters as production sharing agreements, privatization, currency restrictions, universal service, energy affiliate/parent relationships, tariffs, and imports/exports. Regrettably, Chapter Four also does not include any discussion of the European Community (EC), which has promulgated two far reaching Orders dealing with restructuring of the electric and natural gas industries.⁵

The United States' Energy-Environmental Policy is the subject of Chapter Six, which is authored by Professor Tomain. The Chapter begins with a thirty page summary of major energy law events, beginning with *Munn v. Illinois*⁶ and concluding with the pronouncements Department of Energy (DOE) regarding goals for a national energy strategy in 1998. This dash through energy history should prove helpful to newcomers to the field.

Natural gas is covered in Chapter Eight, which is authored by Professor Kelly of the University of New Mexico. In thirty pages, Professor Kelly provides a straight-forward account of natural gas and the transformation of the industry from "a highly regulated industry to one based on competitive markets." During the course of the survey, which includes a review of federal and state regulation, Chapter Eight correctly notes recent industry trends, such as: capacity release, unbundling, customer choice programs, and the use of natural gas to generate electricity. A virtue of Chapter Eight is its use of current data.⁷

Professor Mansfield, provides in Chapter Nine, a readable discussion of basic coal facts. She begins with the coal fuel cycle (including the observation that the United States is the "Saudi Arabia of coal"), coal markets, and the effect of fluctuating prices during the past several decades on coal markets. Chapter Nine concludes with a discussion of public policy considerations. In a section entitled "Coal Regulation," the esoteric subject of the differences in ownership of coal (mineral interest) and the rights of the surface owner are discussed. It is observed that "[c]oal mining often leaves the surface heavily impacted unless reclamation is required."⁸ This leads Professor Mansfield into a brief discussion of federal regulation, followed by a good summary of federal ownership of coal. Finally, the Chapter concludes with a balanced statement of public policy considerations.

Professor Zillman also is the author of Chapter Ten which covers nu-

5. See Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998, concerning common rules for the internal market in natural gas, OJ No L 204 of 21.07.1997 at 1; Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996, concerning common rules for the internal market in electricity, OJ No L 027 of 30.01.1997.

6. *Munn v. Illinois*, 94 U.S. 113 (1876).

7. Unfortunately, most of the other Chapters do not go beyond 1997 and have the habit of citing the authors' earlier writings as authority.

8. A separate section of Chapter Nine summarizes the issues related to reclamation.

clear power. This is a straightforward review, but anti-nuclear. It is observed at the outset that "nuclear power may take its place as a technology in which the real risks are outweighed by the benefits in the new century." The balance of the Chapter covers most of the important topics, except for the future existing nuclear plants and the role of nuclear power in other places, especially in Western Europe. Finally, Chapter Ten stops too soon. It fails to discuss the renaissance of the nuclear industry that is occurring in the United States because nuclear power remains a relatively cheap source of electricity with minimal greenhouse effects.

Energy Law and Policy for the 21st Century concludes with two timely and well written chapters on electricity and alternative energy sources.⁹ As to the latter chapter, there is a good discussion of solar, wind, geothermal, biomass, ocean thermal, wave energy, fuel cells, and synthetic fuels. Professor Kelly discusses, in connection with electric deregulation, "green power" and "emission allowance trading." The Chapter concludes with a brief summary of the Kyoto Protocol of 1997.

In summary, the authors of *Energy Law and Policy for the 21st Century* have accomplished their several objectives.

9. Professor Kelly, the author of these two chapters, with prescience, cites this reviewers' work. See 2 ENERGY LAW & TRANSACTIONS (David J. Muchow & William A. Mogel, eds., 1998) in Chapter Twelve.

