SUBMITTED COMMITTEE REPORTS

As a general policy, the Energy Bar Association does not take a position in published Committee Reports on substantive issues that are the subject of pending litigation.

REPORT OF THE FERC ADMINISTRATION COMMITTEE

The following report summarizes recent developments that affect the Federal Energy Regulatory Commission's (FERC or Commission) staffing, structure, budget, and organization.

I. THE FERC COMMISSIONERS

As of February 2003, there are three sitting commissioners and two vacant commissioner positions. The Commission is comprised of Chairman Patrick Henry Wood, III (R), who was appointed in 2001 and whose term expires June 2005; Commissioner William L. Massey (D), who has been at the Commission since 1993 and whose second term expired in June 2003; and Commissioner Nora Mead Brownell (R), who was appointed in 2001 and whose term expires June 2006. President Bush nominated Joseph Kelliher, formerly of the Department of Energy and a member of the Bush Administration's National Energy Policy task force, on October 16, 2001 during the 107th Congress; however, no action was taken on the nomination. President Bush renominated Mr. Kelliher on January 9, 2003 for consideration by the 108th Congress.

II. THE FERC BUDGET AND STRATEGIC PLAN

Although the FERC is a self-funded federal agency that recovers its expenditures through charges to the entities it regulates, a budget and performance plan is submitted to Congress annually. For fiscal year (FY) 2003, the FERC estimates a total budget of $192 million and 1,250 full time equivalent (FTE) positions. This represents an increase from FY 2002, when FERC expended $191 million and maintained 1,184 FTE positions. In February 2003, the FERC submitted its budget for FY 2004, which provides for an increase in expenditures to $199 million, but with no increase in FTE positions. These figures do not reflect proposed legislation that would require federal agencies to accrue the full share of employee pensions and annuitant health benefits beginning in FY 2004, which would increase the FERC's budget by approximately $8 million per fiscal year. For FY 2003, the FERC estimates that 36.8% of its budget is devoted to Electric Power, 36.3% to Natural Gas & Oil, and 26.8% to Hydropower.

The FERC now operates and evaluates its performance pursuant to a five year Strategic Plan implemented by Chairman Patrick Wood, III. The four goals of the Strategic Plan are:

Goal 1: Promote a secure, high-quality, environmentally responsible infrastructure through consistent policies.

Goal 2: Foster nationwide competitive energy markets as a substitute for traditional regulation.

Goal 3: Protect customers and market participants through vigilant and fair oversight of the transitioning energy markets.

Goal 4: Strategically manage agency resources.[1]

III. ESTABLISHMENT OF OMOI

In 2002, the Commission established the Office of Market Oversight and Investigations (OMOI). The OMOI is designed to aid the Commission in guiding the evolution and operation of newly restructured energy markets to ensure effective protection of energy consumers. The office is made up of economists, engineers, attorneys, auditors, data management specialists, financial analysts, and regulatory and energy policy analysts.

OMOI performs three primary functions: (1) assessment of market performance through analyzing market structures, conducting market research and developing market models and simulations, analyzing the effects of current and proposed market rules, and advising the Commission on potential market impacts of proposed policies; (2) ensuring conformance with Commission rules through verification of compliance and reporting requirements, investigation of the actions of market participants, and enforcement of Commission rules governing markets; and (3) production of internal and external reports addressing, among other things, the state of energy markets, market occurrences and trends, vulnerable market conditions, and the governance of energy markets.

William F. Hederman, Jr., is the first Director of the OMOI. Mr. Hederman was previously employed with an interstate natural gas pipeline company, focusing on strategic initiatives and business development, and with private consulting firms, focusing on energy and financial matters. In the mid-1990s, Mr. Hederman served as the Executive Director of the International Centre for Gas Technology Information.

The creation of OMOI as a separate office outside of the FERC's Office of the General Counsel (OGC) has removed the Commission's enforcement function from OGC for the first time in two decades. An Office of Enforcement had previously been established in 1978, but that office was later absorbed into the OGC.

IV. BUILDING SECURITY

In response to the September 11, 2001 terrorist attacks, the Commission reevaluated its security and access control procedures. As a result, FERC access badges are now available only to federal employees. Other physical security measures have also been added, including detection devices and limited searches. Beginning in early 2003, visitors to floors above the third floor of the Commission's building were required to have special access badges, and to be escorted by Commission personnel.

1. *Testimony of Pat Wood, III, Chairman, Fed. Energy Regulatory Comm'n: Hearings Before the Senate Committee on Governmental Affairs* (November 12, 2002) (attachment FERC Strategic Plan FY 2002-07), *available at* http://www.ferc.gov/press-room/ct-archives/2002/11-12-02-wood.pdf (last visited Oct. 17, 2003).

V. AVAILABILITY OF DRAFT ORDERS

During Fall 2002, the Commission ended the practice of providing public access to draft discussion orders on Commission meeting days. Draft consent orders remain available.

VI. WEBSITE

At the end of 2002, the FERC established a redesigned and expanded website.[2] The new layout minimizes graphics to speed connection, and provides an organized set of links to the FERC databases and documents. The site highlights "What's New at FERC" each day and includes up-front displays of Commission meeting dates, with links to agendas, decisions and discussion papers, filings and issuances, Commission procedures, and significant Commission activities. A bar at the top of the page features links to FERRIS and the FERC office pages. The FERC also provides a Student's Corner to educate students on the FERC's mission. The FERC is interested in feedback on the site and has surveyed users.

VII. ACCESS TO COMMISSION STAFF

On January 16, 2003, the Commission issued an Order Modifying The Application Of Rule 2201 To Communications With Commission-Approved Market Monitors.[3] That order provided that communications between the Commission, and its staff, and Commission-approved market monitors will be treated as exempt communications not subject to notice and disclosure under the Commission's Ex Parte Rule adopted in Order No. 607.[4] In making this change, the Commission explained that:

> Market monitors assist the Commission by being in the market and collecting and analyzing relevant data and reporting data analyses, conclusions, and recommendations back to the Commission. . . . In these efforts, however, market monitors may encounter situations or matters that are also at issue in ongoing contested on-the-record proceedings at the Commission. While they may rightly need to bring such situations or matters promptly to the Commission's attention,. . . market monitors are currently prohibited from doing that off-the-record under Rule 2201. . . . The Commission believes that the application of Rule 2201 in these circumstances is counterproductive.[5]

In making this change, the Commission observed that market monitors "serve an important practical and unique function as the Commission's 'eyes and ears' in

2. The FERC's website is available at http://www.ferc.gov (lst visited Oct. 19, 2003).

3. *Order Modifying the Application of Rule 2201 to Communications with Commission-Approved Market Monitors*, 102 F.E.R.C. ¶ 61,041 (Jan. 16, 2003).

4. Order No. 607, *Regulations Governing Off-the-Record Communications*, [Regs. Preambles 1996-2000], F.E.R.C. STATS. & REGS. ¶ 31,079 (1999) 64 Fed. Reg. 51,222, 18 C.F.R. 385, *order on reh'g and clarification*, Order No. 607-A, *Regulations Governing Off-the-Record Communications*, [Regs. Preambles 1996-2000], F.E.R.C. STATS. & REGS. ¶ 31,112 (2000) 65 Fed. Reg. 71,247, (codified at 18 C.F.R. pt. 385).

5. 102 F.E.R.C. ¶ 61,041, at 61,090.

the marketplace,"[6] further noting that market monitors "are practically an extension of, or a surrogate for, the Commission's own market monitoring and investigative staff."[7]

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6. *Id.* at 61,091.
7. 102 F.E.R.C. ¶ 61,041, at 61,091.