

## President's Message

The EBA Program Committee has designed an extraordinary Mid-Year Meeting and Primer that will take place on November 29-30 at the Ronald Reagan Building and International Trade Center located at 1300 Pennsylvania Avenue, N.W., in Washington, D.C. The Mid-Year Program on Thursday, November 29th is entitled "Energy in the 21st Century" and features experts from throughout the country who will focus on leading topics that impact a broad range of EBA members. On Friday, November 30th, we will follow the Mid-Year Meeting with a full-day Primer program, again with leading experts covering current issues in renewable energy resources, carbon regulation, and financing alternative energy projects. We are delighted to have Mr. Stephen Elbert, Vice-Chairman of BP America, Inc., as our keynote luncheon speaker for the Mid-Year Meeting on November 29th. BP has taken an active leadership role in developing alternative energy resources.

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## U.S. Senator James M. Inhofe Tells EBA His Views on Global Warming!

**Fearlessly Battles Foes on This Issue; Tells of Growing Scientific Support; Traces His Own Evolving Views (Sparks Fly in This No-Holds-Barred Interview!)**

*Gary E. Guy and Channing D. Strother*

In their constant quest to ferret out leading figures holding policy-making positions affecting energy-related matters, *EBA Update* reporters Gary Guy and Channing Strother (aka "H.L. Mencken and Vermont C. Royster") were honored by the acceptance of United States Senator James M. Inhofe of Oklahoma of their request to interview him for this publication.

Senator Inhofe is a long-time friend of the EBA and its sister organizations. The jointly sponsored FELJ/NELPI William O. Mogel Internship Program, under which two deserving *Energy Law Journal* Student Editorial Board Members from the University of Tulsa are selected each summer to work at the Senate Environment and Public Works Committee, began four years ago when he was its Chairman. Senator Inhofe is a

strong advocate of the high-caliber Petroleum Engineering program at the University of Tulsa, and spoke glowingly to us about its ability to attract students world-wide. He is also the author of the widely-acclaimed, "Energy and the Environment: The Future of Natural Gas in America," 26 *ELJ* 349 (2005), along with Frank Fannon, Legislative Counsel of the Committee, who we had the pleasure of meeting during our late September visit.



Besides reading our recounting of the interview, you are invited to watch the video of our conversation with Senator Inhofe available on the EBA website at [www.eba-net.org](http://www.eba-net.org). For an even more in-depth exploration of the topics discussed, you may wish to link into the Minority Members' blog at [www.epw.senate.gov](http://www.epw.senate.gov).

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### in this issue

**Contribute To  
The Charitable Foundation  
of the Energy Bar Association**

<http://www.eba-net.org/donate.php>

**Over \$500,000 donated  
to support energy-related  
charities**

**See the latest news inside!**

# News from the Charitable Foundation of the Energy Bar Association

## Fundraising Campaigns Underway

The Charitable Foundation of the Energy Bar Association is soliciting contributions in two separate campaigns – one aimed at corporate contributors, such as law firms and companies, and another aimed at individual donors most of whom are members of the Energy Bar Association. In June, letters were mailed to over 500 institutions seeking support during the 2007 fund drive. Letters to more than 2,000 individual donors will be e-mailed in October. Rick Roberts and Bob Weishaar, Fundraising Campaign Co-Chairmen, urge EBA members and employers to respond generously to the solicitations. “The CFEBA’s past level of charitable activity would not have been possible without the generous support of EBA members and their firms and companies,” Rick Roberts pointed out. “We are adding value by funneling contributions to energy-related purposes that enhance the lives of less fortunate children and families, victims of utility accidents, relatives of wounded soldiers, and victims of domestic violence. These causes continue to need the support of energy lawyers, professionals and companies,” Bob Weishaar said. Please help make this the CFEBA’s most successful fundraising drive. You or your firm’s or company’s contributions will make a difference!

Individuals may donate funds directly to the CFEBA and also may donate valuable items (such as tickets, vacations, or gift certificates) to the CFEBA Fundraising Gala, scheduled for November 29, 2007, in the Pavilion Room of the Ronald Reagan Building, in conjunction with the EBA Mid-Year Meeting. The Gala coordinating committee urges EBA members to call Michele Duehring of the EBA administrative staff (202-223-5625) to donate valuable gifts for the silent auction.

Individuals who donate \$1,000 or more annually, or contribute Gala items with a claimed value of \$1,000 or more, will receive acknowledgement in one or more EBA publications and will receive 4 tickets to the Gala. Individuals who donate \$500 or more annually, or contribute Gala items with a claimed value of \$500 or more, will receive acknowledgement in one or more EBA publications and will receive 2 tickets to the Gala. Tickets for the Gala are \$100 for individuals and \$50 for government employees.

Because the CFEBA is a volunteer organization with all of its administrative costs covered by a grant dedicated to those costs, all individual and corporate donations flow through on a dollar-for-dollar basis to meet CFEBA’s energy-related charitable and educational objectives.

## Charitable Grant Supports Military Families

On Memorial Day, 2007, the CFEBA heard a request for a

contribution to the Fisher House Foundation for energy-related assistance. Fisher Houses are located near military hospitals throughout the United States and provide temporary living quarters to families who are visiting wounded soldiers recovering in military hospitals. Without assistance from the Fisher Foundation, these families would incur substantial expense to visit and support their soldiers who have sacrificed to defend the nation’s security. It was fitting that the Board voted to contribute \$10,000 to support Fisher House Foundation on September 11, 2007, the sixth anniversary of the terrorist attack on the World Trade Center.

The CFEBA is emphasizing its national scope this year by actively reaching out to each of the six regional chapters to recommend a local charity for a grant from the CFEBA. At the request of the Midwest Chapter, the CFEBA voted to donate \$5,000 to the Red Cross for energy-related tornado relief in Kansas. The Houston Chapter hosted a fundraising cocktail reception in conjunction with its Chapter meeting in September and raised \$4,475 for the CFEBA. The Chapter has requested that a donation be made to the Comprehensive Energy Assistance Program (CEAP). CEAP is administered by Sheltering Arms Senior Services, a federally funded program that assists low income families with young children, seniors and the disabled, with the payment of gas and electricity bills. The CFEBA is also considering a request by the Northeast Chapter for a donation to the NE Regional Food Bank for assistance with the Food Bank’s utility bills.

Another request submitted to the CFEBA is to support a drive to provide solar cookers for refugees in Darfur to enable the women



## Charitable Foundation Update Continued

and children to cook without searching for firewood — a daily activity that often takes them outside the security of the camps and puts them in personal danger. This project was recently approved by the Board for a contribution of \$5,000.



### CFEBA Funded Interns -- Part Of Our Energy Community

Rachel Dugan, an undergraduate majoring in resource economics at the University of Massachusetts at Amherst, is working as an intern with the Office of Electricity Delivery and Energy Reliability at DOE during the Fall 2007 semester. The CFEBA is funding the position through the Washington Center for Academic Internships and Academic Seminars. The Washington Center solicits applications from undergraduate students attending over 500 colleges and universities located throughout the United States and some foreign countries for internships in Washington DC. Ms. Dugan has been invited to attend the EBA Mid-Year Meeting at which time we hope you will have the chance to meet her and learn more about her DOE experience.

Ryan Petersen, a 3rd year law student at Washington and Lee University School of Law in Lexington, Virginia, completed a successful legal internship this past summer at the General Counsel's Office of the Federal Energy Regulatory Commission. During the Summer, Ryan worked in FERC's Office of General Counsel, Energy Markets Division, and in the Solicitor's Office. Ryan described his experience in a report to the CFEBA in which he noted working on cases involving LNG siting, electric and gas tariffs, hydro-electric licensing, and associated legal research. As Ryan observed, the "nature and breadth of the work at



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*The Charitable Foundation of the Energy Bar Association  
Invites you to its Fifth Annual Fundraising Gala  
a Cocktail Reception*

*November 29, 2007*

*5:30 to 7:30 p.m.*

*In conjunction with the EBA Mid-Year Meeting at  
The Ronald Reagan Building & International Trade Center  
Washington, D.C.*

*Tickets \$100 - \$50 for government employees  
(Purchase with Meeting Registration or Separately)*

*202/223-5625*

*Sponsorships \$2000*

*Featuring Jazz Trio, Silent Auction, Hors d'oeuvres, Open Bar  
Proceeds contributed to energy-related charitable projects*

*Special Invited Guest of the Gala will be  
The Honorable Joseph Kelliher*





# The Houston Chapter Explores Recent Changes to the EEI Master Agreement and the NAESB Base Contract

*Peter I. Trombley*

EBA's Houston Chapter held its Summer Meeting on August 30, 2007. The meeting program was titled "The New Commodity Contracts - What Changed and What Didn't". Meeting attendees heard from F. Mitchell "Mitch" Dutton, Associate General Counsel - Commercial, Mirant Energy Trading, LLC, and Keith Sappenfield II, Regional Director, U.S. Regulatory Affairs, EnCana Oil and Gas (USA) Inc.

Mr. Dutton, a charter member of the EEI drafting committee, gave a presentation titled "Recent Revisions to EEI Master Agreement" in which he discussed several issues that were addressed in the latest round of EEI revisions. Those issues include: (a) the Into ERCOT Delivery product, (b) new capacity products, (c) revised bankruptcy acknowledgements, (d) clarification of the Uniform Commercial Code waiver, and (e) an updated errata sheet. Mr. Dutton also discussed the Gas and Coal Annexes under which the EEI Master Agreement can be used to document gas and coal transactions.

Mr. Sappenfield, an original member and Co-Chair of the NAESB Wholesale Gas Quadrant Contracts Subcommittee, gave a presentation titled "2006 Revisions to the NAESB Base Contract for Sale and Purchase of Natural Gas." In his presentation, Mr. Sappenfield reviewed the material changes that were included in the September 5, 2006 version of the NAESB Base Contract. Those changes, according to the presentation, include: (a) consolidation of default and alternate cover pages (including a new triangular setoff option), (b) important new definitions, (c) revisions to existing definitions; and (d) language to address natural gas imports, market disruption, and electronic duplication.

The chapter meeting was a rousing success with nearly 70 preregistrations and more than a few last minute attendees. Remarkably, nearly half of the registered attendees were not EBA members. Chapter President Jason Leif encouraged the guests to take a membership application and consider joining the EBA.

Special thanks to Baker Botts L.L.P. for both sponsoring and hosting the summer luncheon and meeting.

## The Houston Chapter Hosts a Fundraiser for Charitable Foundation of the Energy Bar Association

The Houston Chapter of the Energy Bar Association hosted a charity cocktail hour to benefit the CFEBA, which will, in turn, direct donations to the Cooperative Energy Assistance Program (CEAP) of Harris County. CEAP provides utility assistance to low-income households most vulnerable to the high cost of energy (i.e., the elderly and the disabled).

The event was held on September 27, 2007 at Zimm's Wine and Martini Bar in Houston Texas. The guests enjoyed food and drink for two hours, all of which was sponsored by the law firms Thompson & Knight, LLP and McDermott, Will & Emery, LLP.

The over 40 attendees were asked to donate \$50.00 to the cause, which all readily did. In addition, attendees were able to bid on 19 silent auction items, ranging from gourmet wine baskets, to gift certificates for dinner, to golf for four, to sports tickets, to concert tickets. A grand total of \$4,475 in fundraising!!

The event was organized by Michelle Dore, Dynegy, and Deanna Reitman, Constellation Energy. But it wouldn't have been a success without the help of so many people, including: Becky Zimmerman, the owner of Zimm's Wine and Martini Bar; Darlene Volker, Constellation Energy; Toni Pohler, Constellation Energy; Lisa Mellencamp, Constellation Energy; Glenn Reitman, Thompson & Knight, LLP; Richard Meyer, Vice President of CFEBA, Linda Walsh, President of CFEBA, EBA Staff; Jason Leif, Jones Day, and Kathy Fisher!



# News from the Midwest Chapter: Reliability and Rebuilding

This past summer, the Midwest Chapter provided members with a forum to explore the issues of reliability and enforcement. On July 10, 2007, the EBA Midwest Chapter hosted a teleconference on FERC's Order No. 693, Mandatory Reliability Standards for the Bulk-Power System: An Update on NERC's New Enforcement Authority. David Cook, General Counsel of the North American Electric Reliability Corporation (NERC), and Susan Court, Director of Enforcement, Federal Energy Regulatory Commission (FERC), presented their respective views on the implementation and enforcement of the new mandatory reliability standards. This event was well attended and provided a unique opportunity for participants to ask questions and seek clarification and insights of these key leaders tasked with carrying out the new rules.

Addressing a series of questions posed to the panelists, Mr. Cook described the initial period (which lasts through December 31, 2007) as fairly smooth, with entities self-reporting violations in large numbers. He said that this initial period enables entities to make any necessary adjustments to achieve compliance. Mr. Cook stated that enforcement actions may arise in a number of ways. Most of these are expected to be resolved at the regional level. The compliance oversight will include a non-public triennial on-site audit process. Notice will be provided to a registered entity of any violations, and that entity would have an opportunity to respond. An impartial hearing may be held at the regional level, which could result in a settlement. Throughout this process, NERC maintains the responsibility to ensure that the enforcement program is implemented in a consistent manner.

Pointing out that Section 215(e) of the Federal Power Act provides concurrent jurisdiction over the standards, as well as appellate jurisdiction, Ms. Court explained that FERC may bring enforcement actions and may also hear appeals. It is at the FERC level that the violation may become public, and interested parties may have an opportunity to intervene and participate if a hearing is held. While NERC is essentially the compliance arm, FERC is authorized to take appropriate enforcement action to ensure that the mandatory standards are followed. However, both entities may investigate an incident at the same time. Importantly, both speakers indicated that the Order did not alter or infringe upon any existing state jurisdiction over reliability.

While it appears that some of the practical details of enforcement and compliance may be determined as developments arise,

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# News from the Northeast Chapter of the EBA

On September 17, 2007, the Northeast Chapter held its annual meeting and elections for 2008 Officers and Directors. The following slate of nominees was unanimously elected:

Patrick M. Gerity - President Elect  
Matthew J. Picardi - Vice President  
William D. Hewitt - Secretary/Treasurer  
Doreen Saia - Director  
Richard A. Drom - Director  
Elias G. Farrah - Director  
William R. Flynn - Director  
Frederic Lee Klein - Director  
Joseph Nelson - Director  
Glen R. Thomas - Director

The Northeast Chapter already has many exciting things in the works. Its 2008 Annual Meeting will be held June 10, 2008 at the Harvard Club in New York City. Joe Nelson is chairing efforts to organize the event, with Angie O'Connor as co-chair. Joe already is hard at work assembling sponsors, topics and speakers. We encourage individuals to contact Joe or Angie with any suggestions or recommendations on speakers, sponsors or topics for the annual meeting.

The Northeast Chapter also is continuing its brown bag seminars. First, Pat Gerity and Dave Doot are organizing a November 2007 brown bag lunch to address the "Regional Greenhouse Gas Initiative: Rules of the Road." Day Pitney LLP will host on-site attendees in its Boston, New York, and Hartford offices, with videoconference links between the three locations. In addition, Glen Thomas of GT Power Group and Ron Fisher of Blank Rome LLP are organizing a Mid-Atlantic Event on January 22, 2008 to discuss, "Buy, Build or Sell, What to Do with Assets in PJM." The event will be hosted in Blank Rome's New York, Philadelphia and Washington offices with a video conference link between the three locations.

One of the most important projects for the Northeast Chapter is its charitable fundraising efforts. Fred Klein is again spearheading the Chapter's charitable winter heating fundraising efforts. Work is underway to identify the charities that the Chapter's efforts will assist, and to increase members' contributions to the Chapter's fundraising efforts and totals.

Finally, Pat Gerity is leading efforts to facilitate and increase state practitioner participation and membership in the Northeast Chapter.

We in the Northeast Chapter look forward to a great year.



# A Conversation with Past President Carmen Gentile

Darrell Blakeway

This is the third in our series of interviews of former EBA Presidents. Carmen Gentile has practiced law in the energy field for more than 31 years. He was a founding partner of Bruder, Gentile & Marcoux, L.L.P. in 1976, and before that was at Debevoise & Liberman from 1971 through 1974 as an associate and in 1975 as a partner. Before moving to Washington, he worked as an Assistant General Counsel to the Governor of Massachusetts. He is a graduate of Boston Latin School, Harvard College, and the University of Pennsylvania Law School. Before attending law school, Mr. Gentile was a Foreign Service Officer and for two years served as a Vice Consul at the American Consulate General in Palermo, Italy. Gentile's law firm practices extensively before the FERC and the federal appeals courts in a variety of energy-related matters. The firm also assists clients in the strategic and transactional aspects of their energy businesses. Most of Gentile's professional work has been on electric utility matters, although his firm also does extensive natural gas work.

We met in the conference room of his office on Pennsylvania Avenue, with a view of the Old Executive Office Building, and a corner of the White House. The photo unfortunately fails to depict Carmen with his suspenders, which most of you will recognize as his "trademark."

Q: When did you first become a member of EBA (or FEBA), and what were your early impressions of its role? How has the role of EBA changed over the years?

A: I became a member of the Federal Power Bar Association, which was the original name, later Federal Energy Bar Association, and now the Energy Bar Association. I was hired as an attorney at Debevoise & Liberman, and Tom Debevoise was active in the Association,

and served as its President in 1973. He encouraged all of us in the firm to participate. I probably attended my first Spring meeting in 1971, and then volunteered to work on some of the Association's committees, which I think is where the heart of the Association's work is. It was rewarding to me in two ways. First, it served to enhance my professional abilities, because of the value of planning and participating in various educational programs, and writ-



ing committee reports on topical issues. Secondly, I enjoyed the opportunity to develop professional relationships with other energy lawyers.

Q: How did you get involved in the leadership of EBA? What prompted you to accept the presidency in 1995? Did you have an agenda or "platform" going into the presidency? What were the EBA's main initiatives during that period? What do you think were the major accomplishments of EBA that you were advocating or initiating as president?

A: I worked my way up through the ranks. Eventually I became chairman of EBA committees on competition, and regulation. In the mid-1980's, I was elected to the Board of Directors, which is really like another committee, but one focused on an overview of all of the Association's

activities. It was fairly time consuming, but I appreciated the opportunity to contribute to the enhancement of the energy bar. I wanted to improve the reputation of the energy bar, and instill pride among those who practice energy law. This activity gave me a great deal of personal satisfaction, and, I believe, was of material benefit to all the members of the Association. Needless to say, I also had the pleasure of making many new friendships during my tenure on the Board.

As you know, serving as President of EBA is a four-year commitment. First you are Vice-President for a year, then President-Elect, then President, and finally, President Emeritus. So while I was President for part of 1994 and 1995 (the terms are not for a calendar year), I was involved for four years in the mid-1990's. The Foundation of the Energy Law Journal had already been formed, and initially it was funded largely by appropriations from the Association budget. During my second tenure on the Board, I was involved in trying to develop the Foundation's ability to raise funds so it could pursue a path of financial independence of the EBA budget. And we succeeded in doing that to a substantial extent. We also built up the Foundation's trust fund and paid attention to how it was invested, to further assure a stable, independent stream of revenue for the works of the Foundation.

As President-Elect, I started working on the two-year planning process for observance of the 50th anniversary of the Association, which was founded in 1946. We consulted with some of our older members, and I recall talking to George Meiburger about the early history of the Association. There is an excellent article on that history in the *Energy Law Journal*, in 1996. You know it was started by lawyers returning home from World War

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# A Conversation with Carmen Gentile *continued*

II, who became instrumental in the construction of the national interstate natural gas pipeline system. Natural gas was always the most prominent utility activity at the Federal Power Commission, from the earliest days until early 1970's, when electricity prices started going up. During the 1950's and 1960's, there were very few electric rate increases, because the unit costs of producing electricity were going down, due to the efficiency and economies of scale of the power plants being built. Interest in regulation of electricity increased with the run-up of oil prices, and other fuel prices, in the early 1970's, which sent the price of electricity soaring. Also, in the '70's, it became clear that the costs of nuclear power were going to be much higher than anticipated, and a lot of nuclear projects were abandoned or became the subject of prudence reviews because of their high costs. It was also at this time (the 70s and 80s) that issues of competition became a major regulatory concern and an important practice area for many EBA members.

For the 50th anniversary, we wanted to have a line-up of especially prominent speakers for our Annual Spring Meeting in 1996, and we got some. I recall trying, unsuccessfully, to get Vice President Gore to speak at that meeting. We had a really nice event. I personally spent more time and effort arranging it than any other event I have worked on, with the exception of a daughter's wedding held at our small farm in Maine. EBA's 50th anniversary coincided with the FERC moving into its new building, and we participated in a big reception at the FERC and made a significant contribution to the FERC Child Care Center.

As President, I was responsible for maintaining good relations between the Association and the FERC Commissioners, and especially the Chairman of FERC, who was Elizabeth (Betsy) Moler when I was President. I remember meeting with her on a quite regular basis to discuss matters of mutual concern to the Commission and Association. Another duty of the President is to oversee the committees and make sure they are functioning as they are supposed to. I remember organizing a big party for the Association committee chairmen and vice-chairmen. I don't know if it was the first such party, but I think it was continued and may still be a regular event.

As President, I recall spending a lot of time on outreach to the members around the country and trying to get local chapters of the Association activated, or reactivated. We gave a lot of encouragement to the members in Houston to start conducting active programs for that area, and gave them some money to get things rolling. There are now chapters in various regions, and most of them are fairly active, carrying on efforts begun the mid-1990's.

Q: What were the most significant legal issues facing the ener-

gy bar during the years of your leadership?

A: In the mid and late-1990's we were in the last stages of the electric industry before restructuring started. We were on the verge of developing competitive markets in electric generation. We used to have a lot of discussion about how competition might work under restructuring. There were still a lot of significant prudence issues pending over nuclear power plants and other construction projects.

Q: As you know, the price of oil and other energy fuels have prompted an unprecedented interest in energy efficiency, demand side management, and renewable energy, and the growing concern about global warming has heightened concern about expanding reliance on coal and other fossil fuels. How has this affected the energy bar and how do you foresee it affecting the energy bar in the future?

A: We are on the verge of some massive changes in the energy industries. As a result of environmental concerns, global warming, the economic consequences of trade deficits from importing so much foreign oil, and the national security vulnerabilities from importing oil from countries that are not friendly to our interests, we have to become more creative about energy issues. We can't rely on natural gas as our main energy fuel. We thought we could for a while, but now we realize it is not as plentiful, or as inexpensive as we thought for a while it might be. Renewable energy will play a role. Conservation will play a role. There are limits on how much coal we can use unless we develop economic ways of capturing the carbon dioxide from it and storing it somehow. So I see nuclear energy as a major part of the future solution to our energy needs.

The biggest problem is how to replace foreign-source oil as a surface transportation fuel. Perhaps if the plug-in electric cars become practical, we can run nuclear plants to meet the needs of factories, businesses and consumers during the peaks of the daylight hours, and use the nuclear generated electricity to charge vehicle batteries at night. This is speculation. I don't know what will work, but I am certain that we must facilitate and implement technological change, start thinking of energy needs as a single issue, and stop viewing conservation, oil, natural gas, LNG, synthetics, renewables, other energy forms, and electricity as discrete and separate from each other. We need to view these energy forms as constituting a single infrastructure, and figure out how to make it function with minimum reliance on oil. And the energy infrastructure is not just extraction, manufacturing, and generation. We need to consider how fuel and/or energy are transported and how to make that transportation safe and efficient. For example, we need to be able to import and use LNG safely and minimize the energy loss associated with electric transmission. Above all, and

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# Interview with Senator Inhofe *Continued*

## Saga of a Crusader Fighting Multi-Front Wars

We actually began the interview on a non-energy but equally newsworthy topic. We informed Senator Inhofe that when we were speaking to his Legislative Director, Ryan Jackson, about conducting our interview he had mentioned in passing that the Senator was about to board an airplane on a fact-finding mission to Baghdad. Subsequently, we heard on the news that his plane was the target of shooting from the ground, necessitating some drastic flying maneuvers. The Senator modestly dismissed the danger he was in, explaining that this was his 15th mission to Iraq as the second ranking Republican on the Armed Services Committee, making him the most frequent Senate visitor to that war-front. He was quick to praise the young crew of the C-130 in avoiding the heat-seeking missile attack on the plane in the night sky, and deploying flares to confuse the enemy. He was “thankful” to see our forces in action in this combat situation, and spoke very movingly about “the great job these kids are doing over there.” He elaborated on his views about the progress he saw, and the debate here at home, all of which you can see in full on the interview videotape.

The other interesting tidbit about Senator Inhofe we learned from an earlier attempt to speak with Mr. Jackson when both he and the Senator were traveling in Oklahoma was that the Senator has his own pilot's license, and pilots his own airplane throughout every nook and cranny of Oklahoma to visit his constituents almost every weekend. When we marveled about learning this about him, Senator Inhofe again modestly dismissed it as being pretty customary with folks from Oklahoma. He said, in fact, that flying a private plane is basically the only way to get, for example,

from Tulsa to Altos. For that reason, the Senator stated that he has been piloting himself around for a little more than 50 years.

He told us of growing up in the oil state of Oklahoma, where as a kid he worked as a tool dresser on a cable tool rig, of his private



business activities prior to getting involved in public affairs, and of his decision to enter politics based on his conviction that much needs to be fixed. A self-described “one-man Truth Squad,” the Senator is extremely popular in his native state, having been elected to the state legislature, where he was Minority Leader of the State Senate, Mayor of Tulsa, and Congressman before winning election to serve the unexpired term of Senator David Boren in 1994 and then being elected to two full terms thereafter. His term comes up again in 2008.

## Don Quixote: Going Where Others Fear to Tread

Mr. Inhofe is a very likable and friendly man who maintains an easy-going manner, even while being interrupted by phone calls and messages from an efficient group of friendly Staffers. But with all his good-natured charm, he expressed a sincere frustration as to the current state of affairs in the forum in which he operates, what others have hailed as the greatest deliberative body

in the world. (Readers will recall that Democratic Senator Jeff Bingaman, now Chairman of the Energy and Natural Resources Committee, who was featured in the Summer 2006 Issue of *EBA Update*, similarly decried an over-politicization on energy matters, but that he found this to be a failing of the House rather than the Senate.) We had hardly started setting up our equipment in the Senator's Office, and not yet formally begun, when Senator Inhofe explained to us that, “I'm the guy that has to do things that everyone else refuses to do.” So much so, that he told us later in the interview that he has been the subject of attacks and “threats.” But he said it with a smile in his voice, and added, “I don't mind doing it.”

He stated ruefully that the Environment and Public Works Committee that he Chaired for four years is now taken over by “far left” members who make it impossible for “anything positive” to come out of it. He named names – Boxer, Clinton, Lautenberg. He identified what he perceived to be their agenda: “They don't want oil; they don't want natural gas; they don't want nuclear. They don't even want wind any more because they say it kills birds.” He asked rhetorically, “How do you run this machine called America without generating energy?”

He does recognize that that these opposite numbers of his Committee do make the point that we need to get away from reliance on foreign sources of energy. But he attributes to them “sole responsibility for keeping us from having the refining capacity, drilling offshore, drilling in ANWR, tax incentives for marginal well production, all these things that we have to do if we're going to do something about the energy crisis.”

He gave as an example the Gas Price Act that originated in the prior Republican-

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# Interview with Senator Inhofe Continued

dominated Senate. Its goal was to increase refining capacity that over-regulation was impeding, thus resulting in anti-competitive advantages to refineries overseas and in Mexico. He points out that even if we explore, drill, and produce all that we want, we still need to refine the crude oil into gasoline.

Incentives to convert closed military bases into refineries were provided for in this legislation, but it was killed on what the Senator called a straight party line vote by the Democratic Senators. To Senator Inhofe, this bill provided for a goal of energy independence that both parties espouse, yet only one party voted for.

## Global Warming I: The Unmaking of a Believer

Going back 4 ½ years to when he took over as Chairman of the Environment and Public Works Committee, Senator Inhofe told us that he thought man-made, “anthropogenic” gases (CO<sub>2</sub>, methane) cause climate change. Over the passage of time, and upon much study, he now is the recognized leader in disputing this theory. His thinking began to evolve when the Wharton School of Economics came out with an econometric study saying the following as restated by Senator Inhofe in his own words: “If we in America were to sign up for the Kyoto Treaty and live by the emission requirements, what will it cost America? The bottom line is it’s about \$2,700 per family of four.”

For Senator Inhofe, given this huge cost to bring down the greenhouse gas emissions prescribed by Kyoto, it became necessary to “make sure the science is real.” He checked into it, holding 15 to 16 hearings on global warming. The Senator then looked at us and said: “I hate to say it this way and I know it will sound extreme. But most of the bad things we get in this country are mandates that come from the United Nations.” He declared, “They’re the guys that dreamed this thing up.”

Michael Mann is the name of the individual “calling himself a scientist” that Senator Inhofe identifies as being put forth by the United Nations for claiming that global warming is a modern phenomenon. Again, Senator Inhofe said that with all the forces available to him as the Committee Chairman, this claim was looked at, and yielded the finding that “there were no scientific consensus that man-made anthropogenic gases were causing climate change.”

Next, according to Senator Inhofe, “we started monitoring the science.” Now, years have gone by and the Senator states that he has learned that parts of the globe do get warmer and cooler during different epochs, but that there is no discernible trend globally in a single direction extending into the future. For example, sixty scientists in the late 90s were cited as having advised the Prime Minister

of Canada to sign the Kyoto Protocol, and now have expressed regret at having given that advice. The Senator states that they are now petitioning Prime Minister Harper not to sign the next version of the Kyoto Accords.

Making our interview very timely, Senator Inhofe informed us that the “most encouraging development” occurred a few days ago. He stated that over half of a group of 540 scientists who have done peer reviews since 2004 have found that man is not a major source of climate change, and only 7 percent attribute man-made gas as the primary factor for climate change.

Thus, Senator Inhofe concludes that (1) there is no consensus as to the role that man-made gases have on climate change, but (2) there is consensus on what it would cost to drastically reduce man-made gas emissions. The Wharton Survey that prompted Senator Inhofe to investigate the need to incur this huge cost has now been superseded by an MIT study that he maintains shows the costs to be even more severe. According to Senator Inhofe, MIT concludes that if the Lieberman-Warner bill’s restraints on man-made gas emissions are enacted, the cost will be \$3,500 per year per family of four. He continued (all without notes) to inform us that the MIT study concludes that enactment of the Boxer bill to even more drastically reduce man-made gas emissions will result in a cost of \$4,500.

He went on to state that one of the largest tax increases of recent times occurred in 1993, totaling \$32 billion. He compared that tax increase to what he said would be almost a \$400 billion tax increase if these bills become law.

The Senator elaborated his view that the confusion in the scientific community, and the move to inflict economic costs based on an unverified need, is not being conveyed to the public by the media. Over time, he sees the scientific community moving away from the view that the factual claims are valid that would make these expenditures necessary while politicians refuse to relent from making these claims.

## Global Warming II: Taking on All Comers

Although declaring he “loves her dearly,” Senator Inhofe is very vocal in maintaining a distinctly different point of view on global warming than that of his successor, Chairman Barbara Boxer of California. He finds his Democratic colleagues to be “disciplined” and followers of “marching orders.” As an example, he stated that a “nice-guy” freshman Democratic Senator recently gave his obligatory global warming party-line speech on the Senate floor, and it was clear that he “did not have the foggiest notion what the issue was.”

*continued on page 10*

**“There were no scientific consensus that man-made anthropogenic gases were causing climate change.”**



# Interview with Senator Inhofe Continued

By contrast, Senator Inhofe told us that the Republican Party does not enforce any uniformity of position concerning global warming, and consequently many Republicans go along with the more popular view espoused by the Democrats and the media. Indeed, he stated that the pressure of public opinion brought to bear on the Republican Presidential candidates on this issue is such that only a single candidate – Fred Thompson – is willing to speak out against the popular view that global warming requires drastic cut-backs in man-made gas emissions.

As Senator Inhofe sees it, the media has jumped on the bandwagon with those who warn of doom if drastic changes are not implemented out of a concern for increasing newspaper and magazine sales, and to boost TV ratings. The Senator informed us that Time Magazine's biggest seller was the issue that ran a photo of polar bears (who he maintains "are over-populated") "standing on the last block of ice" accompanying a story saying that they are going extinct because of man-made gas. He contrasted that with an earlier Time Magazine hot seller that predicted a New Ice Age in which "we're all going to freeze, we're all going to die." He stated that Newsweek Magazine ran a recent "slanted" portrayal of the climate change debate and had a "conscience thing" where its own columnist, Robert J. Samuelson, was printed in a subsequent issue pointing out the unfairness of its own coverage – after it made money from the prior faulty issue. He blamed the networks and CNN for editing his interviews in order to "set me up" and "not give a fair shake" so many times that he now only goes on programs if they are live, although he praised Fox News and talk radio for being exceptions to this practice. (His Staff clarified with us that our interview tape will not be edited when we first submitted

our request. Only to the extent that the interview was interrupted by Office business did we splice tape.)

Nor does the oil and gas industry escape the Senator's criticism. He surmised that corporate executives have calculated the revenues they can pick up if they eliminate coal as a competitor. He identified energy corporations sending representatives to his Committee to testify on the "green" side of the issue concerning "cap and trade" CO2



measures that would reap millions, even billions, of dollars for their company coffers.

## **Global Warming III: The Un-Gore!**

He also had strong words with respect to former Vice President Al Gore's "science fiction movie." He told us of a lady from Maryland who complained to him that her daughter has nightmares after being required by her teacher to watch it once a month. He cites even the United Nations as concluding that there is no danger of the sea levels rising and causing the kind of devastating flooding that is predicted in the Gore-narrated film. He recounted a three-hour Committee hearing that occurred earlier this year at which Mr. Gore testified.

As Senator Inhofe described this televised hearing, the former Vice President was "trying to be his smooth self, pretending that

there is scientific backing for all the Hollywood accolades" his movie has received. Senator Inhofe recalled himself naming scientists who have now abandoned the Gore view, and contends that he saw Mr. Gore "start perspiring." Claude Allegra of France was identified as one of Mr. Gore's strong believers who is now "on our side." David J. Bellamy of the UK was cited by Senator Inhofe as another convert to the "skeptical side of the issue." It was when Senator Inhofe moved to the name of a third such scientist, Nir J. Shaviv from Israel, that he said there were "beads of sweat" coming from Gore in recognition that "his scientific base has flat left him."

However, Senator Inhofe maintains that Hollywood ("Barbara Streisand and all of her friends"), the media, George Soros, Michael Moore, the Heinz Foundation, the Pew Foundation, and environmental extremists (who he states have replaced labor unions and trial lawyers as the major backers of the Democratic Party) still laud the Gore documentary and ignore the shifting scientific viewpoint away from it. He told us of a chart he has which shows hundreds of scientists who have switched sides from Gore's view to his view. In other words, he depicted himself, Al Gore, the United Nations, and renowned scientists as being similarly of the opinion that man-made gases need to be reduced at great costs at an earlier point in time, but that he and growing ranks of scientists are no longer convinced, while Mr. Gore has received an acclaim for championing this view despite its eroding backing from the experts in this field. He even sees the United Nations as more willing than American politicians to recant, in that the UN now says that "livestock emit more gas than the entire transportation sector."

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# Interview with Senator Inhofe Continued

The Senator has a convert's zeal that makes him unrelenting in his criticism of Vice President Gore for ignoring the abandonment of those whom Gore understandably relied upon for providing scientific reasoning for advocating the Kyoto measures that countries all over the globe have committed themselves to uphold. He attributes Al Gore's political fortune (his "ticket to the White House") as invested in the public's belief that man-made gases cause global climate change when there is, in the Senator's firm conviction, a lack of proof. He opines that Mr. Gore "has all of his eggs in the global warming basket" with no way of getting out of it and remaining a viable political leader.

For emphasis, Senator Inhofe said, "Let me tell you, Al Gore is not going to show up anywhere unless there are cameras." He said that at the televised hearings Mr. Gore was not answering Senator Inhofe's questions but was instead "running out the clock" on the allotted question period (that was being enforced by Chairman Boxer) by suggesting that the two get together privately, an event that has never transpired. Clearly, Senator Inhofe believes that he has some facts to bring to the debate that he is having difficulty conveying in a Senate and a media both dominated by perceived opponents. Chief among them is Al Gore, who he says "has a real problem politically" in extricating himself from his publicly espoused position now that the public has embraced it and rewarded him with Academy and other awards.

For his part, Senator Inhofe vows, "I have twenty kids and grand-kids and I'm not going to let them get away with them having to pay a tax increase that is twelve times larger than the largest tax increase in the history of America based on flawed science." He concludes that "they are coming over in droves to our side of the issue and the panic is setting in in Hollywood and liberal quarters." Wow! Ka-Bam!

**"I'm not going to let them get away with them having to pay a tax increase that is twelve times larger than the largest tax increase in the history of America based on flawed science."**

## Global Warming IV: What Hemisphere Are You From?

According to Senator Inhofe, the global warming assertions are always confined to the Northern Hemisphere. There is never any allegation of global warming occurring in the Southern Hemisphere. Logically, therefore, the alleged warming is not "global" but semi-global.

Second, Senator Inhofe maintains that there is authoritative scientific evidence of "natural variances" in the temperature of the Northern Hemisphere. Since 1998, he continued, there has been cooling in Antarctica and other regions of the Northern Hemisphere. He declares that Antarctic "ice is thickening at a pretty rapid rate." He says that Chairman Boxer recently took a group to Greenland "only to find out when they got up there that they wished they had the old Medieval Era warming that they had in the 1500s because prosperity was a lot greater at that time."

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## Personal Insights of Jim Inhofe

**Philosophies of Government:** There are three. His philosophy is we need less government, more personal freedom. A second philosophy is we need more government, less personal freedom. The third philosophy is "it is good to die in Washington, D.C." The proponents of the third philosophy tell people what they want to hear.

**Advice to Young People:** If you know something is right that contradicts what everybody else in Washington thinks, stick to it and you will come out ahead!

**Hero:** Ronald Reagan, because he was not afraid to say exactly what he believed regardless of whether it was popular. (He sees this trait in Fred Thompson.)

**Recent Favorite Book:** *King Leopold's Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* by Adam Hochschild.

**Why He Got Into Politics:** After 30 years in the real world, making and losing fortunes as a builder and developer, with the chief obstacle being 26 different government regulations, once his kids were grown, he ran to "try to save the free enterprise system."





## Interview with Senator Inhofe Continued

Third, he recited that Weather Channel reporter and meteorologist Dr. Heidi Cullen had said that any meteorologist that did not agree with her philosophy that man-made gases cause global warming should be discredited by the American Association of Meteorologists. He recalled writing an Op-Ed piece saying how outrageous a statement that was, and he was gratified by the 30,000 to 50,000 Senate web site hits an hour agreeing with his position.

Finally, the Senator, having made ten 1-hour speeches on the Senate floor, told us he is preparing a 2-hour speech showing the shifting of the science, to be followed by another speech solely on the economics of the issue. Based on these efforts and reactions, he is encouraged that the “truth” is getting out and declares, “We are winning!”



### Nuclear and Other Energy Sources

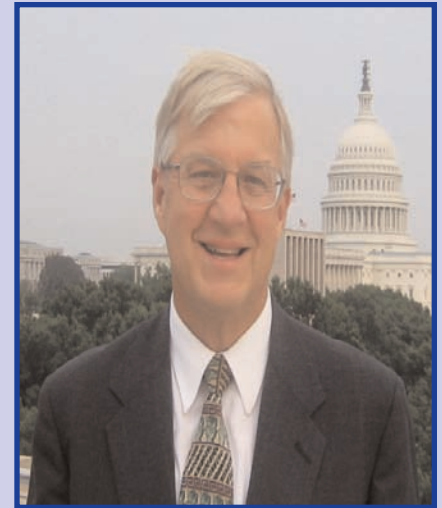
Another important and controversial topic these days of concern to Senator Inhofe is nuclear power. He pointed out that nuclear power accounts for 80 percent of the energy source in France but only 19 percent in the United States. He maintains that all of the demonstrations against nuclear energy at the time of the Chernobyl disaster are now giving way to acknowledgments that nuclear is “probably the safest, cheapest, most abundant form of energy for the future.”

The Nuclear Regulatory Commission is within the jurisdiction of the Environment and Public Works Committee, and Senator Inhofe told us that when he was Chairman he promoted bringing more nuclear plants on line. He described Majority Leader Harry M. Reid as an obstacle because of his opposition to Yucca Mountain as the site for depositing nuclear waste in his state of Nevada. (Readers will recall FERC Commissioner Jon Wellinghoff’s somewhat different perspective of this matter in the Summer 2007 Issue of *EBA Update*.)

In addition to more nuclear power plants, Senator Inhofe stated that there should be increased coal-fired power production. He rejected the view that all coal technology is dirty, and said quite to the contrary that there is clean coal technology. Besides, he observed that even if we eliminated all CO<sub>2</sub> in the U.S., China is building a new coal plant every other week. He also calls for increased use of renewable fuels.

All in all, Senator Inhofe gave us a flavor of the politics of the global warming debate and the efforts to move on energy legislation on Capitol Hill. His comments are quite thought provoking, and although controversial, the sincerity in which he conveyed his convictions was obvious and impressive. As professionals in the energy field, EBA members are well served to keep abreast of the critiques being made by Senator Inhofe.

## President’s Message Continued



Members attending the Mid-Year Meeting can select from two concurrent morning sessions. In the first session one panel will feature legislative experts discussing carbon regulation legislation in this Congress; the other panel will focus on how the States are addressing electric regulation and competition. A second concurrent morning session reviews the pros and cons of a national renewable portfolio standard, and also features a natural gas panel that will examine pipeline capacity markets, price caps and asset management programs. The afternoon program sessions will address emerging issues for ocean and tidal resources; the pros and cons of going private – including the provision for private equity financing; the current and future role that coal will play as a fuel for electric generation; and finally, there will be an ethics session that will examine the pitfalls of technology and a lawyer’s obligation to use technology with competence, confidentiality and care. This last session qualifies for ethics CLE credits. The full-day Primer scheduled for November 30th will examine carbon regulation, renewable energy resources, and how to finance renewable alternative energy projects. We are very pleased to announce that Kateri

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# EBA Member Spotlight: Student Member Scott Johnson

The diverse membership of the EBA includes approximately 50 student members. In this edition of the EBA Newsletter, we focus on one of our student members. Scott Johnson is a second-year evening student at American University's Washington College of Law ("WCL"), a Law Clerk in the Energy, Land-Use & Environment Group at Akin Gump Strauss Hauer & Feld, LLP, and an EBA student member since September 2006.

Q: What sparked your interest in energy law?

A: As part of my geography major at Colgate University, I wrote several papers about the climate change and environmental justice implications of landfilling as a management strategy for municipal solid waste. Both papers focused, in part, on reclamation of methane from landfills for use as an alternative fuel, and states' efforts to regulate or prohibit the importation of municipal solid waste, an interstate commerce issue the significance of which was unknown to me at the time. Through that research, I discovered just how pervasive the law is, and that law school might be a good fit for me.

I wanted a few years of experience in the field before returning to school, so I sought paralegal positions in Washington firms with energy practices, and landed at Sidley Austin Brown & Wood LLP in July 2002. In November 2002, I moved with the partner for whom I worked at Sidley Austin to Akin Gump.

During my tenure at these firms, I have focused on a broad range of energy issues, providing support to attorneys representing corporations, investment and private equity funds, and electric utility companies in infrastructure development projects, transactions, and litigation related to the electric power industry. I have been involved in regulatory due diligence, documentation, and federal and state approval applications for such projects and transactions, litigation before the Federal Energy Regulatory Commission and federal courts involving electric power industry restructuring, rate and tariff development, independent system operator and regional transmission organization development and operation, negotiation and filing of power supply agreements, generation interconnection agreements, and transmission service agreements, and providing advice to clients regarding legislative and regulatory developments affecting the electric power industry.

Q: What made you decide to get involved in the EBA as a law student?

A: Early in my first semester at WCL, I joined the Energy Law Society. In speaking with upper-level students involved in that organization, I noted that several had joined the EBA and

had good experiences with the EBA and EBA programs. I also expected that being a student member of the EBA would facilitate contacts with practitioners for networking purposes and would be a resource for information about opportunities to practice energy law. Both of those expectations were quickly realized.

Q: How do you find EBA as a beginning practitioner?

A: Being a student member of the EBA has been a great benefit. Activities like the Charitable Foundation's Habitat for Humanity build days have enabled me to take breaks from studying to put faces with the names of practitioners with whose work I have become familiar over the past several years. In addition, opportunities like the Charitable Foundation's Legal Internship in the Office of General Counsel at the Federal Energy Regulatory Commission, which are circulated via e-mail directly to EBA student members, are extremely valuable.

Q: Any predictions for the future of energy law?

A: Busy, busy, busy. Satisfying national and global energy demand in the coming decades likely will present significant challenges. Increasing populations and standards of living, demand for reduced pollution, concern about climate change, and declining fossil fuel supplies will require the development of more efficient, cleaner energy resources, and the infrastructure necessary to support those resources and deliver energy to consumers here and abroad. Abundant, reliable energy is the lynchpin of the industrialized world. Without it, agriculture, transportation, communications, and other hallmarks of modern economies would collapse.

My hope is that the need to help industry actors and consumers face these challenges in a changing legal and political environment, through the development of new energy technologies, generation and transmission infrastructure, and competitive markets, eventually will form the basis of my legal practice.

Q: What do you do in your spare time?

A: I spend a significant portion of my spare time working with an organization called Washington, D.C. Inner City Outings, of which I am the National Capital Area Program Chair. Inner City Outings, a part of the Sierra Club Foundation, plans and leads outings for at-risk youth from several D.C. neighborhoods to promote environmental education, exploration, and stewardship. I also play as much golf as I can, and try to ski in the Colorado or Canadian Rockies for a week or so at least once a year. On a rainy day, nothing beats a good dark comedy or twisting mystery movie, always with a big bag of popcorn.



# FERC Administrative News

## Creation of Office of Electric Reliability

FERC Chairman Joseph T. Kelliher signaled the growing importance of the Commission's work on the reliability of the nation's bulk power system when he announced creation of a new Office of Electric Reliability.

"Mandatory and enforceable reliability standards and a strong reliability regime are critical elements of the Commission's new regulatory authority over the reliability of the nation's bulk power system, which Congress enacted in the Energy Policy Act of 2005," Chairman Kelliher said. "Today's announcement appropriately raises the profile of this important effort."

The Office of Electric Reliability, formerly a division within the Office of Energy Markets and Reliability (OEMR), will continue to focus on the development and implementation of mandatory and enforceable reliability standards for the users, owners, and operators of the nation's bulk power system. The office, which initially will have 55 employees, will among other duties help process reliability-related filings with the Commission and review the Electric Reliability Organization's assessments of the adequacy and reliability of the bulk power system for each region. OEMR now will be called the Office of Energy Market Regulation.

Joseph H. McClelland, director of the Division of Reliability since its creation in 2004, will be director of the new Office of Electric Reliability.

"I am pleased that Joe McClelland will continue as head of this increasingly indispensable activity at the Commission," Kelliher said. "Joe and his staff have done a superb job in working to implement the reliability provisions of the Energy Policy Act, overseeing the first true test of the reliability standards this summer, and overseeing the FERC-designated Electric Reliability Organization to create a robust reliability regime for the nation's consumers."

"Chairman Kelliher's announcement underscores both his and his colleagues' commitment to protecting and improving the reliability and security of the nation's bulk power system," McClelland said. "I am honored to have been selected to lead this important new office."

McClelland came to the Commission with more than 20 years of experience in the electric utility industry. He began his career with Allegheny Energy Inc., holding a variety of positions including stops in engineering, marketing, regulation and rates, and project development. Immediately prior to joining the Commission, he was the General Manager of the Custer Public Power District in Broken Bow, Neb. McClelland holds a Bachelor of Science degree in Electrical Engineering from The Pennsylvania State University.

## New Energy Innovations Unit

FERC recently announced the creation of a new Energy Innovations Sector in recognition of the importance of demand response, renewable energy, global warming and advanced technologies in the development of energy markets.

The Energy Innovations Sector will be a unit within the Office of Energy Market Regulation that will provide the cross-cutting expertise to promote and manage the Commission's activities with regard to demand response, energy efficiency, distributed generation, renewable energy issues, greenhouse gas emissions policies and advanced technologies relevant to the transmission grid and wholesale markets.

"The Commission has been addressing the needs of demand response and renewable energy in our policy decisions, and this new unit reflects that these issues will be increasingly important as energy markets continue to evolve," Chairman Joseph T. Kelliher said. "Creation of this new Energy Innovations unit will add structure to what we have been doing."

Commissioner Jon Wellinghoff said the new unit provides a welcome addition and needed complement to the Commission's staff.

"This is an innovative and ambitious effort by the Commission that also provides an essential component for us to completely fulfill our responsibilities under the Energy Policy Act of 2005," he said. "The Energy Innovations Sector will supply technical support and policy recommendations for this agency to better integrate demand response, energy efficiency, and renewable energy into wholesale electric markets and reliable transmission service."

Commissioner Suedeen Kelly noted that demand resources and renewable energy can play a role in the Commission's reliability, open access and wholesale market design policies.

"The energy sector is poised to advance more innovations that will affect the Commission's regulatory jurisdiction, and Congress is working to advance these issues in its energy policy initiatives as a way to lower consumer costs, mitigate pollution and improve competition," Kelly said. "The time is right for the Commission to take this step in demonstrating its commitment to these important issues."

## McCartney Named Deputy Chief Administrative Law Judge

Chairman Kelliher has announced the appointment of Judge Bobbie J. McCartney as Deputy Chief Administrative Law Judge. "I'm delighted that Judge McCartney has agreed to accept this

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# FERC Commissioners, ALJs, FERC Staff and EBA Members Enjoy a first ever EBA Happy Hour held at the Federal Energy Regulatory Commission

*The Energy Bar Association  
Wishes to Acknowledge &  
Thank the Following  
Organizations  
Whose Generous  
Contributions  
to the EBA made this Event  
Financially Possible*

*Alston & Bird LLP  
Bingham McCutchen LLP  
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Energy Group of Blackwell  
Sanders L.L.P.  
Paul, Hastings, Janofsky &  
Walker LLP  
Skadden, Arps, Slate, Meagher  
& Flom LLP  
Sullivan & Worcester LLP  
White & Case LLP*



**Vocal Point, University of Rochester A Capella Group provided joyous entertainment at the function. Here they pose with Chief Judge Wagner & University of Rochester alum Commissioner Kelly**



**This summer marked the fourth successful year of the FELJ co-sponsoring two students from the University of Tulsa College of Law as they served as interns to the Senate Environment & Public Works Committee. As they completed their internships, Marina Greek and Kaylan Lytle reflected on their experiences and express appreciation for what was a once-in-a-lifetime opportunity.**

## Summer 2007 Intern Experience

*Marina Greek*

This summer I had the privilege of working as an intern for the United States Senate Committee on the Environment and Public Works. This internship was possible due to the leadership of William Mogel and generosity of the Foundation of the Energy Law Journal. The internship was much more than a job; it was an opportunity to learn more about the law, the city, and myself.

I and Kaylan Lytle, the other recipient of the Mogel internship, worked closely with Senator James Inhofe's staff. From the beginning, the staff was warm and helpful. The intern coordinator asked about our particular areas of interest, giving each of us the opportunity to work on specific projects related to those areas. Therefore, I was able to work on issues related to nuclear energy, clean water, clean air, and Energy Bill, H.R. 6. Within those broad fields, I was able to do everything from research to analysis and, perhaps most importantly, I had access to the staff member who could answer my questions.

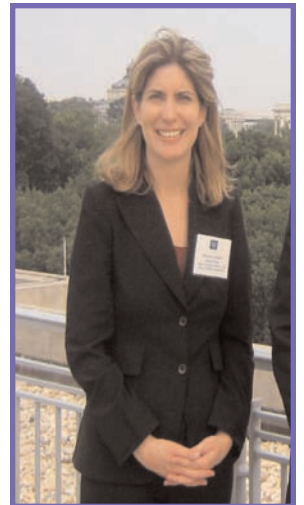
From my energy and resources classes, I had familiarity with many energy and environmental statutes. However, this summer helped me understand how the statutes operate versus simply how they read. Law school professors often say that the law does not exist in a vacuum, and this summer demonstrated the proposition clearly as I learned about the impacts of potential changes in the law. After each research assignment, hearing, or meeting, I understood more about energy and environmental policy, which was especially meaningful to me since this is the area of law that I want to practice in upon graduation.

Further, I often received feedback after each project so I could see that what I did made a difference. It was very gratifying to know my work was valuable to the Committee. In addition, with the staff including me and the other interns in "going away" parties and a picnic at Hains Point, it was easy to make friends.

I also learned a lot about myself this summer. I have always wanted to live in a city larger than Tulsa, and I finally got my chance. I did not know whether I would like taking public transportation every day or whether I would like living "in" the city as I lived in Cleveland Park, but I enjoyed it all. I also did have the advantage of having two cousins in the area, living just nine blocks away from one of them. The two of us were already close, but this summer made us friends. I also was able to attend a reception in honor of my other cousin, and had the honor of meeting his baby daughter who was born the week before I left for home.

While quite familiar with Washington, D.C., living in the Nation's capital for three months gave me the chance to go places and experience things I never had. I was able to watch the Fourth of July rehearsal from the Capitol steps and get a comprehensive tour of the Supreme Court where Justice Ginsberg said hello.

This internship was rewarding to me professionally and personally. I am grateful for the opportunity and thank everyone who helped make it possible. The Foundation of the Energy Law Journal and Mr. Mogel provided me more than a summer job; they gave me life-time memories and a start in the energy and environmental areas of the law.



*Editor's note: Marina is serving as the Notes and Comments Editor on the student editorial board of the Energy Law Journal during 2007-2008.*

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# My Summer with the Senate

Kaylan Lytle



For the summer of 2007, between my second and third years of law school, I searched for a challenging internship that would allow me to explore my post-graduation options. I am very fortunate to have been selected for the William Mogel Internship, sponsored by the Foundation of the Energy Law Journal, to spend my summer with the United States Senate. This internship provided countless opportunities as well as great insight into the legislative process.

Having been a political science major in my undergraduate years, I spend quite a bit of time following the political system. In college, I interned and volunteered with several Congressional campaigns. My background provided a foundation for my intern experience in the United States Senate. Working directly with the Senate Committee on Environment and Public Works (EPW), I was able to experience a different side of the world I have studied so closely.

The internship provided a forum for applying legal knowledge that I had acquired during the first two years of law school. Preparing for a hearing, for example, I found myself recalling information from my Energy Policy course. While reviewing pending amendments to the Energy Policy Act of 2005, I referred back to my Administrative Law course outline.

I and my fellow interns engaged in many different tasks. From preparing testimony and questions for hearing to sitting in on oversight meetings, we were able to ask questions and offer suggestions. I enjoyed observing the crafting of legislation, especially when the lawmakers weighed the various policy issues.

I am tremendously grateful to the Foundation of the Energy Law Journal and the Energy Bar Association for creating this opportunity with the Senate EPW.

*Editor's note: Kaylan is serving as the Executive Notes and Comments Editor on the student editorial board of the Energy Law Journal during 2007-2008.*

# FERC Administrative News

## Continued

position," Kelliher said. "Since joining the Commission in 1999, Judge McCartney has handled some of the most complex regulatory cases referred for hearing. Judge McCartney also brings extensive management experience acquired in her previous positions with other federal agencies."



As Deputy Chief Administrative Law Judge, Judge McCartney will assist Chief Administrative Law Judge Curtis Wagner, Jr. with administrative and managerial duties in the Office of Administrative Law Judges and serve as head of the office in the Chief Judge's absence.

"I am delighted to have Judge McCartney as my deputy," Wagner said. "Her management experience as the Deputy Chief Judge at the Social Security Administration will be a real benefit to FERC."

McCartney's appointment became effective on September 30.

Judge McCartney has been an active and effective participant in administrative law judge alternative dispute resolution proceedings. Judge McCartney routinely makes Energy Bar Association panel presentations and provides in-house training seminars.

Prior to her service at the Commission, Judge McCartney held several management positions as a trial attorney with the Office of the Solicitor, United States Department of Labor, and as an Administrative Law Judge with the Office of Hearings and Appeals, Social Security Administration, including her position as the Deputy Chief Administrative Law Judge of the Office of Hearings and Appeals.

Judge McCartney obtained her Doctor of Jurisprudence (JD) from the University of Houston, and holds a Master of Law (LLM) from Southern Methodist University (SMU). She has also attended classes at the Universities of Oxford and London. She is a member of the Texas and Colorado Bars and has been admitted to practice before numerous state and federal courts as well as the United States Supreme Court.





# Report of the Alternative Dispute Resolution Committee

Alternative Dispute Resolution Committee Co-Chairs Paul Mohler and Steve Shapiro, and Vice-Chair Edna Sussman, report that ADR and mediation are seeing more interest and use in the energy industry than ever before. Consistent with this activity, the ADR Committee held a number of notable events over the past year highlighting ADR developments.

## Energy ADR Forum Report Provides Comprehensive ADR Review

In October 2006, The Energy ADR Forum released a comprehensive report titled: "Using ADR to Resolve Energy Industry Disputes: The Better Way." As described by Bob Fleishman of Covington & Burling LLP, Project Director and Co-Chair of the Energy ADR Forum, "the Report offers practical advice for energy industry participants who wish to benefit from fresh approaches for conflict resolution and difficult decision-making." The Energy ADR Forum is a broad-based coalition comprised of suppliers, customers, regulators, policymakers, law firms, dispute resolution service providers, and energy companies and others involved with energy production, transmission, distribution, and regulatory activities. A copy of the report is available at: <http://www.energyadrforum.com>.

On December 8, 2006, the ADR Committee held a special meeting in Washington, D.C. to introduce and describe the Report's key findings. As stated by Mr. Shapiro, "a report of this magnitude has never been produced for the energy industry - - and was sorely needed."

## A Sell Out Crowd For Energy and Alternative Dispute Resolution:

### What Every Energy Professional Should Know

On January 23, 2007, the Committee presented a sell out brown bag and teleconference program entitled "Energy and Alternative Dispute Resolution: What Every Energy Professional Should Know." The program, held in New York, was organized and chaired by Ms. Sussman and focused on an overview of the energy practice at the major dispute resolution service providers including: the American Arbitration Association; JAMS; the International Centre for Dispute Resolution; the International Institute for Conflict Prevention and Resolution; and the International Court of Arbitration.

The program also offered practical pointers on topics including drafting ADR clauses; ADR procedures at FERC, PSC's and ISO's; the Energy Charter Treaty; and using ADR to successfully site energy projects.

## Deputy Chief Judge Brenner and His Star Studded Presentation:

### Best Practices for Settlement and ADR at FERC

On April 10, in a presentation sprinkled with film clips (from Erin Broockovich, A Civil Action, and A Night at the Opera, among others), historical excerpts (from the Cuban missile crisis), and poetry (by Dr. Suess and Robert Frost), Deputy Chief Judge Lawrence Brenner (now a Commissioner at the Maryland Public Service Commission) presented a session on best practices for settlement and ADR in FERC proceedings. Judge Brenner's presentation to a packed room was based on his experience in a range of proceedings, with real-world examples. Judge Brenner attributed the success of the settlement processes he managed to a judicious and patient use of plenary and caucus sessions, combined with finding key individuals to participate in working groups designed to address substantive contested issues.

## ADR and RTO/ISO's:

### Finding New Ways to Manage Disputes

On May 22, the ADR Committee held a brown-bag presentation on "Alternative Dispute Resolution at RTOs, ISOs and Power Pools" in Washington D.C. Robert Wax, ADR Committee member and independent arbitrator and mediator, organized and moderated the program which included representatives of key RTO and ISO organizations, including Wayne Harris from Indiana (Chair of the MISO ADR Committee); Dan Shonkwiler from California (Senior Counsel at CA ISO); Bill Museler (Chair of the New England Power Pool Review Committee); and Craig Glazer from Washington (from PJM Interconnection). These panelists made presentations on ADR at their respective organizations. Bob Fleishman (Covington & Burling) and Chip Cannon (Latham & Watkins) addressed the broad topic as discussed in the 2006 Energy ADR Forum Report. Rick Miles (Director of FERC's Dispute Resolution Service) also participated in the discussion.

A transcript of the May 22 session will be published in the upcoming issue of the *Energy Law Journal*.

\* \* \* \* \*

Looking ahead, the ADR Committee is planning several new exciting and informative events for the coming year. Please look for them.



# American Public Gas Association

The American Public Gas Association is the national trade association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states currently serving over five million customers. Almost 700 of these systems are APGA members.

Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution. Through APGA, public gas systems work together to keep their members reliably informed about new developments in safety, public policy, operations, technology, and the marketplace that could affect the communities and consumers they serve.

Their policy positions are actively decided by their membership through committees and resolutions.

APGA currently has several advocacy priorities:

## Market Transparency

Currently, the vast majority of natural gas derivatives are traded without government oversight. While the Commodity Futures Trading Commission (CFTC) monitors trading of natural gas contracts executed on the NYMEX, it receives very limited information regarding trading of natural gas derivatives on the over the counter market where tens of thousands of trades are placed every day. APGA has maintained that the government cannot effectively monitor for manipulation or other trading abuses if the government only receives information concerning positions taken in one segment of the total market.

APGA believes that Congress should extend current market monitoring practices by authorizing the CFTC to collect information concerning all positions held by the largest traders in the natural gas derivatives market; not just positions cleared through the New York Mercantile Exchange (NYMEX) or traded on the Intercontinental Commodity Exchange (ICE). Over the last several months, APGA has testified before the Senate, House of Representatives, the Federal Energy Regulatory Commission (FERC) and most recently before the CFTC in regard to the need for additional market transparency.

## Gas Supply

Increasing domestic supply is a fundamental component of the solution to bring prices back to an affordable level. Supply has not been able to keep pace with demand in large part because of federal policies that have restricted the exploration and production of natural gas. APGA continues to push for the passage of legislation that would allow natural gas production from areas that are currently off-limits to exploration.

## Climate Change

Over the past several years the calls for Congress to pass legislation that addresses climate change have increased. Given that natural gas is anticipated to be a key component (i.e., the fossil fuel of choice) in any climate change plan, APGA is extremely concerned about the impact climate change legislation will have on the price of natural gas. APGA has maintained that to the extent an additional natural gas demand is created by climate change policy goals, there needs to be an accompanying policy goal that achieves an identical increase in the amount of natural gas supply.

Want to know more about APGA? Then go to <http://www.apga.org> or contact FELJ Board and EBA member Les Fyock at 202-464-0833 or [lfyock@apga.org](mailto:lfyock@apga.org).



# A Preview of the November 2007 Energy Law Journal

The fall edition of the *Energy Law Journal* (Vol. 28 No. 2) will be published in November 2007 and will address a number of provocative, important, and timely subjects.

Articles to be published will cover the following cutting-edge issues: demand resources and the second half of the wholesale market equation (FERC Commissioner Jon Wellinghoff and David Morenoff); the global economic and environmental implications of China's power sector (Robert Gee); the growth of wind power and the accompanying new wave of litigation (Brit Brown and Benjamin Escobar); and the potential law of on-site carbon sequestration (Jeff Moore.) Other important articles more focused on FERC that will appear address the implementation of EPA's 2005's long-term firm transmission rights provisions (Jay Morrison), RTO governance (Michael Dworkin and Rachel Aslin Goldwasser) and new metrics for measuring the success of non-profit RTOs (Rick Drom.)

The fall edition also will feature the transcript of an EBA symposium/brown bag on Alternative Dispute Resolution in RTOs, ISOs, and Power Pools with insights from speakers discussing recent activities at CAISO, MISO, PJM, and NEPOOL, as well as recommendations from the recent Energy ADR Forum Report. Finally, there will be a number of student notes and EBA committee reports on important subjects.

The *Journal* will be available on-line as well as in hard copy.

## Energy Law Journal: Excerpts from Past Issues

### Ten Years Ago

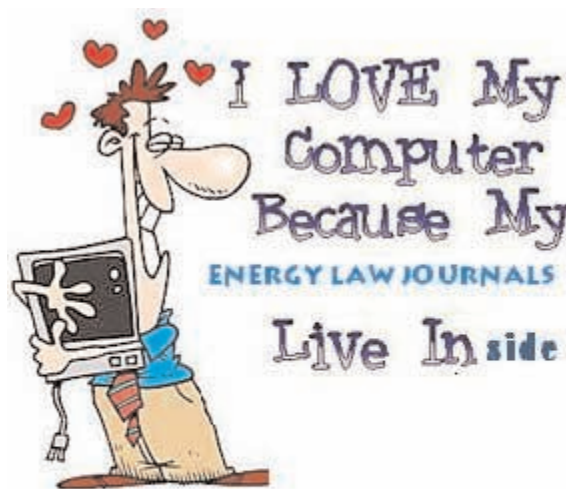
"Because transition charges are typically assessed as distribution surcharges, there are incentives to avoid the charges through bypassing not just the merchant function of the incumbent utility, but the distribution system as well. The potential inefficiencies created by such bypass are evident. Duplicative distribution facilities are created not because they can be operated at lower cost than the incumbent or because additional capacity is needed. Rather, the avoidance of distribution surcharges makes the creation of alternative facilities economically feasible. This is a potentially difficult problem that has prompted calls for exit charges or competitively neutral end-user charges imposed on wholesale intermediaries."

Michael J. Doane and Daniel F. Spulber, *Municipalization: Opportunism and Bypass in Electric Power*, 18 *ELJ* 333, 335 (1997).

### Twenty Years Ago

"Unless a pipeline were shown to be systematically imposing on customers the cost of facilities which it has no intention or chance of utilizing for their benefit, the Commission would do well to consider the throughput issue purely in terms of risk allocation, without resorting to the shibboleths of rate base regulation. The language of used and useful would clutter and confuse the issue; there are no discrete costs to be disallowed or separate facilities for which the utility may be denied recovery or a return. Rates that are based in part on optimum throughput levels simply mitigate adverse rate impacts on consumers by redistributing the risks and burdens of underrecovering the costs of an already operational unit."

James J. Hoecker, "Used and Useful": *Autopsy of a Ratemaking Policy*, 8 *ELJ* 303, 324 (1987).



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# Midwest Chapter Update

## Continued

the speakers helped to clarify some of the questions surrounding the new rules and shed valuable light on what those impacted may expect from the process in the months and years to come. We appreciate their guidance.

The Midwest Chapter is also pleased to announce that the CFEBA approved the Midwest Chapter's recommendation for recipient of a 2007 CFEBA Charitable Grant. In June, 2007, the Midwest Chapter chose the American Red Cross, with funds earmarked for the Greensburg, Kansas Tornado Disaster Relief Fund, as its recommended grant recipient, to assist with the rebuilding and energy needs of those residents in that Midwestern town that was leveled by tornadoes on May 4, 2007. The CFEBA Board approved a \$5,000.00 grant for that purpose. We thank the CFEBA Board for their generosity to the region.



**Tornado  
damage,  
Greensburg,  
Kansas**



The Midwest Chapter invites all EBA members, and all others who may be interested, to attend the Eleventh Annual Regional Midwest Energy Conference to be held in Chicago on March 5-6, 2008, at The Palmer House Hilton Hotel.

*Christine Ericson, President  
Midwest Chapter*

# President's Message

## Continued

Callahan, President of the Alliance to Save Energy, will give the Primer luncheon address. Please sign up for these events by means of the mailings you will receive shortly, or you can do so online at <http://www.eba-net.org/events.php>.

The Charitable Foundation of the Energy Bar Association will host its 5th Annual Gala the evening of November 29th in conjunction with the Mid-Year Meeting. This CFEBA Gala offers members the opportunity to network with the FERC Chairman, other Commissioners and staff, as well as our colleagues and EBA practitioners. As you will read in this newsletter, CFEBA has initiated a major fundraising campaign in order to raise funds for extremely worthwhile causes. Proceeds from this campaign will enable CFEBA to make energy-related grants to organizations in local communities where our members practice. The Gala features live music, delicious food, and a silent auction.

Our regional chapters and committees have scheduled numerous programs for the remainder of the year. In September, the Houston Chapter held a very successful fundraiser to benefit CFEBA. Also, in September the EBA Renewable Energy Committee held a teleconference seminar in conjunction with the ABA. Three EBA Committees, including the State Commission Practice and Regulation Committee, the Renewable Energy Committee, and the Power Generation and Marketing Committee, have functions planned in October, and the Southern Chapter will also hold a teleseminar. In December, the EBA Oil Pipeline Regulation Committee has scheduled a brownbag. Other Chapters and EBA Committees are planning programs that will be announced shortly.

I encourage all our members to take advantage of the numerous educational programs and networking opportunities offered by your Association. Also, I hope you will provide us with feedback on program content, as well as ideas for improving the organization.

We look forward to seeing all of you in Washington on November 29-30 at the Mid-Year Meeting Program and Primer, and the CFEBA Gala.

*Michael J. Manning  
President, Energy Bar Association*



## Upcoming Events

**Happy Hour co-hosted by the Young Lawyers Committee & the Women's Council on Energy & the Environment**

**October 31, 2007  
The Mayflower Hotel  
Washington, D.C.**

**Mid-Year Meeting**

**November 29, 2007  
Reagan Building & ITC  
Washington, D.C.**

**Charitable Foundation Fifth Annual Fundraising Gala**

**November 29, 2007  
Reagan Building & ITC  
Washington, D.C.**

**Primer on Climate Change & Renewable Energy Resources**

**November 30, 2007  
Reagan Building & ITC  
Washington, D.C.**

**Primer Meeting**

**April 30, 2008  
Reagan Building & ITC  
Washington, D.C.**

**Sixty-Second Annual Meeting**

**May 1, 2008  
Reagan Building & ITC  
Washington, D.C.**

*For more information on any of these events, please contact Michele Duehring at 202.223.5625 or [michele@eba-net.org](mailto:michele@eba-net.org).*

## Interview with Carmen Gentile

### Continued

first and foremost, we should think of meeting our energy needs as a single integrated activity that takes account of the national prosperity, environmental needs, and international security and economic concerns. I don't know the solutions, but there are some major opportunities for energy lawyers to contribute to the solutions. I keep practicing law, even though I have been at it for a while, because I am very excited about the opportunities and challenges just ahead of us. Perhaps none of us will still be practicing when the solutions are all worked out, but I am more excited to be involved now than at any earlier stage of my career. That is one of the rewards of being involved in the energy law and in the EBA.

## Charitable Foundation Update Continued

FERC ensures that every day there are novel legal issues to tackle. During my ten weeks at FERC, no two days were alike."

The CFEBA was delighted to have the opportunity to support Mr. Petersen this past summer and looks forward to sponsoring another intern at FERC during the summer of 2008. Information about the 2008 FERC internship opportunity is available on the EBA web site. In addition, the CFEBA is currently working through the Washington Center to evaluate and place another energy-related intern during the Spring 2008.

**ABOUT THE ENERGY BAR ASSOCIATION:** EBA is a non-profit voluntary association of attorneys, non-attorney professionals and law students whose mission is to enhance the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies. Established in 1946 as the Federal Power Bar Association, the Association generally was focused on those lawyers practicing energy regulatory law at the federal level. In 1977, the organization changed its name to the Federal Energy Bar Association to reflect the name change of the Federal Energy Regulatory Commission. Today, the Energy Bar Association is an international, non-profit association of attorneys, non-attorney professionals and law students active in all areas of energy law. It has approximately 2,500 members, six formal chapters in Houston, New Orleans, Midwest, Southern, Western and Northeast regions of the U.S. and an increasing number of members across the United States and Canada.

**DIVERSITY POLICY STATEMENT:** The Energy Bar Association is committed to the goals of fostering an inclusive and diverse membership and increasing diversity across all levels of the Association, so as to reflect the diversity of the energy industry and the Nation as a whole. Attorneys, non-attorney professionals in the energy field and law students are welcome to join our ranks regardless of race, creed, color, gender, ethnic origin, religion, sexual preference, age, or physical disability and are encouraged to become active participants in the Association's activities.

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