

President's Message



As the Energy Bar Association kicks off its Sixty-Second year, I am delighted to report that the EBA has never been stronger, thanks to the dedication of officers and directors at the national level and in our regional chapters, and the hard work of our EBA committee chairs and vice chairs. I also want to recognize EBA's administrative staff including Lorna Wilson, Marlo Brown and Michele Duehring, who deserve much praise.

EBA membership numbers likely will exceed 2,500 this year. As our membership has increased, we are offering expanded educational and networking opportunities at the national and regional level. At the national level, EBA sponsored several extraordinarily successful major events this past year. In addition, EBA's eighteen committees held a record number of brown bag programs that primarily focused on current issues affecting our practices. Many events are being planned for this year, including the Mid-Year and Annual Meeting Programs and two Primer programs. At the regional level, the six chapters organized Fall and Spring educational programs for

continued on page 15

Wellinghoff: Man with a Mission!

Driven by Innate Inventive Genius, this FERC Commissioner Brings Demand Response Crusade to the National Forefront; His Even Broader Agenda Captures the Imagination

Gary E. Guy and Channing D. Strother

Entering into the Offices of Federal Energy Regulatory Commissioner Jon Wellinghoff, EBA Update reporters Gary Guy and Channing Strother (aka "Marquis Childs and Roscoe Drummond") were instantly transported into an atmosphere of science, technology, and invention. Three large wall hangings of Albert Einstein, and a fourth of Thomas Alva Edison, are displayed in the outer office. A model hybrid car is on a table. A geological map of the United States is on another wall. It was clear immediately that this is the Office of a Commissioner with a futuristic insight and a keen appreciation of the avant-garde. Read on to discover what we learned on our journey through FERC-land with Mr. Wellinghoff; better yet, watch as much of it as we could capture in our hour-plus video by linking onto the EBA website at www.eba-net.org.

Mr. Wizard! Welcome to Wellinghoff's World

Once Commissioner Wellinghoff ushered us into his personal office, we saw more inventive displays, and a sketch board where concepts from Thomas L. Friedman's *The World is Flat*, especially as applied to energy matters, are diagramed.



He explained to us his sketch board diagrams, including a "silver buckshot" notation, wherein he has sketched an array of energy efficient measures. Mindful of the adage that there is no "silver bullet" solution, the Commissioner has multi-pronged solutions to the nation's energy concerns.

Simply put, the Commissioner has a passion for knowing how things work and figuring out how to make them work better. As he more eloquently put it, "I am fascinated with making things more efficient." And he is going about doing it in the energy field with growing success.

He has always been interested in technology, and alternately majored in physics and mathematics as an undergraduate. He told us that he has just turned 58 and "feels

continued on page 7

THE CHARITABLE FOUNDATION OF THE ENERGY BAR ASSOCIATION

Charitable Foundation Kicks Off 2007 Fundraising Campaign

On June 27th, the Charitable Foundation of the Energy Bar Association kicked off its 2007 Annual Campaign. This fundraising campaign is directed to the law firms, energy companies and other institutions represented by EBA members. Rick Roberts, Chairman of the Fundraising Committee, noted that a separate fundraising drive directed to individual EBA members will be launched later this year.

All of the Charitable Foundation's work - from providing emergency generators to Hurricane Katrina victims, to donating solar panels for lighting at a mountaintop school in Tibet where children previously studied by candlelight, to assisting burned utility linemen and their families, to assisting a charitable hospice pay its utility bills, and so much more - was made possible by generous donations from law firms, corporations, other organizations and individuals. The Charitable Foundation seeks to promote energy related charitable works in all regions of the U.S. and beyond. Linda Walsh, President of the Charitable Foundation, emphasized that because all of the Charitable Foundation's modest administrative costs are paid by a dedicated grant, 100 Percent of all contributions go to support energy related charitable works!

Donations to the Charitable Foundation are tax deductible and, at certain levels, entitle donors to recognition in the EBA Directory and other publications. "This recognition not only demonstrates to peers the organization's support of the Charitable Foundation's work. It also helps energy professionals show the larger community that the energy bar stands together to help those with energy-related needs," said Mr. Roberts.

Any organization or person that would like to contribute can contact the EBA administrative office for a pledge form at 202-223-5625 or admin@eba-net.org.

Fourth Annual Golf Tournament Raises Funds

On April 26, 2007, the CFEBAs hosted its Fourth Annual Fundraising Golf Tournament at Westfields Golf Club in Clifton, Virginia. "The weather was dry and refreshing, and the golf course was in excellent shape as the first players teed off during the "shot gun" start," said Evan Reese, Chairman of the Golf Tournament Committee. The event raised a total of \$9,360 for the CFEBAs.

Seventeen companies/firms sponsored the golf tournament, each contributing \$500 to sponsor a hole for a total of \$8,500 of the net proceeds. Sponsors included the following: ABS

Complete Printing Services, Inc., Access Litigation Services, Analysis Group, Boardwalk Pipeline Partners, LP, Brown, Williams, Moorhead, & Quinn, CaseDriven Technologies, Duane Morris LLP, Dunes Realty, Economists Incorporated, Edison Electric Institute, Huron Consulting Group/Barrington-Wellesley Group, Inc., Landmark Document Services, LeBoeuf, Lamb, Greene & MacRae L.L.P., Lukens Energy Group, A Black & Veatch Company, Pitney Bowes Legal Solutions, PowerGrid Strategies, LLC, and Van Ness Feldman, P.C.

Registration fees were \$160 for non-government employees and \$145 for government employees, which covered greens fees, breakfast, lunch, and a contribution to a prize fund. Registrations for the seven golfers who did not play were considered charitable contributions to the CFEBAs. Participants represented various segments of the energy industry including lawyers, consultants, and energy company employees.

The law firms of Heller Ehrman LLP; Duane Morris, LLP; LeBoeuf, Lamb, Greene & MacRae L.L.P.; and Van Ness Feldman, P.C. donated gifts for the players - two sleeves of golf balls, tees, a bottle of water, and an eyeglasses case. In addition, Evan Reese donated two tickets to a Washington Nationals baseball game; Andrew Art donated three impressive golf clubs; and Susan Moore donated two boxes of Callaway golf balls. These items were raffled or offered as prizes. Finally, the CFEBAs conducted a silent auction to award a donated week's rental at a Myrtle Beach condominium. The winning bid was \$250.

Notwithstanding the accommodating weather, participation in this year's tournament was down - only 32 golfers participated, compared to over 50 in prior years. As a result, proceeds were down somewhat as well. Mr. Reese said that his Committee members believe that holding the event on Thursday this year, rather than Friday as in previous years, may have caused the drop. The unexpectedly low turnout also cut into the CFEBAs net proceeds, since Westfields requires payment for 75% of the expected turnout 30 days prior to the tournament. CFEBAs estimate of participants, based largely on past experience, was long. Westfields, however, generously gave CFEBAs 12 day passes for future rounds of golf as recompense for having to pay for players that did not materialize.

Mr. Reese spoke for the Foundation in expressing appreciation for others on the Committee who contributed their time and efforts to make this event a success: Andrew Art, Jennifer Cook, Jay Matson, Mustafa Ostrander, Dave Connelly, Bob Stroh, and Joe Fagan. In addition, he said, Dave Doot and John McCaffrey

continued on page 3



The Charitable Foundation Update Continued

worked hard to obtain sponsors. As always, the EBA staff - Michele Duehring, Lorna Wilson, and Marlo Brown – were indispensable and contributed substantially to the success and organization of the event.

Finally, Mr. Reese said the professionalism and expertise of Tammy Sheldon, Scott Barrowclough and the events staff at Westfields Golf Club is top notch. CFEBA is particularly grateful for their work at making the event run smoothly for everyone's pleasure.

Mark your calendar for The Fifth Annual CFEBA Golf Tournament, on May 2, 2008 – a Friday. The CFEBA has tentatively reserved that date at Westfields Golf Club for the 2008 Fifth Annual CFEBA Fundraising Golf Tournament. And the Foundation has ordered another fine day, too.

CFEBA Reaches Out to Regional Chapters for Charitable Grant Opportunities

The CFEBA has contacted the six EBA Chapter Presidents to identify potential grantees in every chapter region. Subject to contributions made during CFEBA's present fundraising drive, a concerted effort will be made to formalize an arrangement with each such grantee in time for presentations at the Annual Fundraising Gala.

Rich Meyer, Chairman of the Charitable Grants Committee, announced that the Foundation is exploring granting a donation 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 military service men and women recovering in military hospitals. Without assistance from the Fisher Foundation, these families otherwise would incur substantial non-reimbursable

expenses staying in hotels while visiting injured service men and women. Mr. Meyer said it was fitting that the CFEBA recognized Memorial Day 2007 by seeking to help the families of service men and women who have been wounded in the line of duty defending our national security.

CFEBA Improves Scholarship and Internship Programs

CFEBA is continuing to work with The Washington Center for Academic Internships and Academic Seminars to place undergraduate college students in energy-related internships. The Washington Center solicits applications from over 500 colleges and universities located throughout the United States and some foreign countries. Past CFEBA-funded interns that were placed through the Washington Center have come from a diverse cross-section of the country, including Florida and New Mexico, as well as Mexico. The CFEBA also is working with both DOE and FERC to develop internship opportunities more directly in line with CFEBA's mission. Sue Kelly, Chairman of the Scholarship and Internship Committee, said that the revamped program is aimed at identifying and assisting worthy undergraduate students and stimulating interest in energy as a career path.

Ms. Kelly also announced that the CFEBA Board voted to offer two full scholarships to fund internships for the 2007-2008 academic year, rather than four partial scholarships as in the past. "We hope this change will attract more qualified candidates," Ms. Kelly said.

CFEBA Volunteers Work on Service Projects in D.C. Area

The CFEBA sponsored a Habitat-for-Humanity construction and park project day in Northeast D.C. on May 12. Bill

Booth, Chairman of the Service Projects Committee said the project day was a tremendous success, with wonderful weather and a turnout of 24 EBA mem-



bers, family and friends. "We were joined by 15 non-EBA volunteers celebrating Mothers Day," Mr. Booth said.

Volunteers working on the construction project framed and raised walls. Other volunteers worked with Washington Parks and People, a non-profit organization dedicated to restoring D.C. parks, cleaning-up Marvin Gaye Park, near the construction project.

Mr. Booth announced that the next Habitat-for-Humanity project will be with the Northern Virginia Chapter of the EBA and is scheduled for September 29. "We'll keep you posted through e-mail as to the location and logistics. We look forward to seeing you there," Mr. Booth said.



EBA PRO BONO PROGRAM UPDATE

This Summer, the EBA Pro Bono Program webpage will be up and running. Information about the program will be available to all, including a description of eligibility for prospective clients and forms to request that the EBA post information on eligible projects. In a separate password protected area of the webpage, members will be able to access completed request forms so they can decide whether to offer services.

The EBA Pro Bono Program's mission is to facilitate the voluntary provision of free legal services requiring energy law expertise by EBA members, to advance humanitarian and charitable causes for clients that are financially constrained, including developing countries, and to provide opportunities for professional development for EBA members. The program's mission was designed to honor EBA's apolitical status and, accordingly, to use the pro bono program to encourage members to provide service in broadly supported activities, but not adversarial proceedings. EBA members will have the opportunity to make a positive difference in their field of expertise by serving pro bono clients on widely supported projects. At the same time, EBA will stay its historic non-partisan course.

In implementing the Pro Bono Program, the EBA will not itself provide any legal services. Rather, it will electronically post eligible projects at the request of eligible clients. On a purely voluntary basis, EBA members and their firms may choose to provide services. The pro bono client and the practitioners volunteering to provide services will directly make all associated arrangements.

If you are aware of clients with projects, which may be eligible, please encourage them to visit the Pro Bono Program Webpage which will be on line later this summer. If you are interested in providing pro bono services, please visit the webpage. We look forward to hearing from you and will provide additional updates soon.

IN MEMORIAM

We regret to inform our members that C. Frank Reifsnyder, who served as President of the Federal Energy Bar Association in 1981, passed away last month. Mr. Reifsnyder was a senior partner at Hogan & Hartson, where he practiced law for thirty-three years, and was active in FEBA throughout his career. In retirement, Frank continued to maintain his membership in the Association.

Energy Law Journal: Excerpts from Past Issues

Ten Years Ago

"Those who have worked on power sector reform in different countries describe the experience as similar to being in the army: 'You wait and wait and then you rush like crazy.' Once political authorities give the green light, the actual rules and documents are almost always produced under impossibly tight deadlines. Inevitably, mistakes are made that need to be corrected. Moreover, the agreements reached on specific rules and splits of functions are often compromises that fall short of anyone's ideal."

James Barker, Jr., Bernard Tenenbaum, and Fiona Woolf, *Regulation of Power Pools and System Operators: An International Comparison*, 18 ELJ 261, 326 (1997).

Twenty Years Ago

"While it may be premature to say that transmission pricing and service obligation problems are unsolvable, it can be said with confidence that they presently are unsolved. Worse yet, there is little evidence that they even have been addressed seriously. Certainly proponents of open access have not focused on any of these complex problems raised by their advocacy. This is a crucial area that should not be avoided in public policy debates. Reasonable open access scenarios must specify whether a legally-mandated obligation to expand facilities to accommodate wheeling demands is envisioned and, if so, what regulatory agency will exercise the necessary control, how it will be determined when transmission capacity expansions must be provided and how the cost of such expansions will be spread among potential switching and captive customers."

Joe D. Pace, *Wheeling and the Obligation to Serve*, 8 ELJ 265, 301-2 (1987).



Meet Madame Secretary . . . A Conversation with Kimberly D. Bose

Adrienne E. Clair

Kimberly D. Bose is no stranger to the Federal Energy Regulatory Commission. As a 20-year veteran, most recently as a managing attorney with the Office of General Counsel (OGC), she is well familiar with the Commission and considers the staff of the Commission as an “extended family.” Her recent appointment as Secretary of the Commission is the next step in Bose’s self-described “strong dedication to public service.”

As Secretary of the Commission, Bose is responsible for the orderly processing of all matters coming before the Commission pursuant to the Commission’s rules of practice and procedure and the regulations prescribed for the Commission under the Federal Power Act, the Natural Gas Act, and other statutes. She is responsible for the service of process on parties to proceedings before the Commission as required by law. In addition, she is responsible for the performance of many special duties delegated to her by the Commission under the Code of Federal Regulations. She assures the Commission’s compliance with the requirements of the Government in the Sunshine Act as set forth by the United States Code.

When asked how she manages such vast responsibility, Bose praises her “cracker jack staff” for initially handling most of the matters that come before the Secretary, such as the issuance of notices and orders, recording of minutes of official Commission actions, and responding to inquiries from the public. Bose commands a staff of approximately 15, which includes those on the 11th floor of the Commission, as well as a sort of “quality control” group that reviews publications that contain Commission issuances, such as Commerce Clearing House and Lexis-Nexis. Bose said that she also performs a “quasi-management” function over the staff responsible for receipt of filings made with the Commission, through bi-weekly meetings and monthly visits to the offices.

While Bose admits that many of the core functions of the Secretary are administrative, “there are substantive aspects of the

office of which the public is not aware.” Bose says that her office is “the last link of the chain” for issuances by the Commission and, therefore, she must ensure that the language in the orders is consistent with legal and/or statutory requirements. “For example, an

order establishing a hearing on a [Federal Power Act] Section 206 complaint must comply with certain statutory requirements and my office is responsible for reviewing the orders, not on policy issues but on substantive procedural issues.” In this regard, Bose considers her long tenure with the Commission an advantage because it affords her the ability to contact Commission staff responsible for the orders and, when necessary, refine the orders so that they are clear on procedural issues. Bose says that it is also important for her to be aware of the substance of the orders issued by the Commission, particularly on policy issues,

because those orders may well affect the Secretary’s Office. “We are the office that will receive compliance filings when they are directed by the Commission, so we need to be

familiar with the orders calling for such filings,” says Bose. Bose states, “I also try to stay abreast of the constantly evolving energy policy; what new authority has the Commission been granted by Congress; new rulings from the court of appeals; and issues concerning energy infrastructure and reliability.”

The work of the Secretary’s office is constant, and Bose cites the pace of the office as the most challenging aspect of her new position. The Commission must process approximately 1,500 filings every week and issues approximately 440 documents on a weekly basis, which requires a lot of coordination with other offices. “When working as an attorney in OGC,” says Bose, “a great deal of my time was spent working independently. The Secretary’s Office is extremely interdependent on every other office in the agency. We [the staff in the Secretary’s Office] are also very interdependent on one another. Therefore, the pace is relentless.” Bose adds that the office also tends to run later in the evenings because “we serve the Chairman and the Commission, and must be here to process orders as requested.” Even with the



“it is in the public interest and the right of the public to have adequate notice and sufficient time to respond” to matters brought before the Commission.

continued on page 6

A conversation with Kimberly Bose Continued

late nights and notwithstanding Bose's fondness for her position and staff in the Office of General Counsel, Bose finds the work of the Secretary very fulfilling. She views the office as "the due process office" and says that she "feels very strongly that citizens must have notice and an opportunity to be heard." Bose adds that she believes "it is in the public interest and the right of the public to have adequate notice and sufficient time to respond" to matters brought before the Commission.

I asked Bose if in the midst of the day-to-day functions of her office, she has any opportunity to consider strategic initiatives or consult with other agencies to identify best practices. She said that one of the key performance measures of the office is timely issuance of orders from the public meetings. The office also maintains performance measures for timely posting of notices on ELibrary or in the Public Reference Room. As for coordination with other agencies, Bose said that she has met with the Secretary and Deputy Secretary of the Securities and Exchange Commission to discuss the Commission's success with ELibrary and EGovernment initiatives.

One program with which Bose says her office has a continued dedication to improvement is the ELibrary initiative. The Commission recently completed an EGovernment survey, to which it received over 400 responses. Bose said that her office is in the process of addressing the issues raised in survey responses in order to make ELibrary even better. Since Bose was appointed Secretary in April, the office has adopted a new feature called a "Quick Hit." The Quick Hit is an electronic notice sent to all persons who have elected to receive notices through ESubscription. Bose says the Quick Hit will be issued "when the Office has a new service or offering for which an order will not be issued and [the Secretary] thinks the new offering will be helpful to the public. The Quick Hit emails will most often focus on helpful new information concerning Commission submissions." She adds that "while we don't intend to flood the public's e-mail boxes, the Quick Hits are intended to help those that regularly do business with the Commission. I think this is better than having to wade through the Commission's website to find such useful information."

"The guidelines are there to make it easier on both the filers and the Commission. Do not submit items electronically that are not on the list of approved filing types and formats."

The first Quick Hit was issued on April 27 and dealt with guidelines for submitting CDs, DVDs and other electronic media. Bose says the guidelines were necessary because when files are submitted that are voluminous in nature or do not comply with the Commission's format requirements, it becomes very difficult for the Commission to process such filings. "The guidelines address what can be submitted, how such media should be labeled, and format requirements, and are intended to allow us to process electronic media more effectively and efficiently, rather than delay processing because of receipt of unwieldy documents," said Bose.

Is there anything Bose would like to advise the electronic filers? Without hesitation, Bose says that the most important advice she can give is to comply with the E filing guidelines overall. "The guidelines are there to make it easier on both the filers and the Commission. Do not submit items electronically that are not on the list of approved filing types and formats." Bose also says that it would be best to receive Adobe documents in original PDF format rather than a scanned PDF format document, because it is difficult to work with scanned documents.

As if her office is not busy enough, Bose adds that as part of her immediate action items, the public should look forward to publication of responses to the recent survey and new E filing initiatives that will expand the types of filings eligible for E filing.

Kimberly received her law degree from Howard University School of Law in Washington, D.C. and has a Bachelor of Science degree from Hampton University in Hampton, Virginia. In her increasingly rare spare time, she spends time with her family (two sons and a daughter) and enjoys reading fiction and mystery books, playing tennis and basketball, and traveling.



Commissioner Wellinghoff Interview Continued

like a young man.” He is chock-full of ideas and is eager to share them. He began to do just that before we were even in full interview mode, and continued conversing with us, pulling out news clippings on various energy topics, and pointing out energy technology in his office a full 45 minutes after we officially shut down the tape.

In fact, *apropos* of nothing, as we were setting up our equipment and engaging in casual pleasantries, Commissioner Wellinghoff determinedly placed his hand firmly on a contraption on his table and held it there. He was staring at it while we continued to set things up and chat. Then, *voila!* We saw a wheel on the top of the gadget starting to move! Mr. Wellinghoff told us that the heat from his hand was creating a temperature differential between two plates that in turn causes a piston to turn. He elaborated that such waste heat can be used for many beneficial purposes. This invention was next to a plastic-encased all-electric car model, the *Tesla*, which he said “goes from zero to 60 in less than 4 seconds” and can be plugged into a transmission grid to power ancillary services. Much of this dialogue occurred outside our formal interview (although he returned to his hand-heated power producer during the interview but it did not move as quickly then). And when we finished our interview (only because we used up all our scheduled time and our taping equipment), the Commissioner invited us to install another tape in our camera and video a discourse he gave us about his outer office wall map. He pointed out to us that the brown spots along the western United States surround a small red spot. That red spot is an indication of an area that is susceptible to having an earthquake. His punch line is that this red spot is located at Yucca Mountain, Nevada – precisely the spot where the federal government has determined to dump radioactive nuclear waste gathered from power plants throughout the country. It was a presentation worthy of Jay Leno, were it not true!

Waste Not; Want Not!

He is no abstract dreamer; he is personally committed to the cause. As a case in point, Commissioner Wellinghoff commutes to the FERC daily by public transportation, taking both bus and subway.

Also, the Commissioner did not have his ceiling lights on but instead had lamps at his computer and at his work table. He explained that he only uses artificial lighting for areas where he needs to enhance visibility. He told us of how he inspected the entire FERC building for ways to improve efficiency, from the basement to the chiller room directly under the roof. He surprised some workers who told him that they had never been visited by a FERC Commissioner before.

“You can’t have half the market make the market work.” Supply side is only half the answer; demand side must also be addressed

Idea Man: Demand Response as an Element of Improved Efficiency

“You can’t have half the market make the market work.” Supply side is only half the answer; demand side must also be addressed, the Commissioner told us. While he might well be known as “Mr. Demand Response,” Mr. Wellinghoff revealed that his overarching objective is improved efficiency in energy commodity markets and capacity infrastructure. According to Commissioner Wellinghoff, the gas market is working fairly effectively because there is elasticity. That is, the ability to store gas provides flexibility in purchasing decisions, and there are alternative sources of supply. But he sees a need to increase gas efficiency in the design of gas pipeline infrastructure, deliverability of gas, compressor equipment, and waste heat recovery. As he is wont to do, he bedazzled us by rattling off the top of his head studies that, for example, indicate that there are 12 gigawatt-hours of recoverable electric energy from compressor stations and pipeline interconnections, in part by using back-pressure turbines, what he calls “scrap energy technology.”

In fact, Commissioner Wellinghoff maintains that in both the gas and electric industries the delivery infrastructure needs to be made more efficient. And on the electric side, where there is less flexibility than with gas (on account of the inability to store electricity for later use in peak periods), he wants to achieve more market efficiency.

Demand response, as defined by Commissioner Wellinghoff, means looking at all the discrete resources that can be put into the energy supply mix to meet the demands of load. One aspect of demand response identified by Commissioner Wellinghoff is to set

continued on page 8

As defined by the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy
<http://www.eere.energy.gov>

Green Power: A popular term for energy produced from clean, renewable energy resources.

Renewable Energy: Energy derived from resources that are regenerative or for all practical purposes cannot be depleted. Types of renewable energy resources include moving water (hydro, tidal and wave power), thermal gradients in ocean water, biomass, geothermal energy, solar energy, and wind energy. Municipal solid waste (MSW) is also considered to be a renewable energy resource.



Commissioner Wellinghoff Interview Continued

price differentials between peak and off-peak periods to mitigate even greater price spikes during peak load times by decreasing demand peaks. But his concept of demand response is far more than setting commodity price differentials between peak and off-peak periods to effect behavior. He endorses giving consumers capacity price payments for participating in markets in non-peak times without necessarily making a change in the commodity price at all. Another aspect of demand response, he told us, is to have system operators provide signals to market participants other than generators (e.g., plug-in hybrid vehicles) to provide ancillary services, such as spinning reserves and regulation. By relieving the generators from the responsibility of ramping up and down to provide ancillary services, Commissioner Wellinghoff posits that generators can instead keep operating at optimum levels and thereby provide energy more cheaply. For Commissioner Wellinghoff, great benefits from demand response include having services provided more efficiently and inexpensively. It all comes down to having intelligent price signals and a diversity of choices in the provision of services and timing of service demands.

Commissioner Wellinghoff has championed this model at FERC, which is approving organized wholesale programs in the form of tariff demand response programs. He is also Co-Chair of a FERC/NARUC collaborative effort to integrate demand response in both federal and state markets. He has found the states to be

very receptive to the effort to establish both retail and wholesale markets whereby higher commodity and ancillary service prices are established at peak periods, and transmission congestion is thereby alleviated. States particularly understand that transmission congestion can be managed so as to lower prices through demand response, the Commissioner contends, because pressure from consumers for lower prices are



acutely felt by state commissioners, particularly those that are elected.

Before Time Began: Integrated Resource Planning

For states that have not undergone restructuring with retail access, Commissioner Wellinghoff also has left a legacy he began in Nevada that is now being followed in 17 states by which Integrated Resource Planning interweaves all facets of supply and demand in an overall efficient manner. That is, before there was unbundling (with demand side management

as a key ingredient to making markets and services efficient), there was an integrated service provider who owned the generation, transmission, and delivery facilities. Consumers were unaffected by, and unaware of, the construction of power plants until their completion, at which time the costs went into rate base and were passed on to ratepayers – after it was too late to do anything about the planning process that was already completed.

This unaccountable process became unacceptable to Mr. Wellinghoff by the time of the oil embargo, scarcity, and rapidly increasing prices in the late 70s to early 80s. He saw utilities proposing to build plants and consumers unable to participate in the determination of the best option in advance of construction. He set out to do something about it.

Integrated resource planning was touted by then Consumer Advocate Wellinghoff to require planners to look at the entire resource mix, both the supply side and the demand side. It is intended to provide for meeting the needs of load with the most economical mix of resources. He looked around, studied the subject intensely, and then combined what he considered to be the best elements of progressive programs he found in California and Wisconsin. The result was the Least Cost Utility Planning Act of 1983, which requires that all cost options be laid out for consumers before any irreversible decision is made. Mr. Wellinghoff successfully lobbied the Nevada legislature to pass the Act, by which deter-

continued on page 9

As defined by the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy

Biomass: As defined by the Energy Security Act (PL 96-294) of 1980, "any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants."

Clean Power Generator: A company or other organizational unit that produces electricity from sources that are thought to be environmentally cleaner than traditional sources. Clean, or green, power is usually defined as power from renewable energy that comes from wind, solar, biomass energy, etc.



Commissioner Wellinghoff Interview Continued

minations as to power plant construction in the state are influenced by consumers in advance of the construction. He asserted that it gives the consumers a “voice” and “a seat at the table along with any other intervenors.” This statute is still in effect in Nevada, and continues to serve as a model for other non-retail access states on how to give consumers input into resource options so that they can participate in shaping the energy delivery systems that they will be paying for.

“I can’t tell you how many rate cases I have been involved in.”

An All-Around Energy Kind of Guy!

Jon Wellinghoff has been involved in energy matters for 32 years, beginning as a Legal Assistant to a Commissioner on the Nevada Public Utilities Commission right out of law school when rate cases were so prevalent that an anti-pancaking statute was enacted to stop one case coming in before the last one was decided. He has been a private practitioner, government attorney, expert witness, regulator, lobbyist, and legislative staffer. But in all of these capacities, Mr. Wellinghoff has espoused the interests of the consumer, the development of alternative energy choices, the elimination of inefficient planning, and the disallowance of imprudent costs. He has, on the other hand, defended the flow-through of prudent costs.

In various state jurisdictions, including D.C. and Texas, Witness Wellinghoff has given policy-oriented testimony concerning the optimal structure of programs for energy efficiency. He also testified on cost recovery of a coal gasification project, where he took the position that recovery of the plant should be allowed even though the plant was a failure. The reasoning behind Mr. Wellinghoff’s opinion was that the project was approved in a thorough and open planning process in which the utility acted prudently.

Attorney Wellinghoff had “an array of clients all focused on energy.” His clients ranged from large industrials to the U.S. Navy, from commercial investors to renewable energy developers involved in geothermal and biomass landfill gas recovery projects and small power producers seeking to sell power to utilities. He was even Special Deputy Attorney General for the state of Colorado.

As Deputy District Attorney overseeing consumer protection for the northern Nevada area that includes Reno, Mr. Wellinghoff intervened on behalf of ratepayers in utility rate cases for the first time in the history of that office. His involvement in energy litigation gave rise to the idea of having a formal state-wide Consumer Advocate. Mr. Wellinghoff helped to write the law, and then he became the Consumer Advocate after its enactment. In this position, which he held for seven years, Mr. Wellinghoff intervened in every rate case in Nevada as a matter of right, as well as in FERC proceedings. He told us that, “I can’t tell you how many rate cases I have been involved in.” He does, however, have a good recollection of his role in the

largest rate case in Nevada. This was a \$922 million rate case filed by Nevada Power, which is more than the sum of that utility’s prior rate cases combined. Mr.

Wellinghoff was successful in getting a disallowance of \$435 million. He won a friendly bet on how many millions he would shave off of the rate increase application, and has the nominal payment and concession letter framed on his wall. The issues stemmed from the huge amount of imported high-priced California power.

With all of this experience litigating cases, testifying both for and against cost recovery, writing legislation, lobbying for passage, advising other jurisdictions, and comparing and contrasting models used in various states, Mr. Wellinghoff says that he has a balanced approach of looking at problems and determining just and reasonable rates, and in determining terms of service that are in the public interest. He vows that he sees multiple sides to problems.

Mr. Wellinghoff Goes to Washington – More than Once!

Although he grew up in Nevada and returned there after law school to work at the state regulatory commission, Mr. Wellinghoff was recruited by United States Senator Howard Cannon of Nevada, then Chairman of the Commerce Committee, to be Staff Attorney on the Consumer Subcommittee. He performed that role for 6 months, when he was enticed by Michael Pertschuk, Chairman of the Federal Trade Commission, to help weed out fraud against consumers and against the federal treasury in the handling of the solar system tax credit. He served in that position for one and a half years.

Armed with those consumer and energy credentials, Mr. Wellinghoff embarked on his varied career, aimed at protecting consumers and advancing energy efficiency. He came back to D.C. to be a Bush Administration nominee to the FERC at the recommendation of Majority Leader Harry M. Reid of Nevada. Mr. Wellinghoff was the choice of Senator Reid due to merit rather than due to political connection. He confided that he has only been contacted by Leader Reid once since becoming a FERC Commissioner. He said that it was when the Senate was voting on the renomination of FERC Chairman Joseph T. Kelliher, an event which prompted the Senator to call merely to see how things are going.

He told us that in flying to BWI airport on his way to meet with Senators prior to his own confirmation his luggage was lost by the airline. The good news was that he had hand carried some articles of clothing. The bad news was that he had inadvertently hand carried a shirt belonging to one of his two sons, and it was a very snug fit. However, he managed to piece together a good enough wardrobe

continued on page 10



Commissioner Wellinghoff Interview Continued

to survive Senatorial inspection after a quick buying spree in the nation's capital.

Commissioner Wellinghoff also stated that he brought no Nevada contingent with him to FERC. All of his Staffers are from Washington, with experience either inside FERC or in working before FERC. He asserts that he had a wealth of talent to choose from out of a stack of impressive resumes. He seems genuinely overwhelmed that so many good people were interested in applying. He described long-time FERC Staffer and former Assistant to then Commissioner Nora Mead Brownell, Jim Pederson, who is his Legal and Policy Advisor, as "absolutely tops." In fact, he stated, "The entire Staff is tops." He praised economist Mary Beth Tighe, his Technical and Policy Advisor, who used to head up the IRP Staff of the Maryland PSC, and then worked on demand response after that state moved to unbundling. He also spoke highly of David Morenoff, also a Legal and Policy Advisor, who was hired from private practice at Troutman Sanders. He was also complimentary of Mae Travers, his Confidential Assistant, who helped arrange for the interview, and Rose Johnson, his

receptionist who greeted us on our arrival and helped with the picture-taking.

He has informed all of his Staff that as a draft Order comes across his desk he wants to examine how it "affects the demand side of the equation."

Taking it to the Next Level: FERC and Beyond!

We asked Commissioner Wellinghoff if he sees a need for a national Office of Consumer Advocate. He said no, for a host of reasons. First, he asserted that FERC is very effective in its Hotline Service, investigation of complaints, and mediation. He said that he always reads summaries of Hotline calls, and that he knows that his colleagues receive the same information. Second, he said that consumer advocates, state agencies, and ratepayers, including individuals as well as corporations, municipalities, and co-operatives all have liberal rights to intervene and are heard at the Commission. He sees the agency as being very open, accessible, and fair.

He also sees his colleagues as basically in alignment with what he is trying to achieve. He estimates that he votes on approximate-

ly 60 to 70 Orders each month, but has only dissented on four or five during his entire 10-month tenure so far. He stated that on the vast majority of big issues, like overall efficiency of infrastructure and markets, there is a high level of support among the Commissioners for doing what needs to be done.

Still, he states that he is only starting to explore the solutions at FERC. He has a wide and growing agenda. For one thing, he is a "big proponent" of LNG and the Alaska natural gas pipeline. He calls gas a "transition fuel source" that will be instrumental in reducing carbon dioxide emissions and dealing with greenhouse gas issues. He understands that LNG development must take into account the safety and ascetic concerns of localities, and has concrete, nuts-and-bolts thoughts on how to do this very thing. He explained that his hand-heat, piston-turning device is an example of how to make things work better in an efficient, less costly, and more environmentally friendly way. He moved from that little office experiment to a real-world example.

Specifically, he told of what he saw at Boston Harbor. Just like the temperature

continued on page 11

Behind the Scenes with Jon Wellinghoff

How Would He Spend Any Additional Spare Time? Cross-country and back-country skiing. Time with wife Karen and two teenage sons. Looking at architecture. (It's part of that fascination with energy technologies, physics, mathematics, and system design.)

Reading Material on Nightstand? *Solar Today, Wall Street Journal, New York Times, Washington Post*, and current non-fiction (like Freidman's *World is Flat*). (Sorry, no romance novels for him!)

Favorite Movies: *Chariots of Fire, Blazing Saddles, Blood Simple, Terminator I*, and Bruce Willis *Die Hard* flicks. ("I am a cinema enthusiast.")

Walter Mitty Fantasy Occupation: Engineer and Architect. ("I have been practicing engineering without a license for many years.")

Words to Live By: "Everything in moderation, including moderation." "If the only thing you have is a hammer, everything looks like a nail."



Commissioner Wellinghoff Interview Continued

differential between two plates that the waste heat from his hand caused to operate a piston, he postulated that waste air from a cooling compartment in an LNG facility at Boston Harbor can be used to change the temperature at combined cycle gas turbines located right next door. As the Commissioner detailed, without notes, two Boston 800 MW combined cycle combustion turbines, operating optimally at 40 degrees Fahrenheit inlet temperature, can have their temperature maintained at optimum output levels by taking advantage of the near-by offloading of LNG that must occur at minus 200 degrees F and then be gasified in a boiler to heat up the LNG in tubes and put in pipes. As the Commissioner explained it to us technological novices, the waste heat in the combined cycle turbines can be used by the LNG plant to regasify the liquefied natural gas, and the waste air accrual in the cool-down facility can be put into the combined cycle turbines to get them at the temperature level they require to achieve more power at off-peak times without otherwise using any additional expenditure of energy. Waste heat and cool-down waste accrual from the two facilities, respectively, can be transferred between these neighboring plants in order to assist each other, and thereby get America “on track with lowering our greenhouse emissions, getting off foreign oil dependence, and insuring we have reliable sources of power here.” As he aptly put it, “We need to pick up the low-hanging fruit at our ankles because there is so much out there.” The Commissioner has practical solutions to solve energy problems, and even further foreign policy objectives.

Commissioner Wellinghoff also gave his view that we do not have either a generation or transmission capacity problem *per se*, but rather we have a “load congestion problem.” He declares that “there is enough geothermal energy in the western United States to power the entire western United States. It is just locked up in places like northern Nevada that do not have enough transmission to get it out. So,” he continued, “ultimately we will have to build transmission for those purposes.” There will be a greater demand for this kind of transmission in the Commissioner’s estimation in view of the heightened awareness of the need to go from carbon-based resources to renewable resources in order to fight global warming. Except for that needed to move non-carbon based power from remote areas, he actually foresees that in twenty years there will be plenty of transmission for the most part.



"There is enough geothermal energy in the western United States to power the entire western United States."

Accordingly, more strategic siting of transmission is important to Commissioner Wellinghoff. As with LNG, he voiced sympathy with property owners who are concerned with plans to develop transmission on their property. He also expressed skepticism as to how effective backstop transmission siting authority enacted in the Energy Policy Act of 2005 will be. That does not mean that he favors attempts now taking place on Capitol Hill to repeal the legislation. Far from it. He stated that it is a “good first step.” He spoke of the pipeline certificate authority given to FERC under the Natural Gas Act, and called it “interesting” that the same widespread authority was not given for transmission lines in the Federal Power Act back when it was originally enacted. The EAct national interest transmission corridor concept does not equate to the NGA pipeline siting authority, and the Commissioner is concerned that perhaps it does not go far enough.

For Wellinghoff, another key is to look at distributive generation and cogeneration at local levels, such as southwest Connecticut, where residents are far more receptive to these measures than to new central plants. He added that “99% of consumers who flip on a switch do not care what’s behind that switch. All they care is that the switch does what they want it to do – heats their shower, and gives them a cold beer.”

This use of smaller structures on a local level is seen by Mr. Wellinghoff as a way to get a full array of needs taken care of with minimal energy usage. For example, Japan is hailed by the Commissioner for having installed Honda natural gas engines that provide heat, hot water, and electricity to 50,000 homes. Photovoltaic energy sources should also be widespread according to the Commissioner because they will result in decreased dependence on central generation.

Renewable Energy: Case Study in Problem Solving

Finally, Mr. Wellinghoff weighed in on another matter currently before the Congress. He is a proponent of a national Renewable Portfolio Standard (RPS). He believes that there is a good chance that it will be passed. He stated that there is a 20% standard in Nevada, coupled with an efficiency standard, which he was instrumental in drafting. He has found RPS to be attractive to a growing

continued on page 15



EBA Members & Guests came together at the Foundation of the Energy Law Journal Reception Honoring the FERC Administrative Law Judges on April 24 at the Capital Hilton



Energy Bar Association's Sixty-First Annual Meeting Highlights



New EBA President Michael Manning presents outgoing President David Doot with a plaque in recognition of his outstanding service to the Association.



Senator Mary Landrieu's luncheon speech was well received by all in attendance.



Members of the head table listen intently as Commissioner Spitzer amuses dinner guests.



EBA members enjoy a yearly reception with colleagues.



FELJ Welcomes Mogel Internship Recipients to Washington

For the fourth year, the Foundation of the Energy Law Journal is co-sponsoring two students from the University of Tulsa College of Law as they serve as interns to the Senate Environment & Public Works Committee. Kaylan Lytle and Marina Greek, who serve as student editors for the *Energy Law Journal*, arrived in Washington at the end of May and will spend the summer assisting the Committee on its various efforts, including consideration of energy legislation.

Members of the FELJ Board recently met with Kaylan and Marina to get to know the two scholarship recipients and student editors. They shared their enthusiasm about being in Washington, as well as their appreciation for the Board's co-sponsorship of their time in Washington. Since joining the Committee's staff as interns, Kaylan and Marina shared that they have been tasked with a wide variety of assignments, the most exciting of which so far has been analyzing "hundreds of amendments" to H.R. 6, the House version of the Energy Bill, that were proposed by "all sides."

Established in 2004, the Mogel Scholarship is intended, among other things, to help attract students at the University of Tulsa College of Law to the Journal staff by providing an opportunity to participate in Energy Law matters in Washington, DC. Named after William A. Mogel, who served as the Editor-in-Chief of the Energy Law Journal for 25 years, the scholarship is a way to honor the hard work, dedication and love of the law, that define Bill's long-standing service to the Journal and to the FELJ, and as a way to instill principles of hard work, dedication and love of the law in today's students.

The Boards of the Energy Bar Association, Charitable Foundation, and FELJ hosted a reception on July 16, 2007, for the two FELJ interns and for Ryan Petersen, who is a summer intern at FERC sponsored by the Charitable Foundation.



At a lovely reception in their honor, interns Marina Greek, Ryan Petersen & Kaylan Lytle pause to admire the amazing view.



Left to right: Les Fyock, Marina Greek, Elisabeth Myers, Channing Strother, Kaylan Lytle and Andrew Young.



EBA President Mike Manning, ELJ Articles Editor Jay Morrison & EBA Board member Derek Dyson



CFEBA President Linda Walsh & summer intern Ryan Petersen

Commissioner Wellinghoff Interview *Continued*

number of states.

The reason that having a federal standard appeals to Commissioner Wellinghoff is quite profound. Specifically, he postulates that it could create a need for states lacking in renewables to make up the shortfall through the purchase of credits from states with more potential renewables than they can consume, and commensurately provide an incentive for states with small demand to nonetheless develop their natural renewable resource potential. That is, he sees state trading of credits as a significant by-product of a federal RPS statute. For example, he projects that states like Florida, Georgia, and Mississippi, where there is not a great deal of renewable fuels, may move to a diversified portfolio by means of trading credits with other states that are plentiful in renewables but have lesser demand. Further, explained Commissioner Wellinghoff, it should be an incentive for states like North and South Dakota and Montana to develop the wind power that they have available in order to trade, since those states do not have the load that would cause them to develop wind energy if not for the ability to trade credits with other areas.

This national perspective of the interconnectedness of the complementary needs and possessions of various states demonstrates Commissioner Wellinghoff's problem-solving abilities. He sees a solution in having states with reverse mirror images in terms of resource and load profiles coming to their mutual assistance if given proper incentives through governmental action. Like the prior examples of using waste energy to move a piston or power a combined cycle turbine, the practical use of RPS tied to efficiency further demonstrates the applications of advanced technology to improve energy efficiency. This is what Jon Wellinghoff is all about; and FERC and the country are better off for it.

President's Message *Continued*

members, and we are seeing growth in all our chapters. Over fourteen hundred members attended national and regional meetings, and approximately eight hundred and fifty members attended brown bags.

EBA's sister organizations, the Energy Law Journal and the Charitable Foundation, likewise have expanded services and outreach. The FELJ continues to be one of the preeminent scholarly publications in the energy field, and it can now be readily accessed on-line on the EBA website. Coincidentally, the website will experience a number of upgrades over the next few months, including a new section covering pro bono opportunities that will be available for members, updates on CFEBA developments and donation opportunities, and new searchability tools for the FELJ. The Charitable Foundation already has committed approximately \$500,000 in charitable gifts, and you can find out more about these gifts in this newsletter. On June 27, the Charitable Foundation kicked off its 2007 Annual Fundraising Campaign that is directed to law firms, energy companies, and other institutions represented by EBA members. I urge you to get involved in this campaign and help CFEBA raise money for its important charitable works in all regions of the U.S. and overseas.

EBA's Directors and Officers are laying the groundwork for a very exciting year of membership events and activities. Please mark your calendars for the Mid-Year Meeting that is scheduled for November 29, 2007 and focusing on a broad range of emerging issues and significant developments affecting energy industries and our members' respective practice areas. The Mid-Year program will be held at the Reagan Building and International Conference Center, located at 1300 Pennsylvania Avenue, N.W., and will be paired with a Primer to be held on the following day, November 30. The Primer will address climate change, carbon regulation, and renewable energy, and will feature leading authorities from industry, academia, and the legal profession. The Programs and Meetings Committee, with assistance from other EBA committees, is putting together an exceptional Mid-Year program. In addition, several Regional Chapters and EBA Committees have brown bag and luncheon programs already scheduled, and others will follow shortly. I encourage you to attend these Regional Chapter and Committee programs that are highly informative, and offer an excellent opportunity for networking with colleagues that share common interests.

EBA's 2005 Strategic Plan sets out, as the mission of the Association, the promotion of professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies. The Strategic Plan also identified principles for future success and initiatives in six areas: Programs and Services, Membership, Governance, Law Students and New Attorneys, Technology, and Image and Identity. Many of these initiatives have been, or are currently being addressed. For example, EBA has expanded its educational offerings to include primers and other programs at the national and regional levels, and we are introducing new technology to enhance these programs and member services. Our programs are designed to include more extensive coverage of emerging state and

continued on page 16



Upcoming Events

Southern Chapter Teleseminar on Clean Coal Technology

September 2007

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.

For more information on any of these events, please contact Michele Duehring at 202.223.5625 or michele@eba-net.org.

President's Message Continued

regional issues, and as an organization, we are expanding our relationship and participation with other industry organizations and bar associations through EBA's Joint Enterprise Committee. In conjunction with the 2005 Strategic Plan, the Board recently conducted a membership survey during 2006-2007 in order to assess member satisfaction, areas of unmet needs and opportunities to expand membership and improve the delivery of member services. The results of the survey were reported earlier this year, and the Board has created a Strategic Planning Committee, chaired by President-Elect Donna Attanasio and comprised of members of FELJ, CFEBA, each of our EBA Regional Chapters, and the EBA Board, that will provide analysis and recommendations for responding to member needs and challenges that lay ahead. In this regard, we will be providing the membership with reports from the Committee as the year progresses and we welcome your thoughts and suggestions.

Finally, I hope that you find real value in your EBA membership, including the educational resources and networking opportunities the organization provides. The Directors and Officers of the Association appreciate member feedback and are dedicated to ensuring that EBA continues to grow and develop in order to provide its members with the highest quality services. We very much appreciate the support of all our members who so generously volunteer their time and expertise in making EBA such an outstanding professional organization.

*Michael Manning
President, Energy Bar Association*

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 over 2400 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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