

EBA's 60th Annual Meeting

New Directions in Energy Regulation Post EAct 2005

How FERC Rules Will Reshape the Energy Industry

April 27, 2006, Washington, D.C.

Tape #	Session Title
EBA 04/06-01	WELCOME AND INTRODUCTION: Kevin J. Lipson, Co-Chair, EBA Programs and Meetings Committee, Hogan & Hartson L.L.P., Frederic G. Berner, Jr., President, EBA, Sidley Austin Brown & Wood LLP
EBA 04/06-02	GENERAL SESSION: Special Report to the EBA -Implementation of the Energy Policy Act of 2005: SPEAKER: Cynthia A. Marlette, Principal Deputy General Counsel, Federal Energy Regulatory Commission; Introduction: Mark C. Williams, Co-Chair, EBA Programs and Meetings Committee, Bingham McCutchen LLP 1
EBA 04/06-03	Session A: Mergers & Acquisitions in the Post PUHCA Environment: The repeal of the Public Utility Holding Company Act of 1935 opens the door to increased merger and acquisition (M&A) activity in the U.S. energy sector. Since November of 2004, four major electric or combination utility mergers have been announced. Some mergers will give rise to generation divestiture. Interests in generation companies continue to be traded in fast moving financial markets. The M&A panel will discuss the evolution and future of energy sector M&A review, including: what has changed as a result of the Energy Policy Act of 2005 and FERC's rulemakings thereunder; to the extent DOJ/FTC and State PUCs require market power analyses which deviate from FERC's Appendix A, what are merger candidates and consumer interests to do and are these differences relevant in only ISO/RTO clearing price markets; where are the states heading in merger review; how will FERC's implementation of PUHCA 2005 affect evolving markets for trading interests in generation companies or the potential for consolidation in this sector? Panelists: Douglas G. Green, Michael A. Bardee, Diane Munns, Stephen Angle, Moderator: Michael J. Fremuth
EBA 04/06-04	Session B: Antitrust in the Energy Industries: As regulators and legislators opened historically regulated markets to competition in the wholesale electric and gas industries, the industries face growing antitrust challenges. Antitrust litigation in the energy industry is on the rise. For example, the court cases involving activities in electricity and gas markets related to the Western Energy Crisis allege violations of state and federal antitrust laws. In the electric markets, grid operators and market administrators have formed and rely on sector committees of competitors for market participant input. The law governing the interplay of State and Federal antitrust laws and energy regulation will continue to evolve, and the stakes are high. Join this panel of energy antitrust experts to discuss: whether and to what extent the Filed Rate Doctrine bars antitrust suits; does the preemption doctrine allow litigation to proceed under state laws; what are the antitrust implications of new market structures – ISOs/RTOs and other transmission organizations; what are the rules governing sector committee participation – is sector joint petitioning immune from antitrust liability? Panelists: Joel Kleinman, Gregory C. Cook, Max Blecher, William F. Young, Moderator: Kathryn M. Fenton
EBA 04/06-05	LUNCHEON AND AWARD PRESENTATION: Presentation: Frederic G. Berner, Jr., President, Energy Bar Association, Remarks: Senator Pete V. Domenici, Recipient of the Energy Bar Association's, 2006 President's Award for Extraordinary Leadership in the Development of U.S. Energy Law
EBA 04/06-06	Session A: The New Market Behavior Rules, How They Impact Market Manipulation, and FERC's Expanded Penalty Authority: What are the rules? How does the SEC's 10(b) standard implicate FERC's Policy? Is FERC expanding the types of transactions subject to its jurisdiction? Why is conduct found to be "in connection with" a FERC jurisdictional transaction important? What are the new record retention and reporting requirements? What are the consequences of non-compliance? Why is it important to have a corporate compliance plan in place? Panelists: Robert E. Pease, James E. Bowers, Brian D. O'Neill, Allan Horwich, Moderator: Michael J. Manning
EBA 04/06-07	Session B: Nuclear and Coal-Fired Electric Generation: Back to the Future? The nation has once again shifted in its views of what type of fuels might be acceptable for production of electricity. With energy independence and rising oil and natural gas prices on the nation's mind, interest in coal-fired and nuclear generation has returned. In the coal area, there are dozens of plants under development and a few under construction. The panel will examine the regulatory and financing hurdles facing developers of traditional coal-fired plants as well as the prospect for "clean coal" technology projects in the near future. In the nuclear area, the panel will discuss the current state of new nuclear plant development, including the regulatory challenges and industry issues facing such projects (e.g., licensing of new plants). The panel will also explore the investment incentives and risk protections for new plants provided under EAct 2005. Panelists: David R. Hill, R. Thomas Hoffmann, Daniel F. Stenger, David Matthews, Michael H. Schwartz, Moderator: Perry D. Robinson
EBA 04/06-08	Session C: A Ride on the Roller-Coaster: Prices, Supply, and Infrastructure Planning in Today's Volatile Gas Market: In 2005, back-to-back hurricanes stressed an already tight gas-supply balance, leading to record high prices. Fortunately, an unusually warm winter provided short-term relief, including massive declines in wellhead prices. This panel will examine the lessons learned and the expectations for the future as they affect the planning and policy choices in each sector represented. Implications will be explored ranging from what consumers could expect going forward, to the impact on the development of new supply areas and LNG projects, to the reaction of international supply markets, to the interaction with new pipeline infrastructure. Panelists: Stephen J. Harvey, R. Skip Horvath, Ben Andrews, Christopher A. Helms, Monika Ehrman, Moderator: Richard G. Smead
EBA 04/06-09	Session A: State Regulation After the Repeal of PUHCA: There is a growing trend among state regulators to regard the liberalization of federal oversight as potentially creating a regulatory void that could be exploited to the detriment of utility customers and the public interest. Several state commissions have initiated rulemaking proceedings to develop regulations designed to strengthen their review of utility-affiliate relationships, control the extent to which utility holding companies may diversify into non-utility businesses, assure that priority is given to utility operations in the allocation of capital and other resources within holding company systems, and maintain access to information relevant to their regulatory mandate. Will new state regulatory initiatives replace PUHCA's uniform, comprehensive, federal regulatory framework with a diverse mix of regulatory requirements that could vary from state to state? This panel will focus on the pros and cons of more intense state regulation in areas that the federal government vacated based on its judgment that intrusive regulation was having a deleterious effect on capital attraction. Panelists: Maureen O. Helmer, James M. Van Nostrand, Montana M. Cole, Moderator: Kendrick R. Riggs

EBA 04/06-10	Session B: Status of the Industry's Infrastructure: Regardless of market demand and regulatory policies regarding energy commodities, the key link to making any market function is ensuring that the energy infrastructure can make the desired commodity available to market. In today's world, that means making certain that there are incentives and policies in place to ensure the construction or expansion of adequate electric transmission lines, natural gas pipelines, natural gas storage facilities, and liquefied natural gas receiving terminals. This panel will provide an overview and an update on the status of the development of the energy infrastructure and how present policies impact that development. Panelists: Jeff Wright, Mike Heyeck, Kathryn L. Patton, Mark C. Schroeder, Moderator: Kevin J. McIntyre
EBA 04/06-11	Session C: Hot Topics in Oil Pipeline Regulation: What is FERC's new policy on partnership income tax allowances in the aftermath of BP West Coast Products? To what extent should oil pipelines be permitted to offer special rates, terms and conditions to shippers who are uniquely situated? What innovations or changes in FERC ratemaking policies are needed to encourage needed investment in oil pipeline infrastructure? What effect does the master limited partnership form have on the industry and what considerations does it raise about the long-term financial health of such pipelines? Should FERC's standards of conduct, code of conduct, and market behavior rules applicable to natural gas pipelines, electric utilities, and their energy affiliates apply to oil pipelines and their affiliates? Would legislation giving FERC jurisdiction over the siting and construction of interstate oil pipeline facilities be desirable? Panelists: Albert S. Tabor, Jr., Michele F. Joy, Barron W. Dowling, Elisabeth R. Myers, Moderator: Glenn S. Benson
EBA 04/06-12	DINNER & DINNER SPEAKER: The Honorable Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission

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