

Raising the Bar

LAW ASSOCIATION PREPARES FOR CHALLENGES AHEAD

BY DARRELL DELAMAIDE

YOU DON'T HAVE TO BE A MEMBER of the Energy Bar Association to practice energy law, but it helps.

"It's clearly helpful – it gives you a chance to meet with people you're going to be dealing with outside a situation that is adversarial," says Jason Leif, a partner at Jones Day and past president of the group's regional chapter in Houston. "It carries over into your practice – you have those relationships you wouldn't have otherwise."

The Energy Bar Association, which is affiliated with the American Bar Association, is a voluntary, nonprofit organization, so it's not like a state bar or the Supreme Court bar, which you have to join if you want to practice law in that jurisdiction.

Rather, it provides a forum to bring together lawyers who are all focused on the same issues, notes newly installed association president Donna Attanasio, partner at White & Case in Washington. "Networking is one of the primary benefits," she says. Meeting other lawyers in an informal setting pays off when you see them again across a negotiating table or in a courtroom. "Things tend to go a little better if you know someone on the other side," she says.

This is true even in a city-focused chapter like Houston, says Leif. "No matter how many opportunities you have to run into people, the sheer number of people getting together doesn't seem to happen anywhere else," he says.

The EBA brings together a cross-section of lawyers in different types of practice – litigation, transaction,

financial, appellate, corporate – that may not happen in the normal course of business, Leif says.

But that's not all. The EBA's primary mission is to educate its members about the practice of energy law – and as regulation in the industry intensifies, many more lawyers are feeling the need for this type of educational assistance. Membership is soaring and has already surpassed the

2,600 target the organization had set for 2010, compared with fewer than 1,900 in 2000.

One of the reasons for the increase is a conscious effort by the association to recruit members outside of Washington, Attanasio says. "We've wanted to become more regionally diverse, so we're not just talking to ourselves in Washington," she says.

The group, founded in 1946 as the Federal Power Bar Association, had evolved into the Federal Energy Bar Association by 2000, when it changed its name to its current form. Dropping the word "federal" signaled the group's desire to reach out beyond lawyers who practice before the Federal Energy Regulatory Commission to those who appear before state commissions, as well as to attorneys in transactional, marketing and trading practices, Attanasio says.



Donna Attanasio, right, meets with Joseph Nelson and Angela M. O'Connor, co-chairs of the Energy Bar's Northeast chapter.

PHOTO BY MICHELE DUEHRING

The group has six regional chapters – for the Northeast, Midwest, Southern and Western regions as well as two city-based chapters in Houston and New Orleans. While the national association organizes two main events in the spring and fall, the regional chapters hold their own events.

In March, for instance, the Houston Chapter hosted a presentation from Susan Court, the chief enforcement officer for FERC. Court brought the attendees up to date on the agency's efforts to beef up its enforcement staff and implement the new enforcement authority it received under the energy act of 2005.

Among other things, the regulator explained how the agency got around to its recently released changes in the Standards of Conduct – switching from a focus on a company's relationship to its affiliates to a more functional approach looking at the activity of each individual. The company-focused approach had been

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The Iowa Utilities Board has told five communities that they should forget about leaving Alliant Energy subsidiary Interstate Power and Light Co. to set up municipal utilities, according to *Public Power Weekly*.

Too many risks would be posed by the change, the regulators told the cities of Everly, Kalona, Rolfe, Terril and Wellman.

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developed in response to a federal court ruling, but after some experience with it, the agency decided that a return to its original functional focus would be more efficient, Leif recounts.

Hearing first-hand from regulators, having a chance to ask them questions and a chance to meet informally with them is one of the real upsides to EBA membership, says Leif. "It gives you access to decision makers in government that you wouldn't otherwise have," he says. In the case of FERC officials like Court, "it gives you a chance to get to know people, to learn how the agency works and what their priorities are."

This kind of insight becomes more valuable as regulation at all levels becomes more intense. "FERC is coming down harder on enforcement," says Attanasio. The agency has more teeth from the Energy Policy Act, with the power to levy civil penalties of up to \$1 million a day, and has increased its focus on markets. "It's very important that we stay on top of regulation as it evolves," she says.

For one thing, increased innovation in energy markets means energy attorneys and their clients have to be more alert to the formal rulemaking process, as agencies integrate the innovations into their regulatory scheme.

In a more market-based environment with less vertical integration, notes Attanasio, it has also become imperative for those mounting generation and transmission projects to educate investors about regulation. "You have to have a regulatory scheme you can depend on in order to attract capital," she says. "There is a much stronger economic component in everything we do."

Regulators realize the need to have rules that are predictable and fair, and generally, from FERC on down, they are happy to work with EBA to educate members, either directly as members or by taking part in their programs. It is also a useful forum for FERC staffers and other regulators to find out what the concerns of industry are, EBA officials say.

Aside from the national organization and the regional chapters, 20 standing committees devoted to the full range of topics in energy law further the education of members with reports, brown bag lunches and other programs of their own. These committees range from alternative dispute resolution to young lawyers and include topics such as FERC practice and administrative judges, finance and transactions, and renewable energy and demand-side management.

In addition to the macro-benefits like networking and education, says Sue Kelly, in-house counsel for the American Public Power Association, the EBA offers some micro-benefits. "I find the directory of attorneys hugely useful," says Kelly, who is currently vice president of the Energy Bar Association. "Nine

times out of ten I'll find the phone number of any attorney I need to contact," she says, testifying to the comprehensiveness of EBA membership.

The large majority of EBA's membership consists of attorneys located in the continental United States. Just over one-third are based in Washington. EBA also has approximately 50 international members, of which roughly three-fifths are from Canada. The group has approximately 100 student members and attorney members including faculty from at least 10 universities. Overall, roughly 10 percent of the membership comes from either government or academia and pay lower dues.

About 7 percent of the association members are nonattorney professionals, typically professionals who work for energy companies or who are consultants to the energy industry, or even CEOs from utility companies – people who need to keep abreast of what's going on in the regulatory and legal environment.

The financial industry is well represented with nonattorney members from some of the biggest investment banks – membership is individual and not corporate. Many of the attorney members also deal primarily in the financial sector or in energy trading.

The EBA sponsors two special-purpose foundations. One publishes the semiannual *Energy Law Journal* in collaboration with the University of Tulsa, a specialized review that goes to more than 2,700 subscribers. The other, the Charitable Foundation, raises money to donate to charitable causes.

"We try to find things that are energy-related," explains APPA's Kelly, who sits on the Charitable Foundation board. For instance, in the aftermath of Hurricane Katrina, the foundation funded 10 generators in stricken areas to help restore electricity.

In an arrangement typical for professional associations to preserve continuity, Attanasio succeeded to the presidency in May after spending a year as president-elect. The new president-elect is Richard Bonfield, vice president of PSEG Services Corp., who will move up to the presidency next May, and Susan Kelly in all likelihood will then become president-elect.

Attanasio sees the main challenges in the profession as keeping pace with intensifying regulation and working to build infrastructure – new generating and transmission capacity. There is keen interest in renewables, spurred by state requirements for renewable portfolio standards, she says, and growing interest in the field of carbon regulation as Congress moves closer to mandating some sort of carbon reduction program.

The Energy Bar Association will be in the forefront of these developments. "We want to keep growing," she says. "Energy is a continually challenging area of the law."