

ENERGY FOLLIES

Conversations about energy law and policy are paramount, undergoing new scrutiny and characterizations. *Energy Follies: Missteps, Fiascos, and Successes of America's Energy Policy* explores how a century of energy policies, rather than solving our energy problems, often made them worse and how Congress and other federal agencies grappled with remedying seemingly myopic past decisions. Sam Kalen and Robert R. Nordhaus investigate how misguided or naive energy policy decisions caused or contributed to past energy crises and how it took years to unwind their effects. This work recounts the decades-long struggles to move to market supply and pricing policies for oil and natural gas in order to make competition work in the electric power industry and to tame emissions from the coal fleet left to us by the 1970s coal policies. These historic policies continue to present struggles, and this book reflects on how we ought to learn from our past mistakes in addressing future challenges.

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MISSTEPS, FIASCOS, AND SUCCESSES OF AMERICA'S
ENERGY POLICY

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Contents

<i>List of Figures</i>	<i>page</i> vi
<i>Preface</i>	vii
<i>Acknowledgments</i>	ix
1 Introduction	1
2 Federal Energy Regulation Begins Flowing	8
3 The Supreme Court Creates a Gap	25
4 The Gap Continues: Changing Electricity Markets	54
5 Natural Gas’s Tortured Road from Regulation to Decontrol	78
6 Oil Shocks, Gas Lines, and Energy Policy	98
7 Carter Crowns Coal King: Coal’s War on People	135
8 Energy Eclipsing Air	163
9 Oil, Cars, and Climate	191
10 Embedded Judgments and Energy-Resilient Transitions	214
<i>Bibliographic Note</i>	228
<i>Index</i>	233

Figures

5.1	US Energy Information Administration, <i>Annual Energy Review 2011</i> (September 2012)	<i>page 85</i>
5.2	US Energy Information Administration, <i>Monthly Energy Review 2016</i> (August 2017)	95
6.1	Crude oil prices, 2010 dollars. WTRG Economics	131
6.2	Crude oil prices and unemployment rate, 2010 dollars. WTRG Economics	132
9.1	White House sticker on fuel economy standards	204
9.2	Congressional volume target for renewable fuel	207

Preface

When, in 1986, Robert Nordhaus offered me a job, I could not have anticipated how much Bob would influence my career. Energy law at the time was witnessing a transition with dramatic changes, and its allure for lawyers was on the cusp of an incline. Bob had been at the fulcrum of many of those and earlier changes. Early in his career, he served with the House Legislative Counsel and as Counsel to the House Commerce Committee, where he helped draft several of the nation's important regulatory programs, including the 1970 Clean Air Act and federal energy programs following the 1973 oil embargo. He then served, under President Jimmy Carter, as a member of the Energy Policy and Planning Office and as Assistant Administrator of the Federal Energy Administration. When Congress changed the Federal Power Commission to the Federal Energy Regulatory Commission, Bob served as its first General Counsel. Later, President Clinton, in 1993, appointed Bob as General Counsel to the Department of Energy, a position he occupied until 1997. This history of and commitment to public service, along with his tenure in private practice, informed how Bob approached challenges confronting energy and environmental policy, with a keen appreciation for the need to protect our environment and approach energy policy pragmatically. When, therefore, I began my introduction to energy and environmental law with Bob as one of my mentors, I could not have been luckier. Bob taught those who worked with him to pay meticulous attention to details, and with a comprehensive knowledge of many fields, he constantly challenged his colleagues. And when, a few years ago, we agreed to combine our efforts and write this book, I could not have been more humbled.

When, tragically, Bob passed away on December 24, 2016, I lost more than just a coauthor; I said goodbye to a mentor, a friend, and a colleague. Finishing *Energy Follies* presented a unique challenge as well. I had to do my best to ensure that the chapters that follow reflect Bob's insights and perspective, and as such, I had to avoid making alterations that modified what Bob and I discussed. I can only hope I was successful, and to the extent that I may have made mistakes, I wish to apologize to

Bob, my teacher and friend. Specifically, Bob never had the opportunity to review the last chapter in the book, although we talked seemingly innumerable times about the substance of the chapter. If, unfortunately, in translating those conversations into words I erred in conveying my coauthor's insights, I once again take full responsibility and hope that Bob would forgive my failure as one of his many students.

Acknowledgments

As with any endeavor building off years of experience and conversations, acknowledging all those who assisted is impracticable. Yet both Bob and I benefited greatly from our colleagues over the years at Van Ness Feldman, a Washington, DC, law firm specializing in energy, environment, and natural resource issues. While the material discussed in this book does not reflect the views of that firm or its clients, it benefited enormously from the years of support and assistance of attorneys and other professionals as well as assistants in the firm. Bob, I am sure, would have wanted to thank individually his assistant, Penny Storms, and to have acknowledged the support from his wife, Jean, and his two children, Ted and Hannah. This book could not have been written without their generosity and assistance.

I would like to thank the Wyoming College of Law for its generous support, as well as those who offered insightful comments on the book's material, including Steven Weissman and James E. Hickey. Finally, I want to express my appreciation to my son, Joshua, who worked as a research assistant for me one summer, and to my father, Albert, who spent time before he passed away sending me information that he thought useful. My wife, Karen Ventura-Kalen, of course supported me in countless ways, including spending a semester in Washington while I worked with Bob.