Parr Richey Obremskey & Morton
ATTORNEYS
Our Strengths. Your Advantage.

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THE DOCKET

A DISCUSSION OF BUSINESS ACTIONS AND LEGAL ISSUES FROM THE UTILITY BUSINESS ATTORNEYS AT PARR RICHEY OBREMSKEY & MORTON

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CHANGING OF THE GUARD

Parr Richey partner Don F. Morton – after serving Wabash Valley Power Association ("Wabash Valley") for more than 30 years as its General Counsel – returns to Parr Richey's Lebanon office to finish out his legal career. Parr Richey will continue to serve as General Counsel to Wabash Valley, as Randy Holt, another Parr Richey partner, will transition to Don's chair as General Counsel.

Wabash Valley is a wholesale power provider that serves the power needs of 28 local distribution electric cooperatives in a five-state area. Wabash Valley owns electric generation and transmission assets and operates on a cooperative nonprofit basis.

Don started working with Wabash Valley in the mid-1970s, when Wabash Valley hired its first full-time employee to manage the business. He moved into the Wabash Valley offices in 1980 and has weathered more than one business crisis during his tenure there. While at Wabash Valley, Don not only was involved in many aspects of legal issues related to operating an electric utility, but he has had experience in several unusual matters. These include a successful prosecution of a Sherman Antitrust case involving a utility foreclosing

Randy Holt and Don F. Morton (standing)

Wabash Valley from the market by refusing to let Wabash Valley use its transmission facilities. Another matter related to a decade of litigation and wrangling concerning the settling-up of the failed Marble Hill nuclear power project located in southern Indiana. This resulted in intense litigation concerning the construction of the project, as well as working Wabash Valley through a protracted Chapter 11 bankruptcy filing.

On the verge of returning to Lebanon, Don says, "I am looking forward to returning to the county seat practice I left many years ago." Don believes that his broad responsibilities over the years will be of tremendous benefit. His experience should allow him to counsel corporate clients both small and large, whether local, multi-state, or nationwide. He also may continue to work on some utility clients, both locally and nationally. Don has the experience to serve both for-profit and nonprofit corporations, as well as all types of business transactions, including mergers and acquisitions and financing. A long-time member of the production agricultural community, Don will further use his experience to advise farmers in business transactions and in more unusual matters, such as wind generation. Don is

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leaving his post at Wabash Valley in December and plans to be ready for business with the Parr Richey Lebanon office in January 2009.

While Don is returning to Lebanon, Randy is leaving to take Don's chair at Wabash Valley. Randy has been working on projects with Don at Wabash Valley since 1996. Randy has a background in corporate law, senior management in heavy industry and government. His practice has been in the areas of corporate and utility law, and he has represented several electric distribution cooperatives. Randy is looking forward to putting his skills to use for Wabash Valley.

Randy stated that, "I am humbled and honored to be chosen for this tremendous opportunity to serve Wabash Valley." Parr Richey is very appreciative of Don's many years of service to Wabash Valley and is proud that Randy will replace him in 2009. ■

If you have any questions regarding these changes, please contact either Don Morton at donm@wvpa.com or Randy Holt at rholt@parrlaw.com.

Landowners Need to be Aware of Their Rights with Respect to Pipeline

Don Morton

Rockies Express, better known as the REX Pipeline, is scheduled to traverse Indiana, roughly parallel to and south of U.S. Highway 40. REX is a combination of three companies: ConocoPhillips, Kinder Morgan Energy Partners, L.P., and Sempra Pipeline & Storage. REX has been granted federal authority to install this natural gas pipeline.

Work on the pipeline was scheduled to commence in 2008, and the pipeline was originally projected to be complete sometime in 2009. Various delays have pushed these dates back. Affected Indiana counties include Vermillion, Parke, Putnam, Hendricks, Morgan, Johnson, Shelby, Decatur and Franklin.

The good news is that the pipeline generally will parallel existing utilities. That is perhaps bad news for those landowners who already have been affected by the installation of underground utilities. The size of the pipeline is considerable, as it is a 42" natural gas pipeline that operates at high pressure and needs to be recharged by five pumping stations located along the way. The Federal Energy Regulatory Commission ("FERC"), the regulatory agency overseeing the pipeline, has established several conditions relating to the installation and operation for the benefit of the landowners.

Landowners should be well informed as to their rights concerning those easements that will be acquired by REX and also should seek the advice of experts concerning the price to be paid for the easement rights, as well as terms and conditions surrounding the installation and operation of the pipeline. Landowners should be aware of the minimum coverage required of the pipeline and the commitments REX has made to the FERC to protect landowners from damage to their tile and drainage systems. The depth of the pipeline may vary according to the soil types and the topography on the landowner's premises.

Affected landowners may receive notification from REX, and in some instances, the

notification may relate to the depth of the pipeline, and the failure to respond may result in undesirable conditions being imposed upon the landowner. Therefore, it is important to seek the advice of consultants to assist in this process and to obtain a favorable price for the easement rights being transferred.

In the event the landowner and REX are unable to reach agreement, the matter will go to eminent domain proceedings for final resolution. REX has already filed condemnation actions against certain landowners in Indiana.

Landowners should be aware that REX may try to offer below what the land is valued. Landowners may need to seek experts to protect their rights. Attorneys at Parr Richey are prepared to assist landowners in attaining the highest value for their land. ■

If you have any questions, the attorneys of Parr Richey Obremskey & Morton are available to help you. Please contact us at www.parrlaw.com.

Audits of Employment Practices and Benefit Plans Critical to Assess Risks and Prevent Lawsuits

Jeremy Fetty

Employers are facing a barrage of legal issues today. Oftentimes, employers and human resources personnel do not adequately keep up-to-date on employment and benefits laws until an issue arises, such as a lawsuit or a threatened lawsuit. Failure to comply with employment and benefits laws can be costly and can result in penalties, fines, governmental agency audits and/or litigation. The best way for an employer to protect itself is to conduct an annual audit of its employment practices and its benefits plans. Audits should be conducted yearly, because laws continue to change on an annual basis.

A team concept tends to be the best approach for conducting an audit. Generally, the human resources manager or office administrator will work with legal counsel. The support of management is essential.

In reviewing employment practices, certain areas should be examined on a yearly basis, such as pre-employment inquiries and applications; posting of mandated notices; interviewing techniques; hiring and firing practices; compliance with mandated recordkeeping requirements; post-offer medical examinations; wage and hour issues; employee handbook and policies; training; classification of employees; and use of independent contractors. With regard to employee benefits plans, these generally should be reviewed annually to identify structural and operational compliance, reduce potential tax liability and to ensure there is proper communication to employees.

Employment practices and benefits audits can allow an employer to save money, improve personnel policies and resolve potential litigation risks. The primary focus should be to cause action to occur when needed — either to strengthen policies and employment practices or to correct negative or unlawful practices.

Whether it be immigration laws with I-9 audits or new compliance requirements for the Americans with Disabilities Act, employment and benefits law changes every year. Failure to be in compliance with these changing laws can be very costly. Risks and lawsuits can be minimized through an annual audit. Parr Richey is ready, willing, and able to conduct employment practices and benefits audits tailored to employers, municipalities, non-profit organizations and individuals. ■

If you would like more information regarding employment practices and benefits plan audits, please contact Jeremy L. Fetty at jfetty@parrlaw.com. Mr. Fetty practices in the areas of labor and employment and benefits law.

CERCLA Requires Regulations and Responses

Tim Karns

A growing recognition of the effects of climate change and increasing concern over depletion of fossil fuel reserves have pushed ecological issues to the forefront of American politics. Policymakers have enacted complex environmental laws aimed at alleviating society's impact on the environment. Unfortunately, many provisions utilize broad and ambiguous language. Businesses face uncertainty when determining whether their actions conform to these regulations.

Such a dilemma often occurs during real estate transactions involving contaminated commercial properties known as brownfields. Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), persons may be held strictly liable for cleaning up hazardous substances at properties they either currently own or operate or owned or operated at the time of disposal. Strict liability, in the context of CERCLA, means that a potentially responsible party may be liable for environmental contamination based solely on property ownership and without regard to fault or negligence. While CERCLA does provide important liability protections, determining whether a prospective purchaser can utilize a particular exemption requires the interpretation and application of a myriad of regulations.

A prospective purchaser can petition the Indiana Department of Environmental Management for a Brownfields Comfort Letter. While not a release from liability, a Brownfields Comfort Letter will explain a specific liability exemption established by statute or IDEM policy and apply it to the letter recipient. A Brownfields Comfort Letter may eliminate a prospective purchaser's liability concerns. ■

For further information on how to protect yourself from CERCLA liability, please contact Timothy L. Karns at tkarns@parrlaw.com.

NEXT ON THE DOCKET: Erin Casper Borissov

Erin Casper Borissov

Erin Casper Borissov joined the firm in 2008 as an associate concentrating in energy and utility law, environmental law and corporate law.

After she earned her B.S. in economics and trumpet performance from the University of Wisconsin in 2001, Erin joined the economics consulting firm of Christensen Associates in Madison, Wisconsin. She consulted for electric and gas utility companies in retail rate cases, wholesale electricity price forecasting and fuel price forecasting.

Erin also worked with the Arizona Corporation Commission, where she served in several rulemaking processes, provided oral and written testimony and provided various staff reports.

Erin earned a J.D., summa cum laude, from Indiana University School of Law—Indianapolis in 2008. During law school, Erin became a member of the Order of the Barristers and served as articles editor of the *Indiana Law Review*. She also was a three-year recipient of the Indiana State Bar Association Utility Law Section Scholarship. Erin continues to serve as moot court judge.

Erin lives in Indianapolis with her husband, Blagoy. She plays soccer, swims and enjoys the Indianapolis Symphony Orchestra. ■

Financial Crisis: Beware of Preference Payments and Automatic Stays

As a business you may be dealing with an individual or entity which has filed bankruptcy or you fear may soon file. Amidst the current financial crisis, this situation is increasingly prevalent. There are ways a creditor can better protect itself prior to a debtor's bankruptcy filing and once a petition for bankruptcy has been filed. Preference payments and automatic stay rules can be unforgiving to creditors.

Creditors should be aware that an automatic stay is entered when a petition is filed. Once a stay is entered, if violated, a creditor could be subject to sanctions, including actual and punitive damages.

Creditors also need to be aware of preference payments. A bankruptcy estate can recover certain payments made to creditors in the 90-day period prior to the bankruptcy petition. There are exceptions to this general rule which could be critical in deciding whether the payment is a recoverable. Creditors should seek advice on how to handle payments received from debtors within 90 days of a bankruptcy filing and from debtors they suspect may file bankruptcy.

Creditor's rights vary significantly dependant on the type of creditor—secured or unsecured—and the type of debt or performance involved. Bankruptcy laws are complicated and creditors should seek professional advice when dealing with issues such as preference payments and automatic stays.

In these times, it is important for a creditor to protect its interests. Please contact the attorneys at Parr Richey if you have any questions or need assistance in protecting your interests.

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