

# Administrative Law News

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## The Tempest: Weathering the Restructuring Storm

*The theme for the 19th annual National Regulatory Conference, held in Portsmouth on May 7-8, 2001, was "The Tempest: Weathering the Restructuring Storm." Peter Navarro presented the keynote address for the conference. The following summary of Peter Navarro's remarks was compiled from notes taken during Professor Navarro's remarks. It simply attempts to capture the highlights of his talk; he was not speaking from a prepared text.*

*Professor Navarro's remarks from this past May illustrate how dynamic energy restructuring is. He criticized certain power marketers for profiting excessively during California's energy crises. Just last month, the front page of the New York Times business section for December 13th observed that "The power companies that not long ago were criticized as 'profiteers' responsible for California's energy crises are now reeling from Enron's collapse." The tempest remains an apt metaphor for the electric restructuring experience.*

It is unfortunate how California went about the restructuring of its electric industry. It truly has become a "horror story." The California economy is on its knees because of restructuring.

In 1995, California was racing to be the first state to restructure. It made sense at the time. After all, the state had the highest rates in the U.S. (because of mistakes made in the 1970s), especially because of PURPA contracts that were signed at rates as much as 15 cents/kWhs.

That's why no long-term contracts were allowed and there was

heavy reliance on a spot market or day-ahead approach to wholesale energy supply purchases. The state was burned once by long-term PURPA contracts; it wasn't going to make that mistake again.

Also, California Governor Pete Wilson was looking for an issue on which to run for President. And, there was a "rush to judgment" in the California legislature. Environmentalists were told to "get on this bus or it will leave without you." Consumers were kept at bay because

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*Peter Navarro is an Associate Professor of Economics and Public Policy in the Graduate School of Management at the University of California, Irvine. He is considered a leading expert on utility deregulation, and has been interviewed extensively by national as well as local media since California's electric power crises started making headlines.*

# Message from the Chair

by James Patrick Guy, II

The 2001-2002 Bar Year promises to be an exciting one for the Administrative Law Section. A new Board of Governors has been elected and is already working to provide greater services and programs to you, its members. This year's Board looks forward to a full agenda, with renewed efforts to enhance our traditional programs.

In the past year, under the leadership Immediate Past Chair Kodwo Ghartey-Tagoe, the section had one of its best years ever. Kodwo introduced the first in what we hope will be a long running series of Administrative Law Section brown bag speaker lunches. The 19th National Regulatory Conference was held in Portsmouth for the first time, and an outstanding array of nationally recognized speakers presented an informative and challenging program on the progress of restructuring across the utility industries. Also, for the second time, the conference included a section on ethics directed entirely to administrative law practitioners. The section's workshop on judicial review of administrative decisions at the Virginia State Bar Annual Meeting was riveting and very well attended. All the speakers were exceptional, and the insights of Supreme Court Justice Lacy (a former administrative adjudicator who became part of the ultimate judicial reviewer in Virginia) were particularly interesting. The section also updated and reissued its pamphlet titled *Administrative Law*.

In the current year, our most challenging project remains the annual National Regulatory Conference. This year will mark the Twentieth National Regulatory Conference, and the Board is exploring an appropriate celebration to mark this milestone. The conference itself is being planned for Williamsburg on May 13-14, 2002. Jointly sponsored by the

Section, the Virginia State Corporation Commission, and the College of William & Mary's Marshall-Wythe School of Law, the conference traditionally focuses on an important and timely aspect of the regulation of industries under the Commission's jurisdiction. In recent years, industry restructuring and its effects have constituted a major part of each conference. Conference Chair Alex Skirpan and his committee will assemble a group of nationally-recognized speakers. If you would like to join the committee or have ideas or suggestions, please contact Alex Skirpan at 804/371-9082 or [askirpan@scc.state.va.us](mailto:askirpan@scc.state.va.us).

We are also planning to continue our more recent tradition of organizing a CLE workshop on

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*Jim Guy is Chair of the Administrative Law Section Board of Governors. He is a shareholder at LeClair Ryan, where his practice concentrates on the utility industries.*

# Fresh from the Circuits

by Robert M. Gillespie

The federal judiciary is once again sorting out what Congress intended by certain words used in the Telecommunications Act of 1996. Different courts have reached different conclusions about the "clear intent" of §253(a), which requires that state or local statutes, regulations or legal requirements not prohibit or "...have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Does this federal prohibition trump Va. Code § 15.2-1500(B)'s restriction on Virginia localities offering telecommunications services? Judge James P. Jones of the U.S. District Court for the Western District of Virginia found that it did and granted summary judgment for the City of Bristol on May 16, 2001. See, *City of Bristol, Va. v. Earley, et al*, 145 F. Supp. 741 (W.D. Va.2001) (hereafter, *City of Bristol*). His decision declared that §15.2-1500(B) was preempted by operation of the Supremacy Clause of the U.S. Constitution as being contrary to §253(a)'s prohibitions.

Bob Gillespie is Of Counsel at Christian & Barton, L.L.P., where his practice concentrates on the telecommunications and energy industries.

Judge Jones noted that the relationship between a state and its political subdivisions is traditionally

*A longstanding principle of Virginia corporate law is that only a corporation chartered as a "public service corporation" may conduct a public utility business, and such a public service corporation may furnish only the utility service designated in its charter.... Because of this, Virginia's electric utilities have not been able to engage directly in furnishing telecommunications service.... [E]ntry into the telecommunications market has been accomplished by the electric utility's holding company chartering a separate and independent public service corporation. This process is burdensome.... If electric utilities, or for that matter Virginia general business corporations, are "any entity" ..., why should they be required to... charter a separate subsidiary before engaging in telecommunications?*

within the exclusive control of states. However, Congress may preempt this control if it makes that intention "clear and manifest." Citing to *Gregory v. Ashcroft*, 501 U.S. 452,461 (1991), Judge Jones found this degree of clarity to be shown by the statute's use of the modifier "any". This modifier precludes a narrow interpretation of the law's application. See, *City of Bristol*, at p.747, citing to *Salinas v. United States*, 522 U.S. 52, 57 (1997) and to *United States v. Gonzales*, 520 U.S. 1, 5 (1997).

The decision is now on appeal to the Fourth Circuit (Docket No. 01-1800) and, if affirmed, will likely reach the Supreme Court, because a conflicting FCC interpretation was affirmed by the D.C. Circuit's decision, *City of Abilene v. FCC*, 164 F.3d 49 (D.C.Cir. 1999). The matter bears watching because the Court's expansive reading of "any entity" could preempt other Virginia statutes in

addition to §15.2-1500(B).

A longstanding principle of Virginia corporate law is that only a corporation chartered as a "public service corporation" may conduct a public utility

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## Chair

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an administrative law topic at the VSB Annual Meeting. In contrast to the National Regulatory Conference, our Annual Meeting workshop usually focuses on an administrative law topic that is not related (or only tangentially related) to practice before the State Corporation Commission. This should be another great opportunity to become involved in Bar activities, meet your colleagues, and earn CLE credits while enjoying the gentle breezes of Virginia Beach in June. Brian Buniva and his committee are organizing the workshop this year. If you would like to join the committee or have ideas or suggestions, please contact Brian at 804/775-3809 or [bbuniva@virtualmk.com](mailto:bbuniva@virtualmk.com).

Newsletter Editor Cliona Robb, of Christian & Barton, has promised to reinvigorate this newsletter and has many great ideas for several issues this year. More to the point, she has an excellent plan for executing those ideas and ensuring that the *Administrative Law News* is a valuable benefit of section membership. If you would like to submit an article for publication in *Administrative Law News*, please contact Cliona Robb at 804/697-4140 or [crobb@cblaw.com](mailto:crobb@cblaw.com).

Another new development is a website for the administrative law section. You can access the website at [www.vsb.org](http://www.vsb.org) by clicking on "sections" and then "administrative law." I am actively searching for someone to assist in making the website as useful to our members as possible. In the meantime, we'd like to begin collecting e-mail addresses for section members who would like to receive this newsletter electronically.

We are pleased to welcome new Board members Jay Holloway, Rob Omberg, Patrick Horne, and JoAnne Nolte. Along with myself, the Board also includes Immediate Past Chair Kodwo Ghartey-Tagoe, Vice Chair Alexander Skirpan, Secretary Brian Buniva, Newsletter Editor Cliona Robb, and returning members Allen Glover, Judy Jagdmann and Warren Tisdale.

We bid a fond farewell to four Board members: past Chair Ed Petrini of Christian & Barton, Mark LaFratta of McGuire Woods, Vishwa Link of Dominion Virginia Power, and John Sharer of

Dominion Virginia Power. We are very grateful for their tremendous contributions to the Section.

Finally, I have to thank two people for their remarkable support year after year. Dolly Shaffner is our Virginia State Bar Liaison. Her efficiency and warmth have made Bar service a joy for me, and for all who've had the good fortune to work with her. Mary Council on the SCC staff is the coordinator of the National Regulatory Conference. Her expertise, dedication and practical management style are largely responsible for the consistently high quality of the conference. The efforts of these two remarkable people make the work of this Section possible. We are deeply indebted to them and grateful.

We want to hear from the members of the Section. We want to hear your thoughts on the Section's activities, and we want to know how we can serve you better. We also want to know whether you would like to become more involved in the Section's projects. Call me at 804/968-2984 or send me an e-mail at [jguy@leclairryan.com](mailto:jguy@leclairryan.com). ■

The Virginia State Bar  
Administrative Law Section  
**Administrative Law News**

*Newsletter Editor*  
Cliona Mary Robb

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## Circuits

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business, and such a public service corporation may furnish only the utility service designated in its charter. *See*, Va. Code § 13.1-620.D. Because of this, Virginia's electric utilities have not been able to engage directly in furnishing telecommunications service. *See*, *C&P Telephone Co v. VEPCO*, 1990 SCC Ann. Rept. 239. Instead, entry into the telecommunications market has been accomplished by the electric utility's holding company chartering a separate and independent public service corporation. This process is burdensome because it involves, among other regulatory matters, compliance with the Public Utility Holding Company Act, 15 U.S.C. § 79, *et seq.*, and approvals from the Securities Exchange Commission or the FCC. If electric utilities, or for that matter Virginia general business corporations, are "any entity" under § 253(a) of the Telecommunications Act, why should they be required to comply with § 13.1-620.D. and charter a separate subsidiary before engaging in telecommunications?

Similarly, Va. Const. Art. IX, § 5 prohibits foreign-chartered corporations from furnishing public utility service in Virginia. Section 253(a) does not, however, mention state constitutions. Its prohibitions apply to a "...State or local statute or regulation, or other State or local legal requirement." Did Congress intend for the phrase "...other State or local legal requirement" to cover constitutions? If Art. IX, § 5 is not likewise preempted by §253(a), then such foreign-chartered corporations are "entities" prohibited from providing telecommunications service in Virginia.

Public service corporations are also among the few Virginia entities that have been granted the power of eminent domain. *See*, Va. Code § 56-49. If a non-public service corporation were furnishing telephone service and could not acquire needed right-of-way by condemnation, would this lack of authority "...have the effect of prohibiting the ability of [that] entity to provide...telecommunications service" under the *City of Bristol's* interpretation of § 253(a)?

Follow this case through the Fourth Circuit to see if these and other statutory problems are resolved. ■

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## Tempest

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there was a 10% rate reduction built into the restructuring legislation.

The idea was to create a well-functioning wholesale market, and California would benefit from cheap power. To get such a market, it was decided that it was necessary to force utilities to divest themselves of their power plants. So, all of the non-nuclear assets were sold to a handful of large energy companies — Dynegy, Reliant, Williams, Calpine, etc. Surprisingly, these old clunker power plants were not considered to be of much value...yet a good price was paid for many of them.

With only four-to-six such players, instead of a wholesale market, California got a "Dutch market." These few players have been able to withhold

*In my assessment, FERC could end the California crisis tomorrow by 1) establishing hard price caps of 15-20 cents/kWhs. You can still make a lot of money at those prices. And, 2) require generators to run in order to meet market demand. But FERC won't take this step because of its free market, conservative ideology.*

power to drive up the prices. The California ISO was forced to take power at those high prices, with no discretion.

What has that meant in terms of prices? Electricity that was 5, 10 or 15 cents per kilowatt-hour now goes for 25, 30, 35 cents/kWhs and can even spike to \$1/kWhs.

Don't believe what you hear regarding a supply situation. There is 45,000 MW of capacity available to California. The winter peak is only 30,000 MW, yet the state is declaring stage 2 and stage 3 emergencies with rolling blackouts implemented as a

last resort. Why? Because the market is being manipulated by a small number of generators who are withholding electricity from the market. They are accomplishing this even though they only control about 40% of the state's generation. The other 60% is either nuclear (still owned by the incumbents) or small generators (PURPA plants). The small generators have stopped producing because the bankrupt incumbents stopped paying them and, as a result, they could not pay their natural gas bills (the fuel of choice for generating electricity.) The only way for California to get out of this mess is to stop allowing those who are producing electricity at a nickel/kWhs to be able to sell it for \$1/kWhs.

In my assessment, FERC could end the California crisis tomorrow by 1) establishing hard price caps of 15-20 cents/kWhs. You can still make a lot of money at those prices. And, 2) require generators to run in order to meet market demand. But FERC won't take this step because of its free market, conservative ideology. I'm a free market proponent, but still find these two steps necessary.

I consider the situation in California extremely serious. I caution Virginia not to put itself in a position where an oligopoly is controlling the market. And, it's not just in electric supply. California is experiencing the same in gas. Why is the price for natural gas 10 times higher in California when it is only 3 times higher everywhere else in the U.S.?

In summary, California is a victim of oligopoly theory, regulatory stupidity, and unintended consequences. Because the state's energy situation is so intertwined with the state's economy, the state is suffering death by a thousand cuts.

Looking back at how this all happened, the utility marketers (Enron, Williams, etc.) were the smart people playing chess. And the California politicians were the dumb people playing checkers. In chess versus checkers, guess who always wins?

I am all for companies being profitable, but when you see tripling of earnings within a year and CEOs making \$200 million/year salaries... there is a lot really wrong and really dangerous.

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# Judicial Review of Agency Decision-Making in Virginia

by John D. Sharer

On June 15, 2001, the Administrative Law Section presented a continuing legal education (CLE) program on "Judicial Review of Agency Decision-Making in Virginia" during the Bar's Annual Meeting at Virginia Beach. Three seasoned practitioners from private and government practice joined two respected jurists to offer their insights, perspectives and practical pointers on challenging decisions of administrative agencies in the circuit courts, the Court of Appeals, and the Supreme Court of Virginia.

The importance of careful, painstaking preparation emerged from these presentations as an overriding principle and unifying theme. Specifically, an attorney who hopes to be successful in challenging agency action in the courts must be (1) thoroughly familiar with the organic statute under which the agency acted; (2) immersed in the administrative record;

(3) fully educated in the statutory provisions (e.g. the Administrative Process Act, Va. Code Ann. §§ 9-6.14:1 *et seq.*), and court rules and procedures, governing the appeal process; and (4) of critical importance, not only completely conversant with the applicable standard of judicial review, but also able to use the standard of review effectively and deftly as an appellate advocacy tool.

Brian L. Buniva (McCandlish Kaine P.C.) and the Hon. Theodore J. Markow (Circuit Court of the City of Richmond) both emphasized the critical role, and fundamental importance, of the standard of review. Indeed, Judge Markow exhorted the audience of approximately fifty attorneys to anticipate the appellate standard of review before the underlying agency proceeding even begins. (In this regard, it was noted that

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an important contribution to the scholarly literature on judicial review in Virginia is M. R. Carter, *Standards of Judicial Review in the Virginia Administrative Process Act*, 30 U.RICH.L.REV. 905 (1996). Judge Markow also offered practical insights on how to present and argue the appeal in a manner

*John D. Sharer is Managing Counsel – Electric Delivery & Telecommunications, Dominion Resources Services, Inc. Mr. Sharer organized and chaired the Section's CLE panel. The views expressed in this article are solely those of the author, and do not necessarily represent the views of Dominion Resources, Inc., its subsidiaries and affiliates.*

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## Agency

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that is most helpful to, and informative for, the circuit court hearing the case.

Roger L. Chaffe (Senior Assistant Attorney General, Office of the Attorney General) surveyed recent case law from the Court of Appeals and the Supreme Court of Virginia on important facets of judicial review, *e.g.* waiver of sovereign immunity; deference to the agency; standing; jurisdictional nature of the petition for appeal under Rule 2A:4; and attorneys' fees. Arguably, a jurisprudential struggle and debate between the Court of Appeals and the Supreme Court may be discernible with respect to the development of the law in several of these areas.

James C. Dimitri (McGuireWoods LLP) discussed the special rules and procedures (*e.g.* Supreme Court Rule 5:21) applicable to appeals of right from the State Corporation Commission of Virginia to the Supreme Court of Virginia. These rules and procedures, and the body of case law governing the deference that the Supreme Court affords to the Commission's factual decisions, and the decisions that it makes in its legislative capacity, can be traps for the unwary practitioner who is unfamiliar with the workings of the Commission and of the unique considerations applicable to judicial review of the Commission's final orders.

The Hon. Elizabeth B. Lacy (Justice, Supreme Court of Virginia) closed the CLE presentation with "The View from the Supreme Court — Observations and Perspectives." Among other topics, Justice Lacy emphasized the importance of the standard of review as an appellate advocacy tool. She also highlighted the critical role of assignments of error (noting, for example, that winning appellees may be wise to assign cross-error). Justice Lacy provided a helpful and informative glimpse at the Supreme Court's internal operating procedures. She noted, for example, that the Court performs an independent procedure check on the cases that come before it, *e.g.* jurisdictional issues such as the mandatory statement of significant precedential value or constitutional question as determinative of the issue in civil appeals from the Court of Appeals, Va. Code §17.1-410(b), and the proper form for pre-

sentation of the assignment of error in appeals to the Supreme Court, Rule 5:17(c). (Justice Lacy observed that the Supreme Court largely leaves the development of the law of administrative agencies to the Court of Appeals. Thus, the Supreme Court grants review in only a handful of cases involving agency decision-making.) Justice Lacy also stressed the importance of the Joint Appendix, and exhorted counsel to ensure that it is well indexed.

The panelists' written materials may be obtained, subject to the availability of copies, from Mrs. Dolly Shaffner, Section Liaison, at the Virginia State Bar, 804/775-0514 (telephone), or **shaffner@vsb.org** (e-mail). Any questions about the foregoing article should be directed to the author at 804/819-2271 (telephone), or **john\_d\_sharer@dom.com** (e-mail). ■

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## Tempest

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And all of this chaos comes about from only one-half of the restructuring process — the wholesale market. The retail market stuff hasn't really gotten off the ground. Restructuring was done on the promise of lowering retail prices. But retail competition does not exist and may never come to be. Yet, look what is being given up in this yet unpromised return. No more reserve margin controls, no more environmental controls, no more diversified energy mix (it's all natural gas.)

The regulation devil is bad. A lot does not work. But, if something is broken in regulation, you need to be extremely careful how you fix it.

I'm convinced California's problem would not have happened if regulation had remained in place. Sure, there was some preliminary excitement when the market opened. Brokers came in to sell, got a few customers, but when things got bad, they abandoned those customers. This is an extremely complicated, complex and arcane field. You need to be very, very careful. California did not exert the proper care.

P.S. If Virginia ever has to resort to rolling blackouts...make sure you don't do random rolling blackouts. Our experience shows that people need to know in advance when the lights will go out. Come up with a procedure to apply them selectively and by order of preference. ■

# General Assembly Scrutiny of SCC

by Cliona Mary Robb

The General Assembly's recent scrutiny of the State Corporation Commission ("SCC") has resulted in significant structural changes at the SCC, with further changes under consideration during this session of the General Assembly.

For the past two years, a General Assembly joint subcommittee (the "Joint Subcommittee") has subjected the SCC to extensive scrutiny in order to assess its core functions and determine whether the responsibilities, policies and activities of the SCC should be amended to address changing market structures and emerging technologies of the industries it regulates. This scrutiny produced two major studies assessing the SCC, and these studies have provided impetus for the SCC voluntarily to implement significant structural changes. The Joint Subcommittee did not endorse a study recommendation to increase the size of the SCC from three to five commissioners. However, Senator Norment, the chair of

the Joint Subcommittee, has, in his capacity as an individual lawmaker, introduced SB 375 to increase the number of commissioners from three to five. In addition, Senator Norment has introduced SB 554 to limit the SCC's authority to deal with environmental and other effects associated with new power plants; this bill was endorsed by the Legislative Transition Task Force, which Senator Norment also chairs.

The SCC is reorganizing to improve its operational efficiency, effective February 1, 2002. This reorganization addresses, in part, recommendations resulting from the Joint Subcommittee's studies. One of the most significant changes is the creation of a new buffer between the commissioners and the SCC's regulatory staff whenever the SCC's rules prohibit staff from having any direct involvement in formulating a SCC decision. Two new counsel positions, one for business and financial matters and another for utility matters, have been created to help ensure that the regulatory staff does not have undue influence on SCC decisions.

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*Cliona Robb is a partner with Christian & Barton, L.L.P., where her practice focuses on the energy and telecommunications industries, including local government issues.*

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Philip R. "Duke" de Haas will serve as Counsel to the Commission—Business and Financial, while John F. Dudley will serve as Counsel to the Commission—Utilities. Duke de Haas has been counsel to the SCC since July 2000 and will remain in that capacity but now will primarily focus on insurance, banking, securities, and corporate matters. John Dudley is expected to start his new position in mid-February. For more than three years, he has been a senior assistant attorney general and chief of the Attorney General's insurance and regulatory section.

Another major aspect of the SCC's reorganization is that the chairman of the SCC will be designated as the SCC's chief operating officer, and all sixteen SCC divisions will report to the chairman. In the past, oversight responsibility for the sixteen divisions was divided among the three commissioners. The three commissioners will continue to elect a chairman from among themselves on an annual basis.

The reorganization has also simplified the lines of communications with SCC divisions by designating six industry points of contact within the SCC. The six division directors will assume the lead in communicating and encouraging the development of competitive markets involving their respective sectors. To further emphasize the structure-by-industry organization, all formal cases requiring an order from the SCC will be tracked by the SCC's new case management system (scheduled to be implemented in April 2002) using PUC for communications cases, PUE for energy cases, INS for insurance cases, BFI for financial cases, SEC for securities cases, and CLK for business entity cases.

This reorganization plan stemmed from two major studies resulting from the Joint Subcommittee's scrutiny of the SCC. The first was conducted by the SCC's consultant and resulted in

the Final Report on the Virginia State Corporation Commission by David Wirick and John Wilhelm of the National Regulatory Research Institute, which was completed in March 2001 ("Wirick Report"). The second was conducted by the Joint Subcommittee's consultant and resulted in the Study of Regulatory Responsibilities, Policies, and Activities of the State Corporation Commission by George Mason University School of Public Policy, which was completed in August 2001 ("GMU Report").

On November 19, 2001, the Joint Subcommittee determined that the General Assembly will hold off for at least a year in mandating what could involve major structural and procedural changes at the SCC. During its November 19th meeting, the Joint Subcommittee agreed to extend its study of the SCC through 2002 and submit its final report to the 2003 General Assembly. This extension was based on an assessment by members of the Joint Subcommittee that the SCC had not yet fully responded to the Wirick Report or the GMU Report. Prior to submitting its final report to the General Assembly, members of the Joint Subcommittee will meet at the SCC with the staff and commissioners to obtain a first hand look at the activities performed by the SCC.

Most aspects of the consultants' reports are still under consideration by the Joint Subcommittee, but the proposal by the GMU Report to increase the number of commissioners from three to five was not adopted by the Joint Subcommittee at its November 19th meeting. Nonetheless, Senator Norment, who serves as chair of the Joint Subcommittee, has introduced a bill to do just that in his capacity as an individual lawmaker.

Anyone who practices before the SCC or represents industries affected by SCC decisions will want to keep an eye on developments in the General Assembly's ongoing consideration of matters impacting the SCC. ■

# Brown Bag Lunch Program

by Kodwo Pere Ghartey-Tagoe

This past year, we have endeavored to present high-quality, timely, and affordable educational programs to our members. On Thursday, April 12, 2001, we held our first section luncheon program in recent memory in Richmond. The program was entitled "Federal Electric Restructuring—Progress Report," and our speakers were Shaheda Sultan from the Federal Energy Regulatory Commission, Office of the General Counsel, and Charles Foster from Edison Electric Institute. Ms. Sultan provided some insightful comments on the Federal Energy Regulatory Commission's approval of Regional Transmission Organizations (RTO), the flaws in California's model for restructuring its electric industry, and the differences between California and Virginia's restructuring models. Notably, she identified a number of differences in the two states' restructuring approaches and concluded that "[h]opefully the differences between the two programs will ensure that the result in Virginia is very different from that in California."

*Kodwo Ghartey-Tagoe is a partner at McGuireWoods, LLP, where his practice focuses on the utility industries.*

Mr. Foster discussed some of the proposed legislation affecting the electric industry being considered in Congress. He discussed, among other things, the details of the Comprehensive and Balanced Energy Policy Act of 2001 proposed by Sen. Bingaman, the National Energy Security Act of 2001 proposed by Sen. Murkowski, and the Home Energy Generation Act proposed by Rep. Inslee.

The program was a great success. It was well attended (including one telephone participant from Roanoke), and included a lively discussion of what the future holds for Virginia electric utilities and consumers.

With the success of the program has come a lively interest in future luncheon programs on topical subjects. A program to address effective advocacy in administrative hearings will be

held at McGuireWoods's offices in Richmond in late January, and another brown bag lunch program is being considered for April. Call me at 804/775-1191 or e-mail me at [kghartey.tagoe@mcguirewoods.com](mailto:kghartey.tagoe@mcguirewoods.com) if you're interested in helping to plan the April program or other brown bag events. ■

*...[W]e held our first section luncheon program in recent memory in Richmond. The program was entitled "Federal Electric Restructuring—Progress Report," and our speakers were Shaheda Sultan from the Federal Energy Regulatory Commission, Office of the General Counsel, and Charles Foster from Edison Electric Institute. ...*

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